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James Madison, *The Writings, vol. 1 (1769-1783)* [1900]

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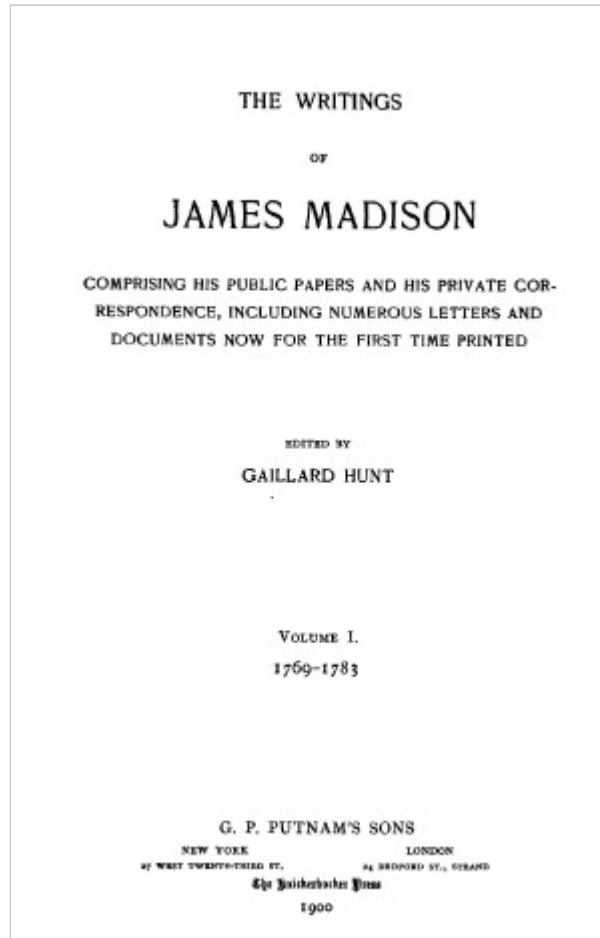
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## Edition Used:

*The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed*, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). Vol. 1.

Author: [James Madison](#)

Editor: [Gaillard Hunt](#)

## About This Title:

Volume 1 of Madison's writings in 9 volumes edited by Gaillard Hunt in 1900-10. This volume contains Public Papers and Private Correspondence, including numerous letters and documents between 1769 and 1783, Constitution of Virginia, and debates with the Congress of the Confederation

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CONTENTS OF VOLUME I.

	PAGE
James Madison (Introduction) . . . . .	xxi
Chronology . . . . .	xxxvii
1769.	
To Rev. Thomas Martin, August 16 [17th] . . . . .	1
<i>Sends account of Princeton—Cost of Grammars—Approach of examination.</i>	
To James Madison, September 30th . . . . .	3
<i>Commencement exercises—Business of the college—Mr. Caldwell's journey—Drought in Virginia.</i>	
1770.	
To James Madison, July 23d . . . . .	6
<i>Finances—Concerning a tutor—His clothes—Conduct of merchants in New York.</i>	
1771.	
To James Madison, October 9th . . . . .	7
<i>Deliverance of his mother—Asks for money.</i>	
1772.	
To William Bradford, Jr., November 9th . . . . .	9
<i>Studies and reading—Livingston's degree.</i>	
Act for opening and keeping in repair public roads . . . . .	13
1773.	
To William Bradford, Jr., April 28th . . . . .	15
<i>Friendship and sermons.</i>	
vii	

## Table Of Contents

[Introduction James Madison.](#)  
[Chronology of James Madison. 1751-1783.](#)  
[The Writings of James Madison](#)  
[1769 - to Rev. Thomas Martin. 1 Mad. Mss.](#)  
[To James Madison. 1 Mad. Mss.](#)  
[1770 - to James Madison. Mad. Mss.](#)  
[1771 - to James Madison. Mad. Mss.](#)  
[1772 - to William Bradford, Jr. 1 \( At the Coffee-house, Philadelphia.—by the Post. \)](#)  
[1772. Act For Opening & Keeping In Repair Public Roads. 1 Mad. Mss.](#)  
[1773 - to William Bradford, Jr.](#)  
[1774 - to William Bradford, Jr.](#)  
[To William Bradford, Jr.](#)  
[To William Bradford, Jr.](#)  
[1775 - to William Bradford, Jr.](#)  
[Address “to Captain Patrick Henry and the Gentlemen Independents of Hanover. 1](#)  
[1776 - Independence and Constitution of Virginia. 1 Mad. Mss.](#)  
[1777 - to James Madison. Mad. Mss.](#)  
[1778 - to James Madison. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[1779 - to James Madison. Mad. Mss.](#)  
[1780 - to James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Joseph Jones. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Joseph Jones. 2](#)  
[To Joseph Jones. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[Instructions to John Jay. Cont. Cong. Boundaries and Free Navigation of the Mississippi. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Joseph Jones. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Joseph Jones. 1](#)



[To Joseph Jones. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Joseph Jones. 1](#)  
[To Joseph Jones. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Joseph Jones. 1](#)  
[To Joseph Jones. 1](#)  
[To Joseph Jones. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[1781 - to Edmund Pendleton. Mad. Mss.](#)  
[To Ambrose Madison. Mad. Mss.](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Randolph. 1 \(extract.\)](#)  
[To Edmund Randolph. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Philip Mazzei. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Pendleton. 2](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Pendleton. Mad. Mass.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[1782 - to Edmund Pendleton. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Edmund Randolph. 1](#)  
[To Edmund Pendleton. 1](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Pendleton. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Pendleton. 1](#)  
[To Thomas Jefferson. 1](#)  
[To James Madison. Mad. Mss.](#)

[To Edmund Pendleton. 1](#)

[To Edmund Randolph. 1](#)

[To Thomas Jefferson. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To James Madison. Mad. Mss.](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[Report of the Committee Consisting of Mr. Madison, Mr. Duane, & Mr. Clymer, Relative to the Instructions of Mr. Adams— July 5 Th , 1782. Mad. Mss.](#)

[To Edmund Randolph. 2](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[To Edmund Randolph. 1](#)

[1783 - Debates In the Congress of the Confederation, From November 4th, 1782, to February 13th, 1783. Mad. Mss.](#)



The life-sized marble medallion bust of James Madison was made in Philadelphia in 1792, when Madison was forty-one years of age, by the Italian sculptor, Giuseppe Ceracchi. It hung on the walls of Montpelier until after Madison's death and was considered by his contemporaries to be the most faithful of the likenesses of him. It was purchased from Mrs. Madison's estate by the late J. C. McGuire, Esq., of Washington, and purchased from the McGuire estate for the Department of State by Secretary Thomas F. Bayard.

The Knickerbocker Press, New York

BECAUSE OF HIS EMINENT SERVICES TO AMERICAN HISTORY AND  
BECAUSE HE IS MY FRIEND I DEDICATE THESE VOLUMES TO  
WORTHINGTON CHAUNCEY FORD

editor of "the writings of george washington"

[\[Back to Table of Contents\]](#)

## INTRODUCTION

### JAMES MADISON.

James Madison's family traditions were wholly colonial and extended back to the first settlement of Virginia. With the mother country he had no living connection, and only one member of the family, his second cousin, Rev. James Madison, received any part of his education there. England was not, therefore, home to the Madisons as it was to many other Virginia families, and there were no divisions of the house and consequent heartburnings when the separation came, but all of them embraced the patriot cause in the beginning and without hesitation. From the shores of Chesapeake Bay, where James Madison's direct ancestor, John Madison, received a patent for lands in 1653, the family pushed its way inland towards the Blue Ridge mountains, and his grandfather, Ambrose, occupied the tract in Orange County where his father, James, and himself spent their entire lives. He was thus completely a Virginian, and his life was well rooted, as George Eliot has expressed it, in a spot of his native land, where it received "the love of tender kinship for the face of earth." During the eighty-four years of his life he was never continuously absent from Montpelier for a twelvemonth.

The Virginia convention of 1776 was composed chiefly of men past the middle period of life; but there was a small circle of young members who afterwards rose to eminence, among whom was Madison, then but twenty-three years old. He was known personally to few of his colleagues and was mastered by a shrinking modesty, which kept him in the background; but he had the reputation of being a scholar and was put on the committee to draw up the Declaration of Rights. He made one motion in the convention, offering a substitute to the clause relating to religious freedom.<sup>1</sup> It was not accepted as he presented it, but a modification, eliminating a chief objection to the clause as originally presented by the committee, was adopted. If Madison's clause had been taken as he wrote it, there would have been no occasion for the subsequent struggle for complete religious freedom in Virginia, for it was so sweeping that any further progressive action would have been redundant. The offering of this amendment was Madison's first important public act, and his belief that it was right was the strongest belief he had at that time.

He was then a profoundly religious man, and his family surroundings were Episcopalian. When he returned home after his graduation from Princeton in 1772, he plunged into religious studies, wrote commentaries on the gospels, and acquired an extensive knowledge of theological literature. His education at a Presbyterian college, the love of liberty which was a passion with the young Americans of his school, the ill-repute surrounding the clergy of the English church in Virginia, the persecution which he saw visited upon the Baptists in his section of the State—all combined to make him champion the cause of absolute religious freedom and separation of church from state. Beginning with the convention of 1776 he fought for this step by step, until it was finally secured by Jefferson's bill, which Madison introduced in the

legislature, but which need never have been written had Madison's amendment to the Bill of Rights been accepted. Madison was a strong man who walked through life alone and did not disclose his inner thoughts on vital personal questions. What his religion was has thus always been a matter of dispute. To Episcopal clergymen his course did not render him popular, and, although he attended their church, he was not a communicant. Agnostics often claim him as having been one of them, chiefly because he was a friend of Jefferson's and is supposed to have been influenced by him; but he made his religious studies, took his first radical stand for disestablishment, and had probably formed his religious views before he knew Jefferson. Non-Episcopal clergymen, although not claiming him as a member of any of their sects, have written of him gratefully. Undoubtedly, he sympathized with them, and he had warm friends among them. He believed in the existence of sects and used to quote Voltaire's aphorism, "If one religion only were allowed in England, the government would possibly become arbitrary; if there were but two, the people would cut each other's throats; but as there are such a multitude, they all live happy and in peace."<sup>1</sup>

As Madison was an advanced thinker on religious subjects, so was he beyond his time as an economic reasoner. In his correspondence with Jefferson he always met the daring speculations of that philosopher with views and conclusions carefully matured. Twenty years before Malthus published his *Essay on the Principles of Population* Madison reached substantially the same conclusions, as his writings show. He welcomed Malthus's work when it appeared, as he had done Adam Smith's.

On the subject of slavery he and his friends stood together in a frank admission that it was a crushing public and private evil, and he earnestly desired to find a means by which his State and himself might escape from it. On his return to Montpelier from Congress in December, 1783, he took up the study of law, having for one object, as he wrote, to gain a subsistence, depending "as little as possible upon the labor of slaves." September 8, 1783, he wrote to his father that he was unwilling to punish a runaway negro simply "for coveting that liberty for which we have paid the price of so much blood and have proclaimed so often to be the right and worthy the pursuit of every human being." In the convention that framed the Constitution Madison and George Mason worked together in opposition to the pro-slavery labors of South Carolina and other Southern States. In the first Congress under the Constitution "The Humane, or Abolitionary Society" of Virginia, composed chiefly, if not wholly, of Quakers, requested him, as "a friend to general liberty," to introduce their memorial against the slave trade and asked his judgment on a proposition to petition the Virginia Legislature for a law declaring all slave children born after the passage of the act free at the age of eighteen for the women and twenty-one for the men.<sup>1</sup> This was similar to the scheme of emancipation which Jefferson entertained, but which he did not bring forward, because "the public mind would not yet bear the proposition." It never became able to bear an emancipation proposition, and Madison lived and died a humane slaveholder opposed to the institution of slavery.

When Madison went into the Continental Congress, March 20, 1780, he was probably the youngest member, and he looked younger than he was; but he had conquered his modesty and was able to speak his views when occasion required. The most important

subject before the Congress was that of meeting the public expenses. Paper money was piled upon paper money; commerce had fled; there was hardly any specie to be had; the States found it difficult and were often disinclined to raise respectable revenue by taxation. Madison led the fighting for a funding of the debt, the prohibition of further paper emissions, and an adequate continental revenue by a five per cent. tax on all imports. The day that he made one of his strongest speeches in favor of the last-named proposition news was received that the Virginia Legislature, which had previously agreed to it, had withdrawn its assent. Nevertheless, he did not lessen his labors, but took the extraordinary course of disregarding the Legislature's instructions. In this matter he acted from a national standpoint, for Virginia's interest was the same as that of the other States.

In advocating an insistence upon the right of America to the free navigation of the Mississippi River from the source to the sea, he stood for a measure more vital to Virginia than it was to any other State. The first elaborate state paper to come from his pen was the instruction to Jay at Madrid on this subject, and it is not too much to say that no member of the Congress could have prepared the instruction so well.

Madison's service in Congress at this time and later laid bare before him all the insufficiencies of the Articles of Confederation, and it was his fortune to participate in each successive step that led to the formation of the Constitution. When he went into the convention he was better equipped for the work that lay before it than any other delegate. After his election he arranged the notes which he had gathered laboriously in the course of years of experience and study. These notes covered the governments of the world, ancient and modern, as they furnished illustrations likely to affect the forming of a new government for America, and they also contained a carefully arranged description of the weakness and vices of the existing government. He had one primal object before him—to evolve a scheme for a stronger government which would remedy the defects of the Articles of Confederation and *which the people would accept*. He was without pride of personal opinion and was always willing to compromise when by doing so his main object would not be lost. As the Constitution was not written by any one member of the convention, so was it not wholly satisfactory to any one member. Madison had no cut-and-dried constitution in his pocket when he went to Philadelphia; but, keeping the general principles of the Virginia plan before him, he set himself to the task of accomplishing a result. He was more continuously in his place than any other member and spoke frequently and always temperately and to the point. When a division of sentiment among the members was so pronounced as to make any conclusion seem improbable, he was patient and hopeful, and returned to the subject when all were in better humor. As the days wore on he came to be recognized as the leading man in the convention, and when the Constitution was finally sent to the people for their judgment, it was generally known that Madison, more than any one else, had wrought it into shape.

Eight States had ratified the Constitution when the Virginia convention met to consider it, and the ratification of nine States was necessary to put it into effect. It was confidently believed, therefore, that its fate would be decided by Virginia's action. When it first reached the State, it was generally approved; but as each man began to study it many found objections to it, and the preponderance of influential men was on

the side of its rejection. When the convention met, George Mason and Patrick Henry led the opposition, and Madison, George Nicholas, and Edmund Randolph led the forces in favor of ratification. Madison was fresh from the convention that framed the Constitution; he had recently written his numbers in the *Federalist*; he could speak readily, and there was hardly an argument against the Constitution for which he did not have the best answer ready prepared. The chief fighting was waged between him and Henry. Madison was constantly on his feet, and during four days he spoke thirty-five times. Henry was supposed to be invincible before a Virginia assemblage and was unquestionably the most powerful man before the people in the State. Madison beat him, and his victory was the greatest triumph of his life. Quick upon the heels of each other had followed his success in the convention that framed the Constitution, his success in conjunction with Hamilton and Jay in turning the growing sentiment against the Constitution by the publication of the *Federalist*, and the crowning success of carrying the ratification in Virginia. This may be said to have marked the culmination of that part of his career which was unquestionably the greatest. The rest was made up of earnest work and high honors, but the achievements winning for him a great place in history were those of the period before the government under the Constitution went into operation.

In the first House of Representatives he was a leader, but he soon became the leader of a party. He and Hamilton had frequently co-operated before the Constitution was formed, and they stood together as the two most effective champions of ratification the Constitution had; but they naturally fell apart after the government was established and parties, as exponents of different habits of thought, were formed. Their surroundings and training had been dissimilar, and they did not agree in disposition. If Hamilton's theory of government was the more scientific, Madison's had a broader basis of popular desire; at any rate, they were different. The two men could not be coadjutors without one or the other changing his views. It is therefore as unjust to accuse Madison of having deserted Hamilton as it would be to accuse Hamilton of having deserted Madison. They were active opponents in their views as to how the Constitution should be interpreted in the conduct of the government, and, being earnest and positive, they drifted into distrust and injustice toward each other, as political opponents nearly always do.

The parties were divided to a great extent on sectional lines, and Madison was a Southerner and a Virginian. The narrow sectionalism that then prevailed needs no explanation. There was no national feeling overspreading the continent, nor could it be forced into being. The States were jealous of each other, and the Articles of Confederation had really been as strong a scheme of national government as the people would stand at the time. So cultured a man as Edmund Randolph wrote some years after the Constitution had been in operation, "you see I am not yet really an *American*." Madison was biased in his political actions by a preference for the welfare of Virginia over that of any other State. Washington alone of the active statesmen of that day manifested a wholly unprejudiced national spirit. The interests of the North and the South were opposed, and Madison bent his energies to keep in control the interests of the South. He never liked New England men, and all of his intimate friends were Virginians. He was as much of a Southerner as John Adams was a New Englander, and more need not be said.

Few sympathizers with the Federalist party of a hundred years ago can now be found to defend the Alien and Sedition Laws which wrecked that party. They were conceived in a spirit of intolerance and had all the ingredients in them of tyranny and oppression. In opposing them many Republicans went to the opposite extreme and uttered sentiments which they lived to regret. Madison wrote the Virginia resolutions of 1798, and, while they are not necessarily Calhounism, he lived long enough to be obliged to defend them against the charge that they contained the germs of nullification.<sup>1</sup>

When Madison became Secretary of State he and his chief determined upon the inauguration of what they hoped to make a new American policy in international intercourse. "If a treaty is proposed," wrote Robert R. Livingston to him July 1, 1801, "that is not to be supported by arms, but by commercial exclusions, that shall not refer to the present war, and shall be open to all nations that choose to adopt it, I think it cannot fail to meet with sufficient support to establish a new law of nations, and that our administration will have the glory of saying, in the words of the prophet, 'a new Law I give unto you, that you love one another.'"<sup>1</sup> Madison was not an enthusiast and did not share Livingston's extravagant hopes; but he had been an advocate of commercial retaliation as the most effective weapon to employ against Great Britain from the time of the first Congress, when he introduced his tonnage bill. He saw his policy carried to the extreme of an absolute refusal to trade at all with a country with which we were not yet at war, and he saw it fail miserably of its purpose. When he stepped from the office of Secretary of State up to that of the Presidency, he was warned in the beginning that a continuance of the embargo would wreck the administration that continued it. Furthermore, he was told that perseverance in it would produce in New England "open and effectual resistance to the laws of the Union."<sup>2</sup> At no time after the adoption of the Constitution were the dangers from without and within so menacing. With fluctuations of false hopes the inevitable came; the cherished "American Policy" was thrown to the winds, and Madison found himself at the head of a nation at war. He was a rounded-out statesman of wide experience and ripe knowledge, but of martial spirit he had none. He was a man of peace and of books. His physique was weak, and he cared nothing for manly sports. Nowhere in the record of his life is there a hint that he ever had a quarrel which approached culmination in a personal encounter. His blood flowed temperately, and he hated war, and his incapacity as a war President was painfully manifest.

The country was not united, and he had not force enough to unite it. A treasonable faction was breeding in New England, and he knew not how to crush it. A vigorous leader of men and of popular forces was what the occasion demanded, and Madison did not meet the requirements. Such success as the war achieved owed nothing to him. An honorable peace and a reaction of prosperity and calm gave him an opportunity to conclude his administration creditably, and he retired from public life with a great reputation; but he had really won it before he became President.<sup>1</sup>

In private life he set an example of beautiful simplicity and purity. No breath of scandal was ever raised against him. No man ever accused him of untruth or meanness. He was gentle and sympathetic towards all who approached him. He was generous in giving and dispensed a free hospitality. While he never introduced a jest



into a public speech and rarely into a letter, he had a rich fund of humor, and his good stories went from mouth to mouth among his friends. His household was one of rare happiness and innocence, and perhaps the highest tribute to his private worth was paid by the hundred slaves who stood around the grave at his funeral and gave an extraordinary exhibition of the genuineness of their grief.<sup>1</sup>

\* \* \*

During the closing years of his life Madison occupied himself in arranging his papers and especially those relating to the framing of the Constitution. He bequeathed them to his wife,<sup>2</sup> intending that she should immediately publish the debates in the Congress of 1782, 1783, and 1787, the debates in the constitutional convention, the proceedings of the Congresses of 1776, and a limited number of letters, as he had arranged them. Through St. George Tucker she offered the work to the Harpers and through her son to other publishers,<sup>3</sup> but was unable to come to a satisfactory agreement with any of them. Francis Preston Blair, the publisher of the *Congressional Globe*, offered to publish the work, but doubted whether much profit would accrue and suggested that her best plan would be to fix a sum to cover the profit she expected and offer the manuscript to Congress at that price. He promised to assist her in securing the appropriation.<sup>4</sup> She had, however, already offered the papers to the government in her letter of November 15, 1836, to President Jackson. A copy of this letter was laid before Congress in a special message dated December 6, 1836. Madison's neighbor and friend, James Barbour, acted as her agent and told her that \$100,000, the sum she at first said she expected, was out of the question,<sup>5</sup> but that she could get \$30,000 for the papers. This amount was appropriated by Act of March 3, 1837.<sup>6</sup> July 9, 1838, Congress authorized the publication of the papers.<sup>7</sup> Henry D. Gilpin, of Pennsylvania, then Solicitor of the Treasury, was selected as the editor, and the work was published in three volumes in Washington in 1840 under the title of *The Madison Papers*. May 31, 1848, Mrs. Madison being then, through domestic misfortunes, in distressed circumstances, Congress appropriated \$25,000 to purchase all the remaining manuscripts of Madison's in her hands.<sup>8</sup> This, with the first purchase, forms the magnificent collection of Madison's writings now deposited in the Department of State. August 18, 1856,<sup>9</sup> Congress authorized the printing of the papers of the second purchase, and a part of them appeared as *The Works of James Madison*, published in four volumes in Washington in 1865.

Mr. J. C. McGuire, of Washington, a family connection of the Madisons, who amassed in the course of his life an extraordinary collection of Madisoniana, printed in 1859 (Washington) "exclusively for private distribution" a limited edition in one volume of Madison's letters under the title *Selections from the Private Correspondence of James Madison from 1812 to 1836*. It contained about one hundred letters.

The originals of a few of the letters printed in *The Madison Papers* have been withheld from the editor, and he has been obliged to reproduce them as they were printed, in the first volume of this edition, indicating their source as he has that of every other paper appearing in these volumes. These sources are widely scattered and

embrace various public, private, and official depositories, which have been generously opened to the editor.

But two lives of Madison have been published: one a large fragment in three volumes, entitled *History of the Life and Times of James Madison*, by William C. Rives, the first volume of which was published in 1859 (Boston, Little, Brown & Co.), and the third in 1868; the other by S. H. Gay, in the American Statesman Series (Boston, 1884). Of Rives's work it must be said that it is a misfortune it was never finished. It embraces only that part of Madison's career preceding the administration of John Adams. It is redundant and heavy, and the stilted style betrays the diplomatic rather than literary training of the author. But it is a painstaking work, executed conscientiously and after an exhaustive and able study of the sources of material, printed and unprinted. The standpoint is uncritical, and Mr. Rives shows an extreme partiality for the subject of his work.

None of these remarks is applicable to Mr. Gay's short Life. With ample unused material available, his study does not seem to have gone beyond the printed resources of any good public library, and his attitude towards Madison and all public men of his school is extremely unsympathetic. It is enough to say of his work that it is wholly inadequate to its subject.

Gaillard Hunt.

Falls Church, Va.,  
August 29, 1900.

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1751-1783.

1751. Born at Port Conway, King George County, Virginia, at the house of his  
March 16. maternal grandmother.
1751. Removed to Montpelier in Orange County.
1763. Sent to school to Donald Robertson in King and Queen County.
- 1765-9. Under the private tuition of Rev. Thomas Martin.
1769. Enters Princeton.
1771. Oct. Graduates from Princeton.  
7.
1772. Returns to Montpelier.
1773. At home teaching his younger brothers and sisters.
1774. Visits New Jersey and Pennsylvania.  
Spring.
1774. Dec. Chosen a member of County Committee of Orange.
1775. Assists in enlisting for defense.
1775. May Writes the address "To Captain Patrick Henry and the Gentlemen  
9. Independents of Hanover."
1776. Elected a member for Orange County of the Virginia Convention.  
April.
1776. May Takes his seat in the Convention.  
6.
1776. May Appointed on the Committee to draft a Declaration of Rights and Plan of  
16. Government for Virginia.
1776. June Offers his amendment for greater religious liberty.  
10.
1776. Oct. Takes his seat in the House of Delegates.  
6.
1776. Meets Thomas Jefferson.
1777. Loses re-election to the House of Delegates.  
April.
1777. Elected by the General Assembly to the Governor's Council.  
Nov. 13.
1778. Jan. Takes his seat in the Governor's Council.  
14.
1778. At Williamsburg, lodging with his cousin, Rev. James Madison.
1779. Dec. Chosen by the General Assembly a representative in the Continental  
14. Congress.
1780. Takes his seat in the Continental Congress.  
March 20.
1780. Oct. Instructions to John Jay on "Boundaries and Free Navigation of the  
17. Mississippi."
1780. Proposes a discontinuance of emissions of paper money.  
Nov.
1780. Dec. Requests instructions from General Assembly on the Mississippi question  
13. jointly with Bland.
1781. Still in Philadelphia.

1781. Receives Benjamin Harrison, "Delegate Extraordinary" from Virginia.
1781. Discusses project for applying coercive measures to the States.
- April 16.
1781. Brings subject of Virginia land cession before Congress again.
- April.
1781. Oct. This subject again.
1781. Suggests that Virginia compliment Lafayette.
- Nov. 13.
1782. Still in Philadelphia.
1782. Jan. The new bank authorized by Congress opened. His distressing personal
7. finances.
1782. The Virginia cession again.
- May.
1782. July Reports instructions to Adams at The Hague.
- 5.
1782. The Virginia cession under debate. He urges compromise.
- Sept.
1782. Begins his reports of debates in Congress.
- Nov. 4.
1782. Raises objection to the mode of executing the orders of Congress.
- Nov. 12.
1782. Moves that Secretary of Foreign Affairs be authorized to keep foreign
- Nov. 21. ministers advised of events in Congress.
1782. Reports in favor of ratifying Franklin's order liberating Cornwallis in
- Nov. 22. exchange for Laurens.
1782. Moves that Congress give credit for State emissions of paper money.
- Nov. 26.
1782. Dec. Appointed on Committee to confer with members of Pennsylvania
4. legislature.
1782. Dec. Speaks on subject of depreciation of currency.
- 7.
1782. Dec. Presents report on publication in a Boston paper of secret proceedings of
12. Congress.
1782. Dec. Presents answer to Rhode Island's objections to proposed impost.
- 16.
1782. Dec. Communicates to Congress Virginia's repeal of the impost law.
- 24.
1782. Dec. Urges instructions to ministers to endeavor to secure commercial freedom
31. with Great Britain and dependencies.
1783. Still in Philadelphia.
1783. Jan. Contends against taxation by valuation of land.
- 8.
1783. Jan. Moves application for further loans in Europe.
- 13.

1783. Jan. 23. Reports list of books proper for Congress to buy.
1783. Jan. 28. Moves the necessity of permanent funds.
1783. Feb. 7. Brings up question of ascertaining valuation of land.
1783. Feb. 21. Speaks on the subject of general revenue.
1783. Feb. 28. Speaks on same subject.
1783. March 19. Speaks on the treaty of peace.
1783. March 22. Seconds motion to disclose to Spain intended British expedition against Florida confided to Adams.
1783. March 26. Defends the conduct of the American ministers to negotiate treaty of peace.
1783. March 27. Advocates assuming expenses of the States in the war.
1783. April 3. Appointed on committee with Hamilton to report arrangements in consequence of peace.
1783. April 9. Opposes appointment of a committee on the western country.
1783. April 17. Reports amendment providing for determining expenses of the States.
1783. April 26. Address to the States on the subject of revenue.
1783. April 27. Accompanying James Floyd and his daughter, Catherine, to Brunswick.
1783. May 3. Returns to Philadelphia.

[\[Back to Table of Contents\]](#)

## THE WRITINGS OF JAMES MADISON

### TO REV. THOMAS MARTIN. [1](#)

Mad. Mss.

Nassau Hall, August 16 [17]69.

Rev Sir—

I am not a little affected at hearing of your misfortune, but cannot but hope the cure may be so far accomplished as to render your journey not inconvenient. Your kind Advice & friendly cautions are a favour that shall be always gratefully remembered, & I must beg leave to assure you that my happiness, which you and your brother so ardently wish for, will be greatly augmented by both your enjoyments of the like blessing.

I have been as particular to my father as I thought necessary for this time, as I send him an account of the Institution, &c. &c., and of the College wrote by Mr. Blair, the Gentleman formerly elected President of this place you will likewise find two pamphlets entitled Britannia's intercession for John Wilks, &c., which, if you have not seen it, perhaps may divert you.

I am perfectly pleased with my present situation; and the prospect before me of three years' confinement, however terrible it may sound, has nothing in it, but what will be greatly alleviated by the advantages I hope to derive from it.

The Grammars, which M<sup>r</sup>. Houston procured for you amount at 2/10 each to 17/. Your brothers account with Plumb, to 6/7. and Sawneys expence 4/2 the whole 1.. 7.. 9, Inclosed you have 15/. the overplus of which you may let Sawney have to satisfy those who may have been at any trouble on my account.

The near approach of examination occasions a surprising application to study on all sides, and I think it very fortunate that I entered College immediately after my arrival, tho' I believe there will not be the least danger of my getting an Irish hint as they call it, yet it will make my future studies somewhat easier, and I have by that means read over more than half Horace and made myself pretty well acquainted with Prosody, both which will be almost neglected the two succeeding years.

The very large packet of Letters for Carolina I am afraid will be incommodious to your brother on so long a journey, to whom I desire my compliments may be presented and conclude with my earnest request for a continuance of both your friendships, and sincere wishes for your recovery, and an agreeable journey to your whole Company.



## I Am, Sir, Your Obligd Friend And Hl Ser.

James Madison.

P. S. Sawney tells me that your Mother and Brothers are determined to accompany you to Virginia; my friendship and regard for you entitle them to my esteem, and with the greatest sincerity I wish, after a pleasant journey, they may find Virginia capable of giving them great Happiness.

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.1

Nassau Hall, September 30<sup>th</sup> 69.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

I received your letter by Mr. Rossekran, and wrote an answer; but as it is probable this will arrive sooner which I now write by Doctor Witherspoon, I shall repeat some circumstances to avoid obscurity.

On Wednesday last we had the usual commencement. Eighteen young Gentlemen took their Bachelor's degrees, and a considerable number their Master's Degrees. The degree of Doctor of Law was bestowed on Mr. Dickenson the Farmer and Mr. Galloway,2 the Speaker of the Pennsylvania Assembly, a distinguishing mark of Honour, as there never was any of that kind done before in America. The Commencement began at 10 O'Clock, when the President walked first into the Church, a board of Trustees following, and behind them those that were to take their Master's degrees, and last of all, those that were to take their first Degrees; after a short prayer by the President the Head Oration, which is always given to greatest Scholar by the President & Tutors, was pronounced in Latin by Mr. Samuel Smith,1 son of a Presbyterian Minister in Pennsylvania. Then followed the other Orations, Disputes, and Dialogues, distributed to each according to his merit, and last of all was pronounced the Valedictory oration by Mr. John Henry son of Gentleman in Maryland. This is given to the greatest Orator. We had a very great assembly of People, a considerable number of whom came from N York those at Philadelphia were most of them detained by Races which were to follow on the next day.

Since Commencement the Trustees have been sitting about Business relative to the College, and have chosen for Tutors for the ensuing year, for the junior class Mr. Houston from N Carolina in the room of Mr. Pream. for the Freshman class, Mr. Reeve a gentleman who has for several years past kept a School at Elizabeth Town, in the room of Mr. Pemberton: The Sophomore Tutor Mr. Thomson still retains his place, remarkable for his skill in the Sophomore Studies, having taken care of that class for several years past. Mr. Halsey was chose Junior Tutor but refused. The Trustees have likewise appointed Mr. Caldwell a minister at Elizabeth Town to take a journey through the Southern Provinces as far as Georgia to make collections by which the College Fund may be enabled to increase the Library, provide an apparatus of mathematical and Philosophical Instruments & likewise to support Professors which would be a great addition to the advantages of this College. Doct<sup>r</sup> Witherspoon's business to Virginia is nearly the same as I conjecture and perhaps to form some acquaintance to induce Gentlemen to send their sons to this College.

I am very sorry to hear of the great drought that has prevailed with you, but am in some hopes the latter part of the year may have been more seasonable for you[r] crops. Your caution of frugality on consideration of the dry weather shall be carefully

observed; but I am under a necessity of spending much more than I was apprehensive, for the purchasing of every small trifle which I have occasion for consumes a much greater sum than one would suppose from a calculation of the necessary expences.

I feel great satisfaction from the assistance my Uncle has received from the Springs, and I flatter myself from the continuance of my mother's health that Dr. Shore's skill will effectually banish the cause of her late indisposition.

I recollect nothing more at present worth relating, but as often as opportunity and anything worthy your attention shall occur, be assured you shall hear from NA your affectionate son.

James Madison.

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Nassau Hall, July 23<sup>d</sup> 1770.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

I receiv'd yours dated June 4<sup>th</sup>. & have applied to M<sup>r</sup>. Hoops as you directed; he says you must suit yourself in paying him, & if you should let him have a bill of Exchange it must be on your own terms. Forty pounds £40. New Jersey Currency is the Sum I shall have of him before I get home, my frugality has not been able to keep it below that, consistent with my staying here to the best advantage. I shall be glad, if it should be convenient for you, to have my next year's stock prepared for me against I come home, for I shall not be able to stay in Virginia more than 4 weeks at most. Half Jos—pass here to the greatest advantage. I have spoken to several of the present senior class about living with you as Tutor, but they will determine on nothing unless they know what you would allow them, as it would not be proper for them to remain in suspense 'till I should return here; If you should receive this time enough to send me an answer by the middle of September & let me know the most you would be willing to give, I think there would be a greater probability of my engaging one for you. Inclosed are the measure of my Neck & rists. I believe my Mother need not hurry herself much about my shirts before I come for I shall not want more than three or four at most. I should chuse she would not have them ruffled 'till I am present myself. I have not yet procured a horse for my Journey, but think you had better not send me one as I cant wait long enough to know whether or not you'll have an opportunity without losing my chance most of the horses being commonly engaged by the Students sometime before vacation begins. If I should set off from this place as soon as I expect you may look for me in October perhaps a little before the middle if the weather should be good.

We have no publick news but the base conduct of the Merchants in N. York in breaking through their spirited resolutions not to import, a distinct account of which I suppose will be in the Virginia Gazette before this arrives. Their Letter to the Merchants in Philadelphia requesting their concurrence was lately burnt by the students of this place in the college yard, all of them appearing in their black Gowns & the bell Tolling. The number of Students has increased very much of late, there are about an hundred & fifteen in College & the Grammar School twenty-two commence this Fall all of them in American Cloth.

With my love to all the Family, I am, etc.

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Princeton October 9<sup>th</sup> 1771.

Mad. Mss.

Hond Sir,—

In obedience to your requests I hereby send you an answer to your's of the 25<sup>th</sup> of Sept. which I received this morning. My Letter by Dr. Witherspoon who left this place yesterday week contains most of what you desire to be informed. I am exceedingly rejoiced to hear of the happy deliverance of my Mother & would fain hope your rheumatic pains will not continue much longer. The Bill of exchange was very acceptable. Though I cannot say I have been as yet very much pressed by my creditors. Since I got the Bill I have been making a calculation of my past & future expences & find it nothing more than a bare competency the reason of which I dare say you will not ascribe to extravagance when you read my letter of last week. If I come home in the Spring the purchase of a horse & travelling expences I am apprehensive will amount to more than I can reserve out of my present stock for those purposes so that it would not be amiss perhaps if you were to send a few Half-Jos: by D<sup>f</sup>. Witherspoon or Col<sup>o</sup>. Lewis's sons if they return, or some safe hand afterwards as best suits you. I should be glad if your health & other circumstances should enable you to visit D Witherspoon during his stay in Virginia. I am persuaded you would be much pleased with him & that he would be very glad to see you. If you should not be able to see him nor send to him Col<sup>o</sup>. Lewis or any other Gentleman in Fredericksburgh would advance what money I am to have at the least intimation from you. If you should ever send me any Bills hereafter, it will be best for you to make them payable to D<sup>f</sup> Witherspoon, which will give him an opportunity to endorse them & greatly help me in getting them, if it should so happen that you see him, please to mention it to him. I am sorry Mr. Chew's mode of Conveyance will not answer in Virginia. I expect to hear from him in a few days by return of a man belonging to this Town from New London & shall then acquaint him with it and get it remedied by the methods you propose. Mr. James Martin was here at Commencement and had an opportunity of hearing from his Brothers & friends in Carolina by a young man lately come from thence to this College however I shall follow your directions in writing to him immediately & visiting him as soon as I find it convenient.

You may tell M<sup>rs</sup> Martin he left his Family at home all well. If you think proper that I should come back to this place after my journey to Virginia in the Spring & spend the Summer here you may send the cloth for my coat which I am extremely pleased with & could have wished it had come time enough to have used this Summer past, if you chuse rather I should remain in Virginia next Summer it will be unnecessary.

I Am, Etc.

[\[Back to Table of Contents\]](#)

TO WILLIAM BRADFORD, JR. 1

*(At The Coffee-House, Philadelphia.—By The Post.)*

Orange, Virginia, November 9, 1772.

My Dear B.,—

You moralize so prettily, that if I were to judge from some parts of your letter of October 13, I should take you for an old philosopher that had experienced the emptiness of earthly happiness; and I am very glad that you have so early seen through the romantic paintings with which the world is sometimes set off by the sprightly imaginations of the ingenious. You have happily supplied, by reading and observation, the want of experiment; and therefore I hope you are sufficiently guarded against the allurements and vanities that beset us on our first entrance on the theatre of life. Yet, however nice and cautious we may be in detecting the follies of mankind, and framing our economy according to the precepts of Wisdom and Religion, I fancy there will commonly remain with us some latent expectation of obtaining more than ordinary happiness and prosperity till we feel the convincing argument of actual disappointment. Though I will not determine whether we shall be much the worse for it if we do not allow it to intercept our views towards a future state, because strong desires and great hopes instigate us to arduous enterprizes, fortitude, and perseverance. Nevertheless, a watchful eye must be kept on ourselves, lest while we are building ideal monuments of renown and bliss here, we neglect to have our names enrolled in the annals of Heaven. These thoughts come into my mind because I am writing to you, and thinking of you. As to myself, I am too dull and infirm now to look out for any extraordinary things in this world, for I think my sensations for many months past have intimated to me not to expect a long or healthy life; though it may be better with me after some time, [but] I hardly dare expect it, and therefore have little spirit and alacrity to set about anything that is difficult in acquiring and useless in possessing after one has exchanged time for eternity. But you have health, youth, fire, and genius, to bear you along through the high track of public life, and so may be more interested and delighted in improving on hints that respect the temporal though momentous concerns of man.

I think you made a judicious choice of History and the science of morals for your winter's study. They seem to be of the most universal benefit to men of sense and taste in every post, and must certainly be of great use to youth in settling the principles and refining the judgment, as well as in enlarging knowledge and correcting the imagination. I doubt not but you design to season them with a little divinity now and then, which, like the philosopher's stone, in the hands of a good man, will turn them and every lawful acquirement into the nature of itself, and make them more precious than fine gold.

As you seem to require that I should be open and unreserved, (which is indeed the only proof of true friendship,) I will venture to give you a word of advice, though it be more to convince you of my affection for you than from any apprehension of your needing it. Pray do not suffer those impertinent fops that abound in every city to divert you from your business and philosophical amusements. You may please them more by admitting them to the enjoyment of your company, but you will make them respect and admire you more by showing your indignation at their follies, and by keeping them at a becoming distance. I am luckily out of the way of such troubles, but I know you are surrounded with them; for they breed in towns and populous places as naturally as flies do in the shambles, because there they get food enough for their vanity and impertinence.

I have undertaken to instruct my brothers and sisters in some of the first rudiments of literature; but it does not take up so much of my time but I shall always have leisure to receive and answer your letters, which are very grateful to me, I assure you; and for reading any performances you may be kind enough to send me, whether of Mr. Freneau<sup>1</sup> or anybody else. I think myself happy in your correspondence, and desire you will continue to write as often as you can, as you see I intend to do by the early and long answer I send you. You are the only valuable friend I have settled in so public a place, and I must rely on you for an account of all literary transactions in your part of the world.

I am not sorry to hear of Livingston's<sup>2</sup> getting a degree. I heartily wish him well, though many would think I had but little reason to do so; and if he would be sensible of his opportunities and encouragements, I think he might still recover. Lucky (?) and his company, after their feeble yet wicked assault upon Mr. Erwin, in my opinion, will disgrace the catalogue of names; but they are below contempt, and I spend no more words about them.

And now, my friend, I must take my leave of you, but with such hopes that it will not be long before I receive another epistle from you, as make me more cheerfully conclude and subscribe myself

Your sincere and affectionate friend.

Your direction was right; however, the addition of "Jr." to my name would not be improper.

[\[Back to Table of Contents\]](#)

## 1772. ACT FOR OPENING & KEEPING IN REPAIR PUBLIC ROADS.1

Mad. Mss.

Freeholders of each Township to chuse annually two supervisors of the High ways.

The supervisors to lay a rate (appeal to lie to Quarter Sessions for party grieved) not exceeding 9<sup>d</sup> in the pound on real & personal estate & to last county assessm<sup>t</sup> to be employed in opening, clearing, mending & repairing the several high ways within their respective Townships.

Where roads divide 2 townships, to be repaired at joint expense, and supervisors.

Vacancy in supervisorship by death refusal to act or removal to be supplied by 3 or more Justices of peace.

Supervisors to receive 12<sup>d</sup>. in the pound for collecting, & 4 shill<sup>gs</sup> per day during the overseeing employ<sup>g</sup> & directing the workmen on the public roads.

Tenants of non resident Landlords liable for rates to be deducted from their rents, saving contracts.

Supervisors req<sup>d</sup> as often as roads out of repair or new roads to be opened, to have sufficient n<sup>o</sup> of labourers to work upon, open, amend, clear & repair the same in the most effectual manner, & to purchase wood, & other materials necessary. Supervisors & persons hav<sup>g</sup> his order, empowered to enter on adjoining lands, to cut ditches & drains as he shall find necessary, doing as little damage as possible, which drains shall not be stopped by owner under penalty of 5 p<sup>ds</sup>. for each offence—also to dig gravel sand or stones, or take loose stones on s<sup>d</sup> land or cut trees necessary, doing as little damage as possible, & the s<sup>d</sup> materials to remove without let, paying or tendency to owner the agreed value, or in case cannot agree, value to be set by two indifferent freeholders.

Penalty of 3/. on persons working on high way, asking demand<sup>g</sup> or extorting money NA or other thing from travellers, to be recovered by supervisor before the Justice of peace & applied to use of roads, & in case of Supervisors connivance, he to forfeit 20/. to NA by any person whatever ½ to prosecutor, ½ to use of roads.

Supervisors neglecting or refusing to perform duty, to be fined £3 for every offence, to be recovered in same way before Justice of peace & applied to use of roads allowing appeal to Supervisor to Court of Quarter Sessions which on petition of party grieved shall take final order therein as shall appear Just & reasonable. Electors at time of chusing supervisors to chuse four freeholders yearly, to settle acc<sup>t</sup> of supervisors whose office shall then be about to expire: & the person or persons who shall have served the office of supervisor for preceding year, shall on 25<sup>th</sup> March yearly or 6 days after make up & produce fair acc<sup>ts</sup>. of all sums expended, & come to



his hands: w<sup>ch</sup> acc<sup>ts</sup> shall be entered in a book to be kept for that purpose, & shall be attested on oath or affirmation before Justice of peace if req<sup>d</sup>. by s<sup>d</sup>. freeholder or 3 of them—s<sup>d</sup> freeholders or 3 of them to allow such charges & sums only as they shall deem reasonable; money remaining in hands of precedg. supervisors to be paid by order of s<sup>d</sup> freeholders to succeeding supervisors: in case of the reverse, succeeding supervisors to reimburse by like order, out of the first money coming to their hands—supervisors fail<sup>g</sup> to produce acc<sup>t</sup>. or to pay surplusage or deliver book of acc<sup>t</sup>. to successor or in his hands may on complaint by s<sup>d</sup> freeholders to any Justice of peace, be by him committed to county goal, till he comply.

Person sued for executing this ac<sup>t</sup>. may plead gen<sup>l</sup> issue, & give it & special matter in evidence; & if dft or prosecutor be nonsuit, or suffer a discontinuance or if a verd<sup>t</sup> pass ag<sup>st</sup> him, dfts shall have treble costs to be recovered as in other cases of costs given to dfts. & no such suit or prosecution NA tained unless com<sup>?</sup>enced within six months after cause given, or unless security be first NA for the charges.

[\[Back to Table of Contents\]](#)

## TO WILLIAM BRADFORD, JR.

Orange County, Virginia, April 28, 1773.

Dear B.,—

I received your letter dated March the 1st about a week ago; and it is not more to obey your demands than to fulfil my own desires that I give you this early answer. I am glad you disclaim all punctiliousness in our correspondence. For my own part I confess I have not the face to perform ceremony in person, and I equally detest it on paper; though as Tully says, It cannot blush. Friendship, like all truth, delights in plainness and simplicity, and it is the counterfeit alone that needs ornament and ostentation. I am so thoroughly persuaded of this, that when I observe any one over complaisant to me in his professions and promises, I am tempted to interpret his language thus: “As I have no real esteem for you, and for certain reasons think it expedient to appear well in your eye, I endeavor to varnish falsehood with politeness, which I think I can do in so ingenious a manner that so vain a blockhead as you cannot see through it.”

I would have you write to me when you feel as you used to do, when we were under the same roof, and you found it a recreation and release from business and books to come and chat an hour or two with me. The case is such with me that I am too remote from the post to have the same choice, but it seldom happens that an opportunity catches me out of a humor of writing to my old Nassovian friends, and you know what place you hold among them.

I have not seen a single piece against the Doctor’s address. I saw a piece advertised for publication in the Philadelphia Gazette, entitled “Candid remarks,” &c., and that is all I know about it. These things seldom reach Virginia, and when they do, I am out of the way of them. I have a curiosity to read those authors who write with “all the rage of impotence,” not because there is any excellence or wit in their writings, but because they implicitly proclaim the merit of those they are railing against, and give them an occasion of shewing by their silence and contempt that they are invulnerable. I am heartily obliged to you for your kind offer of sending me some of these performances. I should also willingly accept Freneau’s works, and the “Sermons to Doctors in Divinity,” which I hear are published, and whatever else you reckon worth reading. Please to note the cost of the articles, for I will by no means suffer our acquaintance to be an expense on your part alone, and I have nothing fit to send you to make it reciprocal. In your next letter be more particular as to yourself, your intentions, present employments, &c., Erwin, McPherson, &c., the affairs of the college. Is the lottery like to come to anything? There has happened no change in my purposes since you heard from me last. My health is a little better, owing, I believe, to more activity and less study, recommended by physicians. I shall try, if possible, to devise some business that will afford me a sight of you once more in Philadelphia within a year or two. I wish you would resolve the same with respect to me in

Virginia, though within a shorter time. I am sorry my situation affords me nothing new, curious, or entertaining, to pay you for your agreeable information and remarks. You, being at the fountain head of political and literary intelligence, and I in an obscure corner, you must expect to be greatly loser on that score by our correspondence. But as you have entered upon it, I am determined to hold you to it, and shall give you some very severe admonitions whenever I perceive a remissness or brevity in your letters. I do not intend this as a beginning of reproof, but as a caution to you never to make it necessary at all.

If Mr. Horton is in Philadelphia, give him my best thanks for his kindness in assisting Mr. Wallace to do some business for [. . . . . ?] not long ago.

I must re-echo your pressing invitation to [. . . . . ?] do with the more confidence as I have complied.

I am, dear sir, your, most unfeignedly.

[\[Back to Table of Contents\]](#)

## TO WILLIAM BRADFORD, JR.

January the 24th, 1774.

My Worthy Friend,—

Yours of the 25th of last month came into my hands a few days past. It gave singular pleasure, not only because of the kindness expressed in it, but because I had reason to apprehend the letter you received last from me had miscarried, and I should fail in procuring the intelligence I wanted before the trip I designed in the spring.

I congratulate you on your heroic proceedings in Philadelphia with regard to the tea. <sup>1</sup> I wish Boston may conduct matters with as much discretion as they seem to do with boldness. They seem to have great trials and difficulties by reason of the obduracy and ministerialism of their Governor. However, political contests are necessary sometimes, as well as military, to afford exercise and practice, and to instruct in the art of defending liberty and property. I verily believe the frequent assaults that have been made on America (Boston especially) will in the end prove of real advantage.

If the Church of England had been the established and general religion in all the northern colonies as it has been among us here, and uninterrupted tranquillity had prevailed throughout the continent, it is clear to me that slavery and subjection might and would have been gradually insinuated among us. Union of religious sentiments begets a surprising confidence, and ecclesiastical establishments tend to great ignorance and corruption; all of which facilitate the execution of mischievous projects.

But away with politics! Let me address you as a student and philosopher, and not as a patriot, now. I am pleased that you are going to converse with the Edwards and Henrys and Charleses, &c., &c., who have swayed the British sceptre, though I believe you will find some of them dirty and unprofitable companions, unless you will glean instruction from their follies, and fall more in love with liberty by beholding such detestable pictures of tyranny and cruelty.

I was afraid you would not easily have loosened your affection from the belles lettres. A delicate taste and warm imagination like yours must find it hard to give up such refined and exquisite enjoyments for the coarse and dry study of the law. It is like leaving a pleasant flourishing field for a barren desert; perhaps I should not say barren either, because the law does bear fruit, but it is sour fruit, that must be gathered and pressed and distilled before it can bring pleasure or profit. I perceive I have made a very awkward comparison; but I got the thought by the end, and had gone too far to quit it before I perceived that it was too much entangled in my brain to run it through; and so you must forgive it. I myself used to have too great a hankering after those amusing studies. Poetry, wit, and criticism, romances, plays, &c., captivated me much; but I began to discover that they deserve but a small portion of a mortal's time,

and that something more substantial, more durable, and more profitable, befits a riper age. It would be exceedingly improper for a laboring man to have nothing but flowers in his garden, or to determine to eat nothing but sweet meats and confections. Equally absurd would it be for a scholar and a man of business to make up his whole library with books of fancy, and feed his mind with nothing but such luscious performances.

When you have an opportunity and write to Mr. Brackenridge, 1 pray tell him I often think of him, and long to see him, and am resolved to do so in the spring. George Luckey was with me at Christmas, and we talked so much about old affairs and old friends, that I have a most insatiable desire to see you all. Luckey will accompany me, and we are to set off on the 10th of April, if no disaster befalls either of us.

I want again to breathe your free air. I expect it will mend my constitution and confirm my principles. I have indeed as good an atmosphere at home as the climate will allow; but have nothing to brag of as to the state and liberty of my country. Poverty and luxury prevail among all sorts; pride, ignorance, and knavery among the priesthood, and vice and wickedness among the laity. This is bad enough, but it is not the worst I have to tell you. That diabolical, hell-conceived principle of persecution rages among some; and to their eternal infamy, the clergy can furnish their quota of imps for such business. This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five or six well-meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all.

I expect to hear from you once more before I see you, if time will admit; and want to know when the synod meets, and where; what the exchange is at, and as much about my friends and other matters as you can [tell,] and think worthy of notice Till I see you,

Adieu!

N. B. Our correspondence is too far advanced to require apology for bad writing and blots.

Your letter to Mr. Wallace is yet in my hands, and shall be forwarded to you as soon as possible. I hear nothing from him by letter or fame.

[\[Back to Table of Contents\]](#)

## TO WILLIAM BRADFORD, JR.

Virginia, Orange County, April 1, 1774.

My Worthy Friend,—

I have another favor to acknowledge in the receipt of your kind letter of March the 4th. I did not intend to have written again to you before I obtained a nearer communication with you; but you have too much interest in my inclinations ever to be denied a request.

Mr. Brackenridge's illness gives me great uneasiness; I think he would be a loss to America. His merit is rated so high by me that I confess, if he were gone, I could almost say with the poet, that his country could furnish such a pomp for death no more. But I solace myself from Finley's ludicrous descriptions as you do.

Our Assembly is to meet the first of May, when it is expected something will be done in behalf of the dissenters. Petitions, I hear, are already forming among the persecuted Baptists, and I fancy it is in the thoughts of the Presbyterians also, to intercede for greater liberty in matters of religion. For my own part, I cannot help being very doubtful of their succeeding in the attempt. The affair was on the carpet during the last session; but such incredible and extravagant stories were told in the House of the monstrous effects of the enthusiasm prevalent among the sectaries, and so greedily swallowed by their enemies, that I believe they lost footing by it. And the bad name they still have with those who pretend too much contempt to examine into their principles and conduct, and are too much devoted to the ecclesiastical establishment to hear of the toleration of dissentients, I am apprehensive, will be again made a pretext for rejecting their request.

The sentiments of our people of fortune and fashion on this subject are vastly different from what you have been used to. <sup>1</sup> That liberal, catholic, and equitable way of thinking, as to the rights of conscience, which is one of the characteristics of a free people, and so strongly marks the people of your province, is but little known among the zealous adherents to our hierarchy. We have, it is true, some persons in the Legislature of generous principles both in Religion and Politics; but number, not merit, you know, is necessary to carry points there. Besides, the clergy are a numerous and powerful body, have great influence at home by reason of their connection with and dependence on the Bishops and Crown, and will naturally employ all their art and interest to depress their rising adversaries; for such they must consider dissenters who rob them of the good will of the people, and may, in time, endanger their livings and security.

You are happy in dwelling in a land where those inestimable privileges are fully enjoyed; and the public has long felt the good effects of this religious as well as civil liberty. Foreigners have been encouraged to settle among you. Industry and virtue

have been promoted by mutual emulation and mutual inspection; commerce and the arts have flourished; and I cannot help attributing those continual exertions of genius which appear among you to the inspiration of liberty, and that love of fame and knowledge which always accompany it. Religious bondage shackles and debilitates the mind, and unfits it for every noble enterprise, every expanded prospect. How far this is the case with Virginia will more clearly appear when the ensuing trial is made.

I am making all haste in preparing for my journey. It appears as if it would be the first of May before I can start, which I can more patiently bear, because I may possibly get no company before that time; and it will answer so exactly with the meeting of the synod. George Luckey talks of joining me if I can wait till then. I am resolutely determined to come if it is in my power. If anything hinders me, it will be most likely the indisposition of my mother, who is in a very low state of health; and if she should grow worse, I am afraid she will be more unwilling to part with my brother, as she will be less able to bear the separation. If it should unfortunately happen that I should be forced off or give out coming, Luckey on his return to Virginia will bring me whatever publications you think worth sending, and among others [Caspapini's?] letters.

But whether I come or not, be assured I retain the most ardent affection and esteem for you, and the most cordial gratitude for your many generous kindnesses. It gives me real pleasure when I write to you that I can talk in this language without the least affectation, and without the suspicion of it, and that if I should omit expressing my love for you, your friendship can supply the omission; or if I make use of the most extravagant expressions of it, your corresponding affection can believe them to be sincere. This is a satisfaction and delight unknown to all who correspond for business and conveniency, but richly enjoyed by all who make pleasure and improvement the business of their communications.

Farewell,

J. M.

P. S. You need no longer direct to the care of Mr. Maury.

[\[Back to Table of Contents\]](#)

TO WILLIAM BRADFORD, JR.

July 1, 1774.

Dear Sir,—

I am once more got into my native land, and into the possession of my customary employments, solitude and contemplation; though I must confess not a little disturbed by the sound of war, blood and plunder, on the one hand, and the threats of slavery and oppression on the other. From the best accounts I can obtain from our frontiers, the savages are determined on the extirpation of the inhabitants, and no longer leave them the alternative of death or captivity. The consternation and timidity of the white people, who abandon their possessions without making the least resistance, are as difficult to be accounted for as they are encouraging to the enemy. Whether it be owing to the unusual cruelty of the Indians, the want of necessary implements or ammunition for war, or to the ignorance and inexperience of many who, since the establishment of peace, have ventured into those new settlements, I can neither learn, nor with any certainty conjecture. However, it is confidently asserted that there is not an inhabitant for some hundreds of miles back which have been settled for many years except those who are [forted?] in or embodied by their military commanders. The state of things has induced Lord Dunmore, contrary to his intentions at the dissolution of the Assembly, to issue writs for a new election of members, whom he is to call together on the 11th of August.

As to the sentiments of the people of this Colony with respect to the Bostonians, I can assure you I find them very warm in their favor. The natives are very numerous and resolute, are making resolves in almost every county, and I believe are willing to fall in with the other Colonies in any expedient measure, even if that should be the universal prohibition of trade. It must not be denied, though, that the Europeans, especially the Scotch, and some interested merchants among the natives, discountenance such proceedings as far as they dare; alledging the injustice and perfidy of refusing to pay our debts to our generous creditors at home. This consideration induces some honest, moderate folks to prefer a partial prohibition, extending only to the importation of goods.

We have a report here that Governor Gage has sent Lord Dunmore some letters relating to public matters in which he says he has strong hopes that he shall be able to bring things at Boston to an amicable settlement. I suppose you know whether there be any truth in the report, or any just foundation for such an opinion in Gage.

It has been said here by some, that the appointed fast was disregarded by every *Scotch* clergyman, though it was observed by most of the others who had timely notice of it. I cannot avouch it for an absolute certainty, but it appears no ways incredible.



I was so lucky as to find Dean Tucker's tracts<sup>1</sup> on my return home, sent by mistake with some other books imported this spring. I have read them with peculiar satisfaction and illumination with respect to the interests of America and Britain. At the same time his ingenious and plausible defence of parliamentary authority carries in it such defects and misrepresentations, as confirm me in political orthodoxy—after the same manner as the specious arguments of Infidels have established the faith of inquiring Christians.

I am impatient to hear from you; and do now certainly [earnestly?] renew the stipulation for that friendly correspondence which alone can comfort me in the privation of your company. I shall be punctual in transmitting you an account of everything that can be acceptable, but must freely absolve you from as strict an obligation, which your application to more important business will not allow, and which my regard for your ease and interests will not suffer me to enjoin. I am, dear sir, your faithful friend.

[\[Back to Table of Contents\]](#)

## TO WILLIAM BRADFORD, JR.

Virginia, Orange County, January 20, 1775.<sup>1</sup>

My Worthy Friend,— \* \* \*

We are very busy at present in raising men and procuring the necessaries for defending ourselves and our friends in case of a sudden invasion. The extensiveness of the demands of the Congress, and the pride of the British nation, together with the wickedness of the present ministry, seem, in the judgment of our politicians, to require a preparation for extreme events. There will, by the Spring I expect, be some thousands of well-trained, high-spirited men ready to meet danger whenever it appears, who are influenced by no mercenary principles, but bearing their own expenses, and having the prospect of no recompense but the honor and safety of their country.

I suppose the inhabitants of your Province are more reserved in their behavior, if not more easy in their apprehension, from the prevalence of Quaker principles and politics. The Quakers are the only people with us who refuse to accede to the Continental association. I cannot forbear suspecting them to be under the control and direction of the leaders of the party in your quarter; for I take those of them that we have to be too honest and simple to have any sinister or secret views, and I do not observe anything in the association inconsistent with their religious principles. When I say they refuse to accede to the association, my meaning is that they refuse to sign it; that being the method used among us to distinguish friends from foes, and to oblige the common people to a more strict observance of it. I have never heard whether the like method has been adopted in the other Governments.

I have not seen the following in print, and it seems to be so just a specimen of Indian eloquence and mistaken valor, that I think you will be pleased with it. You must make allowance for the unskilfulness of the interpreters.

The speech of Logan, a Shawanese Chief, to Lord Dunmore:

“I appeal to any white man to say, if ever he entered Logan’s cabin hungry, and I gave him not meat; if ever he came cold or naked, and I gave him not clothing. During the course of the last long and bloody war, Logan remained idle in his tent, an advocate for peace; nay, such was my love for the whites, that those of my country pointed at me as they passed by, and said ‘Logan is the friend of white men.’ I had even thought to live with you but for the injuries of one man. Col. Cressop, the last spring, in cold blood and unprovoked, cut off all the relations of Logan, not sparing even my women and children. There runs not a drop of my blood in the veins of any human creature. This called on me for revenge. I have sought it; I have killed many; I have fully glutted my vengeance. For my country I rejoice at the beams of peace; but do not

harbor a thought that mine is the joy of fear. Logan never felt fear. He will not turn on his heel to save his life. Who is there to mourn for Logan?—not one!”

If you should see any of our friends from Princeton a little before the time of your intending to write to me, and could transmit any little intelligence concerning the health, &c., of my little brother there, it would be very acceptable to me, and very gratifying to a fond mother; but I desire it may only be done when it will cost you less than five words.

We had with us a little before Christmas the Rev. Moses Allen, on his return from Boston to Charlestown. He told me he came through Philadelphia, but did not see you, though he expresses a singular regard for you, and left his request with me that you would let him hear from you whenever it is convenient, promising to return the kindness with punctuality. He travelled with considerable equipage for a dissenting ecclesiastic, and seems to be willing to superadd the airs of the fine gentleman to the graces of the spirit. I had his company for several days, during which time he preached two sermons with general approbation. His discourses were above the common run some degree; and his appearance in the pulpit on on the whole was no discredit to [. . . . . ?] He retains too much of his pristine levity, but promises amendment. I wish he may for the sake of himself, his friends, and his flock. I only add that he seems to be one of those geniuses that are formed for shifting in the world rather than shining in a college, and that I really believe him to possess a friendly and generous disposition.

You shall ere long hear from me again. Till then, *Vive, vale et Lætare.*

[\[Back to Table of Contents\]](#)

## ADDRESS “TO CAPTAIN PATRICK HENRY AND THE GENTLEMEN INDEPENDENTS OF HANOVER.1

May 9, 1775.

“Gentlemen:

We, the committee for the county of Orange, having been fully informed of your seasonable and spirited proceedings in procuring a compensation for the powder fraudulently taken from the country magazine by command of Lord Dunmore, and which it evidently appears his lordship, notwithstanding his assurances, had no intention to restore, entreat you to accept their cordial thanks for this testimony of your zeal for the honor and interest of your country, We take this opportunity also to give it as our opinion that the blow struck in the Massachusetts government is a hostile attack on this and ever other Colony, and a sufficient warrant to use violence and reprisal in all cases in which it may be for our security and welfare.

“James Madison, Chairman.

JAMES TAYLOR,            THOMAS BARBOUR,  
ZACHARIAH BURNLEY, ROWLAND THOMAS,  
JAMES MADISON, JR.,   WILLIAM MOORE,  
JAMES WALKER,         LAWRENCE TALIAFERRO,  
HENRY SCOTT,           THOMAS BELL.”

[\[Back to Table of Contents\]](#)

## INDEPENDENCE AND CONSTITUTION OF VIRGINIA. 1

May 10. A representation\* from the Committee of the County of Augusta was presented to the Convention, setting forth the present unhappy situation of the country; and from the ministerial measures of vengeance now pursuing, representing the necessity of making the confederacy of the United Colonies the most perfect, independent, and lasting, and of framing an equal, free, and liberal Government that may bear the test of all future ages: ordered that the said representation be referred to the committee on the State of the Colony. [quere, as to the *date* of this representation, and whether the document be on the public files.]

Mad. Mss.

journal of the virginia convention in 1776.

May. 15. The Convention, one hundred and twelve members being present, unanimously agreed as follows “Forasmuch as all endeavours of the United Colonies, by the most decent representations and petitions to the king and parliament of Great Britain, to restore peace and security to America under the British Government, and a reunion with that people upon just and liberal terms, instead of a redress of grievances, have produced—from an imperious and vindictive administration increased insult, oppression, and a vigorous attempt to effect our total destruction: By a late act, all these colonies are declared to be in rebellion, and out of the protection of the British crown, our properties subjected to confiscation, our people when captivated, compelled to join in the murder and plunder of their relations and countrymen, and all former rapine and oppression of Americans delared legal and just. Fleets and armies are raised, and the aid of foreign troops engaged to assist these destructive purposes. The king’s representative in this colony hath not only witheld all the powers of Government from operating for our safety, but having retired on board an armed ship, is carrying on a piratical and savage war against us, tempting our slaves, by every artifice, to resort to him, and training and employing them against their masters. In this state of extreme danger we have no alternative left, but an abject submission to the will of those overbearing tyrants, or a total separation from the crown and Government of Great Britain, uniting and exerting the strength of all America for defence, and forming alliances with foreign powers for commerce and aid in war: wherefore, appealing to the Searcher of Hearts, for the sincerity of former declarations expressing our desire to preserve the connexion with that nation, and that we are driven from that inclination by their wicked councils, and the eternal laws of self-preservation;

*Resolved unanimously*, That the delegates appointed to represent this colony in General congress, be instructed to propose to that respectable body, to declare the United Colonies, free and independent States, absolved from all allegiance to, or dependence upon, the crown or Parliament of Great Britain; and that they give the assent of this Colony to such declaration, and to whatever measures may be thought proper and necessary by the congress for forming foreign alliances, and a confederation of the colonies, as such times, and in the manner, as to them shall seem best: Provided, that the power of forming Government for, and the regulations of the internal concerns of each colony, be left to the respective colonial legislatures.

*Resolved unanimously*, that a committee be appointed to prepare a Declaration of Rights, and such a plan of Government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people.

And a committee was appointed of the following members: viz Archibald Cary, Meriwether Smith, M<sup>r</sup>. Mercer, M<sup>r</sup>. Henry Lee, M<sup>r</sup>. Treasurer—[Robert Carter Nicholas] M<sup>r</sup>. Henry, M<sup>r</sup>. Dandridge, M<sup>r</sup>. Edmund Randolph, M<sup>r</sup>. Gilmer, M<sup>r</sup>. Bland, M<sup>r</sup>. Diggs, M<sup>r</sup>. Carrington, M<sup>r</sup>. Thomas Ludwell Lee, M<sup>r</sup>. Cabell, M<sup>r</sup>. Jones, M<sup>r</sup>. Blair, M<sup>r</sup>. Fleming, M<sup>r</sup>. Tazewell, M<sup>r</sup>. Richard Cary, M<sup>r</sup>. Bullitt, M<sup>r</sup>. Watts, M<sup>r</sup>. Banister, M<sup>r</sup>. Page, M<sup>r</sup>. Starke, M<sup>r</sup>. David Mason, M<sup>r</sup>. Adams, M<sup>r</sup>. Read, and M<sup>r</sup>. Thomas Lewis.

May 16. Ordered that M<sup>r</sup>. Madison, M<sup>r</sup>. Rutherford and M<sup>r</sup>. Watkins be added to the Committee appointed to prepare a Declaration of Rights and a plan of Government.

May. 18. Ordered that George Mason be added to that Committee.

[It is inferred that he was not before present; especially as his name is not on any one of the numerous committees of antecedent appointment. His distinguished talents, if present, could not have been overlooked.]

May 21. Ordered that M<sup>r</sup>. Bowyer be added to the committee appointed to prepare a Declaration of Rights and plan of Government.

May 27. Mr. Cary reported a *Declaration of Rights*, which was ordered to be printed for the perusal of the members. [See a printed copy in the hands of J. M.]

Ordered: that M<sup>r</sup>. Curle and M<sup>r</sup>. Holt be added to the committee appointed to prepare a Declaration of Rights and plan of Government.

June 10. The Declaration of Rights, reported from a committee of the whole, with several amendments.

June 11. The Amendments to the Declaration of Rights agreed to, and the whole ordered to be transcribed for a third reading.

June 12. The Amended Declaration of Rights agreed to nem: con. [See the copy below.]

June 24. M<sup>r</sup>. Cary reported from the appointed committee “a plan of Government for this Colony,” which was ordered to be read a second time.

June 26. In committee of the whole on the reported plan of Gov<sup>t</sup>. progress made and reported.

June 27. In committee of the whole on the Plan, & progress reported.

June 28. The plan reported from the Committee of the whole, with amendments, & ordered to be transcribed & read a third time.

June 29. Resolved unanimously that the said plan do pass.

(As printed by order of the convention)

The following declaration\* was reported to the convention by the committee appointed to prepare the same, and referred to the consideration of a committee of the whole convention; and in the meantime, is ordered to be printed for the perusal of the members.

A DECLARATION OF RIGHTS made by the Representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to us, and our posterity, as the basis and foundation of Government.

1. That all men are born equally free and independent, and have certain inherent natural rights, of which they cannot, by any compact, deprive their posterity; among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
2. That all power is vested in, and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them.
3. That Government is, or ought to be, instituted for the common benefit, protection, and security, of the people, nation or community: of all the various modes and forms of Government that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.
4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of publick services; which not being descendible or hereditary, the idea of a man born a magistrate, a legislator, or a judge, is unnatural and absurd.
5. That the legislative and executive powers of the state should be separate and distinct from the judicative; and that the members of the two first, may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain and regular elections.
6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with and attachment to, the community, have the right of suffrage.
- 7 That no part of a man's property can be taken from him, or applied to publick uses, without his own consent, or that of his legal representatives; nor are the people bound

by any laws but such as they have, in like manner, assented to, for their common good.

8. That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

9. That laws having retrospect to crimes, and punishing offences, committed before the existence of such laws, are generally oppressive, and ought to be avoided.

10. That in all capital or criminal prosecutions, as man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers or witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of his vicinage; without whose unanimous consent he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land, or the judgment of his peers.

11. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

12. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and ought not to be granted.

13. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

14. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotick governments.

15. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state; that standing armies in time of peace, should be avoided as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by the civil power.

16. That the people have a right to uniform Government; and therefore, that no Government separate from, or independent of the Government of Virginia, ought of right, to be erected or established, within the limits thereof.

17. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

18. That Religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence: and therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished, and unrestrained by the magistrate, unless under colour of religion, any man disturb the peace, the



happiness, or safety of Society. And that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.\*

(Copy of a printed paper, in the hands of J. M.)

## A PLAN OF GOVERNMENT

Laid before the Committee of the House, which they have ordered to be printed for the perusal of the members.\*

1. Let the Legislative, executive and judicative departments be separate and distinct, so that neither exercise the powers properly belonging to the other.
2. Let the legislative be formed of two distinct branches, who, together, shall be a complete legislature. They shall meet once, or oftener, every year, and shall be called the GENERAL ASSEMBLY OF VIRGINIA.
3. Let one of these be called the Lower House of Assembly, and consist of two delegates, or representatives, chosen for each county annually, by such men as have resided in the same for one year last past, are freeholders of the county, possess an estate of inheritance of land in Virginia, of at least one thousand pounds value, and are upwards of twenty four years of age.
4. Let the other be called the Upper House of Assembly, and consist of twenty four members, for whose election, let the different counties be divided into twenty four districts, and each county of the respective district, at the time of the election of its delegates for the Lower House, choose twelve deputies, or subelectors, being freeholders residing therein, and having an estate of inheritance of lands within the district, of at least five hundred pounds value: In case of dispute, the qualifications to be determined by the majority of the said deputies. Let these deputies choose by ballot, one member of the Upper House of Assembly, who is a freeholder of the district, hath been a resident therein for one year last past, possesses an estate of inheritance of lands in Virginia, of at least two thousand pounds value, and is upwards of twenty eight years of age. To keep up this Assembly by rotation, let the districts be equally divided into four classes and numbered.

At the end of one year, after the general election. Let the six members elected by the first division be displaced, rendered ineligible for four years, and the vacancies be supplied in the manner aforesaid. Let this rotation be applied to each division according to its number, and continued in due order annually.

5. Let each House settle its own rules of proceeding, direct writs of election for supplying intermediate vacancies; and let the right of suffrage both in the election of members for the Lower House, and of deputies for the districts, be extended to those having leases for land, in which there is an unexpired term of seven years, and to every Housekeeper who hath resided for one year last past, in the county, and hath been the father of three children in this country.

6. Let all laws originate in the Lower House, to be approved or rejected, by the Upper House; or to be amended with the consent of the Lower House, except money bills, which in no instance shall be altered by the Upper House, but wholly approved or rejected.

7. Let a Governour, or Chief Magistrate be chosen annually by joint ballot of both Houses; who shall not continue in that office longer than three years successively, and then be ineligible for the next three years. Let an adequate, but moderate salary, be settled on him, during his continuance in office; and let him, with the advice of a council of State, exercise the executive powers of Government, and the power of prorouging or adjourning the General Assembly, or of calling it upon emergencies, and of granting reprieves or pardons, except in cases where the prosecution shall have been carried on by the Lower House of Assembly.

8. Let a privy Council, or Council of State, consisting of eight members, be chosen by joint ballot of both Houses of Assembly, promiscuously, from their own members, or the people at large, to assist in the administration of Government.

Let the Governor be President of this council; but let them annually choose one of their own members, as Vice-President, who, in case of the death or absence of the Governour, shall act as Lieutenant Governour. Let three members be sufficient to act, and their advice be entered of record in their proceedings. Let them appoint their own clerk, who shall have a salary settled by law, and taken an oath of secrecy, in such matters as he shall be directed to conceal, unless called upon by the Lower House of Assembly for information. Let a sum of money, appropriated to that purpose, be divided annually among the members, in proportion to their attendance: and let them be incapable, during their continuance in office, of sitting in either House of Assembly. Let two members be removed by ballot of their own Board, at the end of every three years, and be ineligible for the three next years. Let this be regularly continued, by rotation, so as that no member be removed before he hath been three years in the council: and let these vacancies, as well as those occasioned by death or incapacity, be supplied by new elections, in the same manner as the first.

9. Let the Governour, with the advice of the Privy council, have the appointment of the Militia officers, and the Government of the militia, under the laws of the country.

10. Let the two Houses of Assembly, by joint ballot, appoint judges of the supreme court, judges in chancery, judges of Admiralty, and the attorney-general, to be commissioned by the Governour, and continue in office during good behaviour. In case of death or incapacity, let the Governour, with the advice of the privy council, appoint persons to succeed in office *pro tempore* to be approved or displaced by both Houses. Let these officers have fixed and adequate salaries, and be incapable of having a seat in either House of Assembly, or in the Privy Council; except the Attorney-general, and the treasurer, who may be permitted to a seat in the Lower House of Assembly.

11. Let the Governour, and Privy Council, appoint justices of the peace for the counties. Let the clerks of all the courts, the sheriffs and coroners, be nominated, by

the respective courts, approved by the Governour and Privy Council, and commissioned by the Governour. Let the clerks be continued during good behaviour, and all fees be regulated by law. Let the justices appoint constables.

12. Let the Governour, any of the Privy Counsellors, judges of the supreme court, and all other officers of government, for mal-administration, or corruption, be prosecuted by the Lower House of Assembly (to be carried on by the attorney-General, or such other person as the House may appoint) in the supreme court of common law. If found guilty, let him or them be either removed from office; or for ever disabled to hold any office under the Government; or subjected to such pains or penalties as the laws shall direct.

13. Let all commissions run in the name of the *Commonwealth of Virginia*, and be tested by the Governour, with the seal of the commonwealth annexed. Let writs run in the same manner, and be tested by the clerks of the several courts. Let indictments conclude, *Against the peace and dignity of the commonwealth*.

14. Let a treasurer be appointed annually, by joint ballot of both Houses.

15. In order to introduce this government, let the representatives of the people, now met in Convention, choose twenty four members to be an upper House; and let both Houses, by joint ballot, choose a Governour and Privy Council; the upper House to continue until the last day of March next; and the other officers, until the end of the succeeding session of Assembly. In case of vacancies, the President to issue writs for new elections.\*

As agreed to by the Convention.

A DECLARATION OF RIGHTS, made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them, and their posterity, as the basis and foundation of Government.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they can not by any compact, deprive or divest their posterity: namely, the enjoyment of life and liberty, with the means of acquiring & possessing property, and preserving and obtaining happiness and safety.

2. The same.

3. The same.

4. That no man or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge to be hereditary.

5. That the Legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained

from oppression, by feeling and participating the burdens of the people, they should at fixed periods be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain and regular elections, in which all or any part of the former members, to be again eligible or ineligible as the laws shall direct.

6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with, and attachment to, the community have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or criminal prosecutions, as man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of the vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself, that no man be deprived of his liberty except by the law of the land, or the judgment of his peers.

9. The same as N<sup>o</sup>. 11.

10. That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence are greivous and oppressive and ought not to be granted.

11. The same as N<sup>o</sup> 13.

12. The same as N<sup>o</sup>. 14.

13. The same as N<sup>o</sup> 15.

14. That the people have a right to uniform Government: and therefore that no government separate from or independent of the Government of Virginia, ought to be erected or established within the limits thereof.

15. The same as N<sup>o</sup>. 17.

16. That Religion, or the duty we owe to our CREATOR, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice christian forbearance love and charity towards each other.

Copy of the Constitution as finally agreed to by the convention of 1776.

The Legislative, Executive and Judiciary Departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others; nor shall any person exercise the powers of more than one of them at the same time except that the Justices of the county courts shall be eligible to either House of Assembly

The Legislative shall be formed of two distinct branches, who

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Orange, March, Saturd<sup>y</sup> 1777.<sup>1</sup>

Mad. Mss.

Hond. Sir, \* \* \*

The following odd affair has furnished the C<sup>t</sup> of this county with some very unexpected business.

Two persons travelling from Phil<sup>a</sup> to the Southward one of them a Frenchman and an officer in the Continental army and the other a man of decent figure came to the C<sup>t</sup> House on the evening of the C<sup>t</sup> day and immediately inquired for a member of the Committee; and being withdrawn with several members into a private room they gave information, that they fell in with a man on the road a few miles from the C<sup>t</sup>. house who, in the course of Conversation on public affairs gave abundant proof of his being an adherent to the King of G. B. and a dangerous Enemy to the State, that he ran into the most outrageous abuse of our proceedings and on their threatening to inform ag<sup>t</sup>. him in the most daring manner bid defiance to Committees or whoever should pretend to judge or punish him. They said the man they alluded to had come with them to the C<sup>t</sup> House, and they made no doubt but they could point him out in the Crowd. On their so doing the culprit appeared to be Benjamin Haley. As the Committee had no jurisdiction in the case it was referred to a justice of the Peace. Every one seemed to be agreed that his conduct was a direct violation of Law and called aloud for public notice; but the witnesses being travellers and therefore unable to attend at a Trial, it was thought best not to undertake a Prosecution which promised nothing but impunity and matter of triumph to the offender. Here the affair dropped and every one supposed was entirely at an end. But as the Frenchman was accidentally passing through the room where Haley was, he took occasion to admonish the people of his being a disaffected person and upbraided him for his Tory principles. This introduced a debate which was continued for some time with great heat on the part of the Frenchman and great insolence on the part of Haley. At the request of the latter they at length both appeared before a Justice of the peace. Haley at first evaded the charges of his antagonist, but after some time, said he scorned to be *counterfeit*, and in answer to some questions that were put to him, signified that we were in the state of rebellion and had revolted from our lawful Sovereign and that if the King had justice done him his authority would still be in exercise among us. This passed in the presence of 20 or 30 persons, and rendered the Testimony of the Travellers needless. A warrant for arresting him was immediately issued and executed. The criminal went through his examination in which his very Pleas seemed to aggravate his guilt. Witnesses were summoned sworn and their evidences taken. And on his obstinate refusal to give security for his appearance, He was committed to close gaol. This happened about 8 O'Clock. I have since heard he begged ab<sup>t</sup>. one O'Clock in the morning to be admitted to bail & went home but not without threats of revenge and making public declaration that he was King George's man. I have stated the case thus particularly not only for your own satisfaction, but that you may, if an opportunity occurs, take the

advice of some Gentleman skilled in the Law, on the most proper and legal mode of proceeding against him.

Ambrose requests you will enquire whether any pretty neat Shoe Boots may be had in Fred<sup>g</sup>. and the price of them.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Williamsburg Jan<sup>y</sup> 23<sup>d</sup> 1778.

Mad. Mss.

Hon<sup>D</sup> Sir,—

I got safe to this place on Tuesday following the day I left home, and at the earnest invitation of my kinsman M<sup>f</sup> Madison1 have taken my lodgings in a Room of the Presidents house, which is a much better accomodation than I could have promised myself. It would be very agreeable to me if I were enabled by such varieties as our part of the Country furnishes, particularly dried fruit &c &c which M<sup>f</sup>. Madison is very fond of to make some little returns for the culinary favours I receive. Should any opportunity for this purpose offer I hope they will be sent. You will see by the inclosed Acc<sup>t</sup> of Sales what money you have in M<sup>f</sup>. Lee's hands, and if you chuse to draw for it, you can transmit me your Bills for sale—You will be informed in due time by Advertisement from the Governour what is proper to be done with the Shoes &c &c collected for the Army. You will be able to obtain so circumstantial an acc<sup>t</sup>. of public affairs from Maj<sup>f</sup>. Moore that I may save myself the trouble of anticipating it—Maj<sup>f</sup>. Moore also has for my Mother 14 oz of Bark—The other Articles wanted by the family are not at present to be had. When ever I meet with them I shall provide and transmit them. I hope you will not forget my parting request that I might hear frequently from home, and whenever my brother1 returns from the Army I desire he may be informed. I shall expect he will make up by letter the loss of intelligence I sustain by my removal out of his way. With the sincerest affection for yourself & all others who I ought particularly to remember on this occasion.

I am Dear Sir your Affect<sup>n</sup>. son

I find on enquiry that M<sup>f</sup>. Benjamin Winslow is discontinued in the military appointment given him by the Governour & Council. I promised to let him know this by letter but my being as yet unprovided with paper makes it necessary to leave this information for him with you.

J. M J<sup>f</sup>

Although I well know how inconvenient and disagreeable it is to you to continue to act as Lieutenant of the County1 I cannot help informing you that a resignation at this juncture is here supposed to have a very unfriendly aspect on the execution of the Draught and consequently to betray at least a want of patriotism and perseverance. This is so much the case that a recommendation of Con<sup>y</sup> Lt. this day received by the Gov<sup>f</sup>, to supply the place of one who had resigned to the Court, produced a private verbal message to the old L<sup>t</sup> to continue to act at least as long as the present measures were in execution.

J M J<sup>f</sup>



[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Williams<sup>bg</sup> March 6<sup>th</sup>. 78.

Mad. Mss.

Hon<sup>D</sup> Sir,—

Since I wrote to you by M<sup>r</sup> Cave I have taken the freedom to give an order on M<sup>r</sup> Lee who is at present at Nants for money due to you in favour of the Rev<sup>d</sup> M<sup>r</sup>. Madison who wanted to procure from Europe a few literary curiosities by means of a French gentleman just setting out on public Business for this State, addressed to the management of M<sup>r</sup>. Lee. I take the opportunity by M<sup>r</sup>. Harrison from Culpeper of giving you the earliest notice of this circumstance that you may not dispose of your Bills to any other person. As some little return for the favour I am daily receiving from M<sup>r</sup>. Madison I shall not charge him more than the legal rate of exchange for the money. I have sent for a few Books also on my own account and M<sup>r</sup> Lee is requested to transmit whatever late publications relate to G. B. or the present state of European Politics. If any Balance should remain after these purposes are provided for Capt. le Maire the french Gentl<sup>m</sup> alluded to has engaged to lay it out for us in linen &c. We have no news here that can be depended. It is said by M<sup>r</sup>. King who is just from Peters<sup>bg</sup> that a Gentleman was at that place who informed that sundry persons had arrived at Edenton (which he was travelling from) from Providence Island who affirmed that they saw in Providence a London Paper giving an account that Burgoyne's disaster had produced the most violent fermentation in England that the Parliament had refused to grant the supplies for carrying on the war and that a motion for acknowledging our Independence was overruled by a small majority only. The People who bring this news to Edenton, as the story goes, were prisoners w<sup>th</sup> the Enemy at Providence, where they were released by a New England privateer which suddenly landed her men took possession of the small fort that commanded the Harbour and secured several vessels that lay in it one of which was given up to these men to bring them to the Continent. I leave you to form your own Judgment as to the credibility of this report—I wish it carried stronger marks of truth.

The Gov<sup>r</sup> has just rec<sup>d</sup> a letter from the Cap<sup>t</sup> of french frigate I mentioned in my last informing him of his safe arrival in N. C. with a rich Cargo of various useful and important Articles, which will be offered for sale to us. The frigate belongs to a Company at Nantes in France—We also hear but in a less authentic manner that 7000 Tents have arrived at Martinique on their way from France to the Grand Army (?)—Salt at South. Quay sells at £3-1 a [illegible] and is falling—A letter from York-Town this moment read informs us that an Exchange of Prisoners is at last agreed on between W[ashington]. & H[owe].

I wish much to hear from you, and shall continue to write by every opportunity.

I Am D<sup>R</sup> Sir With My Constant Good Wishes &C &C  
Y<sup>R</sup> Affect<sup>N</sup> Son

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Williamsburg, Dec<sup>r</sup>. 8<sup>th</sup>, 1779.

Mad. Mss.

Honored Sir,—

Having an opportunity by M<sup>r</sup> Collins I add a few lines to those I sent by Col. Burnley on the Subject of your's by him. The Assembly have not yet concluded their plan for complying with the requisitions from Congress. It may be relied on that that cannot be done without very heavy taxes on every species of property. Indeed it is thought questionable whether it will not be found absolutely impossible. No exertions however ought to be omitted to testify our Zeal to support Congress in the prosecution of the War. It is also proposed to procure a large sum on loan by stipulating to pay the Interest in Tob<sup>o</sup>. A Tax on This article necessary for that purpose is to be collected. Being very imperfectly acquainted with the proceedings of the Assembly on this matter I must refer you for the particulars to the return of Maj<sup>r</sup>. Moore, or some future opportunity. The law for escheats & forfeitures will be repealed as it respects orphans, &c. The effects of the measures taken by the Assembly on the credit of our money & the prices of things cannot be predicted. If our expectations had not been so invariably disappointed they ought to be supposed very considerable. But from the rapid progress of depreciation at present and the universal struggle among sellers to bring up prices, I cannot flatter myself with the hope of any great reformation. Corn is already at £20 & rising. Tob<sup>o</sup> is also rising. Pork will probably command any price. Imported goods exceed everything else many hundreds per cent.

I am much at a loss how to dispose of Willey.<sup>1</sup> I cannot think it would be expedient in the present state of things to send him out of the State. From a new arrangement of the college here nothing is in future to be taught but the higher & rarer branches of Science. The preliminary studies must therefore be pursued in private Schools or Academies. If the Academy at Prince Edward is so far dissolved that you think his return thither improper, I would recommend his being put under the instruction of Mr. Maury<sup>1</sup> rather than suffer him to be idle at home. The languages including English, Geography, & arithmetic ought to be his employment till he is prepared to receive a finish to his education at this place.

By the late change also in the college, the former custom of furnishing the table for the President & professors is to be discontinued. I am induced by this consideration to renew my request for the Flour mentioned so often to you. It will perhaps be the only opportunity I may have of requiting received & singular favours, and, for the reason just assigned will be extremely convenient. I wish to know without any loss of time how far this supply may be reckoned. 5 or 600<sup>lb</sup>., at least I persuade myself may be spared from your stock without encroaching on your own consumption. Perhaps Mr. R. Burnley would receive and store it for me. Capt. W<sup>m</sup>. Anderson I believe also lives at that place and would probably do any favour of that sort. I am desired by a Gentleman here to procure for him 2 Bear Skins to cover the foot of his Chariot. If

they can be bought anywhere in your neighborhood I beg you or Ambrose will take the trouble to inquire for them & send them to Capt. Anderson at Hanover Town. If the flour should come down the same opportunity will serve for them. Captain Anderson may be informed that they are for Mr. Norton. If they can be got without too much trouble I should be glad of succeeding, as he will rely on my promise to procure them for him.

Having nothing to add under the head of news, I subscribe myself y<sup>r</sup>. dutiful son. [1](#)

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Philadelphia, Monday March 20<sup>th</sup>., 1780.[2](#)

Mad. Mss.

Hon<sup>D</sup> Sir,—

The extreme badness of the roads and frequency of rains rendered my journey so slow that I did not reach this place till Saturday last. The only public intelligence I have to communicate is that the great and progressive depreciation of the paper currency had introduced such disorder and perplexity into public affairs for the present and threatened to load the United States with such an intolerable burden of debt, that Congress have thought it expedient to convert the 200,000,000 of Dollars now in circulation into a real debt of 5,000,000 by establishing the exchange at 40 for 1: and taxes for calling it in during the ensuing year, are to be payable at the option of the people in Specie or paper according to that difference. In order to carry on public measures in future money is to be emitted under the combined faith of Congress and the several States, secured on permanent and specific funds to be provided by the latter. This scheme was finally resolved on on Saturday last. It has not yet been printed but will be immediately. I shall transmit a copy to you by the first opportunity. The little time I have been here makes it impossible for me to enter into a particular delineation of it. It will probably create great perplexity and complaints in many private transactions. Congress have recommended to the States to repeal their tender laws, and to take measures for preventing injustice as much as possible. It is probable that in the case of loans to the public, the state of depreciation at the time they were made will be the rule of payment, but nothing is yet decided on that point. I expect to be more at leisure to write fully by next post.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, March 27, 1780.

Dear Sir,—

Nothing under the title of news has occurred since I wrote last week by express, except that the enemy on the first of March remained in the neighbourhood of Charleston, in the same posture as when the preceding account came away. From the best intelligence from that quarter, there seems to be great encouragement to hope that Clinton's operations will be again frustrated. Our great apprehensions at present flow from a very different quarter. Among the various conjunctures of alarm and distress which have arisen in the course of the Revolution, it is with pain I affirm to you, sir, that no one can be singled out more truly critical than the present. Our army threatened with an immediate alternative of disbanding or living on free quarter; the public treasury empty; public credit exhausted, nay the private credit of purchasing agents employed, I am told, as far as it will bear; Congress complaining of the extortion of the people; the people of the improvidence of Congress; and the army of both; our affairs requiring the most mature and systematic measures, and the urgency of occasions admitting only of temporizing expedients, and these expedients generating new difficulties; Congress recommending plans to the several States for execution, and the States separately rejudging the expediency of such plans, whereby the same distrust of concurrent exertions that has damped the ardor of patriotic individuals must produce the same effect among the States themselves; an old system of finance discarded as incompetent to our necessities, an untried and precarious one substituted, and a total stagnation in prospect between the end of the former and the operation of the latter. These are the outlines of the picture of our public situation. I leave it to your own imagination to fill them up. Believe me, sir, as things now stand, if the States do not vigorously proceed in collecting the old money, and establishing funds for the credit of the new, that we are undone; and let them be ever so expeditious in doing this, still the intermediate distress to our army, and hindrance to public affairs, are a subject of melancholy reflection. General Washington writes that a failure of bread has already commenced in the army; and that, for any thing he sees, it must unavoidably increase. Meat they have only for a short season; and as the whole dependence is on provisions now to be procured, without a shilling for the purpose, and without credit for a shilling, I look forward with the most pungent apprehensions. It will be attempted, I believe, to purchase a few supplies with loan-office certificates; but whether they will be received is perhaps far from being certain; and if received will certainly be a most expensive and ruinous expedient. It is not without some reluctance I trust this information to a conveyance by post, but I know of no better at present, and I conceive it to be absolutely necessary to be known to those who are most able and zealous to contribute to the public relief.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, May 6, 1780.

Dear Sir,—

I am sorry that I can give you no other account of our public situation, than that it continues equally perplexed and alarming as when I lately gave you a sketch of it. Our army has as yet been kept from starving, and public measures from total stagnation, by draughts on the States for the unpaid requisitions. The great amount of these you may judge of from the share that has fallen to Virginia. The discharge of debts due from the purchasing departments has absorbed a great proportion of them, and very large demands still remain. As soon as the draughts amount to the whole of the monthly requisitions up to the end of March, they must cease, according to the new scheme of finance. We must then depend wholly on the emissions to be made in pursuance of that scheme, which can only be applied as the old emissions are collected and destroyed. Should this not be done as fast as the current expenditures require, or should the new emissions fall into a course of depreciation, both of which may but too justly be feared, a most melancholy crisis must take place. A punctual compliance on the part of the States with the specific supplies will indeed render much less money necessary than would otherwise be wanted; but experience by no means affords satisfactory encouragement that due and unanimous exertions will be made for that purpose,—not to mention that our distress is so pressing that it is uncertain whether any exertions of that kind can give relief in time. It occurs besides, that as, the ability of the people to comply with the pecuniary requisitions is derived from the sale of their commodities, a requisition of the latter must make the former proportionably more difficult and defective. Congress have the satisfaction, however, to be informed that the legislature of Connecticut have taken the most vigorous steps for supplying their quota both of money and commodities; and that a body of their principal merchants have associated for supporting the credit of the new paper, for which purpose they have, in a public address, pledged their faith to the assembly to sell their merchandize on the same terms as if they were to be paid in specie. A similar vigor throughout the Union may perhaps produce effects as far exceeding our present hopes, as they have heretofore fallen short of our wishes.

It is to be observed that the situation of Congress has undergone a total change from what it originally was. Whilst they exercised the indefinite power of emitting money on the credit of their constituents, they had the whole wealth and resources of the continent within their command, and could go on with their affairs independently and as they pleased. Since the resolution passed for shutting the press, this power has been entirely given up, and they are now as dependent on the States as the King of England is on the Parliament. They can neither enlist, pay nor feed a single soldier, nor execute any other purpose, but as the means are first put into their hands. Unless the legislatures are sufficiently attentive to this change of circumstances, and act in conformity to it, every thing must necessarily go wrong, or rather must come to a total

stop. All that Congress can do in future will be to administer public affairs with prudence, vigor and economy. In order to do which they have sent a committee to Head-Quarters with ample powers, in concert with the Commander-in-Chief and the heads of the Departments, to reform the various abuses which prevail, and to make such arrangements as will best guard against a relapse into them.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, June 2, 1780.

Dear Sir,—

It appears from sundry accounts from the frontiers of New York and other Northern States, that the savages are making the most distressing incursions, under the direction of British agents, and that a considerable force is assembling at Montreal for the purpose of wresting from us Fort Schuyler, which covers the northwestern frontier of New York. It is probable the enemy will be but too successful this campaign in exciting their vindictive spirit against us, throughout the whole frontier of the United States. The expedition of General Sullivan against the Six Nations, seems by its effects rather to have exasperated than to have terrified or disabled them. And the example of those nations will add great weight to the exhortations addressed to the more southern tribes.

Rivington has published a positive and particular account of the surrender of Charleston on the twelfth ultimo, said to be brought to New York by the Iris which left Charleston five days after. There are, notwithstanding, some circumstances attending it which, added to the notorious character for lying of the author, leave some hope that it is fictitious. The true state of the matter will probably be known at Richmond before this reaches you.

We have yet heard nothing further of the auxiliary armament from France. However anxiously its arrival may be wished for, it is much to be feared we shall continue to be so unprepared to co-operate with them, as to disappoint their views, and to add to our distress and disgrace. Scarce a week, and sometimes scarce a day, but brings us a most lamentable picture from Head-Quarters. The army are a great part of their time on short allowance, and sometimes without any at all, and constantly depending on the precarious fruits of momentary expedients. General Washington has found it of the utmost difficulty to repress the mutinous spirit engendered by hunger and want of pay: and all his endeavours could not prevent an actual eruption of it in two Connecticut regiments, who assembled on the parade with their arms, and resolved to return home or satisfy their hunger by the power of the bayonet. We have no permanent resource, and scarce even a momentary one left, but in the prompt and vigorous supplies of the States. The State of Pennsylvania has it in her power to give great relief in the present crisis, and a recent act of her legislature shows, they are determined to make the most of it. I understand they have invested the Executive with a dictatorial authority from which nothing but the *lives* of their citizens are exempted. I hope the good resulting from it will be such as to compensate for the risk of the precedent.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, June 23, 1780.

Dear Sir,—

The fact is confirmed that Clinton has returned to New York with part of the Southern army, and has joined Knipphausen. They are at present manœuvring for purposes not absolutely known, but most probably in order to draw General Washington to an action, in which they suppose he might be disabled from giving the necessary co-operation to the French armament. Could they succeed in drawing him from his strong position, the result indeed ought to be exceedingly feared. He is weak in numbers beyond all suspicion, and under as great apprehension from famine as from the enemy. Unless very speedy and extensive reinforcements are received from the Eastern States, which I believe are exerting themselves, the issue of the campaign must be equally disgraceful to our councils and disgustful to our allies. Our greatest hopes of being able to feed them are founded on a patriotic scheme of the opulent merchants of this city, who have already subscribed nearly £NA, and will very soon complete that sum, the immediate object of which is to procure and transport to the army NA rations, and three hundred hogsheads of rum. Congress, for the support of this bank, and for the security and indemnification of the subscribers, have pledged the faith of the United States, and agreed to deposit bills of exchange in Europe to the amount of £150,000 sterling, which are not, however, to be made use of, unless other means of discharging this debt should be inadequate.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.1

Philadelphia, September 12, 1780.2

Dear Sir,—

Congress have at length entered seriously on a plan for finally ratifying the Confederation. Convinced of the necessity of such a measure, to repress the hopes with which the probable issue of the campaign will inspire our enemy, as well as to give greater authority and vigor to our public councils, they have recommended, in the most pressing terms, to the States claiming unappropriated back lands, to cede a liberal portion of them for the general benefit. As these exclusive claims formed the only obstacle with Maryland, there is no doubt that a compliance with this recommendation will bring her into the Confederation. How far the States holding the back lands may be disposed to give them up, cannot be so easily determined. From the sentiments of the most intelligent persons which have come to my knowledge, I own I am pretty sanguine that they will see the necessity of closing the Union, in too strong a light to oppose the only expedient that can accomplish it.

Another circumstance, that ought greatly to encourage us under disappointed expectations from the campaign, is the combination of the maritime powers in support of their neutral rights, and particularly the late insolent and provoking violation of those rights by the English ships at St. Martin's. It is not probable that the injured will be satisfied without reparations and acknowledgments which the pride of Britain will not submit to; and if she can once be embroiled in an altercation with so formidable a league, the result must necessarily be decisive in our favor. Indeed it is not to be supposed, after the amazing resources which have been seen in Great Britain, when not only deprived of, but opposed by, her ancient Colonies, and the success of the latter in resisting for so long a time the utmost exertion of these resources against her, that the maritime powers, who appear to be so jealous of their rights, will ever suffer an event to take place which must very soon expose them to be trampled on at the pleasure of Great Britain.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, September 19, 1780.

Dear Sir,—

Yesterday was employed by Congress in discussing the resolutions you left with them. The first and second were passed after undergoing sundry alterations. 1 The clause in the second for allowing the expense of maintaining civil government within the ceded territory, was struck out by the committee, and an attempt to get it re-inserted in the House was negatived. It was surmised, that so indefinite an expression might subject Congress to very exorbitant claims. With respect to Virginia, I believe that expense has not been so considerable as to be much worth insisting on. The principal expenses may properly be included under the military head. The consideration of the last resolution, annulling Indian purchases, was postponed, with an intention, I believe, of not resuming it. It is supposed by some to be unnecessary; by others, to be improper, as implying that without such previous assurance Congress would have a right to recognize private claims in a territory expressly given up to them for the common benefit. These motives prevailed, I am persuaded, with more than the real view of gratifying private interest at the public expense. The States may annex what conditions they please to their cessions, and by that means guard them against misapplication; or if they only annul all pretended purchases by their own laws before the cessions are made, Congress are sufficiently precluded, by their own general assurance that they shall be applied to the common benefit, from admitting any private claims which are opposed to it.

The Vermont business has been two days under agitation and nothing done in it, except rejecting a proposition for postponing the determination of Congress till Commissioners should enquire into the titles and boundaries of New Hampshire and New York. Congress having bound themselves so strongly by their own act to bring it to an issue at this time, and are pressed by New York so closely with this engagement, that it is not possible any longer to try evasive expedients. For my own part, if a final decision must take place, I am clearly of opinion that it ought to be made on principles that will effectually discountenance the erection of new Governments without the sanction of proper authority, and in a style marking a due firmness and decision in Congress.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>r</sup> Sep<sup>r</sup> 19<sup>th</sup> 1780.

Mad. Mss.

Dear Sir,—

I was in hopes when I wrote my last that I should be able by this post to congratulate you on the arrival of the French fleet from the W. Indies But so far is this from being the case that it comes from authority which seems to have a just claim to our faith that Admiral Rodney is actually at the Hook with 12 sail of the line & 4 frigates. It is still said however that a french fleet is somewhere on the coast. The arrival of Rodney is certainly an evidence that it had quited the Islands and was suspected to be coming hither. It is also given out at New York that a reinforcement of 4000 troops will arrive next month from England. Another part of our reports is that 5 or 6000 troops will embark at N. York on the 25<sup>th</sup> inst. for Virg<sup>a</sup>. or S. Carolina: but it is not to be supposed that such a measure will be hazarded in the present ticklish state of things—22 sail of the Quebec fleet are carried prizes into N. England.

I Am D<sup>R</sup> Sir With Sincere Respect  
Y<sup>R</sup> Ob<sup>T</sup> Friend & Servt.

P. S. The mortality in this place exceeds any thing ever remembered. The only person of note that occurs at present is the Lady of President Reid who fell a victim to it yesterday morning.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup> Sep<sup>r</sup> 26<sup>h</sup> 1780.

Mad. Mss.

Dear Sir,—

Yesterday's post disappointed me of the pleasure of a line from you. I hope the next will not fail to make amends for it.

I have nothing to add to the inclosed paper except that Ternay is yet unreinforced, Graves at Sea no one knows where, or for what purpose, and Rodney with 10 ships of the line still at the Hook, though according to some private accounts he also is gone to sea. In this state of uncertainty conjectures & speculations abound as usual. I shall not trouble you with them, because, as far as they are founded in reason they will be much better formed by yourself. We hear nothing further of an intended visit from N. Y. to Virginia. With sincere respect & regard

I Am D<sup>R</sup>. S<sup>R</sup>. Yrs &C.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Phil<sup>a</sup> Oc<sup>r</sup> 3<sup>d</sup> 1780.

Mad. Mss.

Dear Sir,—

I had the pleasure of receiving yours of the 25 ul<sup>o</sup>. yesterday and am sorry it is not in my power to gratify your hopes with any prospect of a successful issue to this campaign. The reports of the approach or arrival of a French fleet continue to be circulated, and to prove groundless. If any foreign operations are undertaken on the continent it will probably be against the Floridas by the Spaniards. A Spanish Gentleman who resides in this City has received information from the Governor of Cuba that an armament would pass from the Havannah to Pensacola towards the end of last month, and that 10 or 12 ships of the line and as many thousand troops would soon be in readiness for an expedition against St. Augustine. It would be much more for the credit of that nation as well as for the common good, if instead of wasting their time & resources in these separate and unimportant enterprises, they would join heartily with the French in attacking the Enemy where success would produce the desired effect.

The enclosed papers contain all the particulars which have been received concerning the apostacy & plot of Arnold. A variety of his iniquitous jobs prior to this chef d'œuvre of his villainy, carried on under cover of his military authority, have been detected among his papers, and involve a number of persons both within & without the Enemies lines. The embarkation lately going on at N. York, and given out to be destined for Virginia or Rhode Island, was pretty certainly a part of the plot against W. Point; although the first representation of it has not yet been officially contradicted.

With sincere regard, I am, etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Phil<sup>a</sup> Oct<sup>r</sup> 10<sup>th</sup> 1780.

Mad. Mss.

Dear Sir,—

Your favor of the first Inst. came safe to hand yesterday. The enclosed was sent to Mr. Pendleton who is still in town.

All we know of the several fleets in the American seas is that Rodney with a few ships is at N. York, the remainder having joined Graves & Arbuthnot whom we know nothing about. Ternay is still at Rhode Island. The main French fleet under Guichen left the West Indies about the time first mentioned with a large fleet of merchantmen under its convoy, and has not since been heard of. The residue of the french fleet is in the W. Indies but we do not hear of their being any way employed. It is said an English expedition is preparing at Jamaica against some of the Spanish settlements. The Spanish expeditions against the Floridas I believe I mentioned in my last.

We have private accounts, through a channel which has seldom deceived that a very large embarkation is still going on at N. York. I hope Virginia will not be surprised, in case she should be the meditated victim. André was hung as a spy on the 2d inst. Clinton made a frivolous attempt to save him by pleading the passport granted by Arnold. He submitted to his fate in a manner that showed him to be worthy of a better one. His coadjutor Smith will soon follow him. The Hero of the Plot, although he may for the present escape an ignominious death must lead an ignominious life which if any of his feelings remain will be a sorer punishment. It is *said* that he is to be made a Brigadier and employed in some predatory expedition against the Spaniards in which he may gratify his thirst for gold. It is said with more probability that his baseness is universally despised by those who have taken advantage of it, and y<sup>t</sup>. some degree of resentment is mixed with their contempt on account of the loss of their darling officer to which he was accessory.

With sincere regard, I am, etc.



[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>l</sup>. Oct. 1780.

Mad. Mss.

Dear Sir,—

Your favour of the 8<sup>th</sup>. which ought to have been here on Monday week did not arrive till thursday; that of the 17<sup>th</sup>. came yesterday according to expectation. I know not how to account for your disappointment on the last post day having not omitted to write once since the institution of our correspondence.

Although the stroke of good fortune you mention does not appear to have been duly represented, it was only mistaken for one of equal importance which I doubt not is fully known to you by this time. Our joy on this event has been somewhat abated by intelligence of an opposite complexion from the State of N. York. Two parties from Canada composed of regulars Tories Canadians and savages and amounting to about 1000 each have entered their frontiers, the one by the way of lake George, the other by the way of the Oneida lake. They have already done some mischief, and as they are pursuing their incendiary plan, will involve the inhabitants in very great distress, (it being now the eve of winter) unless a speedy check can be given to their progress. It is supposed that this expedition was intended to take advantage of the consternation in that state expected to result from the success of Arnolds treason.

We had information some days ago from Gen<sup>l</sup> Washington that a fleet with about 2000 troops on Board had fallen down towards the Hook, which it was supposed was destined either for Virginia or N. Carolina. As nothing further has come from the General it is to be inferred that they have not yet sailed. It is said the fleet consisting of upwards of 100 sail has at last safely arrived. The capture of the British fleet from Jamaica rests upon the same evidence as mentioned in my last. I am D<sup>r</sup> S<sup>r</sup>

Affec Yr. Ob<sup>t</sup> Serv<sup>t</sup>

P. S. The President has just communicated a letter from M<sup>r</sup>. Harrison<sup>1</sup> at Cadiz confirming the capture of the B. fleet. Some of the Pris[oners were] in that bay when he wrote. The number taken was not known. The fleet amounted to 60 or 70 sail, having on board military stores provisions dry goods & 1000 Highland troops for the East Indies. You will have the particulars by the next post. 5 or 6 ships also attempting to get into Gibraltar with provisions have been taken by the Spanish [illegible] stationed off that place. 30 sail of French merchantmen had arrived safe from S<sup>t</sup> Domingo. The post is this moment starting. Adieu.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES.2

Philadelphia, October, 1780.

Dear Sir,—

I wish it was in my power to enable you to satisfy the uneasiness of people with respect to the disappointment in foreign succours. I am sensible of the advantage which our secret enemies take of it. I am persuaded also that those who ought to be acquainted with the cause are sensible of it; and as they give no intimations on the subject, it is to be inferred that they are unable to give any that would prevent the mischief. It is so delicate a subject, that, with so little probability of succeeding, it would perhaps be hardly prudent to suggest it. As soon as any solution comes out you shall be furnished with it.

We continue to receive periodical alarms from the commissary's and quarter-master's departments. The season is now arrived when provision ought to be made for a season that will not admit of transportation, and when the monthly supplies must be subject to infinite disappointments, even if the States were to do their duty. But instead of magazines being laid in, our army is living from hand to mouth, with a prospect of being soon in a condition still worse. How a total dissolution of it can be prevented in the course of the winter is, for any resources now in prospect, utterly inexplicable, unless the States unanimously make a vigorous and speedy effort to form magazines for the purpose. But unless the States take other methods to procure their specific supplies than have prevailed in most of them, the utmost efforts to comply with the requisitions of Congress can be only a temporary relief. This expedient, as I take it, was meant to prevent the emission of money. Our own experience, as well as the example of other countries, made it evident that we could not by taxes draw back to the treasury the emissions as fast as they were necessarily drawn out. We could not follow the example of other countries by borrowing, neither our own citizens nor foreigners being willing to lend as far as our wants extended. To continue to emit *ad infinitum*, was thought more dangerous than an absolute occlusion of the press. Under these circumstances, the expedient of specific requisitions was adopted for supplying the necessities of the war. But it is clear the success of this expedient depends on the mode of carrying it into execution. If, instead of executing it by specific taxes, State emissions or commissary's and quarter-master's certificates, which are a worse species of emissions, are recurred to, what was intended for our relief will only hasten our destruction.

As you are at present a *legislator*,1 I will take the liberty of hinting to you an idea that has occurred on this subject. I take it for granted that taxation alone is inadequate to our situation. You know as well as I do, how far we ought to rely on loans to supply the defects of it. Specific taxes, as far as they go, are a valuable fund, but from local and other difficulties will never be universally and sufficiently adopted: purchases with State money or certificates will be substituted. In order to prevent this evil, and

to ensure the supplies, therefore, I would propose, that they be diffused and proportioned among the people as accurately as circumstances will admit; that they be *impressed* with vigor and impartiality; and paid for in certificates not transferable, and to be redeemable, at some period subsequent to the war, at specie value, and bearing an intermediate interest. The advantage of such a scheme is this, that it would anticipate during the war the future revenues of peace, as our enemies and all other modern nations do. It would be compelling the people to *lend* the public their commodities, as people elsewhere lend their money to purchase commodities. It would be a permanent resource by which the war might be supported as long as the earth should yield its increase. This plan differs from specific taxes in this, that as an equivalent is given for what is received, much less nicety would be requisite in apportioning the supplies among the people, and they would be taken in places where they are most wanted. It differs from the plan of paying for supplies in State emissions or common certificates, in this, that the latter produce all the evils of a redundant medium, whereas the former, not being transferable, cannot have that effect, and moreover do not require the same degree of taxes during the war.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, October 17, 1780.

Dear Sir,—

The post having failed to arrive this week, I am deprived of the pleasure of acknowledging a line from you.

Congress have at length been brought to a final consideration of the clause relating to Indian purchases, [by the land companies.] It was debated very fully and particularly, and was, in the result, lost by a division of the House. Under the first impression of the chagrin, I had determined to propose to my colleagues to state the whole matter to the Assembly, with all the circumstances and the reasonings of the opponents to the measure; but, on cooler reflection, I think it best to leave the fact in your hands, to be made use of as your prudence may suggest. I am the rather led to decline the first determination, because I am pretty confident, that, whatever the views of particular members might be, it was neither the wish nor intention of many who voted with them, to favor the purchasing companies. Some thought such an assurance from Congress unnecessary, because their receiving the lands from the States as *vacant* and unappropriated, excluded all individual claims, and because they had given a general assurance that the cession should be applied to the common benefit. Others supposed that such an assurance might imply, that without it Congress would have a right to dispose of the lands in any manner they pleased, and that it might give umbrage to the States claiming an exclusive jurisdiction over them. All that now remains for the ceding States to do, is to annex to their cessions the express condition, that no private claims be complied with by Congress. Perhaps it would not be going too far, by Virginia, who is so deeply concerned, to make it a condition of the grant, that no such claim be admitted even within the grants of others, because, when they are given up to Congress, she is interested in them as much as others, and it might so happen, that the benefit of all other grants, except her own, might be transferred from the public to a few landmongers. I cannot help adding, however, that I hope this incident in Congress will not discourage any measures of the Assembly, which would otherwise have been taken [for the object] of ratifying the Confederation. Under the cautions I have suggested, they may still be taken with perfect security.

Congress have promoted Col. Morgan to the rank of a Brigadier, on the representations in favor of it from Governors Rutledge, and Jefferson, and General Gates. The latter is directed to be made a subject of a Court of Inquiry, and General Washington is to send a successor into the Southern department. The new arrangement of the army, sent to the General for his revision, has brought from him many judicious and valuable observations on the subject, which, with the arrangement, are in the hands of a committee.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Phild<sup>a</sup> Oc<sup>r</sup> 17<sup>th</sup> 1780.

Mad. Mss.

Dear Sir,—

The Southern post having not yet arrived, I have not the pleasure of acknowledging the receipt of your favor, which I have found you too punctual to doubt has been [illegible].

The best news I have to give you is contained in the enclosed paper in a letter from Eustatia, which comes from a person known to many Gentlemen here who say it may be fully credited. The Saratoga a Continental vessel of 16 guns is just returned from a cruise on which she took several Jamaica prizes with a prodigious quantity of rum & sugar on board. She parted from them in a fog near the coast, and as they have not yet been heard of it is feared they have fallen back into the possession of the Enemy.

Baron Stuben just come to town brings a report that an embarkation left N. York on thursday, but no confirmation has yet arrived from G<sup>l</sup>. Washington or any other official source.

Adieu.

By a letter just rec<sup>d</sup>. from the continental ag<sup>t</sup>. as stated by the Commercial Committee the capture of the British fleet by the Spaniards is brought pretty nearly to certainty.

[\[Back to Table of Contents\]](#)

## INSTRUCTIONS TO JOHN JAY.

Cont. Cong.

### BOUNDARIES AND FREE NAVIGATION OF THE MISSISSIPPI. 1

[Oct. 17, 1780.]

The Committee appointed to draught a letter to the Ministers Plenipotentiary at the Courts of Versailles and Madrid, explaining the reasons and principles on which the instructions to M<sup>r</sup> Jay of the 4<sup>th</sup>. inst. are founded report the following to M<sup>r</sup> Jay, a copy of which with the resolution directing the draught to be also inclosed to D<sup>r</sup> Franklin

Sir

Congress having in their instructions of the 4<sup>th</sup> inst.; directed you to adhere strictly to their former instructions relating to the boundaries of the United States, to insist on the navigation of the Mississippi for the Citizens of the United States in common with the subjects of his Catholic Majesty, as also on a free port or ports below the Northern limit of W. Florida & accessible to Merchant ships, for the use of the former, and being sensible of the influence which these claims on the part of the United States may have on your negotiations with the Court of Madrid, have thought it expedient to explain the reasons and principles on which the same are founded, that you may be enabled to satisfy that Court of the equity and justice of their intentions.

With respect to the first of these articles by which the river Miss: is fixed as the boundary between the Spanish settlements and the United States, it is unnecessary to take notice of any pretensions founded on priority of discovery, of occupancy or on conquest. It is sufficient that by the definitive treaty of Paris 1763 Art. 7 all the territory now claimed by the United States was expressly and irrevocably ceded to the King of G. Britain—and that the United States are in consequence of revolution in their Government entitled to the benefits of that cession.

The first of these positions is proved by the treaty itself. To prove the last, it must be observed that it is a fundamental principle in all lawful Governments and particularly in the constitution of the British Empire, that all the rights of sovereignty are intended for the benefit of those from whom they are derived and over whom they are exercised. It is known also to have been held for an inviolable principle by the United States whilst they remained a part of the British Empire, that the Sovereignty of the King of England with all the rights & powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as King by the people of England or of any other part of the Empire, but in virtue of his being acknowledged and obeyed as King by the people of America themselves; and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From

these principles it results that all the territory lying within the limits of the States as fixed by the Sovereign himself, was held by him for their particular benefit, and must equally with other rights and claims in quality of their sovereign be considered as having devolved on them in consequence of their resumption of the Sovereignty to themselves.

In support of this position it may be further observed that all the territorial rights of the King of G. Britain within the limits of the United States accrued to him from the enterprises, the risks, the sacrifices, the expence in blood and treasure of the present inhabitants and their progenitors. If in latter times expences and exertions have been borne by any other part of the Empire in their immediate defence it need only be recollected that the ultimate object of them was the general security and advantage of the empire, that a proportionate share was borne by the States themselves, and that if this had not been the case, the benefits resulting from an exclusive enjoyment of their trade have been an abundant compensation. Equity and justice therefore perfectly coincide in the present instance with political and constitutional principles.

No objection can be pretended against what is here said, except that the King of G. Britain was at the time of the rupture with his Catholic Majesty possessed of certain parts of the territory in question, and consequently that his C. M. had and still has a right to regard them as lawful objects of conquest. In answer to this objection it is to be considered. 1<sup>st</sup>. that these possessions are few in number and confined to small spots. 2. that a right founded on conquest being only coextensive with the objects of conquest, cannot comprehend the circumjacent territory. 3. that if a right to the said territory depended on the conquest of the British posts within it the United States have already a more extensive claim to it, than Spain can acquire, having by the success of their arms obtained possession of all the important posts and settlements on the Illinois and Wabash, rescued the inhabitants from British domination, and established civil government in its proper form over them. They have moreover established a post on a strong and commanding situation near the mouth of the Ohio, whereas Spain has a claim by conquest to no post above the Northern bounds of W. Florida except that of Natches, nor are there any other British posts below the mouth of the Ohio for their arms to be employed against. 4. that whatever extent ought to be ascribed to the right of conquest, it must be admitted to have limitations which in the present case exclude the pretensions of his Catholic Majesty by the King of G. Britain. If the occupation of posts within the limits of the United States as defined by charters derived from the said King when constitutionally authorised to grant them, makes them lawful objects of conquest to any other power than the United States, it follows that every other part of the United States that is now or may hereafter fall into the hands of the Enemy is equally an object of conquest. Not only N. York Long Island & the other islands in its vicinity, but almost the entire States of S. Carolina and Georgia, might by the interposition of a foreign power at war with their Enemy be forever severed from the American Confederacy and subjected to a foreign Yoke. But is such a doctrine consonant to the rights of nations or the sentiments of humanity? does it breathe that spirit of concord and amity which is the aim of the proposed alliance with Spain? would it be admitted by Spain herself if it affected her own dominions? Were for example a British armament by a sudden enterprise to get possession of a sea port a trading town or maritime province in Spain and another power at war with Britain

should before it could be reconquered by Spain wrest it from the hands of Britain, would Spain herself consider it as an extinguishment of her just pretensions? or would any impartial nation consider it in that light?

The right of the United States to Western territory as far as the Mississippi having been shewn, there are sufficient reasons for them to insist on that right as well as for Spain not to wish a relinquishment of it.

In the first place the river Mississippi be a more natural more distinguishable and more precise boundary than any other that can be drawn eastwardly of it, and consequently will be less liable to become a source of those disputes which too often proceed from uncertain boundaries between nations.

Secondly. It ought to be conceded that although the vacant territory adjacent to the Mississippi should be relinquished by the United States to Spain, yet the fertility of its soil and its convenient situation for trade might be productive of intrusions by the Citizens of the former which their great distance would render it difficult to restrain and which might lead to an interruption of that harmony which it is so much to the interest and wish of both should be perpetual.

Thirdly. As this territory be within the charter limits of particular States and is considered by them as no less their property than other territory within their limits, Congress could not relinquish it with out exciting discussions between themselves & these States concerning their respective rights and powers which might greatly embarrass the public councils of the United States and give advantage to the common enemy.

Fourthly. The territory in question contains a number of inhabitants who are at present under the protection of the United States and have sworn allegiance to them. These could not by voluntary transfer be subjected to a foreign jurisdiction without manifest violation of the common rights of mankind and of the genius and principles of the American Governments.

Fifthly. In case the obstinacy and pride of G. Britain should for any length of time continue an obstacle to peace a cession of this territory rendered of so much value to the United States by its particular situation would deprive them of one of the material funds on which they rely for pursuing the war against her, on the part of Spain, this territorial fund is not needed for and perhaps could not be applied to the purposes of the war and from its situation is otherwise of much less value to her than to the United States.

Congress have the greater hopes that the pretensions of his Catholic Majesty on this subject will not be so far urged as to prove an insuperable obstacle to an alliance with the United States, because they conceive such pretensions to be incompatible with the treaties subsisting between France and them which are to be the basis and substance of it. By Art; 11 of the Treaty of Alliance eventual and defensive the *Possessions* of the United States are guarantied to them by his most II<sup>s</sup> Majesty. By Art; 12 of the same treaty intended to fix more precisely the sense and application of the preceeding



article, it is declared that this guarantee shall have its full force and effect the moment a rupture shall take place between France and England. All the *possessions* therefore belonging to the United States at the time of that rupture, which being prior to the rupture between Spain and England must be prior to all claims of conquest by the former, are guaranteed to them by his most II<sup>S</sup> Majesty. Now that in the *possessions* thus guaranteed was meant by the Contracting parties to be included all the territory within the limits assigned to the United States by the Treaty of Paris, may be inferred from Art: 5 of the Treaty above mentioned, which declares that if the United States should think fit to attempt the reduction of the British power remaining in the Northern parts of America, on the Islands of Bermudas &c., those countries shall in case of success be considered with or dependent upon the United States; for if it had not been understood by the parties that the Western territory in question known to be of so great importance to the United States and a reduction of it so likely to be attempted by them, was included in the general guarantee, can it be supposed that no notice would have been taken of it when the parties extended their views not only to Canada but to the remote & unimportant Islands of Bermudas. It is true these acts between France and the United States are in no respect obligatory on his Catholic Majesty until he shall think fit to accede to them. Yet as they shew the sense of his most II<sup>S</sup> Majesty on this subject with whom his C. M is intimately allied, as it is in pursuance of an express reservation to his C. M in a secret act subjoined to the treaties aforesaid of a power to accede to those treaties that the present overtures are made on the part of the United States, and as it is particularly stated in that Act, that any conditions which his C. M shall think fit to add are to be analogous to the principal aim of the Alliance and conformable to the rules of equality reciprocity & friendship, Congress entertains too high an opinion of the equity moderation & wisdom of his C. M not to suppose, that when joined to these considerations they will prevail against any mistaken views of interest that may be suggested to him.

The next object of the instruction is the free navigation of the Mississippi for the citizens of the United States in common with the subjects of his C. M.

On this subject the same inference may be made from Art: 7 of the Treaty of Paris which stipulates this right in the amplest manner to the King of G. Britain and the devolution of it to the United States as was applied to their territorial claims, of the latter. Nor can Congress hesitate to believe that even if no such right could be inferred from that treaty, that the generosity of his C. M would suffer the inhabitants of these States to be put into a worse condition in this respect by their alliance with him in the character of a sovereign people, than they were when subjects of a power who was always ready to turn their force against his Majesty; especially as one of the great objects of the proposed alliance is to give greater effect to the common exertions for disarming that power of the faculty of disturbing others.

Besides as the United States have an indisputable right to the possession of the East bank of the Mississippi for a very great distance, and the navigation of that river will essentially tend to the prosperity and advantage of the Citizens of the United States that may reside on the Mississippi or the waters running into it, it is conceived that the circumstance of Spain's being in possession of the banks on both sides near the mouth, cannot be deemed a natural or equitable bar to the free use of the river. Such a

principle would authorize a nation disposed to take advantage of circumstances to contravene the clear indications of nature and providence, and the general good of mankind.

The usage of nations accordingly seems in such cases to have given to those holding the mouth or lower parts of a river no right against those above them except the right of imposing a moderate toll and that on the equitable supposition that such toll is due for the expence and trouble the former may have been put to.

“An *innocent passage* (says Vattel) is due to all nations with whom a State is at peace, and this duty comprehends troops equally with individuals.” If a right to a passage by land through other countries may be claimed for troops which are employed in the destruction of mankind; how much more may a passage by water be claimed for commerce which is beneficial to all nations.

Here again it ought not to be concealed that the inconvenience that must be felt by the inhabitants on the waters running westwardly under an exclusion from the use of the Mississippi would be a constant and increasing source of disquietude on their part, of more rigorous precautions on the part of Spain and, of an irritation on both parts, which it is equally to the interest and duty of both to guard against.

But notwithstanding the equitable claim of the United States to the *free* navigation of the Mississippi and its great importance to them, Congress have so strong a disposition to conform to the desires of his C. M that they have agreed that such equitable regulations may be entered into as may be a requisite security against contraband; provided the point of right be not relinquished and a *free port or ports below the 31<sup>st</sup> degree of N. L. and accessible to merchant ships be stipulated to them.*

The reason why a port or ports as thus described was required must be obvious, without such a stipulation the free use of the Mississippi would in fact amount to no more than a free intercourse with New Orleans and the other ports of Louisiana. From the rapid current of this river it is well known that it must be navigated by vessels of a peculiar construction and which will be unfit to go to sea. Unless therefore some place be assigned to the U. S. where the produce carried down the river and the merchandise returning from abroad may be repositied till they can be respectively taken away by the proper vessels there can be no such thing as a foreign trade.

There is a remaining consideration respecting the navigation of the Mississippi which deeply concerns the maritime powers in general but more particularly their Most Ill<sup>s</sup> and Catholic Majesties. The Country watered by the Ohio with its large branches having their sources near the lakes on one side, and those running N. Westward and falling into it on the other side, will appear from a single glance on a map to be of vast extent. The circumstance of it being so finely watered added to the singular fertility of its soil and the other advantages presented by a new country, will occasion a rapidity of population not easily conceived. The spirit of emigration has already shewn itself in a very strong degree, notwithstanding the many impediments which discourage it. The principal of these impediments is the war with Britain which can not spare a force sufficient to protect the emigrants against the incursions of the Savages. In a very few

years after peace shall take place this Country will certainly be overspread, with inhabitants. In like manner as in all other new settlements agriculture, not manufactures will be their employment. They will raise wheat corn Beef Pork tobacco hemp flax and in the Southern parts perhaps rice and indigo in great quantities. On the other hand their consumption of foreign manufactures will be in proportion, if they can be exchanged for the produce of their soil. There are but two channels through which such commerce can be carried on, the first is on the river Mississippi—the other is up the rivers having their sources near the lakes, thence by short portages to the lakes or the rivers falling into them, and thence through the lakes and down the St. Lawrence. The first of these channels is manifestly the most natural and by far the most advantageous. Should it however be obstructed, the second will be found far from an impracticable. If no obstructions should be thrown in its course down the Mississippi, the exports from this immense tract of Country will not only supply an abundance of all necessaries for the W. Indies Islands, but serve for a valuable basis of general trade, of which the rising spirit of commerce in France & Spain will no doubt particularly avail itself. The imports will be proportionally extensive and from the climate as well as other causes will consist in a great degree of the manufactures of the same countries. On the other hand should obstruction on the Mississippi force this trade into a contrary direction through Canada, France and Spain and the other maritime powers will not only lose the immediate benefit of it to themselves, but they will also suffer by the advantage it will give to G. Britain. So fair a prospect should not escape the commercial sagacity of this nation. She would embrace it with avidity; she would cherish it with most studious care; and should she succeed in fixing it in that channel, the loss of her exclusive possession of the trade of the United States might prove a much less decisive blow to her maritime preeminence and tyranny than has been calculated.

The last clause of the instructions respecting the navigation of the waters running out of Georgia through West Florida, not being included in the ultimatum, nor claimed on a footing of right requires nothing to be added to what it speaks itself. The utility of the privilege asked to the State of Georgia and consequently to the Union is apparent from the geographic representation of the Country. The motives for Spain to grant it must be found in her equity generosity and disposition to cultivate our friendship and intercourse.

These observations you will readily discern are not communicated, in order to be urged in all events and as they here stand in support of the claims to which they relate. They are intended for your private information and use and are to be urged so far and in such form only as will best suit the temper and Sentiments of the Court at which you reside, and best fulfil the object of them.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, October 31, 1780.

Dear Sir,—

Congress have felt a becoming resentment of the barbarous treatment of the gentlemen in captivity at Charleston, and have directed General Washington to require of Clinton an explanation of the matter. Nothing has yet been done in consequence of it, except an application to Clinton, which, as he had at that time not been officially informed of the fact, he evaded by general assurances of the humanity, &c., of Cornwallis. General Washington had very luckily, between the application and the answer, received two of the Earl's bloody proclamations, which he very handsomely communicated to Sir Henry.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, November, 1780.

Dear Sir,—

Many attempts have been made to bring the Vermont dispute to an issue, but the diversity of opinions that prevail on one side, and the dilatory artifices employed on the other, have frustrated them. All the evidence has been heard, and the proposition for including it within the jurisdiction of some one of the States, debated for some time, but the decision was suspended. An arrangement of the army founded on General Washington's letter has passed Congress, and is now with the General for his observations on it. It includes a recommendation to the States to fill up their quotas. No arrangement of the civil departments has taken place. A new medical system has been passed. Shippen is again at the head of it. Craig and Cochran have not been forgotten. The instructions relating to the Mississippi have passed entirely to my satisfaction. A committee is now preparing a statement of the reasons and principles on which they stand.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, November 7, 1780.

Dear Sir,—

Doctor Lee and Mr. Izard, particularly the latter, have been here sometime, and I believe are not very reserved in their reflections on the venerable philosopher at the Court of Versailles. Mr. Izard, I understand, is particularly open in his charges against him. Doctor Lee on his arrival applied to Congress for a hearing on the subject of Mr. Dean's allegations, if any doubt remained of the falsehood and malice of them, but nothing final has been done as yet in consequence of it. I have had great anxiety lest the flame of faction, which on a former occasion proved so injurious, should be kindled anew; but, as far as I can judge, the temper of Congress is in general by no means prone to it, although there may be individuals on both sides who would both wish and endeavour it.

Congress have just finished an estimate of supplies for the ensuing year, requiring of the States the value of six millions of dollars in specie. The principal part of the requisition consists of specific articles, the residue of specie or the new emissions, receivable as specie. If the States fulfil this plan punctually, there is no doubt that we shall go smoothly through another campaign; and if they would forbear recurring to State emissions and certificates, in procuring the supplies, it may become a permanent and effectual mode of carrying on the war. But past experience will not permit our expectations to be very sanguine. The collection and transportation of specific supplies must necessarily be tedious and subject to casualties; and the proceedings of separate popular bodies must add greatly to the uncertainty and delay. The expense attending the mode is of itself a sufficient objection to it, if money could by any possible device be provided in due quantity. The want of this article is the source of all our public difficulties and misfortunes. One or two millions of guineas properly applied, would diffuse vigor and satisfaction throughout the whole military departments, and would expel the enemy from every part of the United States. It would also have another good effect. It would reconcile the army and everybody else to our republican forms of government; the principal inconveniences which are imputed to them being really the fruit of defective revenues. What other States effect by money, we are obliged to pursue by dilatory and indigested expedients, which benumb all our operations, and expose our troops to numberless distresses. If these were well paid, well fed, and well clothed, they would be well satisfied, and would fight with more success. And this might and would be as well effected by our governments as by any other, if they possessed money enough, as in our moneyless situation the same embarrassments would have been experienced by any government.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philada., Nov. 14, 1780.

Mad. Mss.

Dear Sir,—

Your favor of the 6th inst. came to hand yesterday. Mr. Griffin by whom you appear also to have written has not yet arrived.

It gives me great pleasure to find that the enemy's numbers are so much less formidable than was at first computed but the information from N. York makes it not improbable that the blank in the computation may shortly be filled up. Gen<sup>l</sup>. Washington wrote to Congress on the 4<sup>th</sup>. inst. that another embarkation was going on at that place, and in another letter of the 7<sup>th</sup> he says that although he had received no further intelligence on the subject, he had reason still to believe that such a measure was in contemplation. Neither the amount nor the object of it however had been ascertained.

The inroads of the Enemy on the Frontier of N. York have been distressing & wasteful almost beyond their own example. They have totally laid in ashes a fine settlement called Schoarie which was capable Gen<sup>l</sup> Washington says of yielding no less than 80,000 bushels of grain for public consumption. Such a loss is inestimable, and is the more to be regretted because, both local circumstances, and the energy of that Gov<sup>t</sup>. left little doubt that it would have been applied to public use.

I fancy the taking of Quebec was a mere invention. Your letter gave me the first account of such a report. A different report concerning the 2<sup>d</sup>. division of the French fleet has sprung up as you will see by the enclosed paper. It is believed here by many, and some attention given to it by all. It is also said that Rodney has sailed from N. York with 20 Ships for Europe. If he has sailed at all, & the first report be true also, it is more likely that he has gone out to meet the french.

The late exchange has liberated ab<sup>t</sup>. 140 officers & all our privates at N. Y. amounting to 476. G. Washington has acceded to a proposal of a further exchange of the Convention officers without attaching any privates to them, which will liberate almost the whole residue of our officers at that place.

I am sir, etc.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, November 14, 1780.

Dear Sir,—

I do not learn that any of the States are particularly attentive to prevent the evils arising from certificates and emissions from their own treasury, although they are unquestionably the bane of every salutary arrangement of the public finances. When the estimate for the ensuing year was on the anvil in Congress, I proposed a recommendation to the States to discontinue the use of them, and particularly in providing the specific articles required. It met, however, with so cool a reception, that I did not much urge it. The objection against it was, that the practice was manifestly repugnant to the spirit of the acts of Congress respecting finance; and if these were disregarded, no effect could be expected from any additional recommendations. The letters from General Washington and the Commissary General, for some time past, give a most alarming picture of the state and prospects of the magazines. Applications to the contiguous States on the subject, have been repeated from every quarter, till they seem to have lost all their force. Whether any degree of danger and necessity will rouse them to provide for the winter season now hastening upon us, I am unwilling to decide, because my fears dictate the worst. The inroads of the enemy on the frontier of New York have been most fatal to us in this respect. They have almost totally ruined that fine wheat country, which was able, and from the energy of their Government, was most likely, to supply magazines of flour, both to the main army and to the northwestern posts. The settlement of Schoharie, which alone was able to furnish, according to a letter from General Washington, eighty thousand bushels of grain for the public use, has been totally laid in ashes.

I make no apology for inaccuracies and bad writing, because you know the manner in which we are obliged to write for the post, and having been prevented by company from doing anything last night, I am particularly hurried this morning.



[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, November 21, 1780.

Dear Sir,—

I am glad to find you have at last got a House of Delegates, and have made so auspicious a beginning, as an unanimous vote to fill up our line for the war. This is a measure which all the States ought to have begun with. I wish there may not be some that will not be prevailed on even to end with it. It is much to be regretted that you are not in a condition to discontinue another practice equally destructive with temporary enlistments. Unless an end can by some means or other be put to State emission and certificates, they must prove the bane of every salutary regulation. The depreciation in this place has lately run up as high as one hundred for one, and it cannot be satisfactorily accounted for, on any other principle than the substitution of certificates in the payment of those taxes which were intended to reduce its quantity and keep up a demand for it. The immediate cause of this event is said to have been the sudden conversion of a large quantity of paper into specie, by some Tories lately ordered into exile by this State. It is at present on the fall, and I am told the merchants have associated to bring it down and fix it at 75. The fate of the new money is as yet suspended. There is but too much reason, however, to fear that it will follow the fate of the old. According to the arrangement now in force, it would seem impossible for it to rise above one for forty. The resolutions of Congress which establish that relation between the two kinds of paper, must destroy the equality of the new with specie, unless the old can be kept down at forty for one. In New Jersey, I am told, the Legislature has lately empowered the Executive to regulate the exchange between the two papers, according to the exchange between the old and the new, in order to preserve the equality of the latter with specie. The issue of this experiment is of consequence, and may throw light perhaps on our paper finance. The only infallible remedy, whilst we cannot command specie, for the pecuniary embarrassments we labor under, will, after all, be found to be a punctual collection of the taxes required by Congress.

I hope you will not forget to call the attention of the Assembly, as early as the preparations for defence will admit, to the means of ratifying the Confederation, nor to remind it of the conditions which prudence requires should be annexed to any territorial cession that may be agreed on. I do not believe there is any serious design in Congress to gratify the avidity of land mongers, but the best security for their virtue, in this respect, will be to keep it out of their power. They have been much infested, since you left us, with memorials from these people; who appear to be equally alarmed and perplexed. Mr. G. Morgan, as agent for the Indiana claimants, after memorializing Congress on the subject, has honored the Virginia delegates with a separate attention. He very modestly proposes to them a reference of the controversy between the company and Virginia to arbitration, in the mode pointed out in the Confederation for adjusting disputes between State and State. We have given him for

answer, that as the State we represent had finally determined the question, we could not, with any propriety, attend to his proposition; observing at the same time, that if we were less precluded, we could not reconcile with the sovereignty and honor of the State an appeal from its own jurisdiction to a foreign tribunal, in a controversy with private individuals.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>, Nov<sup>r</sup> 21, 1789.

Mad. Mss.

Dear Sir—

Your favor of the 13<sup>th</sup>. came safe yesterday. The past week has brought forth very little of consequence, except the disagreeable and I fear certain information of the arrival of the Cape fleet. Our last account of the embarkation at N. York was that the Ships had fallen down to the Hook, that the number of troops was quite unknown, as well as their destination, except in general that it was Southwardly. It is still said that Philips is to command this detachment. If the projected junction between Leslie & Cornwallis had not been so opportunely frustrated by the gallant volunteers at King's Mountain it is probable that Philips would have reinforced the former, as the great force in his rear would otherwise have rendered every advance hazardous. At present it seems more likely that the declining state of their Southern affairs will call their attention to that quarter. They can it is well known regain at any time their present footing in Virginia if it should be thought expedient to abandon it, or to collect in their forces to a defensible point. But every retrograde step they take towards Charleston proves fatal to their general plan. M. J. Adams in a letter of the 23<sup>d</sup>. of Aug<sup>st</sup>. from Amsterdam received yesterday, says that Gen. Prevost had sailed from England with a few frigates for Cape fear in order to facilitate the operations of their arms in N. Carolina, and that the Ministry were determined to make the Southern States the scene of a very active winter campaign. No intimation is given by Mr. Adams of the number of troops under Gen<sup>l</sup> Prevost. The 2<sup>d</sup>. division of the French fleet mentioned in my last to have been off the Bermudas has not yet made its appearance. It is now rather supposed to have been a British one. The death of Gen<sup>l</sup>. Woodford is announced in a N. York paper of the 17th. I have not seen the paper, but am told that no particulars are mentioned. I suppose it will reach his friends before this will be rec<sup>d</sup>., through some other channel.

Adieu.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, November 25, 1780.

Dear Sir,—

I informed you some time ago that the instructions to Mr. Jay had passed Congress in a form which was entirely to my mind. I since informed you that a committee was preparing a letter to him explanatory of the principles and objects of the instructions. This letter also passed in a form equally satisfactory. I did not suppose that any thing further would be done on the subject, at least till further intelligence should arrive from Mr. Jay. It now appears that I was mistaken. The Delegates from Georgia and South Carolina, apprehensive that a *uti possidetis* may be obtruded on the belligerent powers by the armed neutrality in Europe, and hoping that the accession of Spain to the alliance will give greater concert and success to the military operations that may be pursued for the recovery of their States, and likewise add weight to the means that may be used for obviating a *uti possidetis*, have moved for a reconsideration of the instructions in order to empower Mr. Jay, in case of necessity, to yield to the claims of Spain in consideration of her guaranteeing our independence, and affording us a handsome subsidy. The expediency of such a motion is further urged, from the dangerous negotiations now on foot, by British emissaries, for detaching Spain from the war. Wednesday last was assigned for the consideration of this motion, and it has continued the order of the day ever since, without being taken up. What the fate of it will be I do not predict; but, whatever its own fate may be, it must do mischief in its operation. It will not probably be concealed that such a motion has been made and supported, and the weight which our demands would derive from unanimity and decision must be lost. I flatter myself, however, that Congress will see the impropriety of sacrificing the acknowledged limits and claims of any State, without the express concurrence of such State. Obstacles enough will be thrown in the way of peace, if it is to be bid for at the expense of particular members of the Union. The Eastern States must, on the first suggestion, take the alarm for their fisheries. If they will not support other States in their rights, they cannot expect to be supported themselves when theirs come into question.

In this important business, which so deeply affects the claims and interests of Virginia, and which I know she has so much at heart, I have not the satisfaction to harmonize in sentiment with my colleague. 1 He has embraced an opinion that we have no just claim to the subject in controversy between us and Spain, and that it is the interest of Virginia not to adhere to it. Under this impression, he drew up a letter to the Executive, to be communicated to the Legislature, stating in general the difficulty Congress might be under, and calling their attention to a revision of their instructions to their delegates on the subject. I was obliged to object to such a step, and, in order to prevent it, observed that the instructions were given by the Legislature of Virginia on mature consideration of the case, and on a supposition that Spain would make the demands she has done; that no other event has occurred to change the

mind of our constituents, but the armed neutrality in Europe, and the successes of the enemy to the southward, which are as well known to them as to ourselves; that we might every moment expect a third delegate here, who would either adjust or decide the difference in opinion between us, and that whatever went from the Delegation would then go in its proper form and have its proper effect; that if the instructions from Virginia were to be revised, and their ultimatum reduced, it could not be concealed in so populous an Assembly, and that every thing which our minister should be authorized to yield, would be insisted on; that Mr. Jay's last despatches encouraged us to expect that Spain would not be inflexible if we were so, that we might every day expect to have more satisfactory information from him; that finally if it should be thought expedient to listen to the pretensions of Spain, it would be best, before we took any decisive step in the matter, to take the counsel of those who best know the interests, and have the greatest influence on the opinions, of our constituents; that as you were both a member of Congress and of the Legislature, and were now with the latter, you would be an unexceptionable medium for effecting this, and that I would write to you for the purpose by the first safe conveyance.

These objections had not the weight with my colleague which they had with me. He adhered to his first determination, and has, I believe, sent the letter above-mentioned by Mr. Walker, who will, I suppose, soon forward it to the Governor. You will readily conceive the embarrassments this affair must have cost me. All that I have to ask of you is, that if my refusing to concur with my colleague in recommending to the Legislature a revision of their instructions should be misconstrued by any, you will be so good as to place it in its true light; and if you agree with me as to the danger of giving express power to concede, or the inexpediency of conceding, that you will consult with gentlemen of the above description, and acquaint me with the result.

I need not observe to you that the alarms with respect to the inflexibility of Spain in her demands, the progress of British intrigues at Madrid, and the danger of the *uti possidetis*, may with no small probability be regarded as artifices for securing her object on the Mississippi. Mr. Adams, in a late letter from Amsterdam, a copy of which has been enclosed to the Governor, supposes that the pretended success of the British emissaries at Madrid is nothing but a ministerial finesse to facilitate the loans and keep up the spirits of the people.

This will be conveyed by Col. Grayson, who has promised to deliver it himself; or, if any thing unforeseen should prevent his going to Richmond, to put it into such hands as will equally ensure its safe delivery.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, November 28, 1780.

Dear Sir,—

Yours of the eighteenth came yesterday. I am glad to find the Legislature persist in their resolution to recruit their line of the army for the war; though without deciding on the expediency of the mode under their consideration, would it not be as well to liberate and make soldiers at once of the blacks themselves, as to make them instruments for enlisting white soldiers?2 It would certainly be more consonant to the principles of liberty, which ought never to be lost sight of in a contest for liberty; and with white officers and a majority of white soldiers, no imaginable danger could be feared from themselves, as there certainly could be none from the effect of the example on those who should remain in bondage; experience having shewn that a freedman immediately loses all attachment and sympathy with his former fellow-slaves.

We have enclosed to the Governor a copy of an act of the Legislature of Connecticut, ceding some of their territorial claims to the United States, which he will doubtless communicate to the Assembly. They reserve the jurisdiction to themselves, and clog the cession with some other conditions which greatly depreciate it, and are the more extraordinary as their title to the land is so controvertible a one.

The association of the merchants for fixing the depreciation seems likely to prove a salutary measure; it reduced it from 90 and 100 to 75 at once, which is its present current rate; although it is observed that many of the retailers elude the force of it by raising the price in hard money.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>., Dec<sup>r</sup> 5<sup>th</sup>, 1780.

Mad. Mss.

D<sup>R</sup>. S<sup>R</sup>.,—

I have your favor of the 27th ult., and congratulate you on the deliverance of our Country from the distresses of actual invasion. The spirit it has shewn on this occasion will I hope in some degree protect it from a second visit.

Congress yesterday received letters from Mr. Jay & Mr. Carmichael as late as the 4 & 9th of Sep<sup>r</sup>. The general tenor of them is that we are not to rely on much aid in the article of cash from Spain, her finances & credit being scarcely adequate to her own necessities, and that the B. emissaries are indefatigable in misrepresenting our affairs in that kingdom and in endeavoring to detach it from the war. The character however of the Catholic King for steadiness and probity, and the entire confidence of our allies in him, forbid any distrust on our part. Portugal on the pressing remonstrances of France & Spain has at length agreed to shut her ports ag<sup>st</sup>. English prizes but still refuses to accede to the armed neutrality. Mr. Adams writes that the [news of the] fate of the Quebec and Jamaica fleets arrived in London nearly about the same time and had a very serious effect on all ranks as well as on stocks and insurance.

Our information from the W. Indies gives a melancholy picture of the effects of the late tempest. Martinique has suffered very considerably both in shipping & people. Not less than 600 houses have been destroyed in S<sup>t</sup>. Vincents. The Spaniards in Cuba also have not escaped, and it is *reported* that their fleet on its way from the Havannah to Pensacola has been so disabled & dispersed as to defeat the expedition for the present. On the other side our Enemies have suffered severely. The Ajax a ship of the line and two frigates stationed off S<sup>t</sup>. Lucie to intercept the Martinique trade are certainly lost with the greatest part, if not the whole, of their crews; and there is great reason to believe that several other capital ships that have not been since heard of have shared the like fate. The Island of S<sup>t</sup>. Lucie is totally defaced. In Barbadoes also scarce a house remains entire and 1500 persons at least have perished. One of the largest towns in Jamaica has been totally swept away and the island otherwise much damaged. The consequences of this calamity must afford a striking proof to G. Britain of her folly in shutting our ports against her W. India commerce and transferring the advantage of our friendship to her Enemies.

I Am, Etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>, Decem<sup>r</sup>., 1780.

Mad. Mss.

Dear Sir,—

I had the pleasure of yours of the 2<sup>d</sup>. instant yesterday. We have not heard a word of the fleet which lately left the Chesapeake. There is little doubt that the whole of it has gone to the Southward.

Our intelligence from Europe confirms the accession of Portugal to the Neutral league; so far at least as to exclude the English from the privileges which their vessels of war have hitherto enjoyed in her ports. The Ariel commanded by P. Jones which had on board the cloathing &c., which has been long expected from France was dismasted a few days after she sailed and obliged to return into port; an event which must prolong the suffering which our army has been exposed to from the delay of this supply. Mr. Sartine, the Minister of the French Marine has been lately removed from the administration of that departm<sup>t</sup>. His successor is the Marquis de Castries, who is held out to us as a man of greater activity, & from whom we may hope for more effectual co-operation.

An Irish paper informs us that M<sup>r</sup>. Laurens was committed to the Tower on the 6<sup>th</sup> of Oct<sup>r</sup>. by the three Secretaries of State on suspicion of high treason. As the warrant with the names of the Secretaries subscribed with some other particulars is inserted, no hope remains of the fact being a forgery.

With very sincere regard, I am, etc.



[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, December 5, 1780.

Dear Sir,—

I had yours of the twenty-fifth ultimo, by yesterday's post. I congratulate you on the deliverance of our country from the distresses of actual invasion. If any unusual forbearance has been shown by the British commanders, it has proceeded rather I presume, from a possibility that they may some time or other in the course of the war repossess what they have now abandoned, than from a real disposition to spare. The proceedings of the enemy to the southward prove that no general change of system has taken place in their military policy.

We had letters yesterday from Mr. Jay and Mr. Carmichael as late as the fourth and ninth of September. Mr. Jay informs us that it is absolutely necessary to cease drawing bills on him; that 150,000 dollars, to be repaid in three years, with some aid in clothing, &c., is all that the Court will advance for us. The general tenor of the letters is, that our affairs there make little progress, that the court is rather backward, that the navigation of the Mississippi is likely to prove a very serious difficulty; that Spain has herself been endeavouring to borrow a large sum in France on which she meant to issue a paper currency, that the terms and means used by her displeased Mr. Neckar, who in consequence threw such discouragements on it, as in turn were not very pleasing to the Spanish Minister; that Mr. Cumberland is still at Madrid laboring in concert with other secret emissaries of Britain to give unfavorable impressions of our affairs, that he is permitted to keep up a correspondence by his couriers with London, that if negotiations for peace should be instituted this winter, as Spain has not yet taken a decided part with regard to America, England will probably choose to make Madrid rather than Versailles the seat of it. However unfavorable many of these particulars may appear, it is the concurrent representation of the above ministers that our disappointment of pecuniary succor at Madrid is to be imputed to the want of ability and not of inclination to supply us, that the steadiness of His Catholic Majesty is entirely confided in by the French Ambassador, and that the mysterious conduct of Mr. Cumberland and of the Court of Spain towards him, seems to excite no uneasiness in the Ambassador. The letters add, that, on the pressing remonstrances of France and Spain, Portugal had agreed to shut her ports against English prizes, but that she persisted in her refusal to accede to the armed neutrality.

The receipt of the foregoing intelligence has awakened the attention of the Georgia delegates to their motion, of which I informed you particularly by Col. Grayson. It has lain, ever since it was made, undisturbed on the table. This morning is assigned for the consideration of it, and I expect it will without fail be taken up. I do not believe Congress will adopt it without the express concurrence of all the States immediately interested. Both my principles and my instructions will determine me to oppose it. Virginia, and the United States in general, are too deeply interested in the subject of

controversy to give it up, as long as there is a possibility of retaining it. And I have ever considered the mysterious and reserved behaviour of Spain, particularly her backwardness in the article of money, as intended to alarm us into concessions, rather than as the effect of a real indifference to our fate or to any alliance with us. I am very anxious, notwithstanding, to have an answer to my letter by Grayson.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, December 12, 1780.

Dear Sir,—

Agreeably to your favor of the second instant, which came to hand yesterday, I shall send this to Fredericksburg. I am sorry that either your own health or that of your lady should oblige you to leave the Legislature before the principal business of the session is finished. I shall be more sorry, if either of these causes should disappoint my hopes of your return to Philadelphia at the promised time. I am the more anxious for your return, because I suppose it will supersede the proposed measure of sending an Envoy to Congress on the business you mention. If the facts are transmitted by the Speaker of the Assembly or the Executive, may they not be laid before Congress with as much efficacy by the established Representatives of the State as by a special messenger? And will not the latter mode in some measure imply a distrust in the former one, and lower us in the eyes of Congress and the public? The application to the Court of France has been anticipated. Congress have even gone so far as to appoint an Envoy Extraordinary to solicit the necessary aids. Colonel Laurens was invested yesterday with that office. I leave the measure to your own reflection. How far it may be expedient to urge Spain to assist us, before she is convinced of the reasonableness of our pretensions, ought to be well weighed before it be tried. The liberty we took in drawing on her for money, excited no small astonishment, and probably gave an idea of our distress, which confirmed her hopes of concession on our part. Accounts received since my last, repeat her inflexibility with regard to the object 1 in question between us. It is indispensable that we should in some way or other know the *ultimate* sense of our constituents on this important matter.

Mr. Laurens is certainly in captivity. An Irish paper tells us he was committed to the Tower on the sixth of October, under a warrant from the three Secretaries of State. Portugal has acceded to the neutral league so far as to exclude the English from the privileges her armed vessels have hitherto enjoyed in her ports. The Ariel, with Paul Jones, and the clothing &c., on board, was dismantled a day or two after she sailed, and obliged to put back into port. If General Washington detaches no further aid to the southward, it will be owing to the reduction of his force by the expiration of enlistments. The Pennsylvania line is mostly engaged for the war, and will soon form almost the whole of the army under his immediate command.

Mr. Sartine, it seems, has been lately removed from the administration of the Naval Department, in consequence of his disappointing the general hopes formed from the great means put into his hands. When it was mentioned to me by Mr. Marbois, I took occasion to ask whether the deception with regard to the second division ought to be ultimately charged upon him, observing to him the use the enemies of the alliance had made of that circumstance. From the explanation that was given, I believe, the blame rests upon his head, and that his removal was the effect of it in a great measure;

though it is possible, he may, like many others, have been sacrificed to ideas of policy, and particularly in order to cancel the unfavorable impression which the disappointment left on America. A high character is given, as might be expected, of his successor, the Marquis de Castries, particularly with respect to those qualities in which Mr. Sartine is charged with having been most deficient.

[\[Back to Table of Contents\]](#)

## TO JOSEPH JONES. 1

Philadelphia, December 19, 1780.

Dear Sir,—

Yours of the eighth instant came to hand yesterday. I was sorry to find the Assembly had not then taken up the recommendation of Congress on the subject of the western lands. Its being postponed so late will, I fear, prevent the result of their deliberations from being communicated to Maryland before the rising of their Legislature; in which case much time must be lost, unless their Delegates be authorized to accede to the Confederation, on a cession satisfactory to themselves,—a liberality of proceeding hardly to be expected from that State, after the jealousy and reserve it has shown. I am no less sorry to find so little progress made in the plan for levying soldiers. The regular force for the southern department must be principally, it seems, contributed by Virginia, the North Carolina Assembly having broken up without making any effectual provision of that sort. One would have supposed that the fatiguing service exacted of the militia in that State, would have greatly facilitated such a measure, and yet that is assigned as the obstacle to its practicability.

I wish anxiously to hear from you on the subject stated in my letter by Grayson, and in my subsequent one by the post. Circumstances which I do not choose unnecessarily to hazard by the post, have made it expedient to lay the matter before the Assembly, that their former instructions may not be invalidated by a supposed effect of a change of situation, or may be rescinded if real. This went by W. Jones, Esquire, on his return to North Carolina, who, I suppose, will not be at Richmond till nearly Christmas. I wish it could have reached the Assembly before your leaving it.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup> Dec<sup>r</sup> 19, 1780.

Mad. Mss.

Dear Sir,—

You preserve your character for punctuality so well that I always have the pleasure to begin with acknowledging the receipt of a favor from you. That of the 11 instant came to hand yesterday. As the sufferings of your Militia are ascribed to the conduct of their commanding officer, I hope the disgust will be only local. A general disgust would be a very serious misfortune.

We are informed from good authority that an embarkation is taking place at N. York. From the number of Regiments & corps mentioned, it probably consists of about 4000 troops. Knyphausen & Philips it is said are to have the command of them. Their course will without doubt be directed to the Southern States.

We have a probable story from the Southward, corroborated by a paper from N. York, that Tarlton has had an encounter with Sumpter, in which he lost upwards of 100 men including the wounded & received a mortal wound himself. Sumpter is said also to have been wounded but slightly and to have lost one man only. The personal wound of Tarlton is omitted in the N. Y. Paper, but his loss otherwise is represented as greater than our own account makes it.

I Am D<sup>R</sup> S<sup>R</sup> Y<sup>Rs</sup> Sincerely.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup>, Dec<sup>r</sup>. 26. 1780.

Mad. Mss.

Dear Sir,—

I have your favor of the 18<sup>th</sup>. inst: inclosing another relating to Capt: C. Taylor with a certificate of his situation, to which I shall pay the necessary attention but cannot undertake to predict certain success.

The Danish Declaration with the step taken in consequence by the C<sup>t</sup> of London mentioned in the inclosed are the chief news of this week. There is a *report* that Arnold is gone up the sound with 4000 troops towards N. London. Wishing you the compliments of the season

I Am D<sup>R</sup> S<sup>R</sup>. Yours Sincerely

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup>, Jany 2<sup>d</sup> 1781.

Mad. Mss.

Dear Sir,—

Yesterday's post was the first that has failed to bring me a line from you since our correspondence commenced. I hope it has not been owing to any cause which concerns your health.

We had it yesterday from under Gen<sup>l</sup> Washingtons hand that another embarkation is actually departed from N. York, among [torn] to ab<sup>t</sup>. 2500 troops. There is little & [torn] that they will steer the same course with the preceding detachment. Congress are under great anxiety for the States ag<sup>s</sup>. which this accommodating force is to be directed, and the more so as the principal means of their defence is so little in their power. It is not so much the want of men as the want of subsistence arms & clothing, which results from the want of money that gives the greatest alarm. A disposition appears to do every thing practicable for their relief and defence.

M<sup>t</sup>. Harrison writes from Cadiz that the combined fleets in that port, including 18 ships from the W. Indies under Guichen amounted to 68 Ships of the line. He offers no conjecture as to the manner in which they will be employed.

I Am D<sup>R</sup> Sir Y<sup>Rs</sup> Sincerely



[\[Back to Table of Contents\]](#)

## TO AMBROSE MADISON.

Philad<sup>a</sup> Jan<sup>y</sup> 2, 1781.

Mad. Mss.

Dear Brother,—

I rec<sup>d</sup>. yesterday yours of the 19 & my father's of the 20 Dec<sup>r</sup>. I am glad to hear of your recovery, and particularly so of my mother's whose attack was unknown to me till the receipt of my father's letter.

The inclosed papers will give you the late proceedings of Cong<sup>s</sup>. more fully tho' often very incorrectly, than could be done in a letter. The excise on spirits distilled in the Country will probably take place. In fact, considering the aversion to direct taxes & that the imports are already loaded, I see nothing else that can be done. Besides the duty on imported rum, requires a proportional one on Country rum, & this a duty on other spirits. The tax will I presume be so guarded as to operate on stills according to the quantity really distilled.

I have rec<sup>d</sup>. a letter from M<sup>r</sup>. Maury which says that the market of Europe is very full of Tob<sup>o</sup>. & recommends it to me to [save?] as much as possible.

On leaving home I desired my father to pay Maj<sup>r</sup>. Lee the sum due from me. I sh<sup>d</sup>. have left the comission in your hands if you had been in the way, being apprehensive that some delicacy might arise from unsettled transactions between him & my father. I find accordingly that this has happened & that Maj<sup>r</sup> Lee refuses the paym<sup>t</sup> on y<sup>t</sup>. account. I wish you to pay him if possible as I intended & promised.

Tell Capt: Dade that Gen. Knox has not yet reported on his case & that I will let him know the event of his claim as soon as it happens. Adieu.

Y<sup>Rs</sup>. Aff<sup>Y</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, January 9th, 1781.

Dear Sir,—

I have again the pleasure to begin with acknowledging the receipt of a favor from you, that of the first having come to han yesterday.

On Thursday last, Congress was informed by General Potts and Colonel Johnston, who came expresses for the purpose, that a general mutiny had broken out on the morning of the New Year's day, in the Pennsylvania line, which was cantoned near Morristown, apart from the rest of the army. Every effort was made by the officers to stifle it in its infancy, but without effect. Several of them fell victims to the fury of the mutineers. The next information came from General Wayne, who wrote from Princeton, whither the troops had marched in regular order on their way to Philadelphia, as they gave out, with a determination not to lay down their arms, nor to return to their obedience till a redress of grievances should be obtained. They suffered none of their officers to be among them except General Wayne and Colonels Steuart and Butler, and these they kept under close guard, but in every other respect treated with the utmost decorum. The grievances complained of were principally, the detention of many in service beyond the term of enlistment, and the sufferings of all from a deficient supply of clothing and subsistence, and the long arrearage of pay. Several propositions and replies, on the subject of redress, passed between a deputation of sergeants, in behalf of the troops, and General Wayne, but without any certain tendency to a favorable issue. The affair at length began to take a very serious countenance, and as a great proportion of that line are foreigners, and not a few deserters from the British army, and as they showed a disposition to continue at Princeton, from whence a refuge with the enemy, who, it was said, were coming out in force for the purpose, was at any moment practicable, it was thought necessary, notwithstanding the humiliation of the step, to depute a committee of Congress with powers to employ every expedient for putting a speedy end to the discontents. The President of the State, with a number of gentlemen from this place, went up to interpose their influence. By a letter from the committee, who had proceeded as far as Trenton, received the evening before last, it appears that the President, who was ahead, and had written to General Wayne, was likely to have a confidential reception. The committee write, that an emissary of Clinton, who had appeared among the soldiers with a paper setting forth the folly and danger of adhering to a cause which had already brought so much misery upon them, promising a protection under the British Government, a body of troops to cover their escape, and the payment of all arrears due from Congress, was seized and given up to General Wayne, who handed him with his guide over to the President of this State; who placed them under the custody of his light-horse. This circumstance not only presages a fortunate issue to the mutiny, but is such a proof of attachment to the country in the most trying situation, as must effectually repress the joy and encouragement which the enemy had taken from

this threatening event. The late detachment from New York, which a letter from Fredericksburg says is in the Chesapeake, is about one thousand six hundred strong, and commanded by Arnold.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.1

Philadelphia, January 16, 1781.

Dear Sir,—

I was very glad at not being disappointed in my expectation of a favor from you by yesterday's post. Several reports, in quick succession, of the arrival and progress of the predatory band under Arnold, had rendered us exceedingly anxious to hear the truth and particulars of the matter. Some letters, by the post, tell us that the Governor and Baron Steuben were wholly engaged in removing and securing the arms and ammunition. If so, he was better employed than in writing to Congress on the subject, which, from his usual punctuality, was expected. The enterprise against Richmond, at this season, was certainly an audacious one, and strongly marks the character which directed it. Having been long sensible that the security of the country, as high up as the tide-water reaches, has been owing more to the ignorance and caution of the enemy than to its own strength or inaccessibility, I was much less astonished at the news than many others. To those who are strangers to the sparse manner in which that country is settled, and the easy penetration afforded by its long, navigable rivers, the rapid and unopposed advances of the enemy appear unaccountable, and our national character suffers imputations which are by no means due to it.

Congress have yet received no official report of the result of the conciliatory measures taken with the revolted soldiers at Trenton. From oral and circumstantial evidence, there is no doubt that they have been successful. A discharge of a part from the service, and a supply of clothing and money to the rest, is the price of their submission. This much, considered in itself, was required by justice, and is, consequently, consistent with dignity. But, considered with respect to the circumstances attending the negotiation, there is but too much ground to suspect that it will be attributed to our fears, and is, therefore, not a little mortifying. Happily, the example, as we understand by a letter from General Washington received yesterday, had not infected the other parts of the army. As the same causes, however, which engendered this malignant humour in the Pennsylvania line, are known to exist in the other lines, we cannot be sure that the same effects will not yet take place in the latter, unless they be speedily removed. As one step towards it, Congress are endeavouring to profit by the alarm which this event must have excited in the States, by calling upon them for the means of immediately furnishing some pay to the troops of their respective lines.

You ask me what I think of the Delegate Extraordinary to Congress.1 I wish you had told me what you think of such an appointment. It is pretty certain, I believe, that people in general will not consider it as a proof of confidence in the ordinary delegation. As Mr. Jones, who, I believe, possesses the confidence of his country, and, I am sure, will have as much weight in Congress as any man that will be sent on such an occasion, will come about the same time, and, having attended the Legislature, will

be as well informed in every point of view, I cannot deny that the appointment appears to me to be, at least, a supernumerary one. I wish the good effects of it may show that I am mistaken.

The trade of this city has just suffered a very severe blow. No less than seven fine vessels have been taken out of an outward bound fleet, and carried into New York.

The emissary from Clinton, and his guide, were executed on Saturday morning last.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>, Jan<sup>y</sup> 23, 1781.

Mad. Mss.

Dear Sir,—

I have nothing new this week for you but two *reports*: the first is that very great discontents prevail in N. York among the German Troops for causes pretty similar to those which produced the eruption in the Pennsylvania line. It is further said on this head that a party of 200 have deserted from Long Island & gone to Rhode Island. The other report is that the British minister either has or proposes to carry a bill into Parliam<sup>t</sup>. authorizing the Commanding officer in America to permit & promote a trade with us in British Goods of every kind except Linens & Woollens. This change of system is said to be the advice of some notable refugees, with a view to revive an intercourse as far as possible between the two countries, & particularly to check the habit that is taking place in the consumption of French Manufactures. Whatever their public views may be it is certain that such a plan would open fine prospects to them in a private view.

We have rec<sup>d</sup>. no fresh or certain information of the designs of F. and Spain in assembling so great a force at Cadiz. There does not appear to be any object in that Quarter except Gibraltar. Should the attempts be renewed ag<sup>st</sup>. that place, it will prove that the former has not that absolute sway in the Cabinet of the latter which has been generally imagined. Nothing would have prevailed on the French to recall their fleets from the Islands at the time they did but the necessity of humouring Spain on the subject of her hobby horse.

I am glad to hear that Arnold has been at last fired at. It sounded a little unfavorably for us in the ears of the people here that he was likely to get off without that proof of a hostile reception. If he ventures an irruption in any other quarter I hope he will be made sensible that his impunity on James River was owing to the suddenness of his appearance & not to the want of spirit in the people. I am, etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>r</sup>, Feb<sup>y</sup>, 1781.

Mad. Mss.

D<sup>R</sup> Sir,—

I have your favor of the 5<sup>th</sup>. instant by the post. Col. Harrison arrived here yesterday, and as he mentions no circumstance which indicated an intended departure of the Enemy I am afraid your intelligence on that subject was not well founded. Immediately on the receipt of your former letter relating to an exchange of C. Taylor I applied to the Admiralty department, and if such a step can be brought about with propriety, I hope he will be gratified, but considering the tenor of their treatment of naval prisoners, and the resolutions with which it has inspired Congress, I do not think it probable that exchanges will go on easily, and if this were less the case, a mere passenger, under the indulgence too of a parole, can scarcely hope to be preferred to such as are suffering the utmost hardships and even made prisoners in public service.

A vessel arrived here a few days ago from Cadiz which brings letters of as late date as the last of Dec<sup>r</sup>. Those that are official tell us that England is making the most strenuous exertions for the current year, & that she is likely to be but too successful in the great article of money. The Parliament have voted 32,000 seamen, and a considerable land reinforcement for their Southern army in America is s<sup>d</sup>. to be in preparation. Private letters by the same conveyance mention that the blockage of Gibraltar is going on with alacrity, and that the garrison is in such distress as flatters the hope of a speedy capitulation.

If Mr. Pendleton your nephew is still with you be pleased to return him my compliments.

With great respect I am, etc.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, April 3rd, 1781.

Dear Sir,—

The letter from the Delegation, by the last post, informed you of the arrival of the stores here, which were to have been delivered in Virginia by one of the French ships. The infinite importance of them to the State, especially since the arrival of a reinforcement to Arnold,2 of which we are just apprized by the Marquis, has determined the Delegates to forward them by land, without loss of time. This will be attempted in the first instance, in the channel of the Quartermaster's department, and, if it cannot be effected in that mode, without delay, we propose to engage private wagons for the purpose, on the credit of the State. Should the latter alternative be embraced, I find it will be necessary to stipulate instantaneous payment, from the Treasury, on the arrival of the wagons at Richmond, in specie or *old continental currency* to the *real* amount thereof. I mention this circumstance that you may be prepared for it. The expense of the transportation will be between five and six hundred pounds, Virginia money. The exchange between specie and the old paper, at present, is about one hundred and thirty-five for one.

The Delegates having understood that the refugees taken by Captain Tilley, on his return to Newport from the Chesapeake, consisted chiefly of persons who formerly lived in Virginia, some of whom were traitors who deserved exemplary punishment, and others vindictive enemies to the State, thought proper to make the inclosed application to the French Minister. By conversation I have since had with him on the subject, I doubt whether it will be deemed consistent with their general rules of conduct, to give up, to be punished as malefactors, any of the captives made by their fleet, which does not serve, like their land army, as an auxiliary to the forces of the United States. If these persons had been taken by their land forces, which serve as auxiliaries under the Commander-in-Chief, it seems there would have been no difficulty in the case. However, the application will certainly prevent the exchange or release to which it refers, if the Executive think it expedient to do so. On the least intimation, I am persuaded the apostates would be even sent over to France, and secured in the most effectual manner during the war. Perhaps this would not be amiss, as being not our prisoners, no use can be made of them in redeeming our citizens from captivity.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, April 16, 1781.

Dear Sir,—

The inclosed paper is a copy of a report,2 from a committee, now lying on the table of Congress for consideration. The delicacy and importance of the subject makes me wish for your judgment on it, before it undergoes the final decision of Congress.

The necessity of arming Congress with coercive powers arises from the shameful deficiency of some of the States which are most capable of yielding their apportioned supplies, and the military exactions to which others, already exhausted by the enemy and our own troops, are in consequence exposed. Without such powers, too, in the General Government, the whole confederacy may be insulted, and the most salutary measures frustrated, by the most inconsiderable State in the Union. At a time when all the other States were submitting to the loss and inconvenience of an embargo on their exports, Delaware absolutely declined coming into the measure, and not only defeated the general object of it, but enriched herself at the expense of those who did their duty.

The expediency, however, of making the proposed application to the States, will depend on the probability of their complying with it. If they should refuse, Congress will be in a worse situation than at present; for as the Confederation now stands, and according to the nature even of alliances much less intimate, there is an implied right of coercion against the delinquent party, and the exercise of it by Congress, whenever a palpable necessity occurs, will probably be acquiesced in.

It may be asked, perhaps, by what means Congress could exercise such a power, if the States were to invest them with it. As long as there is a regular army on foot, a small detachment from it, acting under civil authority, would at any time render a voluntary contribution of supplies due from a State, an eligible alternative. But there is a still more easy and efficacious mode. The situation of most of the States is such, that two or three vessels of force employed against their trade will make it their interest to yield prompt obedience to all just requisitions on them. With respect to those States that have little or no foreign trade of their own, it is provided that all inland trade with such States as supply them with foreign merchandize may be interdicted, and the concurrence of the latter may be enforced, in case of refusal, by operations on their foreign trade.

There is a collateral reason which interests the States who are feeble in maritime resources, in such a plan. If a naval armament was considered as the proper instrument of general government, it would be, both preserved in a respectable state in time of peace, and it would be an object to man it with citizens, taken in due proportions, from every State. A navy so formed, and under the orders of the General

Council of the State, would not only be a guard against aggressions and insults from abroad, but, without it, what is to protect the Southern States, for many years to come, against the insults and aggressions of their northern brethren?

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

(Extract.)

Philadelphia, May 1, 1781.

Dear Sir,—

A letter which I received a few days ago from Mr. Jefferson gives me a hope that he will lend his succor in defending the title of Virginia. He professes ignorance of the ground on which the report of the committee places the controversy. I have exhorted him not to drop his purpose, and referred him to you as a source of copious information on the subject. I wish much you and he could unite your ideas on it. Since you left us I have picked up several pamphlets which had escaped our researches. Among them are the examination of the Connecticut claim, and the charter of Georgia, bound up with that of Maryland and four others. Presuming that a better use will be made of them, I will send them by Mr. Jones, requesting, however, that they may be returned by the hands of him, Dr. Lee, or yourself, as the case may be.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May 1, 1781.

Dear Sir,—

The case of the vessel captured within North Carolina was some time since remitted to Congress by Governor Harrison. I am glad to find your ideas correspond so exactly with those I had advanced on the subject. The legislative power over captures, and the judiciary in the last resort, are clearly vested in Congress by the Confederation. But the judiciary power in the first instance, not being delegated, is as clearly reserved to the Admiralty Courts of the particular States within which the captures are made. Captures made on the high seas must fall within the jurisdiction of the State into which it shall please the captor to carry them. It will be sufficient, I believe, to insert in the instructions to privateers, a clause for preventing the grievance complained of by North Carolina. The anger of Mr. Burke was erroneous in its principle, as well as intemperate in its degree. The offender being an officer of Congress, and not of Virginia, Congress, and not Virginia, should have been resorted to for redress.

1 On a consultation before Doctor Lee left us, it was determined that we ought to renew our attempts to obtain from Congress a decision on the cession of Virginia, before the meeting of the Legislature. The attempt was accordingly made, and produced all the perplexing and dilatory objections which its adversaries could devise. An indisposition of the President, which suspended the vote of Maryland, furnished an argument for postponing, which it was prudent to yield to, but which is now removed by the arrival of Mr. Wright, a new Delegate from that State. We shall call again on Congress for a simple answer in the affirmative or the negative, without going into any unnecessary discussions on the point of right; and should the decision be postponed *sine die*, we hope the State will consider itself at liberty to take any course which its interest shall suggest. It happens very unluckily that Virginia will only have two Representatives present during the interesting business. Mr. Jones cannot be prevailed on to wait the event. Colonel Bland thinks the validity of characters unimportant to the title of Virginia, and that the title of the natives militates against the claims of the companies. Is not my situation an enviable one?

A further communication from the French Minister informs us, that the Court of France laments the weakness of our army; insinuates the idea of co-operation in expelling the enemy from the United States; apprehends attempts to seduce the States into separate negotiations, and hopes measures will be taken to frustrate such views. I believe, from this and other circumstances, that the Court of France begins to have serious suspicions of some latent danger. It is extremely probable, that as the enemy relax in their military exertions against this country, they will redouble the means of seduction and division. This consideration is an additional argument in favor of a full representation of the States. In a multitude of counsellors there is the best chance for honesty, if not of wisdom.

The subject of Vermont has not yet been called up. Their agents and those of the land-mongers are playing with great adroitness into each others' hands. Mr. Jones will explain this game to you. Colonel Bland is still schismatical on this point. I flatter myself, however, that he will so far respect the united opinion of his brethren as to be silent. Mr. Lee entered fully into the policy of keeping the vote of Vermont out of Congress.

The refugees from New York have lately perpetrated one of the most daring and flagrant acts that has occurred in the course of the war. A captain of militia of New Jersey, who unfortunately fell a captive into their hands, was carried to New York, confined successively in different prisons, and treated with every mark of insult and cruelty; and finally brought over to the Jerseys, and in cold blood hanged. A label was left on his breast, charging him with having murdered one of their fraternity, and denouncing a like fate to others. The charge has been disproved by unexceptionable testimony. A number of respectable people of New Jersey have, by a memorial, called aloud on the Commander-in-Chief for retaliation; in consequence of which he has, in the most decisive terms, claimed of Sir Henry Clinton a delivery of the offenders up to justice, as the only means of averting the stroke of vengeance from the innocent head of a captive officer of equal rank to the Jersey captain. The answer of Clinton was not received when General Washington despatched a state of the transaction to Congress.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, May 29, 1781.

Dear Sir,—

The two circumstances relating to the proposed duty on trade, mentioned in your favor of the first instant, were subjects of discussion when the measure was on the anvil. It was evident that the disposition of the States to invest Congress with such a power would be influenced by the length of the term assigned for the exercise of it. It was equally evident that no provision would satisfy the present creditors of the United States, or obtain future loans, that was not commensurate to all the public engagements. In order to reconcile these points, the duration of the impost was limited, but limited in so indefinite a manner as not to defeat the object of it. Should the increase of trade render the duty more productive than was estimated, it must the sooner extinguish the public debts, and cease. The application of Congress for such a power supposes, indeed, a confidence in them, on the part of the States, greater perhaps than many may think consistent with republican jealousy; but if the States will not enable their Representatives to fulfil their engagements, it is not to be expected that individuals either in Europe or America will confide in them. The second objection you mention was also a subject of much discussion in Congress. On one side it was contended that the powers incident to the collection of a duty on trade were in their nature so municipal, and in their operation so irritative, that it was improbable that the States could be prevailed on to part with them; and that, consequently, it would be most prudent to ask from the States nothing more than the duty itself, to be collected by State officers, and paid to a Continental Receiver; and not the right of collecting it by officers of Congress. On the opposite side it was urged, that as Congress would be held responsible for the public debts, it was necessary, and would be expected, that the fund granted for discharging them should be exclusively and independently in their hands; that if the collectors were under the control of the States, the urgency of their wants would be constantly diverting the revenue from its proper destination; that if the States were willing to give up the thing itself, it was not likely they would cavil at any form that would be most effectual; that the term proposed might be reconciled with their internal jurisdictions, by annexing to the *office* of collector all the powers incident thereto, and leaving to Congress the right of appointing the *officer*. How far it may be best to appoint the established naval officer, I am not prepared to say; but should that be found to be the case, they will exercise their new functions, not as naval officers of the State, but as invested with a separate commission by Congress, in such manner that in the former respect they are wholly exempt from the jurisdiction of Congress, and in the latter from that of the State. Such a junction of powers, derived from different sources, in the same person, certainly has its inconveniences, but there will be many instances of it in our complex government. I have met with so many interruptions this morning, that I fear I may have not done justice to the subject in my explanation of it. Another consequence is, that I must be very brief on the head of intelligence to make sure of the post.

[\[Back to Table of Contents\]](#)

## TO PHILIP MAZZEI.1

Philadelphia, July 7, 1781.2

My Dear Friend,—

I have received two copies of your favor of the 7th of December last, and three of that of the 30th of November preceding. Having neglected to bring with me from Virginia the cypher concerted between you and the Executive, I still remain ignorant of the paragraph in your last which I suppose the best worth knowing.

The state of our affairs has undergone so many vicissitudes since you embarked for Europe, and I can so little judge how far you may have had intelligence of them, that I am at a loss where I ought to begin my narrative. As the present posture of them is the most interesting, I shall aim at nothing further at present than to give you some idea of that, referring to past events so far only as may be necessary to explain it.

The insuperable difficulties which opposed a general conquest of America seemed as early as the year 1779 to have been felt by the enemy, and to have led them into the scheme of directing their operations and views against the Southern States only. Clinton accordingly removed with the principal part of his force from New York to South Carolina, and laid siege to Charleston, which, after an honorable resistance, was compelled to surrender to a superiority of force. Our loss in men, besides the inhabitants of the town, was not less than two thousand. Clinton returned to New York. Cornwallis was left with about five thousand troops to pursue his conquests. General Gates was appointed to the command of the Southern department, in place of Lincoln, who commanded in Charleston at the time of its capitulation. He met Cornwallis on the 16th of August, 1780, near Camden, in the upper part of South Carolina and on the border of North Carolina. A general action ensued, in which the American troops were defeated with considerable loss, though not without making the enemy pay a good price for their victory. Cornwallis continued his progress into North Carolina, but afterwards retreated to Camden. The defeat of Gates was followed by so general a clamor against him, that it was judged expedient to recall him. Greene was sent to succeed in command. About the time of his arrival at the army, Cornwallis, having been reinforced from New York, resumed his enterprise into North Carolina. A detachment of his best troops was totally defeated by Morgan with an inferior number, and consisting of a major part of militia detached from Greene's army. Five hundred were made prisoners, between two and three hundred killed and wounded, and about the like number escaped. This disaster, instead of checking the ardor of Cornwallis, afforded a new incentive to a rapid advance, in the hope of recovering his prisoners. The vigilance and activity, however, of Morgan, secured them. Cornwallis continued his pursuit as far as the Dan river, which divides North Carolina from Virginia. Greene, whose inferior force obliged him to recede this far before the enemy, received such succors of militia on his entering Virginia that the chase was reversed. Cornwallis, in his turn, retreated precipitately. Greene overtook

him on his way to Wilmington, and attacked him. Although the ground was lost on our side, the British army was so much weakened by the loss of five or six hundred of their best troops, that their retreat towards Wilmington suffered little interruption. Greene pursued as long as any chance of reaching his prey remained, and then, leaving Cornwallis on his left, took an oblique direction towards Camden, which, with all the other posts in South Carolina except Charleston and Ninety-Six, have, in consequence, fallen again into our possession. His army lay before the latter when we last heard from him. It contained seven or eight hundred men and large quantities of stores. It is nearly two hundred miles from Charleston, and, without some untoward accident, cannot fail of being taken. Greene has detachments all over South Carolina, some of them within a little distance of Charleston; and the resentments of the people against their late insolent masters ensure him all the aids they can give in re-establishing the American Government there. Great progress is also making in the redemption of Georgia.

As soon as Cornwallis had refreshed his troops at Wilmington, abandoning his Southern conquests to their fate, he pushed forward into Virginia. The parricide Arnold had a detachment at Portsmouth when he lay on the Dan; Philips had reinforced him so powerfully from New York, that the juncture of the two armies at Petersburg could not be prevented. The whole force amounted to about six thousand men. The force under the Marquis De La Fayette, who commanded in Virginia, being greatly inferior, did not oppose them, but retreated into Orange and Culpeper in order to meet General Wayne, who was on his way from Pennsylvania to join him. Cornwallis advanced northward as far as Chesterfield, in the county of Caroline, having parties at the same time at Page's warehouse and other places in its vicinity. A party of horse, commanded by Tarleton, was sent with all the secrecy and celerity possible to surprise and take the General Assembly and Executive who had retreated from Richmond to Charlottesville. The vigilance of a young gentleman who discovered the design and rode express to Charlottesville prevented a complete surprise. As it was, several Delegates were caught, and the rest were within an hour of sharing the same fate. Among the captives was Colonel Lyon of Hanover. Mr. Kinlock, a member of Congress from South Carolina, was also caught at Mr. John Walker's, whose daughter he had married some time before. Governor Jefferson had a very narrow escape. The members of the Government rendezvoused at Stanton, where they soon made a House. Mr. Jefferson's year having expired, he declined a re-election, and General Nelson has taken his place. Tarleton's party retreated with as much celerity as it had advanced. On the junction of Wayne with the Marquis and the arrival of militia, the latter faced about and advanced rapidly on Cornwallis, who retreated to Richmond, and thence precipitately to Williamsburg, where he lay on the 27th ultimo. The Marquis pursued, and was at the same time within twenty miles of that place. One of his advanced parties had had a successful skirmish within six miles of Williamsburg. Bellini has, I understand, abided patiently in the college the dangers and inconveniences of such a situation. I do not hear that the consequences have condemned the experiment. Such is the present state of the war in the Southern Department. In the Northern, operations have been for a considerable time in a manner suspended. At present, a vigorous siege of New York by General Washington's army, aided by five or six thousand French troops under Count De Rochambeau, is in contemplation, and will soon commence. As the English have the



command of the water, the result of such an enterprise must be very uncertain. It is supposed, however, that it will certainly oblige the enemy to withdraw their force from the Southern States, which may be a more convenient mode of relieving them than by marching the troops from New York at this season of the year to the southward. On the whole, the probable conclusion of this campaign is, at this juncture, very flattering, the enemy being on the defensive in every quarter.

The vicissitudes which our finances have undergone are as great as those of the war, the depreciation of the old continental bills having arrived at forty, fifty, and sixty for one. Congress, on the 18th of March, 1780, resolved to displace them entirely from circulation, and substitute another currency, to be issued on better funds, and redeemable at a shorter period. For this purpose, they fixed the relative value of paper and specie at forty for one; directed the States to sink by taxes the whole two hundred millions in one year, and to provide proper funds for sinking in six years a new currency which was not to exceed ten millions of dollars, which was redeemable within that period, and to bear an interest of five per cent., payable in bills of exchange on Europe or hard money. The loan-office certificates granted by Congress are to be discharged at the value of the money at the time of the loan; a scale of depreciation being fixed by Congress for that purpose. This scheme has not yet been carried into full execution. The old bills are still unredeemed, in part, in some of the States, where they have depreciated to two, three, and four hundred for one. The new bills, which were to be issued only as the old ones were taken in, are consequently in a great degree still unissued; and the depreciation which they have already suffered has determined Congress and the States to issue as few more of them as possible. We seem to have pursued our paper projects as far as prudence will warrant. Our medium in future will be principally specie. The States are already levying taxes in it. As the paper disappears, the hard money comes forward into circulation. This revolution will also be greatly facilitated by the influx of Spanish dollars from the Havannah, where the Spanish forces employed against the Floridas\* consume immense quantities of our flour, and remit their dollars in payment. We also receive considerable assistance from the direct aids of our ally, and from the money expended among us by his auxiliary troops. These advantages, as they have been and are likely to be improved by the skill of Mr. Robert Morris, whom we have constituted minister of our finances, afford a more flattering prospect in this department of our affairs than has existed at any period of the war.

The great advantage the enemy have over us lies in the superiority of their navy, which enables them continually to shift the war into defenceless places, and to weary out our troops by long marches. The squadron sent by our ally to our support did not arrive till a reinforcement on the part of the enemy had counteracted their views. They have been almost constantly blocked up at Rhode Island by the British fleet. The effects of a hurricane in the last spring on the latter gave a temporary advantage to the former, but circumstances delayed the improvement of it till the critical season was past. Mr. Destouches, who commanded the French fleet, nevertheless hazarded an expedition into Chesapeake bay. The object of it was to co-operate with the Marquis de la Fayette in an attack against Arnold, who lay at Portsmouth with about fifteen hundred British troops. Had he got into the bay, and taken a favorable station, the event would certainly have been adequate to our hopes. Unfortunately, the British

fleet, which followed the French immediately from Rhode Island, reached the capes of Virginia first. On the arrival of the latter, a regular and fair combat took place. It lasted for several hours, and ended rather in favor of our allies. As the enemy, however, were nearest the capes, and one of the French ships had lost her rudder, and was otherwise much damaged, the commander thought it best to relinquish his object, and return to his former station. The damage sustained by the enemy, according to their own representation, exceeded that of the French; and as their number of ships and weight of metal were both superior, it does great honor to the gallantry and good conduct of Mr. Destouches. Congress, and indeed the public at large, were so sensible of this, that their particular thanks were given him on this occasion.

No description can give you an adequate idea of the barbarity with which the enemy have conducted the war in the Southern States. Every outrage which humanity could suffer has been committed by them. Desolation rather than conquest seems to have been their object. They have acted more like desperate bands of robbers or buccaneers than like a nation making war for dominion. Negroes, horses, tobacco, &c., not the standards and arms of their antagonists, are the trophies which display their success. Rapes, murders, and the whole catalogue of individual cruelties, not protection and the distribution of justice, are the acts which characterize the sphere of their usurped jurisdiction. The advantage we derive from such proceedings would, if it were purchased on other terms than the distresses of our citizens, fully compensate for the injury accruing to the public. They are a daily lesson to the people of the United States of the necessity of perseverance in the contest; and wherever the pressure of their local tyranny is removed, the subjects of it rise up as one man to avenge their wrongs and prevent a repetition of them. Those who have possessed a latent partiality for them, as their resentment is embittered by their disappointment, generally feel most sensibly their injuries and insults, and are the foremost in retaliating them. It is much to be regretted that these things are so little known in Europe. Were they published to the world in their true colors, the British nation would be hated by all nations as much as they have heretofore been feared by any, and all nations would be sensible of the policy of abridging a power which nothing else can prevent the abuse of.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup> July 31<sup>st</sup> 1781.

Mad. Mss.

D<sup>R</sup>. Sir—

I have the pleasure of your's of the 23<sup>d</sup>. I congratulate you on your return to Caroline and on the safety of your estate from the ravages of the Enemy.

The mail of last week having been intercepted near Wilmington has kept back the post a day later than his usual arrival, and I have now but a few moments for the discharge of my epistolary duty. The only certain information we have lately had from Europe is that the mediation tendered by Russia in the dispute between England & Holland has been referred by the former to the General pacification in which the mediation of the Emperor will be joined with it. As this step is not very respectful to Russia, it can only proceed from a distrust of her friendship, & their hopes of a favorable issue to the campaign which an intercepted letter from L<sup>d</sup>. G. Germain shews to be extravagantly sanguine. There has been nothing from the W Indies for several weeks. General Washington is continuing his preparations & progress ag<sup>t</sup>. N. York. I shall hazard no prediction with regard to the event of them. Col. Willet we understand has lately given a decisive defeat to a party from Canada or the Frontiers of N. York. With very sincere regard I am D<sup>f</sup> Sir

Your Ob<sup>T</sup> Friend & Servant,

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Philadelphia, August 1, 1781.[1](#)

Mad. Mss.

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We have heard little of late from Europe, except that the Mediation proffered by Russia in the dispute between England & Holland has been referred by the former to the general pacification in which the mediation of the Emperor will be joined with that of Russia. As this step is not very respectful to Russia it can only proceed from a distrust of her friendship and the hopes entertained by Britain as to the issue of the Campaign, which as you will see in an intercepted letter from Germaine to Clinton were extravagantly sanguine. We have no late intelligence from the W. Indies. Ge<sup>nl</sup> Washington is going on with his preparations & operations ag<sup>st</sup> N. York. What the result will be can be decided by time alone. We hope they will at least withdraw some of the invaders from Virginia. The French fleet is still at Rhode Island. The British *it is reported* has lately left the Hook.

Aug<sup>st</sup>. 2<sup>d</sup>—Information has been rec<sup>d</sup> from N. York thro' a channel that is thought a good one, that orders are gone to Virginia for a large part of the troops under Cornwallis immediately to sail for that place. Should this be well founded the execution of the orders will announce it to you. Among other advantages attending an evacuation of Virg<sup>a</sup>. it will not be the least that the communication with this place by the Bay will supply the State with many necessary articles w<sup>ch</sup>. are now transported by land at so much expense & will enable you to pay for them easier by raising the price of your commodities. It gives me pain to hear that so many of the people have incautiously sold or rather given away their Tob<sup>o</sup>. to speculators when it was in no danger from the Enemy. The destruction of that article, which alarmed them, was an obvious cause of its future rise, and a reason for their retaining it till the alarm should be over. Goods of all kinds, particularly dry goods are rising here already. Salt in particular has risen within a few days from two dollars to a guinea per bushel.

I send you by this opportunity five English Grammars<sup>1</sup> for M<sup>r</sup>. W. Maury agreeably to his request. This is the first that has offered although I have had them on hand for some months. The price of the whole is a guinea. The price of D<sup>r</sup> Collins medical book published here is also one guinea. If you would choose a copy on that condition I can send you one by a future opportunity. With my most affectionate regards to the family.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.2

Philadelphia, August 14, 1781.

Dear Sir,—

The controversy relating to the district called Vermont, the inhabitants of which have for several years claimed and exercised the jurisdiction of an independent State, is at length put into a train of speedy decision. Notwithstanding the objections to such an event, there is no question but they will soon be established into a separate and Federal State. A relinquishment made by Massachusetts of her claims; a despair of finally obtaining theirs on the part of New York and New Hampshire, the other claimants, on whom these enterprising adventures were making fresh encroachments; the latent support afforded them by the leading people of the New England States in general, from which they emigrated; the just ground of apprehension that their rulers were engaging in clandestine negotiations with the enemy; and lastly, perhaps, the jealous policy of some of the little States, which hope that such a precedent may engender a division of some of the large ones, are the circumstances which will determine the concurrence of Congress in this affair.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, September 3, 1781.

Dear Sir,—

I am favored with yours of the 27th ultimo. This letter will be the most agreeable of any I have long had the pleasure of writing. I begin with informing you that the Commander-in-Chief and the Count Rochambeau,—the former with a part of the American army, and the latter with the whole of the French,—are thus far on their way for the Southern Department. The American troops passed through the town yesterday. The first division of the French army to-day. The second will pass to-morrow. Nothing can exceed the appearance of this specimen which our Ally has sent us of his army, whether we regard the figure of the men, or the exactness of their discipline.

Yesterday also arrived, from his special mission to the Court of France, Colonel John Laurens. Although his success has not been fully commensurate to our wishes, he has brought with him very *substantial* proofs of the determination of that Court to support us. Besides a considerable quantity of clothing and other valuable articles, there are upwards of sixteen thousand stand of arms. It is rather unlucky that they found it expedient to put into Boston, instead of this place, from whence the distribution of them would have been so much more easy.

I wish I could have concluded the intelligence without adding that Admiral Hood, with thirteen sail of the line from the West Indies, lately arrived at New York, and after being joined by Graves with eight ships, put again immediately to sea. The French squadron under De Barras had previously sailed from Newport. As the expected arrival of De Grasse from the West Indies could not be unknown to Hood, there is little doubt that his activity is directed against the junction of the two French fleets.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>, Sep<sup>r</sup> 18<sup>th</sup> 1781.

Mad. Mass.

Dear Sir,—

I was yesterday favored with yours of the 10th instant. The various reports arrived of late from the Chesapeake prepared us for a confirmation from our correspondents of a fortunate rencontre between the 2 fleets. A continuation of these reports although unsupported by any authentic evidence still keeps up the public anxiety. We have not heard a word of de Barras. The arrival of Digby is far from being certain, and the circulating reports have reduced his force to six ships of the line. The preparations at New York for some movement are pretty well attested. The conjectures of many are directing it against this City, as the most practicable & important object within the reach of Clinton. The successful blow struck by the parricide Arnold against the Town of New London is described, as far as the particulars are known here in the enclosed Gazette. There have been several arrivals of late from Europe with very little intelligence of any kind & with none from official sources. It all relates to the junction of the French & Spanish fleets, for the purpose of renewing the investiture of Gibraltar, and enterprising something against Minorca. Thus the selfish projects of Spain not only withholds from us the co-operation of their armaments, but divert in part that of our allies, & yet we are to reward her with a cession of what constitutes the value of the finest part of America.

Gen<sup>l</sup>. Washington & the Count de Rochambeau, with the forces under them have I presume by this time got within Virginia. This revolution in our military plan cannot fail to produce great advantages to the Southern department and particularly to Virginia, even if the immediate object of it should be unexpectedly frustrated. The presence of the Commander in chief with the proportion of our forces which will always attend him, will better protect the country against the depredations of the Enemy although he should be followed by troops from N. Y. which w<sup>d</sup>. otherwise remain there, than it has hitherto been, will leave the militia more at leisure to pursue their occupations at the same time that the demands of the armies will afford a sure market for the surplus provisions of the country, will diffuse among them a share of the gold & silver of our ally & I may now say of our own of w<sup>ch</sup>. their Northern Brethren have hitherto had a monopoly which will be peculiarly grateful to them after having been so long gorged with depreciating paper; and as we may suppose that the ships of our ally allotted for our service will so long as his troops remain in the U. States be kept in the Chesapeake, it will revive the trade thro' that channel, reduce the price of imported necessaries & raise the staple of the Country once more to its proper value. I am, etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Phila, October 2, 1781.

Mad. Mss.

Dear Sir,—

Yours of the 24th ult<sup>o</sup>. came safe by yesterday's post. In addition to the paper of this day I enclose you two of the preceding week in one of which you will find a very entertaining & interesting speech of Mr. Fox, and in the other a handsome forensic discussion of a case important in itself and which has some relation to the State of Virginia.

Our intelligence from N. Y. through several channels confirms the sufferings of the B. fleet from their rash visit to the Capes of Chesapeak. The troops which were kept in Transports to await that event have since the return of the fleet been put on shore on Staten Island. This circumstance has been construed into a preliminary to any expedition to this City, which had revived, till within a few days the preparation for a militia opposition, but is better explained by the raging of a malignant fever in the City of N Y. Digby we hear is now certainly arrived but with three ships of the line only. It is given out that three more with a large number of Transports came with him and that they only lay back till it was known whether they could proceed to N. Y. with safety. This is not improbably suspected to be a trick to palliate the disappointment and to buoy up the sinking hopes of their adherents, the most staunch of whom give up Lord Cornwallis as irretrievably lost.

We have received some communications from Europe relative to the general state of its affairs. They all center in three important points; the first is the obstinacy of G. B, the second the fidelity of our ally, and the third the absolute necessity of vigorous & systematic preparations for war on our part in order to ensure a speedy as well as favorable peace. The wisdom of the Legislature of Virginia will I flatter myself, not only prevent an illusion from the present brilliant prospects, but take advantage of the military ardor and sanguine hopes of the people to recruit their line for the war. The introduction of specie will also I hope be made subservient to some salutary operations in their finances. Another great object which in my opinion claims an immediate attention from them, is some liberal provision for extending the benefits of Government to the distant parts of the State. I am not able to see why this cannot be done, so as fully to satisfy the exigencies of the people and at the same time preserve the idea of Unity in the State. Any plan which divides in any manner the Sovereignty may be dangerous & precipitate an evil which ought & may at least be long procrastinated. The administration of justice which is the capital branch may certainly be diffused sufficiently and kept in due subordination in every part to one supreme tribunal. Separate boards for auditing accounts may also be admitted with safety & propriety. The same as to a separate depository for the taxes &c., and as to a land office. The military powers of the Executive, may well be intrusted to militia officers of Rank, as far as the defence of the country & the custody of military stores make it



necessary. A complete organization of the militia, in which Gen<sup>l</sup>. officers would be erected would greatly facilitate this part of the plan. Such an one with a council of Field officers, might exercise without encroaching on the Constitutional powers of the Supreme Executive, all the powers over the militia which any emergency could demand.

I Am, Etc.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup>. Oct<sup>r</sup> 9<sup>th</sup>, 1781.

Mad. Mss.

D<sup>R</sup>. Sir,—

Having sent you the arguments on one side of the judiciary question relating to the property of Virg<sup>a</sup>. seized by Mr. Nathan, it is but reasonable that you should see what was contended on the other side. With this view, although I in some measure usurp the task of Mr. Jones, I enclose the paper of Wednesday last. As it may escape Mr. Jones I also enclose a copy of Mr. Adams memorial to the States General. I wish I could have informed you of its being lodged in the archives of their High Mightinesses instead of presenting it to you in print.

I Am, Dr Sir, Etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup> Oc<sup>t</sup> 16th, 1781.

Mad. Mss.

Dear Sir,—

When you get a sight of the Resolution of the Gen. Ass. referred to in your favor of the 8th, you will readily judge from the tenor of it what steps would be taken by the Delegates.<sup>1</sup> It necessarily submitted the fate of the object in question to the discretion and prospects of the Gentleman<sup>2</sup> whom reports it seems have arraigned to you, but who I am bound in justice to testify has entirely supported the character which he formerly held with you. I am somewhat surprised that you never had before known of the Resolution just mentioned, especially as, what is indeed more surprising, it was both debated & passed with open doors and a full gallery. This circumstance alone must have defeated any reservations attached to it.

The N. York papers and the intelligence from thence make it evident that they have no hope of relieving Cornwallis, unless it can be effected by some desperate naval experiment and that such an one will be made. Their force will probably amount to 26 sail of the line, and if we are not misinformed as to the late arrival of three ships of the line to 29 sail. The superiority still remaining on the part of our Allies and the repeated proofs given of their skill & bravery on the water forbid any apprehension of danger. At the same time we cannot help calculating that every addition to the British force proportionally diminishes the certainty of success. A fleet of provisions amounting to about 40 sail convoyed by a 44 & 2 frigates have arrived at N. York within the week past.

Having sent all the papers containing the proceedings on the case of Mr. N. ag<sup>st</sup>. V. as they came out, I shall to complete your view of it add the last effort in his favor published in the enclosed No. of the Freemans Journal. I am told however that the publisher ought to have subjoined that the privy Council interposed & directed restitution of the King of Spain's effects. I am, etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, October 30, 1781.

Dear Sir,—

I return you my fervent congratulations on the glorious success of the combined arms at York and Gloucester. We have had from the Commander-in-Chief an official report of the fact, with a copy of the capitulation, and a general intimation that the number of prisoners, excluding seamen, &c., would exceed five thousand; but no detail of our gains. If these severe doses of ill fortune do not cool the phrenzy and relax the pride of Britain, it would seem as if Heaven had in reality abandoned her to her folly and her fate. This campaign was grounded on the most intense exertion of her pecuniary resources. Upwards of twenty millions were voted by the Parliament. The King acknowledged that it was all he asked, and all that was necessary. A fair trial has been made of her strength; and what is the result? They have lost another army, another colony, another island, and another fleet of her trade; their possessions in the East Indies, which were so rich a source of their commerce and credit, have been severed from them, perhaps for ever; their naval armaments, the bulwarks of their safety, and the idols of their vanity, have in every contest felt the rising superiority of their enemies. In no points have they succeeded, except in the predatory conquest of Eustatia, of which they have lost the greatest part of every thing except the infamy, and in the relief of Gibraltar, which was merely a negative advantage. With what hope or with what view can they try the fortune of another campaign? Unless they can draw succour from the compassion or jealousy of other powers, of which it does not yet appear that they have any well-founded expectation, it seems scarcely possible for them much longer to shut their ears against the voice of peace.

I am sorry to find that the practice of impressing is still kept up with you. It is partial and oppressive with respect to individuals, and I wish it may not eventually prove so with respect to the State. The zeal and liberality of those States which make undue advances, may not find an equal disposition to re-imburse them, in others which have had more caution, or less occasion for such exertions.

You are not mistaken in your apprehensions for our Western interests. An agrarian law is as much coveted by the little members of the Union, as ever it was by the indigent citizens of Rome. The conditions annexed by Virginia to her territorial cession have furnished a committee of Congress a handle for taking up questions of right, both with respect to the ceding States, and the great Land Companies, which they have not before ventured to touch. We have made every opposition and remonstrance to the conduct of the committee which the forms of proceedings will admit. When a report is made, we shall renew our efforts upon more eligible ground, but with little hope of arresting any aggression upon Virginia which depends solely on the inclination of Congress. Since the close of the Confederation, however, it has been understood, that seven votes are necessary to carry every question. This rule, in

proportion to the thinness of Congress, opposes a difficulty to those who attack. It will therefore, I believe, be impossible for the enemies of Virginia to obtain any positive injury to her rights. My greatest anxiety at present is, lest the attempts for that purpose may exasperate the Assembly into measures which will furnish new hopes to the British Court to persevere in the war, and new baits for the credulity of the British nation. The good sense of the Assembly will, however, I flatter myself, temper every expression of their displeasure with due respect to this consideration. It would be particularly unhappy, if any symptoms of disunion among ourselves should blast the golden prospects which the events of the campaign have opened to us.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, November 13, 1781.

Dear Sir,—

Nothing definitive has taken place on the territorial cessions. That of Virginia will not, I believe, be accepted with the conditions annexed to it. The opinion seems to be, that an acceptance of the cession of New York will give Congress a title which will be maintainable against all the other claimants. In this, however, they will certainly be deceived; and even if it were otherwise, it would be their true interest, as well as conformable to the plan on which the cessions were recommended, to bury all further contentions by covering the territory with the titles of as many of the claimants as possible. We are very anxious to bring the matter to issue, that the State may know what course their honor and security require them to take. The present thinness of Congress makes it but too uncertain when we shall be able to accomplish it.

Will not the Assembly pay some handsome compliments to the Marquis, for his judicious and zealous services whilst the protection of the country was entrusted to him? His having baffled, and finally reduced to the defensive, so powerful an army as we now know he had to contend with, and with so disproportionate a force, would have done honor to the most veteran officer, added to his other merits and services, constitutes a claim on their gratitude which I hope will not be unattended to.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, November 18, 1781.

Dear Sir,—

By the conveyance through which you will receive this, the Delegates have communicated to the State the proceedings in Congress to which the territorial cessions have given birth. The complexion of them will, I suppose, be somewhat unexpected, and produce no small irritation. They clearly speak the hostile machinations of some of the States against our territorial claims, and afford suspicions that the predominant temper of Congress may coincide with them. It is proper to recollect, however, that the report of the Committee having not yet been taken into consideration, no certain inference can be drawn as to its issue; and that the report itself is not founded on the obnoxious doctrine of an inherent right in the United States to the territory in question, but on the expediency of clothing them with the title of New York, which is supposed to be maintainable against all others. It is proper also to be considered, that the proceedings of the Committee, which we labored in vain to arrest, were vindicated not by the pretext of a jurisdiction belonging to Congress in such cases, but alleged to have been made necessary by the conditions annexed to the cession of Virginia. Although the cession of Virginia will probably be rejected, on the whole, I do not think it probable that all the principles and positions contained in the report of the Committee will be ratified. The Committee was composed of a member from Maryland, Pennsylvania, New Jersey, Rhode Island and New Hampshire; all of which States, except the last, are systematically and notoriously adverse to the claims of Western Territory, and particularly those of Virginia. The opinion of the Committee is therefore no just index of the opinion of Congress; and it is a rule observed since the Confederation was completed, that seven States are requisite in any question, and there are seldom more than seven, eight, nine or ten States present; even the opinion of a majority of Congress is a very different thing from a constitutional vote. I mention these particulars, that you may be the better able to counteract any intemperate measures that may be urged in the Legislature. If the State wishes any particular steps to be pursued by the Delegates, it would be well for particular instructions to that effect to be given. These will not only be a guide to us, but will give greater weight to whatever is urged by us.

I enclose you a paper containing two of the many letters lately published in New York, with the subscription of Mr. Deane's name. The genuineness of some of them, and particularly that to Mr. Morris, is generally doubted. There are some who think the whole of them spurious. However this may be, there is, through another channel, indubitable proof that no injustice is done in ascribing to him the sentiments advanced in these letters. Either from pique, interested projects of trade, or a traitorous correspondence with the enemy, he has certainly apostatized from his first principles.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Phila, Nov. 27th, 1781.

Mad. Mss.

Dear Sir,—

Your favor of the 19<sup>th</sup>. instant came to hand yesterday. On the same evening arrived our illustrious General returning to his position on the North river. We shall probably however have his company here for some days at least, where he will be able to give Congress very seasonable aid in settling the military establishment for the next year, about which there is some diversity of opinion. Whatever the total requisition of men may be on the States, I cannot but wish that Virginia may take effectual measures for bringing into the field her proportion of them. One reason for this wish is the calumnies which her enemies ground on her present deficiency, but the principal one is the influence that such an exertion may have in preventing insults & aggressions from whatever quarter they may be meditated, by shewing that we are able to defy them.

The Delegates have lately transmitted to the Gov<sup>r</sup> for the Assembly all the proceedings which have taken place on the Subject of the territorial cessions. The tenor of them & the reception given them by the assembly will I doubt not be communicated to you by some of your correspondents in it.

There is pretty good reason to believe that a descent on Minorca has actually taken place. It is a little problematical with me whether successes against G. B. in any other quarter except America tend much to hasten a peace. If they increase her general distress they at the same time increase those demands against her which are likely to impede negotiations, & her hopes from the sympathy of other powers. They are favorable to us however in making it more the interest of all the belligerent powers to reject the *uti possidetis* as the basis of a pacification.

The report of Rodney's capture never deserved the attention it seems which was given to it.

I Am, Etc.



[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Phil., D<sup>r</sup> 11th, 1781.

Mad. Mss.

Dear Sir,—

I am favored with yours of the 3d instant. Other letters by the same conveyance confirm your report of the election of Mr. Harrison to the chief magistracy. Several other appointments are mentioned which I make no doubt are all well known to you.

On whichever side Mr. Deanes letters are viewed they present mysteries. Whether they be supposed genuine or spurious or a mixture of both difficulties which cannot well be answered may be started. There are however passages in some of them which can scarcely be imputed to any other hand. But it is unnecessary to rely on these publications for the real character of the man. There is evidence of his obliquity which has for a considerable time been conclusive.

Congress have not resumed their proceedings on the Western business. They have agreed on a requisition on the States for 8,000,000 of Dollars & a completion of their lines according to the last establishment of the army. We endeavored, tho' with very little effect to obtain deductions in the first article from the quota of Virginia but we did not oppose the aggregate of the demand in either. If we do not obtain a sufficiency of men & money from the States by regular & duly appointed calls we know by experience that the burden of the war will fall on the resources of the States w<sup>ch</sup>. happen to be subject of it.

Mr. Moore late Vice Presid<sup>t</sup>. has been elected Presid<sup>t</sup>. of this State in place of Mr. Reed whose period of eligibility was out. I am, etc.

[\[Back to Table of Contents\]](#)

TO EDMUND PENDLETON.

Philad<sup>a</sup> Dec. 25th, 1781.

Mad. Mss.

Dear Sir,—

You only do me justice in ascribing your disappointment in the part of the week preceding your favor of the 16<sup>th</sup>. instant, to some other cause than my neglect. If I were less disposed to punctuality your example w<sup>d</sup> preserve me from transgressing it. As the last letter went to the post office here & you did not receive it from the post in Virg<sup>a</sup>., the delinquency must have happened in that line. It is however I believe of little consequence, as I do not recollect that any thing material has been contained in my letters for several weeks, any more than there will be in this in which I have little else to say than to tender you the compliments of the day. Perhaps indeed it will be new to you what appeared here in a paper several days ago, that the success of Comodore Johnstone in taking 5 Duch E. India men homeward bound & destroying a 6<sup>th</sup> is confirmed. Whatever may be thought of this stroke of fortune by him & his rapacious crew, the Ministry will hardly think it a compensation to the public for the danger to which the remains of their possessions in the East will be exposed by the failure of his Expedition.

It gives me great pleasure to hear of the honorable acquittal of M<sup>r</sup>. Jefferson. I know his abilities, & I think I know his fidelity & zeal for his Country so well, that I am persuaded it was a just one. We are impatient to know whether he will undertake the new service to which he is called. I am, etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, January 8, 1782.

Dear Sir,—

Yesterday was opened, for the first time, the Bank instituted under the auspices of Congress. Its principal founder is Mr. Robert Morris, who has certain prerogatives with respect to it in his quality of Superintendent of Finance. It is pretty analogous in its principles to the Bank of England. The stock subscribed is 400,000 dollars. When the scheme was originally proposed to Congress for their approbation and patronage, a promise was given that as soon as it was ripe for operation the company should be incorporated. A few days ago the fulfilment of the promise was claimed. The competency of Congress to such an act had been called in question in the first instance; but the subject not lying in so near and distinct a view, the objections did not prevail. On the last occasion, the general opinion, though with some exceptions, was, that the Confederation gave no such power, and that the exercise of it would not bear the test of a forensic disquisition, and consequently would not avail the Institution. The Bank, however, supposing that such a sanction from Congress would at least give it a dignity and preeminence in the public opinion, urged the engagement of Congress; that on this engagement the subscriptions had been made, and that a disappointment would leave the subscribers free to withdraw their names. These considerations were re-inforced by the Superintendent of Finance, who relied on this Institution as a great auxiliary to his department; and, in particular, expected aid from it in a payment he is exerting himself to make to the army. The immediate interposition of Congress was rendered the more essential, too, by the sudden adjournment of the Assembly of this State, to whom the Bank might have been referred for the desired incorporation, which, it was the opinion of many, would have given them a sufficient legal existence in every State. You will conceive the dilemma in which these circumstances placed the members who felt on one side the importance of the Institution, and on the other a want of power, and an aversion to assume it. Something like a middle way finally produced an acquiescing, rather than an affirmative, vote. A charter of incorporation was granted, with a recommendation to the States to give it all the necessary validity within their respective jurisdictions. As this is a tacit admission of a defect of power, I hope it will be an antidote against the poisonous tendency of precedents of usurpation.

In the ordinance lately passed for regulating captures, which I presume you have seen, a clause was inserted exposing to capture all merchandizes produced in Great Britain, if coming into these States, and within three leagues of the coast, although the property of a neutral nation. Congress have now recommended to the States to subject them to seizure, during the war, if found on land within their respective limits. These measures had become necessary to check an evil which was every day increasing, and which both enabled and encouraged Great Britain to persevere in the war, at the same time that it mortified our ally with daily seeing the fruits of his generosity to us remitted in payment to the rival of his nation and the enemy of both.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, January 15, 1782.

Dear Sir,—

The result of the attack on your administration was so fully anticipated that it made little impression on me.2 If it had been consistent with your sentiments and views to engage in the service to which you were called, it would have afforded me both unexpected and singular satisfaction, not only from the personal interest I felt in it, but from the important aid which the interest of the State would probably have derived from it. What I particularly refer to is her claim to Western territory. The machinations which have long been practised by interested individuals against this claim, are well known to you. The late proceedings within the walls of Congress, in consequence of the territorial cessions, produced by their recommendations to the States claiming the Western country, were, many weeks ago, transmitted for the Legislature by a Captain Irish. By the same conveyance I wrote to you on the subject. We have the mortification to find, by our latest letters from Richmond, that this gentleman had not, at the date of them, appeared there. As it is uncertain whether that information may not have totally miscarried, it will be proper to repeat to you that the States, besides Virginia, from which the cessions came, were Connecticut and New York. The cession of the former consisted of all her claim west of New York as far as the Mississippi. That of the latter, of all her claims beyond a certain western limit, drawn on the occasion. The cession of Connecticut extended to the soil only, expressly reserving the jurisdiction. That of New York made no reservation. These cessions, with that of Virginia, and sundry memorials from the Indiana and other land companies, were referred to a committee, composed of a member from New Hampshire, Rhode Island, New Jersey, Pennsylvania and Maryland. The ingredients of this composition prepared us for the complexion of their proceedings. Their first step was to investigate and discuss the respective titles of the States to the territory ceded. As this was directly in the face of the recommendation of Congress, which professed to bury all such discussions, and might prejudice future controversies between individual members of the Union, we refused to exhibit any evidence in favor of the title of Virginia, and endeavored, though in vain, to prevail on Congress to interdict the Committee from proceeding in the inquiry. The next step of the Committee was still more obnoxious. They went fully into a hearing of the memorialists through their agent, and received all the evidence adduced in support of their pretensions. On this occasion we renewed our remonstrances to the Committee, and our complaints to Congress, but with as little effect as on the first occasion. The upshot of the whole was a report to Congress, rejecting the cessions of Connecticut and Virginia, and accepting that of New York; disallowing also the claims of the companies northwest of the Ohio, but justifying that of the Indiana company. The report seems to distrust the doctrine hitherto maintained, of territorial rights being incident to the United States collectively, which are not comprehended within any individual State; substituting the expedient of recognizing the title of New York,

stretching over the whole country claimed by the other ceding States, and then accepting a transfer of it to the United States. In this state the business now rests—the report having never been taken into consideration; nor do we wish it should, till it shall have undergone the consideration of Virginia.

In whatever light the policy of this proceeding may be viewed, it affords an additional proof of the industry and perseverance with which the territorial rights of Virginia are persecuted, and of the necessity of fortifying them with every precaution which their importance demands. As a very obvious and necessary one, we long since recommended to the State an accurate and full collection of the documents which relate to the subject. If the arrival of Captain Irish had taken place before the adjournment of the Assembly, and during your stay with it, we flattered ourselves that the recommendation would have been attended to, and that the task would have fallen on you. As this was not the case, we have no hope at present of being enabled, from any other sources than the voluntary aid of individuals, to contradict even verbally the misrepresentations and calumnies which are daily levelled against the claims of Virginia, and which cannot fail to prepossess the public with errors, injurious at present to her reputation, and which may affect a future decision on her rights. Colonel Mason's industry and kindness have supplied us with some valuable papers and remarks. Mr. Jones has also received from Mr. Pendleton some judicious remarks on the subject. We are still, notwithstanding, far from possessing a complete view of it. Will you permit me to ask of you such information as your researches have yielded, with the observations which you have made in the course of them. I would not obtrude such a request on you if the subject were not of public importance, and if it could have been addressed with equal prospect of advantage elsewhere. Indeed, if you could prevail on yourself to spare as much time as would survey the whole subject, beginning with the original charter, pursuing it through the subsequent charters and other public acts of the crown, through the government of Virginia, and referring to all the transactions with the Indians which have been drawn into the question, the public utility, I am persuaded, would sufficiently reward you for the labor.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, January 22, 1782.

Dear Sir,—

Congress are much occupied and perplexed at present with the case of Vermont. The pretensions of that settlement to the character of an independent State, with the grounds on which they are made, and the countenance given them by Congress, are, I presume, pretty well known to you. It has long been contended, that an explicit acknowledgment of that character, and an admission of them into the Federal Union, was an act both of justice and policy. The discovery made through several channels, and particularly the intercepted letters of Lord G. Germaine, added such force to the latter of these considerations, that in the course of last summer preliminary overtures were made on the part of Congress for taking them into the Confederation, containing, as one condition on the part of Vermont, that they should contract their claims within the bounds to which they were originally confined, and guaranteeing to New York and New Hampshire all the territory without those bounds to which their encroachments had been extended. Instead of complying with this condition, they have gone on in their encroachments both on the New York and New Hampshire sides, and there is at this moment every symptom of approaching hostility with each of them. In this delicate crisis, the interposition of Congress is again called for, and, indeed, seems to be indispensable; but whether in the way of military coercion, or a renewal of former overtures, or by making the first a condition of a refusal of the last, is not so unanimously decided. Indeed, with several members, and, I may say, States in Congress, a want of power either to decide on their independence, or to open the door of the Confederacy to them, is utterly disclaimed; besides which the danger of the precedent, and the preponderancy it would give to the Eastern scale, deserve serious consideration. These reasons, nevertheless, can only prevail when the alternative contains fewer evils. It is very unhappy that such plausible pretenses, if not necessary occasions, of assuming power should occur. Nothing is more distressing to those who have a true respect for the constitutional modifications of power, than to be obliged to decide on them.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, January 22, 1782.

Dear Sir,—

The repeal of the impost act by Virginia is still considered as covered with some degree of mystery. Colonel Bland's representations do not remove the veil. Indeed, he seems as much astonished at it, and as unable to penetrate it, as any of us. Many have surmised that the enmity of Doctor Lee against Morris is at the bottom of it. But had that been the case, it can scarcely be supposed that the repeal would have passed so quietly. By this time, I presume, you will be able to furnish me with its true history, and I ask the favor of you to do it. Virginia could never have cut off this source of public relief at a more unlucky crisis than when she is protesting her inability to comply with the continental requisitions. She will, I hope, be yet made sensible of the impropriety of the step she has taken, and make amends by a more liberal grant. Congress cannot abandon the plan as long as there is a spark of hope. Nay, other plans on a like principle must be added. Justice, gratitude, our reputation abroad, and our tranquillity at home, require provisions for a debt of not less than fifty millions of dollars, and I pronounce that this provision will not be adequately met by separate acts of the States. If there are not revenue laws which operate at the same time through all the States, and are exempt from the control of each—the mutual jealousies which begin already to appear among them will assuredly defraud both our foreign and domestic creditors of their just claims.

The deputies of the army are still here, urging the objects of their mission. Congress are thoroughly impressed with the justice of them, and are disposed to do everything which depends on them. But what can a Virginia Delegate say to them, whose constituents declare that they are unable to make the necessary contributions, and unwilling to establish funds for obtaining them elsewhere? The valuation of lands is still under consideration.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.1

Philadelphia, February 7, 1782.

Dear Sir,—

Congress are still occupied with the thorny subject of Vermont. Some plan for a general liquidation and apportionment of the public debts is also under their consideration, and I fear will be little less perplexing. It is proposed that until justice and the situation of the States will admit of a valuation of lands, the States should be applied to for power to substitute such other rule of apportioning the expenditures as shall be equitable and practicable, and that Commissioners be appointed by the concurrent act of the United States and each State, to settle the accounts between them. The scheme is not yet matured, and will meet with many difficulties in its passage through Congress. I wish it may not meet with much greater when it goes down to the States. A spirit of accommodation alone can render it unanimously admissible; a spirit which but too little prevails, but which in few instances is more powerfully recommended by the occasion than the present. If our voluminous and entangled accounts be not put into some certain course of settlement before a foreign war is off our hands, it is easy to see they must prove an exuberant and formidable source of intestine dissensions.



[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Feb. 12, 1782.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

A conveyance by a waggon returning to your neighbourhood this moment presenting itself I make use of it to forward a collection of papers which have accumulated since the last supply. If there are any deficiencies be so good as to point them out to me. By the same conveyance I send to M<sup>r</sup>. W. Maury 4 English grammars the price of which is 3 dollars which he is to remit thro' you.

The disappointment in forwarding the money by Mr. Brownlow has been sorely felt by me, and the more so as the Legislature has made no provision for the subsistence of the Delegates that can be relied on.<sup>1</sup> I hope some opportunity will soon put it in your power to renew the attempt to transmit it, & that the delay will have made considerable addition to it. Besides the necessity of this supply for the common occasions, I have frequent opportunities here of purchasing many scarce & necessary books at  $\frac{1}{4}$  of the price which if to be had at all they will hereafter cost me. If an immediate conveyance does not present itself for the cash, I w<sup>d</sup>. recomend that a bill of exchange on some merchant here be got of Mr. Hunter, Mr. Maury or other respectable merchant, & forwarded by the post. This is a safer method than the first and I make no doubt is very practicable. I wish at all events the trial to be made & that speedily.

I recollect nothing new which is not contained in some of the late papers. Present my affectionate regards to all the family. I have not time to add more than that I am,

Your Dutiful Son.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, February 25, 1782.

Dear Sir,—

You have been misinformed, I find, with respect to that article in the scheme of the Bank, which claims for it the exclusive privilege of issuing circulating notes. It is true, Congress have recommended to the States to allow it such privilege, but it is to be considered only during the present war. Under such a limitation it was conceived both necessary to the success of the scheme, and consistent with the policy of the several States; it being improbable that the collective credit and specie of the whole would support more than one such institution, or that any particular State would, during the war, stake its credit anew on any paper experiment whatever.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, March 18, 1782.

Dear Sir,—

I have met with a bundle of old pamphlets belonging to the public library here, in which is a map<sup>2</sup> published in 1650, which, from this and other circumstances, I am pretty confident is of the same impression with that of Dr. Smith's. It represents the South Sea at about ten days' travel from the heads or falls, I forget which, of James River. From the tenor, however, of the pamphlet to which it is immediately annexed, and indeed of the whole collection, there is just ground to suspect that this representation was an artifice to favor the object of the publications, which evidently was to entice emigrants from England by a flattering picture of the advantages of this country, one of which, dwelt on in all the pamphlets, is the vicinity of the South Sea, and the facility it afforded of a trade with the Eastern world. Another circumstance, which lessens much the value of this map to the antiquary, is, that it is more modern by twenty-five years than those extant in Purchase's Pilgrim, which are referred to in the negotiations between the British and French Commissaries touching the bounds of Nova Scotia, as the first of authenticity relating to this part of the world. If, notwithstanding these considerations, you still desire that a copy be taken from the map above described, I shall with pleasure execute your orders; or if you wish that a copy of Virginia, or of the whole country, may be taken from those in Purchase, your orders shall be equally attended to. I much doubt, however, whether that book be so extremely scarce as to require a transcript from it for the purpose you seem to have in view.

Congress have taken no step in the business of the Western territory since the report of the Committee, of which I have already given you an account, and which, we hear, arrived at Richmond on the day of the adjournment of the Assembly. We wish it to undergo their consideration, and to receive their instructions before we again move in it.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON. 1

Philadelphia, March 19, 1782.

Dear Sir,—

The Ministerial speeches, with other circumstances, place it beyond a doubt that the plan for recovering America will be changed. A separate peace with the Dutch—a suspension of the offensive war here—an exertion of their resources thus disencumbered against the naval power of France and Spain—and a renewal of the arts of seduction and division in the United States, will probably constitute the outlines of the new plan. Whether they will succeed in the first article of it, cannot be ascertained by the last intelligence we have from Holland. It is only certain that negotiations are on foot, under the auspices of the Empress of Russia.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, March 26, 1782.

Dear Sir,—

A letter has been lately received from you by the President of Congress, accompanied by a bundle of papers procured from the Cherokees by Colonel Campbell. As it appears that these papers were transmitted at the request of the late President, it is proper to apprize you that it was made without any written or verbal sanction, and even without the knowledge of Congress; and not improbably with a view of fishing for discoveries which may be subservient to the aggressions meditated on the territorial rights of Virginia. It would have been unnecessary to trouble you with this, had it not appeared that Colonel Campbell has given a promise of other papers; which if he should fulfil, and the papers contain any thing which the adversaries of Virginia may make an ill use of, you will not suffer any respect for the acts of Congress to induce you to forward hither.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Philad<sup>a</sup>. March 30<sup>th</sup>. 1782.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

Mr. J. Walker has safely delivered to me three letters from you attended with the money therein specified. He has also been so obliging as to undertake the conveyance of the several articles of medicine you wanted with a gallon keg filled with good Port wine; to all which I add a large packet of Newspapers—and an almanack. The last packet I sent was by a waggon returning to your neighborhood which brought me a letter from M<sup>r</sup>. W. Maury, by which I sent at the same time a small supply of Bark for my Mother.

I mentioned to you in one of my former letters that I had a prospect of getting on very favorable terms a few scarce books from a library brought hither for sale by Col. Lane. My purchases of him have amounted in the whole to nineteen pounds three shillings of this currency. As I had not the money here for him, & he could not conveniently wait till it would be convenient for me to pay him, I was obliged to give him a draught on you. I hope you will be able to find means to satisfy it. If it can not be otherwise done than by a deduction from the further supply you have in contemplation for me I must submit to it. How far I shall depend on you for the resources necessary for my expenses here not included in the legal provision, and for the arrearages into which I have unavoidably fallen, will be known as soon as the assembly have finally decided on our accounts & the allowance which is to be made to us. This I suppose will be done at their session in May next. Unless liberal principles prevail on the occasion, I shall be under the necessity of selling . . . a negro.

The newspapers will give you in general the intelligence we have from Europe. As far as we are enabled to judge of the views of the British Cabinet, the misfortunes of one more campaign at least will be necessary to conquer their obstinacy. They are attempting a separate peace with the Dutch & talk of suspending their offensive war ag<sup>st</sup>. us, & directing their whole resources ag<sup>st</sup>. the naval power of France & Spain. If this be their real plan we may be sure they do not mean by it to abandon their pretensions to the U. States but try another mode for recovering them. During their offensive exertions ag<sup>st</sup>. our ally, they can be practicing insidious ones ag<sup>st</sup>. us: and if in the first they should be successful & in the latter disappointed, a renewal of a vigorous war upon us will certainly take place. The best security ag<sup>st</sup>. every artifice & every event will be such military preparations on our part as will be sufficient either to resist or expell them as the case may require.

With My Affectionate Regards For The Family  
I Am Hon<sup>D</sup>. Sir Y<sup>R</sup>. Dutiful Son

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.1

Philadelphia, April 2, 1782.

Dear Sir,—

The only event with which the period since my last has enabled me to repay your favor of the twenty-fifth ultimo, is the arrival of four Deputies from Vermont, with a plenipotentiary commission to accede to the Confederacy. The business is referred to a committee who are sufficiently devoted to the policy of gaining the vote of Vermont into Congress. The result will be the subject of a future letter.

The thinness, or rather vacancy, of the Virginia line, and the little prospect of recruiting it, are subjects of a very distressing nature. If those on whom the remedy depends were sensible of the insulting comparisons to which they expose the State, and of the wound they give to her influence in the general councils, I am persuaded more decisive exertions would be made. Considering the extensive interests and claims which Virginia has, and the enemies and calumnies which these very claims form against her, she is perhaps under the strongest obligation of any State in the Union, to preserve her military contingent on a respectable footing; and unhappily her line is perhaps, of all, in the most disgraceful condition. The only hope that remains is, that her true policy will be better consulted at the ensuing Assembly, and that as far as a proper sense of it may be deficient, the expostulations of her friends, and clamors of her enemies, will supply the place of it. If I speak my sentiments too freely on this point, it can only be imputed to my sensibility to the honor and interest of my country.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, April 9, 1782.

Dear Sir,—

I perceive, by a passage cited in the examination of the Connecticut claim to lands in Pennsylvania, that we have been mistaken in supposing the acquiescence of Virginia in the defalcations of her chartered territory to have been a silent one. It said that “at a meeting of the Privy Council, July 3d, 1633, was taken into consideration the petition of the planters of Virginia, remonstrating that some grants had lately been obtained of a great proportion of the lands and territories within the limits of the Colony there; and a day was ordered for further hearing the parties, (to wit: Lord Baltimore, and said adventurers and planters.)” The decision against Virginia is urged as proof that the Crown did not regard the charter as in force with respect to the bounds of Virginia. It is clearly a proof that Virginia at that time thought otherwise, and made all the opposition to the encroachment which could then have been made to the arbitrary acts which gave birth to the present revolution. If any monuments exist of the transactions of Virginia at the period above mentioned, or any of the successive periods, at which these encroachments had been repeated, you will have an opportunity of searching more minutely into them. It is not probable, however, that after a failure in the first opposition any further opposition will be found to subsequent grants out of Virginia.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Philadelphia, April 16, 1782.

Dear Sir,—

I entreat that you will not suffer the chance of a speedy and final determination of the Territorial Question, by Congress, to affect your purpose of tracing the title of Virginia to her claims. It is, in the first place, very uncertain when a determination will take place, even if it takes place at all; and in the next it will assuredly not be a final one, unless Virginia means to be passive and silent under aggression on her rights. In every event, therefore, it is proper to be armed with every argument and document that can vindicate her title. Her adversaries will be either the United States, or New York, or both. The former will either claim on the principle that the vacant country is not included in any particular State, and consequently falls to the whole, or will clothe themselves with the title of the latter by accepting its cession. In both cases it will be alleged, that the charter of 1609 was annulled by the resumption of it into the hands of the Crown, and that the subsequent grants to Maryland, &c., denote this to have been the construction of it; that the proclamation of 1763 has constituted the Alleghany ridge the Western limit of Virginia, and that the letter of President Nelson, on the subject of a new Colony on the Ohio, relinquishes on the part of Virginia all interference with the authority of the Crown beyond that limit. In case the title of New York should alone be opposed to that of Virginia, it will be further alleged against the latter, that the treaties of 1684, 1701, 1726, 1744, and 1754, between the Government of the former and the Six Nations, have annexed to it all the country claimed by these nations and their tributaries, and that the expense of New York in defending and protecting them ought in equity to be reimbursed by this exclusive advantage. The original title of New York is indeed drawn from the charter to the Duke of York in 1663-4, renewed after the treaty of Westminister in 1674. But this charter will not, I believe, reach any territory claimed by Virginia.

Much stress will also be laid on the treaty of Fort Stanwix, particularly as a bar to any corroboration of the claim of Virginia from the treaties of Lancaster and Loggstown. It is under this treaty that the companies of Indiana and Vandalia shelter their pretensions against the claims of Virginia, &c. &c. See the pamphlets entitled “Public Good” and “Plain Facts.” As these pretensions can be of no avail, unless the jurisdiction of Congress, or New York at least, can be established, they no otherwise deserve notice than as sources of calumny and influence in the public councils; in both which respects it is the interest of Virginia that an antidote should be applied.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, April 23, 1782.

Dear Sir,—

Congress have received from the Minister of France some informal communications relative to the issue of the proposed mediation of Vienna and Petersburg. The answer of the British Court to the preliminary articles is among them. It rejects explicitly that part of the plan which requires concurrent negotiations between her and America, and guaranties the result, as incompatible with the relation of subjects to their sovereign, and the essential interests of the Empire; alleging, at the same time, that a great part of the people are disposed to return to their allegiance, and that such a treaty would supply the rebels with new pretexts for misleading them. The final answer of the mediating Courts professes great impartiality and delicacy toward the belligerent parties; adheres to the expediency of the first plan, and hopes that it may still become, under more favorable circumstances, the basis of a general pacification.

Another letter has come to hand from Mr. Dana. His proposed step was probably taken a few days after the date of it, which was about the middle of October.

The Committee on the last application from Vermont have reported fully in their favor. The consideration of the report will not be called for, however, till the pulse of nine States beats favorably for it. This is so uncertain that the agents have returned. The recognition of the Independence of Vermont is not fully stated in the report, as a resolution, antecedent, went to authorizing a committee to treat with them on the terms of their admission. You will know the object of this arrangement.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May, 1782.

Dear Sir,—

The enclosed gazette details all the information which we have received relative to the parliamentary advances towards a negotiation with the United States. The first reports which issued from the packet which brought them, were of a very different complexion, and raised high expectations of peace. We now find the ideas of the opposition, as well as the Ministry, to be far short of the only condition on which it can take place. Those who are the farthest reconciled to concessions calculate on a dissolution of the compact with France. The Ministry will yield to the experiment, and turn the result upon their adversaries. Our business is plain. Fidelity to our allies, and vigor in military preparation,—these, and these alone, will secure us against all political devices.

We have received no intelligence which speaks a danger of a separate peace between the Dutch and Great Britain. Mr. Adams' request of a categorical answer was taken, *ad referendum*, prior, if I mistake not, to the knowledge of Cornwallis' fate; and it is not likely that after that event they would be less disposed to respect our overtures, or reject those of the enemy.

We have letters from Mr. Jay and Mr. Carmichael of as late date as the twenty-seventh of February. They differ in nothing from the style of the former. The conduct of the Spanish Court subsequent to the date of the letter received the day preceding your departure, corresponds entirely with the tenor of it as therein related. Mr. Jones will inform you of the act of Congress which that letter produced.

We have made no progress in the Western subject. We mean to desist, after one or two more attempts, and state the matter to the Assembly by next post, expecting that they will pursue such measures as their interest prescribes, without regard to the resolutions which proposed the cession.

I beg you to keep me punctually informed of every legislative step touching the Western territory. I suppose the cession cannot fail to be revoked, or, at least, a day of limitation set to it. The condition relative to the companies will certainly be adhered to in every event. I find that those who have been against us do not wish to lose sight of the prospect altogether. If the State is firm and prudent, I have little doubt that she will be again courted. Previous to Mr. Jones' departure, our opinions were united on the expediency of making the impost of five per cent. subservient to an honorable adjustment of territory and accounts. I have since discovered that Varnum is left out, the latter having promoted it, and that Chase is inflexible against it. Massachusetts also holds out. The expedient, therefore, would not be efficacious, and clamors would

be drawn on Virginia, which it would be best should fall elsewhere. Show this to Mr. Jones. He will be with you about the twentieth instant.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May 14, 1782.

Dear Sir,—

The Ceres man-of-war, we are informed by a New York paper, arrived there, in twenty-five days, on the fifth instant, having on board His Excellency, Sir Guy Carleton, Commander-in-Chief, &c., and *commissioned for making peace or war* in North America. The intelligence brought by this conveyance is, that the vibrations of power between the Ministry and their rivals had terminated in the complete dissolution of the former and organization of the latter. What change of measures will follow this change of men is yet concealed from us. The bill for empowering the King to conclude a peace or truce with the revolted Colonies in North America had been brought into Parliament on the twenty-seventh of March. The language of it is at the same time cautious and comprehensive, and seems to make eventual provision for our independence, without betraying any purpose of acknowledging it. The terms peace and truce are scarcely applicable to any other conventions than national ones. And the King is authorized to annul or suspend all acts of Parliament whatever, as far as they speak of the Colonies. He can, therefore, clearly remove any parliamentary bar to his recognition of our Independence, and I know of no other bar to his treating with America on that ground. All this is, however, very different from a real peace. The King will assuredly prefer war as long as his Ministry will stand by him, and the sentiments of his present Ministry, particularly of Shelburne, are as peremptory against the dismemberment of the Empire as those of any of their predecessors. They will at least try a campaign of negotiation against the United States, and of war against their other enemies, before they submit to it. It is probable that the arrival of Sir Guy Carleton will not long precede an opening of the first campaign. Congress will, I am persuaded, give a proper verbal answer to any overtures with which he may insult them; but the best answer will come from the States, in such supplies of men and money as will expel him and all our other enemies from the United States.

We have at length brought our territorial business to an issue. It was postponed *sine die* on the sixth instant. We have transmitted the whole proceeding to the Governor, to be laid before the Assembly.

There are various accounts from the West Indies, which render it pretty certain that an engagement has taken place between the two fleets. The circumstances are not ascertained. The issue seems, at least, to have been so far in favor of our allies as to leave them free to pursue their course with their convoy to Hispaniola, where a junction is to be made with the Spaniards. The object of this junction is universally supposed to be Jamaica.

Since I finished the above, a letter has come to Congress from General Washington, enclosing one to him from Sir Guy Carleton, announcing his commission, in

conjunction with Admiral Digby, to treat of peace with this country, and requesting a passport for his secretary, Mr. Morgan, to bring a similar *letter of compliment* to Congress. The request will certainly be refused, and General Washington probably directed to receive and forward any despatches which may be properly addressed to Congress.

A public audience was yesterday given to the Minister of France, in which he formally announced the birth of the Dauphin. It was deemed politic at this crisis to display every proper evidence of tionate attachment to our ally. The Minister was accordingly received with military honors, and the audience concluded with the discharge of cannon, and a *feu de joi* of small arms. A public entertainment followed, and fireworks at night closed the scene.

The answer reported by the committee on Mr. Dana's letter gave him a cautionary instruction. It afterwards went to the Secretary of Foreign Affairs, and thence, I suppose, in his dress, to Petersburg. Mr. Jones will give you more satisfactory information on this, as also with respect to the answer to Mr. Jay's letter.

Your surmises relative to a revival of paper currency alarms me. It is impossible that any evil can render such an alternative eligible. It will revive the hopes of the enemy, increase the internal debility of the States, and awaken the clamors of all ranks throughout the United States against her. Much more to Virginia's honor would it be to rescind the taxes, although the consequence of that can but be of a most serious nature.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Phil<sup>a</sup>., May 20th, 1782.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

Having written a letter and enclosed it with a large collection of Newspapers, for you which was to have been carried by M<sup>r</sup>. J. Smith, but which I have now put into the hands of Capt: Walker, whose return will be quicker, little remains for me to add here. Our anxiety on account of the West India news, published at New York is still supported by contradictory reports and conjectures. The account however to which Rodney's name is prefixed renders our apprehensions too strong for our hopes. Rivington has been very bold in several of his spurious publications, and at this conjuncture might venture as far to serve a particular turn as at any. But it is scarcely credible that he would dare or be permitted to sport with so high an official name.

If M<sup>r</sup>. Jefferson will be so obliging as to superintend the legal studies of W<sup>m</sup>. I think he cannot do better than prosecute the plan he has adopted. The interruption occasioned by the Election of Mr. J. 1 although inconvenient in that respect, is by no means a decisive objection ag<sup>st</sup>. it.

I did not know before that the letters which M<sup>r</sup>. Walker was to have carried last fall had met with the fate which it seems they did. I shall be more cautious hereafter. The papers missing in your list were I presume for I do not recollect, contained in them.

The short notice does not leave me time to obtain the information you ask as to Stiles. I have never heard of Iron Stiles cast here, nor do I know the price of Copper ones.

If Continental money passes here at all it is in a very small quantity, at very great discount, and merely to serve particular local & temporary ends.

It has at no time been more difficult for me to fix my probable return to Virg<sup>a</sup>. At present all my Colleagues have left Congress except Col: Bland, and it is a crisis which calls for a full representation from every State. Anxious as I am to visit my friends, as long as I sustain a public trust, I shall feel a principle which is superior to it. The state of my finances also, unless the Assembly shall make a different provision for the Delegates from what has hitherto been in force, will be a serious bar to my removal from this place. I shall I believe be under the necessity of purchasing a carriage of some kind besides discharging considerable arrears, & where the means for effecting either are to be found is totally without my comprehension. \* \* \* \* \*

I Am, Etc.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May 21, 1782.

Dear Sir,—

Your favor of the 10th was received yesterday. I suspect that I have expressed myself ambiguously with respect to Mr. Jefferson. He does not allege ignorance of the report of the committee, but of the title of New York, which is the ground on which the report places the controversy with Virginia.

The final report of our suit to Congress for an answer to the Western cession was sent by the last post. Mr. Jones can explain every thing relative to it. I feel myself much disburdened by the termination of the business. If it should be revived here, in consequence of steps taken by the Legislature, I flatter myself it will be under circumstances less embarrassing.



[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May 28, 1782.

Dear Sir,—

A letter from Dr. Franklin, of the fourth March, informs the Superintendent of Finance that the Court of France had granted an aid of six millions of livres to the United States for the present year. It appears, however, that this aid has been wholly anticipated, as well as the aids of the last year, by bills of exchange; by supplies for the army, particularly those in Holland; by the debt of Beaumarchais, amounting to two millions and a half of livres; by the interest money; by the deduction on account of Virginia, computed at seven hundred thousand livres, &c. The States must, therefore, by some means or other, supply the demands of Congress, or a very serious crisis must ensue. After the differences between the modes of feeding the army by contracts and by the bayonet have been experienced both by the army and the people, a recurrence to the latter cannot be too much dreaded.

The Province of Friesland has instructed its Delegates in the States General to concur in a public reception of Mr. Adams. The city of Dort has done the same to theirs in the Provincial Assembly of Holland.

The above letter came by the Alliance, which is arrived at Rhode Island. Captain Barry, I am told, says that the Marquis will come with a squadron for the American coast, which was equipping. If this be true, Barry is wrong in disclosing it. I distrust it.

A French cutter is since arrived, after a short passage, with despatches for the Minister here. He received them on Saturday by an express from Salem, and has not yet communicated their contents to Congress. I understand, through the Secretary of Foreign Affairs, that the Court of London has lately proposed to the Court of France a separate peace, as the price of which she would place Dunkirk in its former state, make some sacrifices in the East Indies, and accede to a *status quo* in the West Indies. The answer of France was dictated by her engagements with the United States. This insidious step taken at the same moment with the agency of Mr. Carleton, will, I hope, not long be withheld from the public. We have heard nothing from this gentleman since the answer to his request of a passport for his secretary.

In order to explain our public affairs to the States, and to urge the necessity of complying with the requisitions of Congress, we have determined to depute two members to visit the Eastern States, and two the Southern. The first are Root and Montgomery; the others, Rutledge and Clymer. I put this in cypher, because secrecy has been enjoined by Congress. The deputation will probably set off in a few days.

I find that the Minister of France has been informed, by some correspondent in Virginia, that the late intelligence from Britain has produced very unfavorable symptoms in a large party. He seems not a little discomposed at it. The honor of the State concurred with my own persuasion in dictating a consolatory answer to him. For this reason, as well as for others, I think it would be expedient for the Legislature to enter into an unanimous declaration on this point. Other States are doing this, and such a mode of announcing the sense of the people may be regarded as more authentic than a declaration from Congress. The best form, I conceive, will be that of an instruction to the Delegates. Do not fail to supply me with accurate and full information on the whole subject of this paragraph.

A letter from Dr. Franklin, of thirtieth of March, enclosing a copy of one to him from Mr. Adams, at the Hague, was laid before Congress subsequently to writing the above. By these, it appears not only that an essay has been made on the fidelity of France to the alliance, but that the pulse of America has been at the same time separately felt through each of those Ministers. They both speak with becoming indignation on the subject, attest the firmness of our ally, and recommend decisive efforts for expelling the enemy from our country. Mr. Adams says, 'ten or eleven cities of Holland have declared themselves in favor of American Independence, and it is expected that to-day or to-morrow this Province will take the decisive resolution of admitting me to my audience. Perhaps some of the other Provinces may delay it for three or four weeks, but the Prince has declared that he has no hopes of resisting the torrent, and, therefore, that he shall not attempt it. The Duke de la Vauguyon has acted a very friendly and honorable part in this business, without, however, doing any ministerial act in it.' What was said above of Friesland came from Mr. Barclay, the Consul. Mr. Adams says nothing of that Province, although his letter is of later date.

The Secretary of War has just given notice to Congress, that the Department of Finance is unable to supply the essential means of opening the campaign. This shocks, rather than surprises, us. It will be one article in the communications of the deputies above mentioned, and adds force to the expediency of their mission.

The denial to Congress of the right of granting flags is singular indeed. May not the power of Congress to agree to a truce be contested on the same grounds? The former is a partial truce, and if the silence of the Confederation reserves it to the States, the same silence reserves the latter. Admitting that Congress had the right of granting flags, was it not exercised to the advantage of Virginia in procuring a vent to her staple, and stopping the exportation of her specie?

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, May 29, 1782.

Dear Sir,—

I wrote you yesterday morning by the post, fully and in cypher. As I am told, however, the bearer will probably be in Richmond before the post, it may not be amiss to repeat to you that we have heard nothing from Carleton since our refusal of the passport to his secretary, and that we have authentic information from Europe, that insidious attempts have been made both on Doctor Franklin and Mr. Adams, by British emissaries, as well as tempting overtures employed to divide our ally from us. These machinations have served no other end than to expose the meanness and impotence of our enemy, and to supply fresh proofs of the indissoluble nature of the alliance. Mr. Adams begins to advance with considerable speed towards the object of his mission in Holland.

The action in the West Indies is still wrapt up in darkness. The enclosed paper contains a specimen of the obscure and contradictory advices which have alternately excited our hopes and our apprehensions.

A copy of sundry resolutions of the House of Delegates, touching the exportation of tobacco in the flags, was laid before Congress yesterday by the Superintendent of Finance, and referred to a committee. On a review of the doctrine of the ninth Article of Confederation, I believe, the right of the State to prohibit in the present case the exportation of her produce cannot be controverted. The States seem to have reserved at least a right to subject foreigners to the same imposts and prohibitions as their own citizens; and the citizens of Virginia are at present prohibited from such an exportation as is granted in favor of the British merchants. This is a very interesting point, and unless the division line between the authority of Congress and the States be properly ascertained, every foreign treaty may be a source of internal as well as foreign controversy. You will call to mind one now in negotiation, which may be affected by the construction of this clause in the Confederation. Congress have no authority to enter into any convention with a friendly power which would abridge such a right. They cannot have a greater authority with respect to a hostile power. On the other side, it is equally clear, that the State has no authority to grant flags for the exportation of its produce to the enemy. Armed vessels would not respect them, nor would they be more respected in the Courts of Admiralty. Unless Congress and the State, therefore, act in concert, no tobacco can be remitted to New York, and a further drain of specie must ensue. When the matter was first opened in Congress, the impression was unfavorable to the right of the States, and pretty free strictures were likely to be made on its opposition to the constitutional power of Congress. It became necessary, therefore, to recur to the law and the testimony, which produced an acquiescence in the contrary doctrine. Their sentiments, however, with regard to the policy and consistency of the resolutions, are very different. The last resolution in

particular, compared with the preliminary doctrines, produces animadversions, which I need not recite to you. There are several reasons which make me regret much this variation between Congress and Virginia, of which a material one is that a great personage will be touched by it, since it originates in his act; and, since a conference between a committee and him and the Superintendent, he concurred in the expediency of granting the passports.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June 4, 1782.

Dear Sir,—

According to your request, I send an authenticated extract from the Journals of the vote of Congress on the clause which interdicts British manufactures. It has, however, been for some time in print, and will probably be at Richmond before you receive the manuscript copy. The arguments urged against the measure appear to me in the same light in which you describe them. The policy of Great Britain in the capture of St. Eustatia has been constantly reprobated by some of the wisest statesmen. But whatever her policy might at that period be, it is manifest that a very different one is now pursued. British goods are issued from the enemy's line with greater industry than they have ever been, and, as is universally believed, with the knowledge, if not at the instigation, of those in power. Indeed, they would counteract their new system in doing otherwise. The sense of the Eastern States will appear from the eyes and noses on the question. Mr. Adams, in his last despatches, ascribes much of the late pacific symptoms in the British nation, and of the facilities which begin to attend the mission in Holland, to our proscription of the British merchandize.

You have not sufficiently designated the papers from Mr. R. Morris, from which you wish an extract. I do not recollect, nor can I find, any letter which contains a state of the finances, except his circular letters, which may be found either among the Legislative or Executive archives. If you should be disappointed in these researches, I will, on a renewal of your demands, renew my researches. My charity, I own, cannot invent an excuse for the prepense malice with which the character and services of this gentleman are murdered. I am persuaded that he accepted his office from motives which were honorable and patriotic. I have seen no proof of misfeasance. I have heard of many charges which were palpably erroneous. I have known others, somewhat suspicious, vanish on examination. Every member in Congress must be sensible of the benefit which has accrued to the public from his administration; no intelligent man out of Congress can be altogether insensible of it. The Court of France has testified its satisfaction at his appointment, which I really believe lessened its repugnance to lend us money. These considerations will make me cautious in lending an ear to the suggestions even of the impartial; to those of known and vindictive enemies, very incredulous. The same fidelity to the public interest which obliges those who are its appointed guardians, to pursue with every rigor a perfidious or dishonest servant of the public, requires them to confront the imputations of malice against the good and faithful one. I have, in the conduct of my colleague here, a sure index of the sentiments and objects of one of my colleagues who is absent, relative to the Department of Finance.

The Chevalier de la Luzerne tells us he has written to the General on the subject of the transaction between them, and has no doubt that the difficulties which attended it will be removed.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June, 1782.

Dear Sir,—

General Washington has transmitted to Congress sundry informations he has received, of preparations at New York for expediting from thence a considerable number of ships. Whether they are to convoy troops, and whither, or to bring off troops from other places, is uncertain. He has also transmitted to Congress an answer to him from General Carleton, on a demand, made at the instance of the Legislature of South Carolina, of a re-transportation of the exiles at the expense of the King of Great Britain. This demand was instituted, not executed, during the command of Clinton, from whom an imperious refusal was calculated upon. In pursuance of the views of the new system, his successor weeps over the misfortunes of the exiles, and in the most soothing language that could be framed, engages to comply fully with the application. This incident at once mortifies our pride and summons our vigilance. We have nothing further from Carleton on the main point.

The communication, expected in my last from the Minister of France, has been received, and afforded a very seasonable occasion, which was improved, of renewing the assurances suited to the present crisis.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June 6, 1782.

Dear Sir,—

Mr. Webb being detained till this morning, I enclose the gazette of it. You will find a singular extract from Lord North's budget. The speech was delivered on the eleventh of March. It must have been Mr. Ross's contract, therefore, and not Mr. Morris's, which supplied this article. I am just told that the Senate have put their veto on the resolutions of the House of Delegates against the latter. If an existing law, however, prohibits the exportation, and one branch of the Legislature protests against the authority of Congress to dispense with it, the Executive will scarcely suffer the tobacco to be exported. \* \* \* The proviso in the resolutions in favor of the contract of the State agents, furnishes, I find, a copious topic for anti-Virginian critics. It is inconsistent with the laws of the State—with the ordinances of Congress—with the treaty with France—with gratitude to our allies—for tobacco to be shipped to New York, by Mr. Morris, for the advantage of the United States; but if the identical tobacco be shipped by Mr. Ross, for the advantage of Virginia, the inconsistency is done away in the eyes of the House of Delegates of Virginia.



[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June 11, 1782.

Dear Sir,—

I have your favor of the first instant. I hope you have received mine, although you do not acknowledge them. My punctuality has not been intermitted more than once or twice since your departure, and in no instance for a considerable time past.

I have written so fully concerning the flags that I have nothing to add on that subject, but that I wish the Senate may, by their perseverance on this occasion, exemplify the utility of a check to the precipitate acts of a single legislature.

Having raised my curiosity by your hints as to certain manœuvres, you will not forget your responsibility to gratify it. The pleasure I feel at your being included in the commission for vindicating the claims of Virginia, is considerably impaired by my fears that it may retard your return hither.

Great as my partiality is to Mr. Jefferson, the mode in which he seems determined to revenge the wrong received from his country does not appear to me to be dictated either by philosophy or patriotism.2 It argues, indeed, a keen sensibility and strong consciousness of rectitude. But this sensibility ought to be as great towards the relencings as the misdoings of the Legislature, not to mention the injustice of visiting the faults of this body on their innocent constituents.

Sir Guy Carleton still remains silent. The resolutions which the Legislatures of the States are passing, may, perhaps, induce him to spare British pride the mortification of supplicating in vain the forgiveness of rebels.

Mr. Izard, warm and notorious as his predilection for the Lees is, acknowledges and laments the opposition made by them to measures adapted to the public weal.

The letter in the first page of the Gazette of this morning was written by Mr. Marbois.1 In an evening of promiscuous conversation I suggested to him my opinion, that the insidiousness of the British Court, and the good faith of our ally, displayed in the late abortive attempt of the former to seduce the latter, might with advantage be made known, in some form or other, to the public at large. He said he would think of the matter, and next day sent me the letter in question, with a request that I would revise and translate it for the press, the latter of which was done. I mention this that you may duly appreciate the facts and sentiments contained in this publication.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June 18, 1782.

Dear Sir,—

I received no letter from you yesterday, nor shall I receive any for that week, unless it be through the channel of Rivington's Gazette, the post having been robbed of his mail on Saturday evening last in Maryland. I hope your letter did not contain anything not in cypher which is unfit for the public eye. The policy, however, which seems to direct Carleton's measures, renders it probable that he will decline the mean expedient pursued on such occasions by his predecessors for giving pain to individuals. It will be proper for us to take from this accident an admonition to extend the use of our cypher.

The trade with New York begins to excite general indignation, and threatens a loss of all our hard money. The continued drains which it makes from the bank must at least contract its utility, if it produces no greater mischief to it. The Legislature of New Jersey are devising a remedy for this disgraceful and destructive traffic, and a Committee of Congress are also employed in the same work. I have little expectation that any adequate cure can be applied, whilst our foreign trade is annihilated, and the enemy in New York make it an object to keep open this illicit channel.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, June 25, 1782.

Dear Sir,—

Your favor of the fifteenth, being more fortunate than the preceding one, came safe to hand yesterday. The loss of the mail is the more provoking, as it is said to have contained a packet from New York, which had been intercepted on its passage to England and carried to North Carolina.

The illicit trade with the British lines has been pushed so far, under the encouragement of the enemy, as to threaten a deep wound to our finances. Congress have renewed the exhortation to the States on this subject, and recommended to the people, through them, a patriotic co-operation with the public measures. This trade, we have also discovered, is carried on with considerable effect, under collusive captures. This branch of the iniquity falls properly within the purview of Congress, and an ordinance for its excision is in the hands of a committee.

A letter from Mr. Adams, of the eleventh of April, informs his correspondent that five of the seven provinces had decided in favor of a treaty with the United States, and that the concurrence of the remaining two might be expected in a few days. A Leyden paper, of a subsequent date, reduces the exception to a single province. It would seem, from a memorial from the merchants to the States General, that this resolution had been greatly stimulated by an apprehension that a sudden pacification might exclude their commerce from some of the advantages which England may obtain. The memorial appeals to the effect of the American trade on the resources of France, and to the short and indirect experience of it, which Holland enjoyed before the loss of St. Eustatia, as proof of its immense consequence. It observes, also, that the ordinance of Congress against British manufactures presented a precious crisis for introducing those of other nations; which ought to be rather embraced, as nothing would be so likely to dispose Britain to the independence of America and a general peace, as the prospect of her being supplanted in the commercial preference expected from the habits of her lost provinces.

The present conjecture with regard to the fleet mentioned in my late letters, is, that it conveyed a parcel of miserable refugees, who are destined to exchange the fancied confiscations of their rebellious countrymen, for a cold and barren settlement in Nova Scotia or Penobscot.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, July 2, 1782.

Dear Sir,—

The confidential and circumstantial communications, in your favor of the twentieth of June, have afforded me much pleasure. Those which relate to the scheme of garbling the delegation were far from surprising me. In a conversation with Mr. Jones, before he left Philadelphia, it was our joint inference, from a review of certain characters and circumstances, that such a scheme would be tried.

No addition has been made to our foreign intelligence in the course of the past week. Some of the republications from the European papers herewith sent throw light, however, on the general state of foreign affairs. Those which relate to Ireland, in particular, are very interesting. The Empress of Russia appears, by the memorial of her Ministers, to be more earnest in forwarding a reconciliation between England and Holland, than is consistent with the delicate impartiality she has professed as mediatrix, or with that regard which we flattered ourselves she felt for the interests of the United States.

One article of our late communications from France was, that the interest on the certificates is no longer to be continued, and that provision must be made within ourselves. This has caused great commotion and clamor, among that class of public creditors, against Congress, who, they believe, or affect to believe, have transferred the funds to other uses. The best salve to this irritation, if it could with truth be applied, would be a notification that all the States had granted the impost of five per cent., and that the collection and appropriation of it would immediately commence. It is easy to see that the States whose jealousy and delays withhold this resource from the United States, will soon be the object of the most bitter reproaches from the public creditors. Rhode Island and Georgia are the only States in this predicament, unless the acts of Virginia and Maryland should be vitiated by the limitations with which they are clogged.

No step has yet been taken in the instructions prepared before your departure. I expostulated a few days ago with Dr. Witherspoon on the subject, and prevailed on him to move in the business; but his motion only proved the watchfulness and inflexibility of those who think they advance towards their own objects, in the same proportion as they recede from those of Virginia. I have since shown him the report, and he is a confirmed advocate both for the innocence and expediency of it.

We are, even at this day, without official advice of the naval event of the twelfth of April, in the West Indies; nor have we any advices of late date from that quarter. There is little room to hope that the misfortune of our ally will be repaired by any subsequent enterprises.

Congress are much perplexed by the non-appearance of Connecticut at the time appointed for the meeting of her agents and those of Pennsylvania. We wish to avoid leaving her any pretext to revive the controversy, and yet the reasons for her neglect cannot be pronounced sufficient. Her adversary professes a strong jealousy that she means, by every artifice, to parry a decision during the war; and it cannot be denied that appearances but too well authorize it.

[\[Back to Table of Contents\]](#)

REPORT OF THE COMMITTEE CONSISTING OF MR. MADISON, MR. DUANE, & MR. CLYMER, RELATIVE TO THE INSTRUCTIONS OF MR. ADAMS—July 5<sup>Th</sup>, 1782.

The committee appointed to revise the instructions of M<sup>r</sup> Adams &c, recommend.

Mad. Mss.

That the Minister Plenipo: at the Hague be instructed, in case no definitive steps shall have been taken by him in the proposed Treaty of amity and commerce with the U. Provinces, to engage them if possible, in an express stipulation to furnish annually to the U. States, a loan of NA, with an interest not exceeding NA, the principal not to be demanded within NA years after the conclusion of the war, and the payment of the interest to be suspended during the war, or in case the U. Provinces shall refuse to stipulate such a loan, that the said Minister endeavor to obtain their engagements, to authorize and countenance a loan from their subjects & to guaranty if requisite the due payment of the interest & repayment of the principal by the U. States.

That in case definitive steps shall have been taken in the proposed Treaty, the said Minister Plenipo: be instructed still to represent to the U. Provinces the great advantages which would result as well to them as to the U. States from such pecuniary succours to the latter as would give stability to their finances and energy to their measures against the common Enemy. and to use his utmost address to prevail on them either to grant directly the loan abovementioned, or to support by such responsibility as may be necessary the applications made to individuals for that purpose, on the part of the U. States.

The Committee beg leave to observe that in the Treaty between the U. S. & M [ost] C [hristian] Majesty, it is among other things stipulated that the subjects of the parties “may by testament, donation, or otherwise dispose of their goods immoveable as well as moveable, in favor of such persons, as to them shall seem good, and the heirs of the respective subjects, wheresoever residing, may succeed them ab intestato without being obliged to obtain letters of naturalization:

That the plan of the proposed treaty between the U. S. & the U. P. with which the Minister Plenipo: of the former is furnished, extends this privilege to the subjects of the latter, under a general stipulation of the same privileges as are allowed to the most favor’d nation:

That as it is not probable that the U. P. have granted, or will grant this privilege even to the most favored nation, the said treaty if executed in its present form, will engage the U. S. in a concession which will not be reciprocal, and which if reciprocal, would not be equally beneficial to the parties.

That in the opinion of the committee it is at least questionable whether the extension of this privilege to the subjects of other powers than France and Spain will not encroach on the rights reserved by the federal articles to the individual States.

That without enquiring into the inconveniences which may result from an indefinite permission to aliens to hold & transmit real estates within this country the apparent reluctance of some of the States, notwithstanding the special clause in the federal articles with respect to France their favorable disposition towards her to pass the proper laws on this subject, renders their compliance in case of a similar engagement to another power, extremely precarious.

That in order to avoid these difficulties & consequences, the committee recommend further:

That the s<sup>d</sup> Minister Plenipo: be instructed in case no steps inconsistent therewith, shall have been taken, to decline stipulating to the subjects of the U. Provinces any right or privilege of holding any real estates within the U. States.1

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.2

Philadelphia, July 9, 1782.

Dear Sir,—

Your favors of the twenty-seventh were received this morning. I sincerely regret that any reports should have prevailed injurious to the patriotism of Williamsburg, and particularly that my name should, in any manner whatever, be connected with them. I informed Mr. Jones that the Minister of France had been made somewhat uneasy by some accounts from Virginia, and desired him to enable me to remove it by proper inquiries. It must have been a very gross mistake that could have built the reports in question on this letter, even if its contents had been known. You saw, I presume, the letter. I think I wrote you a letter to the same effect, but I am not sure.

The trade with the enemy at New York has at length, I am told, produced spirited and successful exertions among the people of New Jersey for suppressing it. The same alarm and exertions seem to be taking place in Connecticut. The ordinance of Congress against collusive captures on water has not yet passed. The mode of proof, and the distribution of the effects, occasioned some diversity of opinion, and a recommitment ensued. I am not very sanguine that any thing of efficacy will be done in the matter. Notwithstanding the supposed danger arising to the Bank from the exportation of hard money to New York, a dividend of four and a half per cent. for the first half year has been advertised to the stockholders. Will not this be very captivating to the avarice of the Dutchman, in case his apprehensions shall be removed by a political connection between the two countries?



[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, July 16, 1782.

Dear Sir,—

Notwithstanding the defensive professions of the enemy, they seem to be waging an active war against the post-riders. The mail for the Eastward, on Wednesday last, shared the same fate which the Southern mail did a few weeks ago, and, it is said, from the same identical villains. This operation has withdrawn them from their Southern stand, and secured the arrival of the mail, which brings your favor of the fifth instant. I fully concur in the change of cypher which you suggest, and understand the reference for a key-word. I have been in some pain from the danger incident to the cypher we now use. The enemy, I am told, have in some instances published their intercepted cyphers. On our first meeting, I propose to prepare, against another separation, a cypher framed by Mr. Livingston on a more enlarged and complicated plan than ours, of which he has furnished me several blank printed copies.

Your computation of the numbers in Virginia tallies exactly with one transmitted by Mr. Jefferson, in an answer to several queries from Mr. Marbois. It is as accurate as the official returns to the Executive of the Militia would admit. His proportion of the fencibles to the whole number of souls is stated precisely as your computation states it.

You will continue your information on the case of the flag, and send me the acts of the Legislature as fast as they are printed. Will you be so good, also, as to obtain from the Auditors a state of the balance due on the principles established by law, and let me know when and how it is to be applied for?—as also what chance there is of obtaining a regular remittance of future allowance?

General Washington and Count Rochambeau met here on Saturday evening. The object of their consultation is among the arcana of war.

A despatch from the Commander in Chief communicated to Congress yesterday a late correspondence between him and General Carleton, principally on the subject of two traitors, who, under cover of a flag, have exposed themselves to arrest in New Jersey, and had sentence of death passed upon them. General Carleton, among other observations on the subject, says that, “In a civil war, between people of one Empire, there can, during the contest, be no treason at all,”—and asks a passport for General Robinson and Mr. Ludlow to confer with General Washington, or persons appointed by him, and to settle arrangements on this idea. General Washington declines the conference, observing, that the proposed subject of it is within civil resort. Whereupon General Carleton asks—“Am I to apply to Congress to admit persons to conferences at Philadelphia? Can any deputation be sent by Congress to your camp to meet persons appointed by me? Or will you, sir, undertake to manage our common

interest?" The drift of all this need not be pointed out to you. As a counterpart to it, the British General proposes, in order to remove all objection to an exchange of soldiers for seamen, that the latter shall be perfectly free, and the former subject to the condition of not serving *against the thirteen Provinces* for one year, within which period he is very sanguine that an end will be put to the calamities of the present war.

The same despatch informs Congress that a party of the enemy have lately made a successful incursion upon the settlements of Mohawk, have re-occupied Oswego, and are extending themselves into the Western country. However little these movements may coincide with a defensive plan, they coincide perfectly with ideas which will not fail to be urged at a pacification.

Messrs. Montgomery and Root returned yesterday from their Eastern deputation. They have not yet made their report. The former complains that several of the States are appropriating the taxes, which they lay as their quota of the eight millions, to internal uses. He owns that the knowledge he has obtained of the case changed his mind on that head, and that if the ground was to be trodden over again, he should take a very different part in Congress. He adds, that the current opinion is, that a vessel arrived at Quebec brings a Royal Charter for Vermont; that the people there are in much confusion, and many of them disposed to re-unite with New Hampshire. A letter to Mr. Livingston, from Mr. Livermore, corroborates this good news. It imports that a very unexpected turn had taken place in the temper of the people, between the river and the ridge, that they were petitioning New Hampshire to be restored to that State, and that measures would be taken in concert with New York for that purpose. The revolution in the sentiments of Montgomery may be owing, in part, to the new relation in which Pennsylvania stands to Connecticut, which, he says, is governed on this occasion by interested individuals. The controversy between Pennsylvania and Connecticut will, I suppose, be now resumed, and put into a course for decision, the return of Mr. Root having removed the cause which suspended it.

In the beginning of this month, committees were appointed, in pursuance of a previous resolution for such an appointment every half-year, to examine into the proceedings of the several Executive Departments, and make report to Congress. This plan was adopted not only to discharge the general duty of Congress, and to satisfy their constituents, but also that such reports might shelter, in some degree, faithful officers from unmerited imputations and suspicions, as well as expose to just censure those of an opposite character. \* \* \*

This cypher, I find, is extremely tedious, and liable to errors.

General Carleton, in his letter to General Washington above quoted, says, with respect to Lippencot only, that the court had passed their judgment, and that as soon as the length of the proceedings would admit, a copy should be sent to him. It is inferred that this murderer will not be given up, and consequently a vicarious atonement must be made by the guiltless Asgill.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, July 23, 1782.

Dear Sir,—

I have at length the pleasure of presenting you with certain, though not official, intelligence of the recognition of our Independence by the States General. This event, with other interesting particulars, is contained in the enclosed gazettes. Among its salutary consequences to this country, I hope the people of Virginia will not be inattentive to its influence on the value of its staple, on which it is very probable speculations will be attempted.

The language and measures of the present Administration will furnish you with copious matter for reflection. If we had received fewer lessons of caution against sanguine expectations, I should, with confidence, explain them by a scheme for a general pacification, and for fathering on their predecessors all the obnoxious conditions which the public distresses may expose them to. If this solution were a just one, it ought, at the same time, to be remembered that the triumph of Rodney may give a new turn to their politics. It appears, from the paper from which the enclosed intelligence is republished, that this event had reached London; that it was received with great rejoicings; but that the public were still haunted with fears for Jamaica. Other articles, not included in the paper herewith sent, are the capture of one, if not two, French seventy-fours, with a number of transports for the East Indies, by Admiral Barrington; the capture of a British frigate, with some transports, by a Dutch ship of war; the capture of the valuable Island of Ceylon, from the Dutch, by Admiral Hughes; and of Negapatam, another of their important possessions, on the coast of Coromandel, with two ships, richly freighted with spices and other oriental productions. Ireland is likely to be indulged in every thing. In addition to a free trade and a free legislation, they have obtained the assent of the Lord Lieutenant to an Act of Parliament for emancipating the Catholics from their shackles on their religious rights, and on their tenures of real property. Your philanthropy will be gratified by my adding, as other proofs of the progress of light and freedom, the abolition of the inquisitorial jurisdiction in Sicily—the only part of the Neapolitan dominions where it was in force—and the inefficiency of the Pope's visit to Vienna in checking the liberal innovations of the Emperor in his ecclesiastical polity. \* \* \*

General Washington is still here. I have nothing to add to my last on the subject of Lippencot and Asgill.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, August 9, 1782.

Dear Sir,—

Extract of a letter from Carleton and Digby to General Washington, August the second: “We are acquainted, sir, by authority, that negotiations for a general peace have already commenced at Paris, and that Mr. Grenville is invested with full powers to treat with all parties at war, and is now at Paris in execution of his commission. And we are likewise, sir, further made acquainted, that His Majesty, in order to remove all obstacles to that peace which he so ardently wishes to restore, has commanded his ministers to direct Mr. Grenville that the independency of the Thirteen Provinces should be proposed by him, instead of making it a condition of a general treaty; however, not without the highest confidence that the loyalists shall be restored to their possessions, or a full compensation made them for whatever confiscations may have taken place.”

This is followed by information that transports are preparing to convey all American prisoners in England to the United States, and a proposition for a general exchange, in which seamen are to be placed against seamen as far as they will go, and the balance in favor of Great Britain to be redeemed by land prisoners—the former to be free, the latter not to serve in war against the Thirteen Provinces for one year. An embarkation is taking place at New York for Charleston, either to reinforce that garrison or replace it.

The preceding letter was published in New York, at the same time it was sent to General Washington. I commit this intelligence to your discretion, making no other remark than that it clearly calls for our watchfulness, at the same time that it flatters our expectations.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, August 13, 1782.

Dear Sir,—

I transmitted to you, a few days ago, by express, the contents of a letter from General Carleton and Admiral Digby to General Washington, announcing the purpose of the British Court to acknowledge the independence of the Thirteen Provinces. Our expected advices on this head from Europe are not yet arrived. A Mr. Blake, an opulent citizen of South Carolina, who came from Great Britain under a passport from Mr. Laurens to New York, and thence hither, assures us that the Administration are serious with respect to peace and the independence of this country; that the point, however, was carried in the Cabinet by a majority of two voices only; that their finances are so disordered that a continuance of the war is in a manner impracticable; that the militia at New York have been thanked for their past services, and told explicitly that they would not be wanted in future; that the evacuation of the United States will certainly take place this fall, and that a large number of transports are coming from England to remove the British garrisons, probably to the West Indies; that these transports will contain about two thousand five hundred Germans, who, it is supposed, in case of such an evacuation, will have the same destination; that Carleton told him, and desired him to mention it at large, that he was a real friend to America, and wished her to be powerful, rich, united, and happy, and secure against *all* her enemies; that he also intimated, in the course of conversation, that Canada would probably be given up as a fourteenth member of the Confederacy. You will draw such conclusions from these particulars as you think fit. The gentlemen of South Carolina vouch for the veracity of Mr. Blake. It appears to me much more clear that the Ministry really mean to subscribe to our independence, than that they have renounced the hope of seducing us from the French connection.

The motion for revoking the power given to France has been made again, and pushed with the expected earnestness, but was parried, and will issue, I believe, in an adoption of your report with a representation thereupon to the Court of France.

Among other means of revenue, the back lands have on several late occasions been referred to, and at length recommended by a Grand Committee to the consideration of Congress. A motion for assigning a day to take up the report was negatived by a small majority. The report has been repeated by the committee, but a second experiment has not been made in Congress. Several of the Middle States seem to be facing about. Maryland, however, preserves its wonted jealousy and obstinacy.

In compiling the evidence of our title, I suppose you will, of course, be furnished with all Mr. Jefferson's lights. I have lately seen a fact stated by him, which shows clearly the ideas entertained by Virginia with respect to her territorial limits subsequent to the resumption of the charter. In a convention between commissioners on the part of the

Commonwealth of England, and of the Grand Assembly of Virginia in 1651, by which the latter submit to the new government, it is stipulated that Virginia shall enjoy the ancient bounds and limits granted by the charters of the former Kings, and that a new charter shall be issued from the Parliament against any that shall have entrenched upon the rights thereof

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, August 20, 1782.

Dear Sir,—

In my last I informed you that the motion to rescind the control given to France over the American Ministers had been parried, and would probably end in an adoption of your report. It was parried by a substitute so expressed as to give a committee sufficient latitude in reporting, without implying on the part of Congress a design to alter past instructions. The composition of the committee appointed according well with the object of the substitute, a report was made that the expository report should be referred to the Secretary of Foreign Affairs, to be by him revised and transmitted to the Ministers in Europe, and that the latter should communicate so much thereof as they might judge fit to His Most Christian Majesty. \* \* \*

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, August 27, 1782.

Dear Sir,—

Your favor of the sixteenth came duly to hand yesterday. The hints which it gives with regard to merchandizes imported in returning flags, and the intrusion of obnoxious aliens through other States, merit attention. The latter subject has, on several occasions, been mentioned in Congress, but, I believe, no committee has ever reported a remedy for the abuse. A uniform rule of naturalization ought certainly to be recommended to the States. Their individual authority seems, if properly exerted, to be competent to the case of their own citizens. \* \* \*

We are still left without information concerning negotiations in Europe. So long a silence of our Ministers, at so interesting a crisis, grows equally distressing and inexplicable. The French fleet has gone into Boston harbour. The arrival of a British fleet on this coast is reported, but disbelieved by many. The French army is on its way northward from Baltimore. It is to proceed in five divisions, the first of which is to be here about Friday next.

Congress received yesterday a letter from General Washington enclosing one to him from Carleton, with the proceedings of the court-martial in the case of Lippencot. It appears that this culprit did not deny the fact charged upon him, but undertook to justify it as a necessary retaliation, and as warranted by *verbal* orders from the Board of Refugees. The court decided this warrant to be insufficient, but acquitted him on the pretext that no *malicious* intention appeared. Carleton explicitly acknowledges and reprobates the crime, and promises to pursue it in other modes; complaining, at the same time, of irregularity in the step taken by General Washington of selecting and devoting to execution an innocent, and even caputulant, officer, before satisfaction had been formally demanded and *refused*. General Washington seems to lean to the side of compassion, but asks the direction of Congress. What that will be, may, perhaps, be communicated in my next.

The consideration of your territorial report has been resumed. The expedient which was meant to conciliate both sides proved, as often happens, a means of widening the breach. The jealousies announced on the side mentioned in my last were answered with reciprocal jealousies from the other, and the report between the two was falling to the ground, when a commitment, as a lesser evil, was proposed and agreed to.

Mr. Jones and his family arrived on Sunday at Germantown, without halting in this city. Himself, his lady, and little son, were all extremely sick during the whole journey. Mrs. Jones is still very much indisposed, and Mr. Jones considerably so. They do not propose to come into the city till the salubrity of Germantown shall have enabled them to encounter its noise and polluted atmosphere.



I cannot, in any way, make you more sensible of the importance of your kind attention to pecuniary remittances for me, than by informing you that I have for some time past been a pensioner on the favor of Haym Salomon, a Jew broker. Will not the agent of Mr. Morris give a draft, payable to me, for notes payable to the bearer? Or may not the notes be so endorsed as, in case of accident, to prevent payment to another? In either of those cases, a remittance of notes (if they can be procured for me) by the post will be safe. But my present situation renders such a conveyance preferable to delay, even if neither of the foregoing expedients be practicable. Show this paragraph to Mr. Ambler, if you please.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 3, 1782.

Dear Sir,—

You will again be disappointed at the opening of this, since it contains no European intelligence on the subject of peace. Among other reasons which render it astonishing that we should be long uninformed, a material one is, that neither the Court of France, nor our Ministers, can be insensible of the inexpediency of leaving the people at large so exposed to misrepresentations of the enemy. I am happy to find, by your letter of the twenty-fourth, and those received from my other correspondents by yesterday's post, that so cautious an ear is given to every thing which comes from them of a flattering aspect.

The enclosed hand-bill, published a few days ago, will inform you of the steps taken at Charleston towards an evacuation of that place. It is said to have given fresh violence to the fermentations in New York.

Another petition from Kentucky has been received by Congress, contending for the right of Congress to create new States, and praying for an exertion of it in their behalf. A copy will be sent to the Governor by the Delegates. Mr. Lee moved that the original should be referred to him by Congress. The debate which ensued was terminated by an adjournment, and has not been revived.

General Washington writes to Congress that Carleton had concurred in the proposition for a general cartel so far as to appoint a Commissioner for that purpose. There is little probability, however, that he has authority to settle such a cartel on the principles which Congress had in view, namely, those of a National Convention. It was thought, by some, that this would put to the test the sincerity of their professions on the subject of independence.

I believe I did not acquaint you, on a former occasion, that the prisoners who had lately returned from captivity in England were discharged, in consequence of an agreement, by Franklin, that a like number of the army of Cornwallis should be given for them. This bold step at first gave much offence. Compassion, however, for the patriotic captive stifled reproaches. They will probably come out yet, unless subsequent events discountenance them.

There are, it seems, three letters in the post-office from Carleton to the Governor, which do not appear to have been licensed, nor is it known how they got into that channel. The curiosity of people on this point is inconceivable.

A very unlucky accident has happened to one of the fleet of our Allies. After it got safe into the harbour of Boston, the unskilfulness or negligence of a pilot suffered a

seventy-four to strike on a rock, the wound occasioned by which proved mortal. Most of the furniture has been saved.

I have not yet presented the note to Cohen which you have been so good as to enclose me. The general obstacle to advances here, to be replaced in Virginia, has been the balance in trade against the latter. This is the current answer to attempts to negotiate drafts on Virginia. My next will inform you of the result of the experiment of your note. If its success depends merely on a confidence in your credit, it will certainly be productive. Mr. Ross has unlimited credit in this place. May it not be made instrumental to our supply? At least it would be well to consult him when an occasion presents. His bills on Whiteside will command any sum that may be wanted.

The French army has been passing through this place for several days northward. The last division will pass to-morrow or the day after. The praises bestowed on their discipline and sobriety in Virginia are repeated here with equal cordiality and justice.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 10, 1782.

Dear Sir,—

The loss of the French seventy-four in Boston harbour presented an occasion, which was embraced by Congress, of making a small requital to their Ally for his benevolent exertions in behalf of the United States. They have directed the Agent of Marine to replace the loss by presenting, in the name of the United States, the ship America to the Chevalier de la Luzerne, for the service of His Most Christian Majesty. The *States* were unanimous in this vote. The dissenting members were Bland and Jones, of Virginia.

The report of the Grand Committee, “that the Western lands, if ceded to the United States, would be an important fund,” &c., was the subject of the deliberations of Congress on Thursday and Friday last. After the usual discussion of the question of right, and a proposal of opposite amendments to make the report favor the opposite sides, a turn was given to the debate to the question of expediency, in which it became pretty evident to all parties, that unless a compromise took place, no advantage could ever be derived to the United States, even if their right were ever so valid. The number of States interested in the opposite doctrine rendered it impossible for the title of the United States ever to obtain a vote of Congress in its favor, much less any coercive measures to render the title of any fiscal importance; whilst the individual States, having both the will and the means to avail themselves of their pretensions, might open their land offices, issue their patents, and, if necessary, protect the execution of their plans; without any other molestation than the clamors of individuals within and without the doors of Congress. This view of the case had a manifest effect on the most temperate advocates of the Federal title. Witherspoon moved a set of resolutions recommending to the States which had made no cessions to take up the subject; and to the States whose cessions were not entirely conformable to the plan of Congress, to reconsider their acts; and declaring, that in case of a compliance of the several States claiming the back lands, none of their *determinations* with regard to private property within their cessions shall be *reversed or altered* without their consent, except in cases falling within the ninth Article of the Confederation. On this motion the report was postponed, and these resolutions committed. The report of the committee on the last article will probably determine the ultimate sense of Congress on the pretensions of the companies.

Every review I take of the Western territory produces fresh conviction, that it is the true policy of Virginia, as well as of the United States, to bring the dispute to a friendly compromise. A separate government cannot be distant, and will be an insuperable barrier to subsequent profits. If, therefore, the decision of the State on the claims of companies can be saved, I hope her other conditions will be relaxed.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 11, 1782.

Dear Sir,—

The gentleman by whom I wrote this morning having waited till I had the opportunity of knowing the contents of the despatches from Holland, I take advantage of it to add that we are disappointed by their silence with regard to peace. Those from Mr. Adams relate chiefly to his transactions with the States General. A letter from Mr. Laurens, of the thirtieth of May, informs us that he is returning to the United States, having declined the service of Minister for peace. There is an uninteresting part of a letter from Mr. Dana, the first pages of it having been omitted. Mr. Berkley writes, on the thirteenth of July, that the mail from England, subsequent to the resignation of Fox, Burke, &c., breathes war. He confirms the success of the combined fleets against the Quebec, &c., and the sailing of a fleet from the Texel, consisting of eleven sail of the line, five or six frigates, &c., to cruise in the North Seas, and the retreat of Admiral Howe into port. A New York paper of the seventh contains a very interesting conversation on the — July, in the House of Lords, between Shelburne and the Duke of Richmond, on the subject of ministerial politics, in which the latter assigns his reasons for not following the example of Fox, &c., and both their sentiments with respect to American Independence. The Duke of Richmond seems tolerably well reconciled to it, but Shelburne speaks out his antipathy without depriving himself of the plea of necessity. He professes to adhere, however, to the principles which the Administration carried into office relative to the war against America. I have written this in extreme haste; you will be very sensible of it by its incorrectness.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 17, 1782.

Dear Sir,—

My letters, by a private hand, subsequent to the last post, have anticipated the chief intelligence from Holland, which I had allotted for the post of this week. I have, however, one important article, which at that date lay under an injunction of secrecy, which has been since taken off. Mr. Adams, we are informed, has contracted with a mercantile house in Holland for the negotiation of a loan of five millions of guilders, or about ten millions of livres, for which he is to give five per cent. interest, and four and a half per cent. for commission and other douceurs and charges, which will raise the interest to about six per cent. The principal is to be discharged in five annual payments, commencing with the tenth year from the date of the loan. When the despatches left Holland, upwards of a million and a half of guilders had been subscribed, and upwards of one million actually received. The contractors, however, make it a condition that none of the money should be paid to the United States until the contract should be ratified by Congress. This ratification passed on Saturday, and its arrival in Holland will place under the orders of Mr. Morris the money which shall then have been procured. How far the amount will, by that time, have been augmented, is uncertain. The contractors seemed to be tolerably sanguine, but not absolutely sure, of getting the whole sum. The partial subscription already secured is a most seasonable relief to the Department of Finance, which was struggling under the most critical difficulties.

In addition to the preceding fund, Congress have been led, by a despair of supplies from the States, to sue for a further loan of four millions of dollars for the service of the ensuing, and the deficiencies of the present, year. This demand will be addressed, in the first instance, to the Court of France. In case of miscarriage there, an experiment will be made on the liberality of our new friends.

The Legislature of Rhode Island has broke up without according to the impost of five per cent. Congress have apportioned one million two hundred thousand dollars on the States, for the payment of interest to the public creditors. Virginia is rated somewhat lower in this requisition than in the last; not, however, without complaints from some quarters. On these subjects you will have full information from Mr. Lee, who will set off in a few days, he says, for Virginia, in order to be at the October Session.

I should have told you that some progress had been made by Mr. Adams in the Treaty of Amity and Commerce with their High Mightinesses. His propositions, with the remarks and amendments of the College of Admiralty, had been taken *ad referendum*. It is somewhat extraordinary that he should omit to send us a copy of those propositions and remarks. He had taken no steps towards a Treaty of Alliance.

The debates and explanations produced by the resignation of Mr. Fox and his adherents, have unveiled some of the arcana of the British Cabinet. I enclose them for you complete, as far as they have been published here. If there be any sincerity in the party remaining in office, it would seem that the war is not to be pursued against the United States, nor the independence suffered to be a bar to peace. We shall be able to judge better of this sincerity when the proceedings of Mr. Grenville come to our knowledge.

Mr. Cohen has advanced me fifty pounds of this currency, which, he says, is the utmost that his engagements, and the scarcity of money, will permit. I have given him an order on you for that sum, in favor of his partner at Richmond.

September 17.

On Friday two large French frigates, bringing money, &c. for the French army, and despatches for Congress and the French Minister, came into Delaware Bay. For want of pilots in time, they got entangled among the bars which perplex the navigation of this Bay. The appearance and bearing of the British fleet, after pilots were obtained, rendered it impossible for them to return into the proper channel. The only expedient that remained was to push forward and attempt, under the advantage of high water, to force a passage through the shoal which obstructed them. In this attempt, one of them succeeded. The other stuck in the sand, and was lost. All the public stores, particularly the money on board, have, however, been fortunately saved. The captain and crew, we fear, have fallen into the hands of the enemy. The ship, it is supposed, cannot be raised by them, having been scuttled before they took possession of her. The frigate which escaped is up at Chester. We expect the despatches will be here to-day. The Marquis Viominil, and twenty or thirty other French officers, have returned in these ships.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 24, 1782.

Dear Sir,—

The substance of the despatches brought by the French frigates, mentioned in my last, is, that Mr. Oswald first, and afterwards Mr. Grenville, had been deputed to Versailles on a pacific mission; that the latter was still (twenty-ninth of June) at Versailles; that his proposals, as to the point of independence, were at first equivocal, but at length more explicit; that he associated with the preliminary that the treaty of Paris, of 1763, should be the basis of the treaty in question; that as to this proposition he was answered, that as far as the treaty of '63 might be convenient for opening and facilitating a pacification, it would be admitted as a basis, but that it could not be admitted in any sense that should preclude His Most Christian Majesty from demanding such equitable arrangements as circumstances might warrant, and particularly in the East Indies and on the coast of Africa; that upon these grounds there was at first a prospect that negotiations would be opened with mutual sincerity, and be conducted to a speedy and happy issue; but that the success of the British navy in the West Indies had checked the ardor of the Ministry for peace, and that it was pretty evident they meant to spin out the negotiation till the event of the campaign should be decided. You will take notice that this is a recital from memory, and not a transcript of the intelligence.

The frigate L'Aigle, whose fate was not completely determined at the date of my last, we hear, has been raised by the enemy, and carried to New York. Captain De la Touche and the crew were made prisoners. Besides merchandize to a great value, nearly fifty thousand dollars were lost, most of which fell into the hands of the captors. The loss of this ship is to be the more regretted, as it appears that the two were particularly constructed, and destined for the protection of the trade of this country.

Our Ally has added another important link to the chain of benefits by which this country is bound to France. He has remitted to us all the interest which he has paid for us, or was due to him on loans to us, together with all the charges attending the Holland loan; and has, moreover, postponed the demand of the principal till one year after the war, and agreed to receive it then in twelve successive annual payments. These concessions amount to a very considerable reduction of the liquidated debt. The fresh and large demand which we are about to make on him, will, I fear, be thought an unfit return for such favors. It could not, however, be avoided. The arrears to the army in January next will be upwards of six millions of dollars. Taxes cannot be relied on. Without money, there is some reason to surmise that it may be as difficult to disband an army as it has been to raise an army.



My last informed you that Mr. Laurens had declined serving in the commission for peace. His proceedings, during his captivity, as stated by himself, are far from unexceptionable. Congress, nevertheless, were prevailed on to assent to a resolution informing him that his services could not be dispensed with. A few days after this resolution had passed, several numbers of the Parliamentary Register were received at the Office of Foreign Affairs, in one of which was published the enclosed petition. The petition was introduced by Mr. Burke, was a subject of some debate, and finally ordered to lie on the table. The extreme impropriety of a Representative of the United States addressing that very authority against which they had made war, in the language of the address, determined Mr. Jones and myself to move that the resolution above referred to should not be transmitted until the further order of Congress. In support of the motion it was observed, that however venial the fault might be in a private view, it evidently rendered Mr. Laurens no longer a fit depository for the public dignity and rights, which he had so far degraded; and that if Congress should reinstate him against his own desire, and with this fact before their eyes, it would seem as if they meant to ratify, instead of disowning, the degradation. The motion was opposed on two grounds—first, that the character of Mr. Laurens, and the silence of his letter, overbalanced the testimony of the Register, and rendered the fact incredible; secondly, that the fact, although faulty, ought to have no influence on the public arrangements. The first objection was the prevailing one. The second was abetted by but few. Several professed a readiness to renounce their friend, in case the authenticity of the paper should be verified. On the question there were five noes, three ayes, two divided, two half votes aye. The petition had been published some time ago at New York, and had made some noise in New Jersey, but was ultimately regarded as spurious. There are so many circumstances relating to this gentleman during his captivity, which speak a bias towards the British nation, and an undue cordiality with its new leaders, that I dread his participation in the work of peace.

Your favor of the seventh, which had not arrived last post-day, came a few days afterwards, the post having been detained by sickness. The subsequent one came to hand yesterday in due time. The expedient of drawing bills here on funds in Virginia, even the most unquestionable, has been often tried by us, but in vain. The balance is so much against Virginia that no one wants money there, and the evil will increase as the prospect of peace retires. Your credit with Mr. Cohen, which procured me fifty pounds, with two hundred dollars transmitted by Mr. Ambler, have been of much service to me, but I am relapsing fast into distress. The case of my brethren is equally alarming.

As some of Mr. Laurens's friends strenuously maintain that the petition enclosed is spurious, I would not wish it to be made public through me until the matter be ascertained, or he be present to explain it.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, September 30, 1782.

Dear Sir,—

The remittance to Colonel Bland is a source of hope to his brethren. I am almost ashamed to reiterate my wants so incessantly to you, but they begin to be so urgent that it is impossible to suppress them. The kindness of our little friend in Front street, near the coffee-house, is a fund which will preserve me from extremities, but I never resort to it without great mortification, as he obstinately rejects all recompense. The price of money is so usurious, that he thinks it ought to be extorted from none but those who aim at profitable speculations. To a necessitous Delegate he gratuitously spares a supply out of his private stock.

No addition has been made to our stock of intelligence from Europe since the arrival of the French frigates. Some letters from the Marquis de la Fayette and others have since come to hand, but they are all of the same date with the despatches then received. One of the Marquis's paragraphs, indeed, signifies the tergiversation of Mr. Grenville, which had been only in general mentioned to us before. On the communication made by this gentleman to the Count de Vergennes of the object of his mission, he proposed verbally the unconditional acknowledgment of American Independence as a point to which the King had agreed. The Count de Vergennes immediately wrote it down, and requested him to put his name to the declaration. Mr. Grenville drew back, and refused to abide by any thing more than that the King was *disposed* to grant American Independence. This illustrates the *shade* of difference between Shelburne and Fox.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, October 8, 1782.

Dear Sir,—

Your favor of the twenty-seventh of September came to hand yesterday, and is a fresh instance of the friendly part you take in my necessities. In consequence of the hint in your last of a pressing representation to the Executive, our public letter of last week touched on that subject, but the letter received yesterday from the Governor, which seems to chide our urgency, forbids much expectation from such an expedient. The letter from Mr. Ambler enclosed for me a second bill on Mr. Holker, for two hundred dollars, which very seasonably enabled me to replace a loan by which I had anticipated it. About three hundred and fifty more (and not less) would redeem me completely from the class of debtors.

I omitted, in my last, to inform you that the Swedish Minister at Versailles had announced to Dr. Franklin the wish of his King to become an Ally of the United States, and that the treaty might be negotiated with the Doctor in particular. A plenipotentiary commission has, in consequence, issued for that purpose. The model transmitted by Congress is pretty analogous to the treaty with France, but is limited in duration to fifteen years.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, October 15, 1782.

Dear Sir,—

The offensive paragraph in the correspondence of Mr. L. with Mr. P., spoken of in your favor of the fifth, was, as you supposed, communicated to me by Mr. Jones. I am, however, but very imperfectly informed of it.

We have not yet received a second volume of the negotiations at Versailles; nor any other intelligence from Europe, except a letter from Mr. Carmichael, dated about the middle of June, which is chiefly confined to the great exertions and expectations with respect to Gibraltar. Whilst the siege is depending, it is much to be apprehended that the Court of Madrid will not accelerate a pacification.

Extract of a letter from Sir Guy Carleton to General Washington, dated New York, September twelfth, 1782.

“Partial though our suspension of hostilities may be called, I thought it sufficient to have prevented those cruelties in the Jerseys (avowed) which I have had occasion to mention more than once; but if war was the choice, I never expected this suspension should operate further than to induce them to carry it on as is practised by men of liberal minds. I am clearly of opinion with Your Excellency, that mutual agreement is necessary for a suspension of hostility, and, without this mutual agreement, either is free to act as each may judge expedient; yet I must, at the same time, frankly declare to you, that being no longer able to discern the object we contend for, I disapprove of all hostilities both by sea and land, as they only tend to multiply the miseries of individuals, when the public can reap no advantage from success. As to the savages, I have the best assurances, that from a certain period, not very long after my arrival here, no parties of Indians were sent out, and that messengers were despatched to recall those who had gone forth before that time; and I have particular assurances of disapprobation of all that happened to your party on the side of Sandusky, except so far as was necessary for self-defence.”

It would seem, from this paragraph, that the insidious object of a separate convention with America was still pursued.

The symptoms of an evacuation of New York became every day less apparent. Our next intelligence from Charleston will probably confirm our expectations as to that metropolis.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, October 22, 1782.

Dear Sir,—

By the vessel spoken of in my last, Congress have received a letter from Mr. Adams, dated Hague, August the eighteenth, which enclosed a copy of the plenipotentiary commission issued to Mr. Fitzherbert, the British Minister at Brussels. The following skeleton of the commission will give you an idea of its aspect towards America:

“Georgius tertius, etc., omnibus, etc., salutem. Cum, belli incendio jam nimis diu diversis orbis terrarum partibus flagrante, in id quam maxime incumbamus ut tranquillitas publica, tot litibus, etc., rite compositis, reduci, etc., possit,—cumque eâ de causa, virum quendam tanto negotio parem, ad bonum fratrem nostrum, Regem Chris<sup>mm</sup> mittere decrevimus: Sciatis igitur quod nos, fide, etc. Alleini Fitzherbert, etc., confisi, eundem nominavimus, etc., nostrum Plenipotentiarum, dantes, etc., eidem omnem potestatem, etc., nec non mandatum generale pariter ac speciale, etc., in aula prædicti bon. frat. Reg. Chris<sup>mi</sup> pro nobis et nostro nomine, una cum *Plenipotentariis, tam Celsorum et Præpotentium Dominorum, ordinum Generalium Fæderati Belgii, quam quorumcunque Principum et Statuum quorum interesse poterit, sufficiente auctoritate instructis, tam singulatim ac divisim quam aggregatim ac conjunctim, congregiendi, etc., atque cum ipsis de pace, concordia, etc., præsentibus, etc. etc. In palatio nostro, etc., 24 Julii, 1782.*

The only further circumstance contained in his letter, relative to the business of a pacification, is the appointment of a Plenipotentiary by the States General, who was to set out for Paris in about three weeks after the date of the letter.

The States of Holland and West Friesland had determined upon the proposed treaty of commerce, and Mr. Adams expected to have a speedy conference with the States General, in order to bring it to a conclusion.

The Secretary of War lately communicated to Congress an extract of a letter from General Washington of a very unwelcome tenor. It paints the discontents of the army in very unusual colors, and surmises some dangerous eruption, unless a payment can be effected within the present year. The Secretary is gone to head-quarters at the request of the General. How far their joint precautions will calm the rising billows, must be left to the result.

Congress have reduced the estimate for the ensuing year to six millions of dollars, and the requisitions on the States, for the present, to one-third of that sum. A call for the residue is suspended till the result of the applications for loans shall be known.

The combined fleets have certainly gone to support the siege of Gibraltar. The Dutch has returned to the Texel. According to the preconcerted plan, it was to have proceeded North, after disposing of its convoy, and have reinforced the combined fleet. The disappointment is traced up to the machinations of the Prince of Orange, whose attachment to the enemies of the Republic seems to be fatal to all her exertions. For other particulars taken from foreign gazettes, I refer to those herewith enclosed, and those enclosed to Mr. Ambler.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

Philadelphia, October 29, 1782.

Dear Sir,—

Some intelligence has been received from the frontiers of New York, which revives the apprehensions of further inroads from Canada, and co-operation on the part of the Vermonters. The tenor of Carleton's letter to General Washington on this subject, and other circumstances, render this article at least extremely doubtful.

The British fleet at New York has been busy in preparing for sea, and will probably soon depart from that station. The West Indies most naturally occur as the object of its destination. It is said their preparations have been much expedited by the most direct and undisguised supplies from the people of New Jersey.

Congress have been occupied for several days past with the case of Lippencot, referred to them by General Washington. On one side it was urged, that the disavowal and promises by the British Commander, the abolition of the obnoxious board of refugees, and the general change of circumstances, rendered retaliation unnecessary and inexpedient. On the other side it was contended, that a departure from the resolution so solemnly adopted and repeated by General Washington, with equal solemnity ratified by Congress, would be an indelible blot on our character; that after the confessions on the part of the enemy of the deed complained of, a greater inflexibility on our part would be looked for; that after such confessions, too, the enemy would never suffer the innocent to perish, if we persisted in demanding the guilty; and finally, that if they should suffer it, the blood would be on their heads, not on ours. No definitive resolution has yet passed on the subject. All the intermediate steps have been very properly entered on the secret journals.

General Lincoln has just returned from the army. He has not yet made a report to Congress. He says, I understand, that his visit has had a very salutary operation, but that some pay must be found for the army. Where it is to be found, God knows. The state of the public finances has already compelled the Superintendent to give a discharge to the former contractors, and to accept of a new contract, by which thirty per cent. is added to the price of a ration in consideration of credit for three months. He has, on this occasion, written a pressing exhortation to the States, which, I suppose, is accessible to you.

Mr. Carroll moved, yesterday, a resolution for accepting the territorial cession of New York. It stands the order for to-day. I regret much, on this occasion, the absence of Mr. Jones.

[\[Back to Table of Contents\]](#)

## DEBATES IN THE CONGRESS OF THE CONFEDERATION,

FROM NOVEMBER 4TH, 1782, TO FEBRUARY 13TH,  
1783.

IN CONGRESS, NOVEMBER 4<sup>TH</sup> 1782,  
MONDAY.

Mad. Mss.

Elias Boudinot was chosen President by the votes of N. Hampshire represented by John Taylor Gilman and Phillips White—Rhode Island by Jonathan Arnold and David Howell—Connecticut by Benjamin Huntington & Eliphalet Dyer—N. Jersey by Elias Boudinot & John Witherspoon—Pennsylvania by Thomas Smith George Clymer, and Henry Wynkoop—Delaware by Thomas McKean & Samuel Wharton—Maryland by John Hanson, Daniel Carroll & William Hemsley. The votes of Virg<sup>a</sup> represented by James Madison & Theodorick Bland & of S. Carolina represented by John Rutledge Ralph Izard, David Ramsay, & John Lewis Gervais, were given to Mr. Bland—The vote of N. York represented by James Duane and Ezra L'Hommedieu to Abner Nash. The vote of N. C. by Abner Nash, Hugh Williamson & William Blount to John Rutledge. Massachus<sup>ts</sup> having no Delegate but Samuel Osgood had no vote. Georgia had no Delegate.

A Letter dated Oc<sup>r</sup> 30—1782 from Ge<sup>l</sup> Washington, was read, informing Congress of his putting the army into Winter Quarters, & of the sailing of 14 ships of the line from N. York, supposed to be for the W. Indies & without Troops.

d<sup>o</sup>. July 8 from Mr. Carmichael at St. Ildefonso informing Congress of the good effect in Europe of the rejection of the proposal of Carleton, by Congress & the States; that the King of Spain speaking of the news at table praised greatly the probity of the Americans, raising his voice in such a manner that all the foreign Ministers might hear him. Mr. Carmichael adds that He had discovered that the Imperial & Russian Ministers by directions from their Courts had renewed their offered mediation to His M. C. M. and that he suspected England was at the bottom of it.—Quere.

do. Nants Sep<sup>r</sup> 5. from M<sup>f</sup> Laurens, notifying his intention to return to America; that being so advised by his friends he had applied to the C<sup>t</sup> of London for a passport via Falmouth; that Cornwallis had interested himself therein & that the passport had been promised.1

### TUESDAY NOV<sup>R</sup>. 5.

A Resolution passed authorizing Gen<sup>l</sup> Washington to obtain the exchange of 2 foreign officers notwithstanding the Resol<sup>n</sup> of the 16 of Oc<sup>r</sup>. declaring that Congress will go into no partial exchanges until a general cartel be settled *on national* principles. This



measure passed without due consideration by the votes of N. H., R. I., Cont: Del: Maryland N. C. & S. C. On the motion of Mr. Osgood it was reconsidered in order to refer the case to the Sec<sup>y</sup>. of War & Gen<sup>l</sup> Washington to take order. By Mr. Madison opposition was made ag<sup>st</sup>. any partial exchange in the face of the solemn declaration passed on the 16 Oc<sup>r</sup>., 1 as highly dishonorable to Congress, especially as that declaration was made in order to compel the enemy to a national convention with the U. S. All exchanges had been previously made on the part of the former by the Military authority of their Generals. After the letter of Genl. Carleton & Admiral Digby notifying the purpose of the British King to acknowledge our Independence, it was thought expedient by Congress to assume a higher tone. It was supposed also at the time of changing this mode that it would be a test of the enemy's sincerity with regard to Independence. As the trial had been made & the British Com<sup>mander</sup> either from a want of power or of will had declined treating of a cartel on national ground, it would be peculiarly preposterous & pusilanimous in Congress to return to the former mode. An adjournment suspended the vote on the question for referring the case to the Se<sup>y</sup> & General to take order.

### WEDNESDAY, NOV<sup>R</sup> 6TH.

No Congress.

### THURSDAY, NOV<sup>R</sup>. 7.

On the reconsideration of the Resol: for exchanging the two for: officers Its repeal was unanimously agreed to.

A motion was made by Mr. Osgood to assign an early day for filling up the vacancy in the Court of Appeals. It was opposed on the principle of economy, and the expedient suggested by Mr. Duane, of empowering a single Judge to make a Court *until the public finances would better bear the expense*. In favor of the motion it was argued 1. that the proceedings of the Court were too important to be confided to a single Judge. 2. that the decisions of a single judge would be less satisfactory in cases where a local connection of the judge subsisted with either of the parties. 3. that a single judge would be more apt by erroneous decisions to embroil the U. S. in disputes with foreign powers. 4. that if there were more than one Judge, & one formed a court, there might at the same time be two interfering jurisdictions, and that if any remedy could be applied to this difficulty, the course of decisions would unavoidably be less uniform, & the provision of the confederation for a court of universal appellant Jurisdiction so far contravened. 5. as there was little reason to expect that the public finances wd. during the war be more equal to the public burdens than at present, and as the cases within the cognizance of this court would cease with the war, the qualification annexed to the expedient ought to have no effect. The motion was disagreed to & a committee which had been appointed to prepare a new ordinance for constituting the Court of Appeals, was filled up & instructed to make report.—on the above motion an opinion was maintained by Mr. Rutledge that as the court was according to the ordinance in force to consist of three Judges any two of whom to

make a court, unless three were in actual appointment the decisions of two were illegal.

Congress went into the consideration of the report of the Committee on the case of Capt. Asgill the British officer allotted to suffer retaliation for the murder of Capt. Huddy. The report proposed.

“That considering the letter of the 29<sup>th</sup> of July last from the Count de Vergennes to Genl. Washington interceding for Capt. Asgill, the Commander-in-Chief be directed to set him at liberty.”

Previous to the receipt of this letter from the Count de Vergennes Congress had been much divided as to the propriety of executing the retaliation, after the professions on the part of the British commanders, of a desire to carry on the war on humane principles, and the promises of S<sup>r</sup> G. Carleton to pursue as effectually as possible the real authors of the murder; some supposing that these circumstances had so far changed the ground that Congress ought to recede from their denunciations, others supposing that as the condition of the menace had not been complied with, and the promises were manifestly evasive, a perseverance on the part of Congress was essential to their honor & that moreover it would probably compel the enemy to give up the notorious author of the confessed murder. After the receipt of the letter from the Count de Vergennes, Congress were unanimous for a relaxation. Two questions however arose on the report of the committee. The 1<sup>st</sup> was on what considerations the discharge of Cap. Asgill ought to be grounded. On this question a diversity of opinions existed. Some concurred with the committee in resting the measure entirely on the intercession of the French Court: alledging that this was the only plea that could apologize to the world for such a departure from the solemn declaration made both by Congress and the Commander in Chief. Others were of opinion that this plea if publicly recited would mark an obsequiousness to the French Court and an impeachment of the humanity of Congress, which greatly outweighed the circumstance urged in its favor; and that the disavowal of the outrage, by the British Genl. and a solemn promise to pursue the guilty authors of it, afforded the most honorable ground on which Congress might make their retreat; others again contended for an enumeration of all the reasons which led to the measure; lastly others were against a recital of any reasons & for leaving the justification of the measure to such reasons as would occur of themselves. This last opinion after considerable discussions prevailed, and the Resol. left as it stands on the Journals. The 2<sup>d</sup> question was whether this release of Cap: Asgill should be followed by a demand on Ge<sup>l</sup> Carleton to fulfil his engagement to pursue with all possible effect the authors of the Murder.

On one side it was urged that such a demand would be nugatory after the only sanction which could enforce it had been relinquished; that it would not be consistent with the letter of the Count de Vergennes which solicited complete oblivion, and that it would manifest to the public a degree of confidence in British faith which was not felt and ought not to be affected.

On the opposite side it was said that after the confession & promise of justice by Ge<sup>l</sup> Carleton, the least that could be done by Ge<sup>l</sup>. Washington would be to claim a fulfilment; that the intercession of the C<sup>t</sup> de Vergennes extended no farther than to prevent the execution of Capt: Asgill, and the substitution of any other innocent victim; and by no means was meant to shelter the guilty; that whatever blame might fall on Congress for seeming to confide in the promises of the enemy, they would be more blamed if they not only dismissed the purpose of retaliating on the innocent, but at the same time omitted to challenge a promised vengeance, on the guilty, that if the challenge was not followed by a compliance on the part of the enemy, it would at least promulge and perpetuate, in justification of the past measures of Congress, the confessions & promises of the enemy on which the challenge was grounded; & would give weight to the charges both of barbarity and perfidy which had been so often brought ag<sup>st</sup>. them.

In the vote on this question, 6 States were in favor of the demand & the others either divided or against it.

## FRIDAY, NOV<sup>R</sup>. 8.

The preceding question having been taken again, on a further discussion of the subject. There were in favor of the demand, N. H., R. I., N. Y. P<sup>a</sup> Del. Mary<sup>d</sup>. Virga. & of the other States some were divided.

A motion was made by Mr. Rutledge of S. C. "That the Comder in chief & of the S. Department be respectively directed whenever the Enemy shall commit any act of cruelty or violence contrary to the laws & usage of war on the Citizens of these States to demand adequate satisfaction for the same, and in case such satisfaction shall not be immediately given, but refused or evaded under any pretext whatsoever, to cause suitable retaliation to be forthwith made on British officers without waiting for directions from Congress on the subject."

When this motion was first made it was espoused by many; with great warmth in particular by the Delegates of N. C & S. C., as necessary to prevent the delays & uncertainties incident to a resort by the Military Commanders to Congress, and to convince the enemy that notwithstanding the dismissal of Capt: Asgill the general purpose of retaliation was firmly retained.<sup>1</sup>

Against the motion it was objected 1. that the time & place in which it stood would certainly convey an indirect reprehension of Gen<sup>l</sup> Washington for bringing before Congress the case of Capt: Asgill & Huddy: 2. that it manifested a distrust in Congress which however well founded it might be with respect to retaliation ought not to be proclaimed by themselves. 3. that political & national considerations might render the interference of the Supreme authority expedient, of w<sup>ch</sup> the letter from the C<sup>t</sup> de Vergennes in the late case furnished an instance; that the resort of the Military Commanders to the Sover<sup>n</sup>ign for direction in great and difficult cases, such as those of retaliation would often prove, was a right of which they ought not to be deprived; but in the exercise of which they ought rather to be countenanced. These objections reduced the patrons of the motion to the Delegates of N. C. & S. C. alone or nearly so.

In place of it the declaratory motion on the Journals was substituted. This again was objected to as implying that in the cases of retaliation taken up by the Mil<sup>y</sup> commanders, they had proceeded on doubtful authority. To remove this objection, the amendment was proposed, limiting the preamble to the single act of discharging Capt: Asgill. This however was not entirely satisfactory because that particular act could have no constructive influence on the Reputed authority of the Generals. It was acceded to by the votes of several who were apprehensive that in case of rejecting it, the earnestness of some might obtrude a substitute less harmless, or that the Resolution might pass without the preamble, & be more offensive to the Commander in Chief. The first apprehension was the prevailing motive with many to agree to the proposition on the final question.

This day a letter was rec<sup>d</sup> from Ge<sup>l</sup> Washington, inclosing one of the 25 of Oc<sup>r</sup> from S<sup>r</sup> G. Carleton relative to the demand made on him for a liquidation of acc<sup>ts</sup> and payment of the balance due for the maintenance of Prisoners of war, in which the latter used an asperity of language so much the reverse of his preceding correspondence that many regard it as portending a revival of the war against the U S.

## SATURDAY & MONDAY.

No Congress.

## TUESDAY 12 NOV<sup>R</sup>.

The reappointment of M<sup>r</sup>. Jefferson as Minister Plenipo: for negotiating peace was agreed to unanimously and without a single adverse remark. 1 The act took place in consequence of its being suggested that the death of M<sup>rs</sup> J. had probably changed the sentiments of M<sup>r</sup> J. with regard to public life, & that all the reasons which led to his original appointment still existed and indeed, had acquired additional force from the improbability that Mr. Laurens would actually assist in the negotiation.

“A motion was made by Mr. Rutledge declaring that when a matter was referred to any of the departments *to take order*, it was the sense & meaning of Congress that the same should be carried into execution.” On this motion some argued that such reference amounted to an absolute injunction, others insisted that it gave authority, but did not absolutely exclude discretion in the Executive Departments. The explanation that was finally acquiesced in as most rational & conformable to practice was that it not only gave authority, but expressed the sense of Congress that the measure ought to be executed: leaving it so far however in the discretion of the Executive Department, as that in case it differed in opinion from Congress it might suspend execution & state the objections to Congress that their final direction might be given. In the course of debate it was observed by Mr. Madison that the practice of referring matters to take order, especially where money was to be issued, was extremely exceptionable inasmuch as no entry of such proceedings was made on the Journals, but only noted in a memorandum book kept by the Secretary, and then sent to the Department with the reference to take order indorsed by the Secy. but not signed by him. So that the transaction even where public in its nature, never came before the public eye, & the Dep<sup>t</sup> was left with a precarious voucher for its justification. The motion was in the

end withdrawn, the mover alledging that as he only aimed at rendering an uncertain point clear, & this had been brought about by a satisfactory explanation, he did not wish for any Resolution on the subject.

WEDNESDAY 13 NOV<sup>R</sup>.

No Congress.

THURSDAY 14 NOV<sup>R</sup>.

The proceedings were confined to the Report of the Committee on the case of Vermont entered on the Journals. As it was notorious that Vermont had uniformly disregarded the Recommendation of Congress, of 1779, the Report which ascribed the evils prevalent in that district to a late act of N. Y. which violated that recommendation was generally admitted to be unjust & unfair. Mr. Howel was the only member who openly supported it. The Delegates from N. Y. denied the fact that any violation had been committed on the part of that State. The temper of Congress on this occasion as the yeas & nays shew, was less favorable to Vermont than on any preceding one,—the effect probably of the territorial Cession of N. York to the U. S. In the course of the debate Mr. Howel cited the case of Kentucky as somewhat parallel to that of Vermont, said that the late creation of a separate Court by Virg<sup>a</sup> for the former resembled the issuing of Commissions by N. Y. to the latter that the jurisdiction would probably be equally resisted & the same violences would follow as in Vermont. He was called to order by Mr. Madison. The President & the plurality of Congress supported and enforced the call.

No Congress till

Nov<sup>r</sup> Monday 18 ×

Tuesday 19 ×

The Journals sufficiently explain the proceedings of those days. [1](#)

[1](#) Under date of November 19th, Madison wrote to Randolph

“The prospect derived from the impost of the five Per C<sup>t</sup> seems to be pretty thoroughly blasted by a unanimous & final veto by the Assembly of Rhode Island. This State, by its Delegates (who fully represent the aversion of their constituents to the impost) voted in Congress That 6 Millions of Dollars were necessary for the year ’83, that 2 Millions were as much as the States could raise & as ought to be required by Congress, and that applications for loans in Europe ought to be relied on for the residue. And yet they absolutely refuse the only fund which could be Satisfactory to lenders. The indignation against this perverse sister is increased by her shameful delinquency in the constitutional requisitions.

“The tribunal erected for the controversy between Connecticut and Penns<sup>a</sup> was I hear to be opened to-day. The Judges who compose it are Mr. Whipple of N. Hampshire, Mr. Arnold of Rhode Island, the Chief Justice & another gentlem<sup>n</sup> of N. Jersey & Mr. C. Griffin of Virg<sup>a</sup>. Mr. Rutledge, Mr. Jones & Gen<sup>l</sup> Nelson have declined the service. On the part of Penn<sup>a</sup>, appear Mr. Wilson Mr. Reed, Mr. Bradford & Mr. Sergeant. Mr Osborne assists in the capacity of Solicitor. On the part of Connecticut are deputed Mr. Dyer, Mr. Root, & Doc<sup>r</sup> Sam<sup>l</sup> Johnson. The first & the last I am told, are on the spot. It is supposed that the first object of Con<sup>t</sup> will be to adjourn the cause to a distant day on the plea that many of their essential documents are beyond the Atlantic. In a national view it is not perhaps advisable to invalidate the title of this State however defective it may be, until a more important controversy is terminated. I will make the earliest communication of the issue of this trial. You will not forget a like promise which your letter makes with respect to the case lately decided by the Court of Appeals.”—*Mad. MSS.*

WEDNESDAY NOV<sup>R</sup>. 20<sup>TH</sup>.

Congress went into consideration of the Report of A Committee consisting of Mr. Carrol, Mr. McKean & Mr. Howel on two Memorials from the Legislature of Pennsylvania. The Memorials imported a disposition to provide for the Creditors of the U. S. within the State of Pen<sup>a</sup>. out of the Revenues allotted for Congress, unless such provision could be made by Congress. The Report as an answer to the Memorials acknowledged the merit of the public Creditors, professed the wishes of Congress to do them justice; referring at the same time to their recommendation of the Impost of 5 Per C<sup>t</sup>, which had not been acceded to by all the States; to the requisition of 1,200,000 D<sup>rs</sup>, for the payment of one year’s interest on the public debt, and to their acceptance of the territorial cession made by N. Y. After some general conversation in which the necessity of the Impost as the only fund on which loans could be expected & the necessity of loans to supply the enormous deficiency of taxes, were urged, as also the fatal tendency of the plan intimated in the Memorials, as well to the Union itself, as to the system actually adopted by Congress, the Report was committed. [1](#)

A motion was made by Mr. Rutledge, 2<sup>ded</sup> by Mr. Williamson, to instruct the committee to Report the best mode of liquidating the domestic debts, and of obtaining a valuation of the land within the several States, as the Article of Confederation directs—The first part of the instruction was negatived, provision having been previously made on that head. In place of it the Superintendent<sup>t</sup> of Finance was instructed to report the causes which impede that provision. The 2<sup>d</sup> part was withdrawn by the mover. A committee however was afterwards appointed, consisting of Mr. Rutledge, Mr. Nash Mr. Duane Mr. Osgood & Mr. Madison, to report the best scheme for a valuation.

## THURSDAY, NOV<sup>R</sup> 21.

A report was made by a Committee to whom had been referred several previous reports & propositions relative to the salaries of foreign Ministers, delivering it as the opinion of the Committee that the Salaries allowed to Ministers Plenipo<sup>ty</sup>. to wit £2500 Sterlg. would not admit of reduction; but that the sal<sup>y</sup> allowed to Secretaries of legations, to wit £1000. Sterl<sup>g</sup>, ought to be reduced to £500. This Committee consisted of Mr. Duane, Mr. Izard & Mr. Madison the last of whom disagreed to the opinion of his colleagues as to the reduction of the £2500 allowed to M<sup>ts</sup>. Plenipo<sup>y</sup>

Ag<sup>st</sup> a reduction it was argued that not only justice, but the dignity of the U. S. required a liberal allowance to foreign servants; that gentlemen who had experienced the expence of living in Europe did not think that a less sum would be sufficient for a Decent style; and that in the instance of Mr. A. Lee, the expences claimed by him & allowed by Congress exceeded the fixed salary in question.

In favor of a reduction were urged the poverty of the U. S., the simplicity of Republican Governments, the inconsistency of splendid allowances to Ministers whose chief duty lay in displaying the wants of their Constituents and soliciting a supply of them; and, above all, the policy of reconciling the army to the economical arrangements imposed on them, by extending the reform to every other Department.

The result of this discussion was a reference of the Report to another Committee, consisting of Mr. Williamson, Mr. Osgood & Mr. Carrol.

A motion was made by Mr. Howel, 2<sup>ded</sup>. by Mr. Arnold, recommending to the several States to settle with & satisfy at the charge of the U. S. all such temporary corps as had been raised by them respectively with the approbation of Congress. The repugnance which appeared in Congress to go into so extensive & important a measure at this time, led the mover to withdraw it.

A motion was made by Mr. Madison seconded by Mr. Jones, “That the Sec<sup>y</sup> of F. Affairs be authorized to communicate to For<sup>n</sup> Ministers who may reside near Congress, all such articles of Intelligence rec<sup>d</sup> by Congress as he shall judge fit & that he have like authority with respect to acts & Resolutions passed by Congress; reporting nevertheless the communications which, in all such cases he shall have made.”

It was objected by some that such a Resolution was unnecessary, the Sec<sup>y</sup> being already possessed of the authority; it was contended by others that he ought previously to such communication, to report his intention to do so; others again were of opinion that it was unnecessary to report at all.

The motion was suggested by casual information from the Sec<sup>y</sup>, that he had not communicated to the French Minister the reappointment of Mr. Jefferson, no act of Congress having empowered or instructed him to do so.

The motion was committed to Mr. Williamson Mr. Madison & Mr. Peters.

## FRIDAY, NOV<sup>R</sup> 22.

A considerable time previous to this date a letter had been rec<sup>d</sup> by Congress from Mr. H. Laurens, informing them of his discharge from captivity, and of his having authorized in the British Ministry an expectation that Earl Cornwallis s<sup>d</sup> in his turn be absolved from his parole. Shortly after a letter from Doc<sup>f</sup>. Franklin informed Congress that at the pressing instance of Mr. L., and in consideration of the offer of Gen<sup>l</sup> Burgoyne for Mr. L. by Congress, as well as the apparent reasonableness of the thing, he had executed an instrument setting Cornwallis at liberty from his parole, until the pleasure of Congress should be known. These papers had been committed to M<sup>r</sup> Rutledge M<sup>r</sup> Montgomery & M<sup>r</sup> Madison, who reported in favor of the ratification of the measure, against the opinion however of Mr. R. the first member of the Committee. The Report after some discussion had been recommitted & had lain in their hands, until being called for, it was thought proper by the Committee to obtain the sense of Congress on the main question whether the act s<sup>d</sup> be ratified or annulled; in order that a report might be made correspondent thereto. With this view a motion was this day made by Mr. M., 2<sup>ded</sup> by Mr. Osgood that the Committee be instructed to report a proper act for the ratification of the measure. In support of this motion it was alledged, that whenever a public minister entered into engagements without authority from his Sovereign, the alternative which presented itself was either to recall the minister, or to support his proceedings, or perhaps both; that Congress had by their Resolution of the [seventeenth] day of [September] refused to accept the resignation of Mr. L. and had insisted on his executing the office of a Minister Plenipo: and that on the [twentieth] day of [September] they had rejected a motion for suspending the said Resolution; that they had no option therefore but to fulfil the engagement entered into on the part of that Minister; that it would be in the highest degree preposterous to retain him in so dignified and confidential a service, and at the same time stigmatize him by a disavowal of his conduct and thereby disqualify him for a proper execution of the service; that it was improper to send him into negotiations with the Enemy under an impression of supposed obligations; that this reasoning was in a great degree applicable to the part which Doc<sup>f</sup>. Franklin had taken in the measure; that finally the Marquis de la Fayette, who in consequence of the liberation of Cornwallis, had undertaken an exchange of several officers of his family, would also participate in the mortification; that it was overrating far the importance of Cornwallis, to sacrifice all these considerations to the policy or gratification of prolonging his captivity.



On the opposite side it was said, that the British Gov<sup>t</sup> having treated Mr. L. as a Traitor not as a Prisoner of war, having refused to exchange him for Gen<sup>l</sup> Burgoyne, and having declared by the British Gen<sup>l</sup> at N. York that he had been freely discharged, neither Mr. L. nor Congress would be bound either in honor or justice to render an equivalent; and that policy absolutely required that so barbarous an instrum<sup>t</sup> of war, and so odious an object to the people of the U. S. should be kept as long as possible in the chains of captivity; that as the latest advices rendered it probable that Mr. L. was on his return to America, the commission for peace would not be affected by any mark of disapprobation which might fall on his conduct; that no injury could accrue to Doc<sup>t</sup>. Franklin, because he had guarded his act by an express reservation for the confirmation or disallowance of Congress; that the case was the same with the Marquis de la Fayette; that the declaration ag<sup>st</sup> partial exchanges until a Cartel on national principles s<sup>d</sup> be established w<sup>d</sup> not admit even an exchange anteced<sup>t</sup> thereto.

These considerations were no doubt with some the sole motives for their respective votes. There were others however who at least blended with them, on one side, a personal attachment to Mr. L., and on the other, a dislike to his character, and a jealousy excited by his supposed predilection for G. B. by his intimacy with some of the new Ministry, by his frequent passing to & from G. B. by the eulogiums pronounced on him by Mr Burke in the House of Commons, and by his memorial whilst in the Tower, to the Parliam<sup>t</sup>. The last consideration was the chief ground on which the motion had been made for suspending the Resolution which requested his continuance in the Commission for peace.

In this stage of the business a motion was made by Mr. Duane 2<sup>ded</sup> by Mr. Rutledge to postpone the consideration of it; which being lost, a motion was made by Mr. Williamson to substitute a Resolution declaring, that as the B. Gov<sup>t</sup> had treated Mr. L. with so unwarrantable a rigor & even as a Traitor, and Cornwallis had rendered himself so execrable by his barbarities, Congress could not ratify his exchange—An adjournment was called for in order to prevent a vote with so thin & divided a house.

MONDAY, NOV<sup>R</sup> 25.

No Congress till

A letter from the L<sup>t</sup> Gov<sup>r</sup> of R. I. was read containing evidence that some of the leaders in Verm<sup>t</sup>, and particularly Luke Nolton who had been deputed in the year 1780 to Congress as agent for that party opposed to its independence but who had since changed sides had been intriguing with the enemy in N. Y. The letter was committed. See No<sup>t</sup> 27.

The consideration of the motion for ratifying the discharge of Cornwallis was resumed. Mr. Williamson renewed his motion which failed. Mr. McKean suggested the expedient of ratifying the discharge, on condition that a General cartel should be acceded to. This was relished at first by several members, but a development of its inefficacy and inconsistency with national dignity stifled it.

A motion was made by Mr. Rutledge, 2<sup>ded</sup> by Mr. Ramsay, that the discharge should be ratified in case Mr. L. should undertake the office of commissioner for peace. This proposition was generally considered as of a very extraordinary nature, and after a brief discussion withdrawn.

In the course of these several propositions most of the arguments stated on Friday last were repeated. Col: Hamilton who warmly & urgently espoused the ratification, as an additional argument mentioned, that some intimations had been given by Colonel L. of the army with the privity of Gen<sup>l</sup> W., to Cornwallis previous to his capitulation, that he might be exchanged for his father, then in the Tower.

The Rep<sup>t</sup> of the Committee on Mr. M<sup>s</sup> motion on the 21 inst: relative to the Sec<sup>y</sup> of F. Affairs, passed without opposition.

## TUESDAY, NOV<sup>R</sup> 26.

No Congress but a Grand Committee composed of a member from each State.

The States of N. H. & Mass<sup>ts</sup> having redeemed more than their quota of the Emissions prior to the 18<sup>th</sup> of March 1780, had called on Congress to be credited for the surplus, on which the Superintend<sup>t</sup> of Finance reported that they ought to be credited at the rate of 1 Dollar specie for 40 of the s<sup>d</sup> Emission, according to the Act of March aforesaid.<sup>1</sup> This report being judged by Congress unjust as the money had been called in by those States at a greater depreciation, was disagreed to. Whereupon a motion was made by Mr. Osgood, that the States who had redeemed a surplus should be credited for the same according to its current value at the time of redemption.

This motion with a letter afterwards rec<sup>d</sup> from the State of Mass: on the same subject, was referred to the Grand Committee in question.

The Committee were unanimous that justice required an allowance to the States who s<sup>d</sup> sink a surplus, to be apportioned on the different States. The different expedients were

1. That Congress s<sup>d</sup> renew their call on the States to execute the Acts of the 18<sup>th</sup> of M., 1780 and leave it to the States to level the money by negotiations among themselves. This was Mr. Hamilton's idea. The objections against it were that either nothing w<sup>d</sup> be done in the case or the deficient States w<sup>d</sup> be at the mercy of the hoarding States; altho the former were perhaps prevented from doing their part by invasions; & the prosperity of the latter enabled them to absorb an undue proportion.

By Mr. Madison it was proposed that Congress should declare that whenever it s<sup>d</sup> appear that the whole of the bills emitted prior to the 18<sup>th</sup> of M., 1780 shall have been collected into the treasuries of the several States, Congress w<sup>d</sup> proceed to give such credit for any surplus above the quotas assigned as equity might require, and debit the deficient States accordingly. In favor of this expedient it was supposed that it would give a general encouragement to the States to draw the money outstanding among individuals into the public treasuries, and render a future equitable arrangem<sup>t</sup> by

Congress easy. The objections were that it gave no satisfaction immediately to the complaining States, & would prolong the internal embarrassments which have hindered the States from a due compliance with the requisitions of Congress.

It was lastly proposed by Mr. Fitzsimmons that the Commissioners appointed to traverse the U. S., for the purpose of settling accounts should be empowered to take up all the outstanding old money and issue certificates in place of it, in specie value according to a rule to be given them by Congress the amount of the certificates to be apportioned on the States as part of the public debt, the same rule to determine the credit for redemptions by the States. This proposition was on the whole generally thought by the Committee least objectionable and was referred to a subcommittee composed of Mr. Rutledge, Mr. Fitzsimmons & Mr Hamilton to be matured & laid before the G. Com<sup>e</sup>. One consideration suggested by Mr. Hamilton in its favor was that it would multiply the advocates for federal funds for discharging the public debts, and tend to cement the Union.<sup>1</sup>

WEDNESDAY, NOV<sup>R</sup> 27<sup>Th</sup>.

The report of the Committee on the letter from the L<sup>t</sup> Gov<sup>r</sup> of R. Island (see Nov<sup>r</sup> 25) was made & taken into consideration.

It was moved by Mr. McKean to insert in the first clause on the Journal, after directing the apprehension by Gen<sup>l</sup> W., “in order that the s<sup>d</sup>. persons may be brought to trial” The reason urged for the motion was that it might appear that the interposition was not meant to supersede civil process further than the necessity of the case required. Ag<sup>st</sup> the motion it was urged, that it would lead to discussions extremely perplexing & dilatory & that it would be more proper after the apprehension s<sup>d</sup> have taken place—The motion was lost, 6 States only being for it.

With respect to the main question it was agreed on all sides that it was indispensable to the safety of the U. S. that a traitorous intercourse between the inhabitants of Vermont & the Enemy should be suppressed. There were however two modes proposed for the purpose, viz: the direct & immediate interposition of the military force according to the Report, and, 2<sup>dly</sup> A reference in the first instance to the acting Authority in Vermont, to be followed in case of refusal or neglect of Justice on the offenders, by an exertion of compulsive measures against the whole body.

In favor of the 1<sup>st</sup> mode it was s<sup>d</sup>., that it would be the only effectual one & the only one consistent with the part Congress had observed with regard to Vermont; since a reference to the Authority of Vermont, which had itself been suspected & accused would certainly be followed at the best by a mere mock trial; and would moreover be a stronger recognition of its independence than Congress had made or meant to make.

In favor of the 2<sup>d</sup>. mode it was alledged, that the body of the people in Vermont were well attached to the Revolution, that a sudden march of military force into the Country might alarm them, that if their Rulers abetted the Traitors, it w<sup>d</sup> disgrace them in the eyes of their own people, and that Congress would be justified in that event to “split Vermont up among the other States.” This expression, as well as the

arguments on this side in general came from Mr. Howell, of R. I., whose object was to render the proceedings of Congress as favorable as possible to the independence of Vermont.

In order to compromise the matter Mr. Arnold moved that the Comander in Chief s<sup>d</sup> be directed to make a previous communication of his intentions & the evidence on which they were founded to the persons exercising authority within the district in question.

It was suggested by Mr. Madison, as a better expedient that he s<sup>d</sup>. be authorized to make the communication if he should deem it conducive to the more certain apprehension of the suspected persons.

The Delegates from N. Y. said they would agree that after the apprehension should have been effected, the Commander might give notice thereof to the Persons exercising authority in Vermont.

It was finally compromised as it stands on the Journal.

In the course of the Debate Mr. Clark informed Congress, that the Delegates of N. Jersey could not vote for any act which might oppose force to the Authority of Vermont, the Legislature of that State having so construed the Resolutions of the 7 & 20<sup>th</sup>. of Aug: as to be incompatible therewith & accordingly instructed their Delegates.

The communication directed to the States on this occasion thro' the Commander in Chief was objected to by several members as an improper innovation. The object of it was to prevent the risk of discovery, if sent before the plans which might be taken by Gen<sup>l</sup> W were sufficiently advanced, of which he was the proper Judge.

THURSDAY NOV<sup>R</sup> 28TH.

No Congress.

Mr. Livingston, Sec<sup>y</sup> of F. Affairs called upon me & mentioned his intention to resign in a short time his office; observing that as he ultimately was decided to prefer his place of Chancellor in N. York to the other, and the two had become incompatible by the increase of Business in the former, he thought it expedient not to return to Phil<sup>a</sup>, after a visit to N. Y. which was required by this increase. In the course of conversation he took notice that the expence of his appoin<sup>t</sup> under Congress had exceeded his salary about 3000 Doll<sup>rs</sup> per Annum. He asked me whether it was probable Mr. Jefferson would accept the vacancy, or whether he would accept Mr. Jay's place in Spain, and leave the vacancy to the latter. I told him I thought Mr. J. w<sup>d</sup> not accept it himself & doubted whether he would concur in the latter arrangement, as well as whether Congress would be willing to part with Mr. Jay's services in the Negotiations of peace; but promised to sound Mr. J. on these points by the first opportunity.1

## MONDAY, DEC<sup>R</sup> 2<sup>D</sup>.

No Congress untill

The Sec<sup>y</sup> of foreign Affairs resigned his office, assigning as a reason the increase of business in his office of Chancellor of N. Y., whereby it was become impossible for him to execute the duties of both; informing Congress at the same time as a rule for providing for his successor, that his expences exceeded his salary upwards of 3000 Doll<sup>rs</sup>. per annum. The letter of resignation was committed to Mr. McKean, Mr. Osgood, &c.2

## TUESDAY, DEC<sup>R</sup> 3.

After a verbal report of the Committee above mentioned, who acquainted Congress that in conference with Mr. Livingston he professed a willingness to remain in office till the 1<sup>st</sup> of Jan<sup>y</sup>, to give time for the choice of a Successor, Mr. McKean proposed the Resolution which stands on the Secret Journals; several alterations having been made however in the course of its consideration. With respect to the Preamble particularly, a change took place. As it was first moved it recited as the ground of the resignation the incompatibility of the office of foreign Affairs with the Chancellorship of N. Y. To this recital it was objected by Mr. Madison, that such a publication of preference of the office of Chancellor of a particular State to the office of foreign Affairs under the U. S., tended to degrade the latter. Whereupon the Preamble on the Journal was substituted. In the course of this business the expediency of augmenting the salary was suggested, but not much supported. Mr. Howel & Mr. Clark opposed it strenuously.

The Report of the Committee on the case of Vermont mentioned on Thursday the 14 of Nov<sup>r</sup>. was called for by Mr. McKean, & postponed on his motion to make way for a set of Resolutions declaring that as Vermont in contempt of the authority of Congress & their Recommendations of — 1799,1 exercised jurisdiction over sundry persons professing allegiance to the State of N. Y., banishing them and stripping them of their possessions, the former be required to make restitution &c. and that in case of refusal or neglect Congress will enforce the same, &c. A motion was made by Mr. Clark 2<sup>nd</sup> by Mr. Howel to strike out the latter clause; in favor of which it was said that such a menace ought to be suspended until Vermont should refuse to comply with the Requisition, especially said Mr. Howel as the present proceeding being at the instance of Phelps & other exiles, was an ex parte one.

Against the motion for expunging the clause, it was observed that a requisition on Vermont without such a menace w<sup>d</sup> have no effect, that if Congress interposed they ought to do it with a decisive tone; that as it only enforced restitution in cases where spoliations had been committed and therefore was conditional, the circumstance of its being ex parte was of no weight, especially as Congress c<sup>d</sup> not call on Verm<sup>t</sup> to appear as a party after her repeated protestations ag<sup>st</sup> appearing.

On this occasion, Mr. Carroll informed Congress that he had entirely changed his opinion with regard to the policy requisite with regard to Verm<sup>t</sup> being thoroughly

persuaded that its leaders were perfidious men & that the interest of the U. S. required their pretensions to be discountenanced; that in this opinion he was not a little confirmed by a late conversation with Gen<sup>l</sup> Whipple of N. Hampshire at Trenton in which this Gentleman assured him, that the Governing party in Vermont were perfidiously devoted to the British interests & that he had reason to believe that a British Com<sup>mission</sup> for a Gov<sup>t</sup> of that district had come over & was ready to be produced at a convenient season. Some of the members having gone out of Congress & it being uncertain whether there would be more than six States for the clause, an adjournment was moved for & voted.

The proceedings on this subject evinced still more the conciliating effect of the territorial cession of N. York, on several States & the effect of the scheme of an ultra-montane State within Penns<sup>a</sup>, on the latter State. The only States in Congress which stood by Vermont were Rhode Island, which is supposed to be interested in lands in Verm<sup>t</sup>, and N. Jersey whose Delegates were under instructions on the subject.

## WEDNESDAY DEC<sup>R</sup> 4.

After the passing of the Resolution concerning Cap: P. Jones, 1 a motion was made by Mr. Madison to reconsider the same, that it might be referred to the Agent of Marine to take order, as a better mode of answering the same purpose; since it did not become the sovereign body to give public sanction to a recommendation of Capt: Jones to the Commander of the French Squadron, especially as there was no written evidence that the latter had signified a disposition to concur in the project of Capt: Jones. The motion was lost; a few States only being in favor of it.

The reason assigned by those who voted against the promotion of Col:<sup>s</sup> to Brigad<sup>s</sup>. according to districts was that such a division of the U. S. tends to foster local ideas, and might lead to a dismemberment.

The Delegates from Penn<sup>a</sup> reminded Congress that no answer had been given to the memorials (see Nov<sup>r</sup> 20) from that State that the Legislature were proceeding in the measure intimated in the said memorials and that they meant to finish it & adjourn this evening. 1 The reasons mentioned by the Delegates as prevailing with the Legislature were 1<sup>st</sup>., the delay of Congress to give an answer which was deemed disrespectful 2<sup>d</sup>. the little chance of any funds being provided by Congress for their internal debts; 3<sup>dly</sup>, the assurance (given by one of their members Mr. Jos Mont—g—y, mentioned privately not on the floor) that no impediment to the support of the war c<sup>d</sup> arise from it, since Congress had provided means for that purpose in Europe.

A Committee consisting of Mr. Rutledge Mr. Madison & Mr. Hamilton was appointed to confer immediately with a Committee from the Legislature on the subject of the Memorials & were instructed to make such communications relative to our affairs abroad as would correct misinformations. The comittee which met them on the part of the Legislature, were Mr. Jos: Montgomery, Mr. Hill & Mr. Jacob Rush.

The Committee of Congress in the conference observed that the delay of an answer had proceeded in part from the nature of so large an assembly of which the Committee of the Legislature c<sup>d</sup> not be insensible, but principally from the difficulty of giving a satisfactory one until Rhode Island s<sup>d</sup> accede to the Impost of 5 Per C<sup>t</sup>. of which they had been in constant expectation; that with respect to the prospect from Congress for the public Creditors Congress had required of the States interest for the ensuing year, had accepted the territorial Cession of N. Y. and meant still to pursue the scheme of the impost; that as to their affairs in Europe the loan of 6 Millions of livres only last year had been procured from France by Dr. Franklyn, in place of 12 asked by him, the whole of which had been applied; that the loan of 5.000.000 Guilders opened by Mr. Adams had advanced to about 1½ Million only and there seemed little progress to have been made of late; that the application for 4 Million as part of the estimate for the ensuing year was not founded on any previous information in its favor but against every intimation on the subject, & was dictated entirely by our necessities; so that if even no part of the requisitions from the States s<sup>d</sup> be denied, or diverted, the support of the war the primary object, might be but deficiently provided for. That if this example which violated the right of appropriation delegated to Congress by the federal Articles, should be set by P<sup>a</sup>, it would be both followed by other States & extended to other instances; that in consequence, our system of administration, and even our bond of Union w<sup>d</sup> be dissolved; that the enemy would take courage from such a prospect and the war be prolonged if not the object of it be endangered; that our national credit would fail with other powers, & the loans from abroad which had been our chief resource fail with it. That an assumption by individual States of the prerogative of paying their own Citizens the debts of the U. S. out of the money required by the latter was not only a breach of the federal system but of the faith pledged to the public Creditors; since payment was mutually guaranteed to each & all of the Creditors [by] each & all of the States; and that lastly it was unjust with respect to the States themselves on whom the burden would fall not in proportion to their respective abilities, but to the debts due to their respective Citizens; and that at least it deserved the consideration of P<sup>a</sup> whether she would not be loser by such an arrangement.

On the side of the other Committee it was answered that the measure c<sup>d</sup> not violate the confederation, because the requisition had not been founded on a valuation of land; that it would not be the first example, N. H. & N. Y. hav<sup>g</sup> appropriated money raised under requisitions of Congress; that if the other States did their duty in complying with the demands of Congress no inconvenience would arise from it, that the discontents of the Creditors w<sup>d</sup> prevent the payment of taxes; Mr. Hill finally asking whether it had been considered in Congress how far delinquent States c<sup>d</sup> be eventually coerced to do justice to those who performed their part? To all which it was replied that a valuation of land had been manifestly impossible during the war—that the apportionments made had been acquiesced in by P<sup>a</sup>, and therefore the appropriation could not be objected to; that altho other States might have set previous examples, these had never come before Congress, & it w<sup>d</sup> be more honorable for P<sup>a</sup> to counteract than to abet them especially as the example from her weight in the Union & the residence of Congress w<sup>d</sup> be so powerful, that if other States did their duty the measure w<sup>d</sup> be superfluous; that the discontents of the Creditors might always be answered by the equal justice & more pressing necessity which pleaded in favor of the



army, who had lent their blood & services to their Country, and on whom its defence still rested; that Congress unwilling to presume a refusal in any of the States to do justice, c<sup>d</sup> not anticipate it by a consideration of the steps w<sup>ch</sup> such refusal might require, & that ruin must ensue if the States suffered their policy to be swayed by such distrusts. The Committee appeared to be considerably impressed with these remarks, & the Legislature suspended their plan.

THURSDAY, DEC<sup>R</sup> 5<sup>TH</sup>. 1782.

Mr. Lowel & Mr. Reed were elected Judges of the Court of Appeals. Mr. P. Smith, of N. Jersey had the vote of that State; and Mr. Merchant,<sup>1</sup> of Rhode Island the vote of that State.

The Resolutions respecting Vermont moved by Mr. McKean on the [twenty-seventh] day of [November,] were taken into Consideration. They were seconded by Mr. Hamilton, as entered on the Journal of this day. Previous to the question on the coercive clause, Mr. Madison observed that as the preceding clause was involved in it, & the federal articles did not delegate to Congress the authority about to be enforced, it would be proper in the first place to amend the recital in the previous clause, by inserting the ground on which the Authority of Congress had been interposed. Some who voted against this motion in this stage having done so from a doubt as to the point of order, it was revived in a subsequent stage when that objection did not lie. The objections to the motion itself were urged chiefly by the Delegates from Rhode Island, and with a view in this as in all other instances, to perplex & protract the business. The objections were 1<sup>st</sup> that the proposed insertion was not warranted by the Act of N. Hampshire which submitted to the judgment of Congress *merely* the question of jurisdiction. 2<sup>dly</sup> That the Resolutions of Aug: 1781, concerning Vermont, hav<sup>g</sup> been acceded to by Vermont, annulled all antecedent acts founded on the doubtfulness of its claim to independence. In answer To the 1<sup>st</sup> obj<sup>n</sup> the Act of N. H. was read w<sup>ch</sup> in the utmost latitude adopted the Resolu<sup>s</sup> of Congress which extended expressly to the preservation of peace & order & prevention of acts of confiscation by one party ag<sup>st</sup> another. To the 2<sup>d</sup> obj<sup>n</sup> it was answered 1<sup>st</sup> that the s<sup>d</sup>. Reso<sup>ns</sup> of Aug: being conditional not absolute, the accession of Vermont c<sup>d</sup> not render them definitive; but 2<sup>dly</sup> that prior to this accession, Vermont hav<sup>g</sup> in due form rejected the Resol<sup>ns</sup>, and notified the rejection to Congress, the accession could be of no avail unless subsequently admitted by Congress, 3<sup>dly</sup>, that this doctrine had been maintained by Vermont itself w<sup>ch</sup> had *declared* that inasmuch as the Resol<sup>ns</sup> of Aug: did not correspond w<sup>th</sup> their overtures previously made to Congress these had ceased to be obligatory; w<sup>ch</sup> act it was to be observed was merely *declaratory*, not creative, of the annulment.

The original motion of Mr. McKean & Mr. Hamilton [was agreed to] seven States voting for it; R. I. & N. J. in the negative.

FRIDAY 6 DEC<sup>R</sup>.

An ordinance, extending the privilege of Franking letters to the Heads of all the Departments was reported & taken up. Various ideas were thrown out on the subject



at large; some contending for the extension proposed some for a partial adoption of it, some for a total abolition of the privilege as well in members of Congress as in others. Some for a limitation of the privilege to a definite number or weight of letters. Those who contended for a total abolition, represented the privilege as productive of abuses, as reducing the profits so low as to prevent the extension of the establishment throughout the U. S. and as throwing the whole burden of the establishment on the mercantile intercourse.—On the other side it was contended that in case of an abolition The Delegates, or their Constitutents, would be taxed just in proportion to their distance from the seat of Congress; which was neither just nor politic, considering the many other disadvantages which were inseparable from that distance; that as the correspondence of the Delegates was the principal channel through which a general knowledge of public affairs, was diffused, any abridgment of it would so far confine this advantage to the States within the neighbourhood of Congress; & that as the correspondence at present however voluminous did not exclude from the mail any private letters which w<sup>d</sup> be subject to postage, and if postage was extended to letters now franked the n<sup>o</sup> & size of them would be essentially reduced, the revenue was not affected in the manner represented. The Ordinance was disagreed to & the subject recommitted, w<sup>th</sup> instruction to the Committee giving them ample latitude for such Report as they should think fit.

A Boston Newspaper containing under the Providence Head, an extract of a letter purporting to be written by a Gentleman in Philad<sup>a</sup> and misrepresenting the state of our loans, as well as betraying the secret proposal of the Swedish Court to enter into a Treaty with the U. S; with the view of disproving to the people of R. Island the necessity of the Impost of 5 P C<sup>t</sup>.; had been handed about for several days. From the style and other circumstances, it carried strongly the appearance of being written by a Member of Congress. The unanimous suspicions were fixed on Mr. Howel. The mischievous tendency of such publications & the necessity of the interposition of Congress were also general subjects of conversation. It was imagined too that a detection of the person suspected would destroy in his State that influence which he exerted in misleading its counsels with respect to the Impost. These circumstances led Mr. Williamson to move the proposition on this subject. [1](#)

It was opposed by no one.

Mr. Clark supposing it to be levelled in part at him, rose & informed Congress, that not considering the article relative to Sweden as secret in its nature, and considering himself at liberty to make any communications to his Constituents, he had disclosed it to the Assembly of N. Jersey. He was told that the motion was not aimed at him, but the doctrine advanced by him was utterly inadmissible. Mr. Rutledge observed that after this frankness on the part of Mr. Clarke as well as from the respect due from every member to Congress & to himself, it might be concluded that if no member present should own the letter in question, no member present was the author of it. Mr. H. was evidently perturbed but remained silent.

The conference with the Committee of the Legislature of Penn<sup>a</sup>., with subsequent information had rendered it very evident that unless some effectual measures were taken against separate appropriations & in favor of the public Creditors the

Legislature of that State, at its next meeting, would resume the plan which they had suspended. Mr. Rutledge in pursuance of this conviction moved that the Superintendent of Finance be instructed to represent to the several States the mischiefs which such appropriations would produce. It was observed with respect to this motion that however it might be as one expedient, it was of itself inadequate; that nothing but a permanent fund for discharging the debts of the public would divert the States from making provision for their own Citizens; that a renewal of the call on R. Island for the impost ought to accompany the motion; that such a combination of these plans would mutually give efficacy to them, since R. Island would be solicitous to prevent separate appropriations, & the other States would be soothed with the hope of the Impost. These observations gave rise to the Motion of Mr. Hamilton, which stands on the Journal. 1 Ag<sup>st</sup>. Mr. Rutledge's part of the motion no objection was made. But The sending a deputation to Rhode Island was a subject of considerable debate, in which the necessity of the impost, in order to prevent separate appropriations by the States, to do equal justice to the Public creditors, to maintain our national character & credit abroad, to obtain the loans essential for supplying the deficiencies of revenue, to prevent the encouragement which a failure of the scheme would give the Enemy to persevere in the war, was fully set forth. The objections, except those w<sup>ch</sup> came ag<sup>st</sup> the scheme itself from the Delegates of R. Island, were drawn from the unreasonableness of the proposition. Congress ought it was said to wait for an official answer to their demand of an explicit answer from R. I. before they could with propriety repeat their exhortations. To which it was replied that altho' this objection might have some weight, Yet the urgency of our situation, and the chances of giving a favorable turn to the negotiations on foot for peace rendered it of little comparative significance. The objections were finally retracted, and both the propositions agreed to. The Deputation elected were Mr. Osgood, Mr. Mifflin & Mr. Nash taken from different parts of the U. S., & each from States that had fully adopted the Impost, and would be represented in Congress w<sup>th</sup>out them; except Mr. Osgood whose State, he being alone, was not represented without him.

## SATURDAY, DEC<sup>R</sup>. 7.

No Congress.

The Grand Committee met again on the business of the old paper emissions, and agreed to the plan reported by the sub-committee in pursuance of Mr. Fitzsimmons' motion, vz: that the outstanding bills should be taken up & certificates issued in place thereof at the rate of 1 real Dollar for — nominal ds., and that the surpluses redeemed by particular States sho<sup>d</sup>. be credited to them at the same rate. Mr. Carrol alone dissented to the plan, alledging that a law of Maryland was adverse to it which he considered as equipollent to an instruction. For filling up the blank, several rates were proposed. 1<sup>st</sup>., 1 for 40 on which the votes were *no* except Mr. Howell. 2<sup>d</sup>, 1 for 75 *no* Mr. White & Mr. Howell, *ay*. 3<sup>d</sup>, 1 for 100 *no* Mr. Hamilton & Mr. Fitzsimmons *ay*. 4<sup>th</sup>, 1 for 150 *no* Mr. Fitzsimmons *ay*. The reasons urged in favor of 1 for 40 were—first an adherence to public faith, secondly that the depreciation of the certificates would reduce the rate sufficiently low, they being now negotiated at the rate of three or four for one. The reason for 1 for 75, that the bills passed at that rate when they were called in, in the Eastern States; for 1 for 100—that as popular ideas

were opposed to the stipulated rate, and as adopting the current rate might hurt the credit of other securities which derived their value from an opinion that they would be strictly redeemed, it was best to take an arbitrary rate, leaning to the side of liberality,—for 1 for 150 that this was the medium depreciation when the circulation ceased. The opposition to these several rates came from the Southern Delegates, in some of whose States none, in others but little had been redeemed, & in all of which the depreciation had been much greater. On this side it was observed by Mr. Madison, that the States which had redeemed a surplus, or even their quotas, had not done it within the period fixed by Congress but in the last stages of depreciation, & in a great degree, even after the money had ceased to circulate; that since the supposed Cessation the money had generally changed hands at a value far below any rate that had been named; that the principle established by the plan of the 18<sup>th</sup> of March 1780, with respect to the money in question was, that the Holder of it s<sup>d</sup> receive the value at which it was current, & at which it was presumed he had received it; that a different rule adopted with regard to the same money in different stages of its downfall w<sup>d</sup>. give general dissatisfaction. The Committee adjourned without coming to any decision.

MONDAY 9<sup>TH</sup>. DEC<sup>R</sup>.

No Congress.

TUESDAY, 10 DEC<sup>R</sup>.

A motion was made by Mr. Ramsay directing the Sec<sup>y</sup> at War who was ab<sup>t</sup>. to visit his family in Massachusetts, to take Vermont in his way & deliver the Resolutions passed a few days since to Mr. Chittenden. For the motion it was urged that it would ensure the delivery would have a conciliating effect, and would be the means of obtaining true and certain knowledge of the disposition & views of that people. On the opposite side it was exclaimed ag<sup>st</sup>. as a degradation of so high a Serv<sup>t</sup> of the U. S., as exposing him to the temerity of leaders who were on good ground suspected of being hostile to the U. S., and as treating their pretensions to Sovereignty with greater complaisance than was consistent with the eventual resolutions of Congress. The motion was rejected.

A motion was made by Mr. Gilman that a day be assigned for determining finally the affair of Vermont. The opposition made to the motion itself by Rhode Island & the disagreement as to the day among the friends of the motion prevented a decision & it was suffered to lie over.

For the letter of the Superintend<sup>t</sup>. of Finance to T[homas] B[arclay] Com<sup>r</sup>. for settling accounts in Europe, agreed to by Cong<sup>r</sup>., see Secret Journal of this date.

WEDNESDAY, 11<sup>Th</sup> DEC<sup>R</sup>.

The Sec<sup>y</sup>. at War was authorized to permit the British prisoners to hire themselves out on condition of a bond from the Hirers for their return. The measure was not opposed,

but was acquiesced in by some, only as conformable to antecedent principles established by Congress on this subject. Col Hamilton in particular made this explanation.

Mr. Wilson made a motion referring the transmission of the Resolutions concerning Vermont to the Sec<sup>y</sup>. at War in such words as left him an option of being the Bearer, without the avowed sanction of Congress. The votes of Virg<sup>a</sup> & N. York negatived it. The Presid<sup>t</sup> informed Congress that he should send the Resolutions to the Commander in Chief to be forwarded.

#### THURSDAY, DEC<sup>R</sup>. 12.

The Report made by Mr. Williamson, Mr. Carrol, and Mr. Madison touching the publication in the Boston paper, supposed to be written by Mr. Howel, passed with the concurrence of R. Island; Mr. Howel hesitating & finally beckoning to Mr. Collins his colleague, who answered for the State in the affirmative. As the Report stood the Executive of Massachusetts, as well as of Rho. Island was to be written to, the Gazette being printed at Boston. On the motion of Mr. Osgood who had seen the original publication in the Providence Gazette and apprehended a constructive imputation on the Mass Delegates by such as would be ignorant of the circumstances, the Executive of Mass<sup>ts</sup> was expunged.

#### FRIDAY, DEC<sup>R</sup>. 13TH.

Mr. Howel verbally acknowledged himself to be the writer of the letter from which the extract was published in the Providence Gazette. At his instance the subject was postponed until Monday.

#### SATURDAY, DEC<sup>R</sup> 14TH.

No Congress.

#### MONDAY, DECEMBER 16TH.

The answer to the objections of Rho: Island, 1 as to the Impost, penned by Mr. Howel, passed without opposition, 8 States being present, of which Rho: Is<sup>d</sup> was one, a few trivial alterations only being made in the course of discussion.

Mr. Howell, contrary to expectation, was entirely silent as to his affair.

#### TUESDAY, DEC<sup>R</sup>. 17TH.

Mr. Carrol in order to bring on the affair of Mr. Howel moved that the Sec<sup>y</sup> of Foreign Affairs be instructed not to write to the Gov<sup>t</sup>. of Rhode Island on the subject. The state in w<sup>ch</sup> such a vote would leave the business unless the reason of it was expressed, being not adverted to by some, and others being unwilling to move in the case, this motion was incautiously suffered to pass. The effect of it however was soon

observed, and a motion in consequence made by Mr. Hamilton, to subjoin the words, "Mr. Howel having in his place confessed himself to be the Author of the publication." Mr. Ramsay thinking such a stigma on Mr. Howel unnecessary, & tending to place him in the light of a persecuted man whereby his opposition to the Impost might have more weight in his State, proposed to substitute as the reason, "Congress hav<sup>g</sup> rec<sup>d</sup> the information desired on that subject. The yeas & nays being called for by Mr. Hamilton, Mr. Howell grew very uneasy at the prospect of his name being thereby brought on the Journals; and requested that the subject might be suspended until the day following. This was agreed to & took place on condition that the ne[ga]tived counter direction to the Sec<sup>y</sup> of F. A. should be reconsidered & lie over also.

### WEDNESDAY, DEC<sup>R</sup>. 18TH.

This day was chiefly spent on the case of Mr. Howel, whose behaviour was extremely offensive, and led to a determined opposition to him, those who were most inclined to spare his reputation. If the affair could have been closed without an insertion of his name on the Journal, he seemed willing to withdraw his protest; but the impropriety which appeared to some, & particularly to Mr. Hamilton, in suppressing the name of the Author of a piece w<sup>ch</sup>. Congress had so emphatically reprobated, when the author was found to be a member of Congress, prevented a relaxation as to the yeas & nays. Mr. Howell, therefore as his name was necessarily to appear on the Journal, adhered to the motion which inserted his protest thereon.<sup>1</sup> The indecency of this paper, and the pertinacity of Mr. Howell in adhering to his assertions with respect to the non-failure of any application for foreign loans, excited great & (excepting his Colleagues or rather Mr. Arnold) universal indignation and astonishment in Congress; and he was repeatedly premonished of the certain ruin in w<sup>ch</sup>. he w<sup>d</sup>. thereby involve his character & consequence; and of the necessity w<sup>ch</sup> Congress w<sup>d</sup> be laid under of vindicating themselves by some act which would expose and condemn him to all the world.

### THURSDAY, DEC<sup>R</sup>. 19TH.

See Journals.

### FRIDAY, DEC<sup>R</sup>. 20TH.

A motion was made by Mr. Hamilton for revising the requisitions of the preceding and present years, in order to reduce them more within the faculties of the States. In support of the motion it was urged that the exorbitancy of the demands produced a despair of fulfilling them which benumbed the efforts for that purpose. On the other side it was alledged that a relaxation of the demand would be followed by a relaxation of the efforts; that unless other resources were substituted, either the States would be deluded by such a measure into false expectations, or, in case the truth s<sup>d</sup> be disclosed to prevent that effect, that the Enemy w<sup>d</sup> be encouraged to persevere in the war ag<sup>st</sup> us. The motion meeting with little patronage it was withdrawn.

The report of the committee on the motion of Mr. Hamilton proposed that the *Sec<sup>y</sup>. of Congress* should transmit to the Executive of Rhode Island the several acts of Congress with a state of foreign loans. The object of the committee was that in case Rhode Island should abet or not resent the misconduct of their Representative, as w<sup>d</sup> most likely be the event, Congress should commit themselves as little as possible in the mode of referring it to that State. When the Report came under consideration it was observed, that the *Presid<sup>t</sup>.* had always transmitted acts of Congress to the Executives of the States, and that such a change on the present occasion might afford a pretext if not excite a disposition in Rhode Island not to vindicate the honor of Congress. The matter was compromised by substituting the *Sec<sup>y</sup> of F. A.* who *ex officio*, corresponds with the Governors &c within whose department the facts to be transmitted as to foreign loans, lay. No motion or vote opposed the report as it passed.

## SATURDAY 21 DEC<sup>R</sup>..

The Committee to confer w<sup>th</sup>. Mr. Livingston was appointed the preceding day in consequence of the unwillingness of several States to elect either Gen<sup>l</sup> Schuyler, Mr. Clymer, or Mr. Read the Gentlemen previously put into nomination, and of a hint that Mr. L might be prevailed on to serve till the spring. The Committee found him in this disposition and their report was agreed to without opposition. [1](#) See the Journal.

## MONDAY, 23 DEC<sup>R</sup>..

The motion to strike out the words “accruing to the use of the U. S.,” was grounded on a denial of the principle that a capture & possession by the enemy of moveable property extinguished or effected the title of the original owners. On the other side this principle was asserted as laid down by the most approved writers, and conformable to the practice of all nations; to which was added that if a contrary doctrine were established by Congress, innumerable claims would be brought forward by those whose property had, on recapture been applied to the public use. [1](#) See Journal.

Letters were this day rec<sup>d</sup>. from Dr. Franklin, Mr. Jay & the Marquis de la Fayette. They were dated the 14th of Oc<sup>r</sup>. That from the first inclosed copy of the 2<sup>d</sup> Comission to Mr. Oswald with sundry prelim<sup>y</sup> articles, and distrusted the British Court. That from the 2<sup>d</sup>. expressed great jealousy of the French Gov<sup>t</sup>, & referred to an intercepted letter from Mr. Marbois, opposing the claim of the U. S. to the Fisheries. This despatch produced much indignation ag<sup>st</sup> the author of the intercepted letter, and visible emotions in some ag<sup>st</sup> France. It was remarked here that our Ministers took no notice of the distinct com<sup>ons</sup>. to Fitzherbert & Oswald; that altho’ on a supposed intimacy and joined in the same com<sup>on</sup>., they the Ministers, wrote *separately* & breathed opposite sentiments as to the views of France. Mr. Livingston told me that the letter of the C<sup>t</sup> de Vergennes, as read to him by the Chev<sup>r</sup> Luzerne, very delicately mentioned & complained that American Ministers did not in the negotiations with the British Ministers, maintain the due com. with those of France. Mr. Livingston inferred on the whole that France was sincerely anxious for peace.



The Presid<sup>t</sup> acquainted Congress that C<sup>t</sup> Rochambeau had communicated the intended embarkation of the French troops for the W. Indies, with an assurance from the King of France, that in case the war s<sup>d</sup> be renewed ag<sup>st</sup> U. S. they should immediately be sent back.

## TUESDAY, 24 DEC<sup>R</sup>.

The letter from Mr. Jay, inclosing a copy of the intercepted letter from Marbois, was laid before Congress.<sup>1</sup> The tenor of it with the comments of Mr. Jay, affected deeply the sentiments of Congress with regard to France. The policy in particular manifested by France, of keeping us tractable by leaving the British in possession of posts in this country awakened strong jealousies, corroborated the charges on that subject, and with concomitant circumstances may engender the opposite extreme of the gratitude & cordiality now felt towards France; as the closest friends on a rupture are apt to become the bitterest foes. Much will depend however on the course pursued by Britain. The liberal one Oswald seems to be pursuing will much promote an alienation of temper in America from France. It is not improbable that the intercepted letter from Marbois came thro' Oswald's hands. If G. B., therefore, yields the fisheries & the back territory, America will feel the obligation to her not to France, who appears to be illiberal as to the 1<sup>st</sup> & favorable to Spain as to the 2<sup>d</sup> object; and, consequently has forfeited the confidence of the States interested in either of them. Candor will suggest however that the situation of France is and has been extremely perplexing. The object of her blood & money was not only the independence, but the commerce and gratitude of America; the commerce to render independence the more useful, the gratitude to render that commerce the more permanent. It was necessary therefore she supposed that America should be exposed to the cruelties of her Enemies, and be made sensible of her own weakness in order to be grateful to the hand that relieved her. This policy if discovered tended on the other hand to spoil the whole. Experience shews that her truest policy would have been to relieve America by the most direct & generous means, & to have mingled with them no artifice whatever. With respect to Spain also the situation of France has been as peculiarly delicate. The claims & views of Spain & America interfere. The former attempts of Britain to seduce Spain to a separate peace, & the ties of France with the latter whom she had drawn into the war, required her to favor Spain, at least to a certain degree, at the expence of America. Of this G. B. is taking advantage. If France adheres to Spain G. B. espouses the views of America, & endeavours to draw her off from France. If France adheres to America in her claims B. might espouse those of Spain, & produce a breach between her & France; and in either case Britain w<sup>d</sup> divide her enemies. If France acts wisely, she will in this dilemma prefer the friendship of America to that of Spain. If America acts wisely she will see that she is with respect to her great interests, more in danger of being seduced by Britain than sacrificed by France.

The deputation to R. I. had set out on the 22<sup>d</sup> & proceeded ½ day's journey. Mr. Nash casually mentioned a private letter from Mr. Pendleton to Mr. Madison<sup>1</sup> informing that the Legislature of Virg<sup>a</sup>. had in consequence of the final refusal of R. I. repealed her law for the impost. As this circumstance if true destroyed in the opinion of the deputies the chief arg<sup>t</sup> to be used by them, viz: the unanimity of the other States, they determined to return & wait for the Southern post, to know the truth of it. The post

failing to arrive on the 23<sup>d</sup>, the usual day the deputies on this day came into Congress & stated the case. Mr. Madison read to Congress the paragraph in the letter from Mr. Pendleton. Congress verbally resolved, that the departure of the Deputies for R. I. s<sup>d</sup>. be suspended until the further order of Congress; Mr. Madison promising to give any information he might receive by the post. The arrival of the post immediately ensued. A letter to Mr. Madison from Mr. Randolph confirmed the fact, & was communicated to Congress. The most intelligent members were deeply affected & prognosticated a failure of the Impost scheme, & the most pernicious effects to the character, the duration & the interests of the Confederacy. It was at length notwithstanding determined to persist in the attempt for permanent revenue, and a Committee was appointed to report the steps proper to be taken.

A motion was made by Mr. Rutledge to strike out the salvage for recaptures on land, on the same principle as he did the words "accruing to the use of the United States." As the latter had been retained by barely 7 States, and one of these was not present the motion of Mr. Rutledge succeeded. Some of Those who were on the other side, in consequence, voted ag<sup>st</sup> the whole resolution & it failed. By compromise it passed as reported by the Committee.

The Grand Committee reported after another meeting with respect to the old money, that it should be rated at 40 for 1. The Chair decided on a question raised, that according to rule the blank s<sup>d</sup> not have been filled up by the Committee; so the rate was expunged.

From Tuesday 24 of Dec<sup>r</sup>, the journals suffice untill

## MONDAY 30 DEC<sup>R</sup>.

A motion made by Mr. Clarke, seconded by Mr. Rutledge, to revise the instructions relative to negotiations for peace, with a view to exempt the American Plenipotentiaries from the obligation to conform to the advice of France. This motion was the effect of impressions left by Mr. Jay's letters, & the intercepted one from Marbois. This evidence of separate views in our Ally, and the inconsistency of that instruction with our national dignity, were urged in support of the motion. In opposing the motion, many considerations were suggested, and the original expediency of submitting the commission for peace to the Councils of France descanted upon. The reasons assigned for this expediency were that at the juncture when that measure took place the American affairs were in the most deplorable situation, the Southern States being overrun & exhausted by the enemy, & and the others more inclined to repose after their own fatigues than to exert their resources for the relief of those which were the seat of the war; that the old paper currency had failed, & with it public credit itself to such a degree that no new currency could be substituted; & that there was then no prospect of introducing specie for the purpose, our trade being in the most ruinous condition, & the intercourse with the Havana in particular unopened. In the midst of these distresses the mediation of the two Imperial Courts was announced. The general idea was that the two most respectable powers of Europe would not interpose without a serious desire of peace, and without the energy requisite to effect it. The hope of peace was therefore mingled with an apprehension that considerable concessions



might be exacted from America by the Mediators, as a compensation for the essential one which Britain was to submit to. Congress on a trial found it impossible from the diversity of opinions & interests to define any other claims than those of independence & the alliance. A discretionary power therefore was to be delegated with regard to all other claims. Mr. Adams was the sole minister for peace, he was personally at variance with the French Ministry; his judgment had not the confidence of some, nor his partiality in case of an interference of claims espoused by different quarters of the U. S., the confidence of others; a motion to associate with him two colleagues, to wit, Mr. Franklin & Mr. Jay, had been disagreed to by Congress; the former of these being interested as one of the Land Companies in territorial claims which had less chance of being made good in any other way than by a repossession of the vacant country by the British Crown, the latter belonging to a State interested in such arrangements as would deprive the U. S. of the navigation of the Mississippi, & turn the western trade through N. Y.; and neither of them being connected with the So. States. The idea of having five ministers taken from the whole Union was not suggested until the measure had been adopted, and communicated to the Chev<sup>r</sup> de Luzerne to be forwarded to France, when it was too late to revoke it. It was supposed also that Mr. Laurens then in the tower would not be out, & that Mr. Jefferson w<sup>d</sup>. not go; & that the greater n<sup>o</sup>. of Ministers, the greater the danger of discords & indiscretions. It was Added that as it was expected that nothing would be yielded by G. B. which was not extorted by the address of France in managing the Mediators, and as it was the intention of Congress that their minister should not oppose a peace recommended by them & approved by France, it was thought good policy to make the declaration to France, & by such a mark of confidence to render her friendship the more responsible for the issue. At the worst it could only be considered as a sacrifice of our pride to our interest.

These considerations still justified the original measure in the view of the members who were present & voted for it. All the new members who had not participated in the impressions which dictated it and viewed the subject only under circumstances of an opposite nature, disapproved it. In general however the latter joined with the former in opposing the motion of Mr. Clarke, arguing with them that supposing the instruction to be wrong, it was less dishonorable, than the instability that w<sup>d</sup>. be denoted by rescinding it; that if G. B. was disposed to give us what we claimed France could not prevent it; that if G. B. struggled ag<sup>st</sup> those claims our only chance of getting them was thro' the aid of France; that to withdraw our confidence would lessen the chance & degree of this aid; that if we were in a prosperous or safe condition compared with that in which we adopted the expedient in question, this change had been effected by the friendly succors of our Ally, & that to take advantage of it to loosen the tie, would not only bring on us the reproach of ingratitude, but induce France to believe that she had no hold on our affections, but only in our necessities; that in all possible situations we s<sup>d</sup>. be more in danger of being seduced by G. B., than of being sacrificed by France; the interests of the latter in the main necessarily coinciding with ours, and those of the former being diametrically opposed to them, that as to the intercepted letter, there were many reasons which indicated that it came through the hands of the Enemy to Mr. Jay that it ought therefore to be regarded even if genuine, as communicated for insidious purposes; but that there was strong reason to suspect that it had been adulterated if not forged; and that on the worst supposition, it did not

appear that the doctrines maintained or the measures recommended in it had been adopted by the French Ministry and consequently that they ought not to be held responsible for them.

Upon these considerations it was proposed by Mr. Wolcott, 2<sup>ded</sup> by Mr. Hamilton that the motion of Mr. Clarke should be postponed, which took place without a vote.

Mr. Madison moved that the letter of Doc<sup>r</sup>. Franklin, of the 14 Oct<sup>r</sup>, 1782 should be referred to a Committee, with a view of bringing into consideration the preliminary article proposing that British subjects & American Citizens s<sup>d</sup> reciprocally have in matters of commerce the privilege of natives of the other party; and giving to the American Ministers the instruction which ensued on that subject. This motion succeeded, and the committee appointed consisted of Mr. Madison Mr. Rutledge, Mr. Clarke, Mr. Hamilton & Mr. Osgood.

The contract of Gen<sup>l</sup>. Wayne<sup>1</sup> was confirmed with great reluctance; being considered as being improper with respect to its being made with individuals, as admitting of infinite abuses, as out of his military line, and as founded on a principle that a present commerce with G. B. was favorable to the U. S. a principle reprobated by Congress & all the States. Congress however supposed that these considerations ought to yield to the necessity of supporting the measures which a valuable officer from good motives, had taken upon himself.

TUESDAY, DEC<sup>R</sup>. 31, 1782.

The report of the Committee made in consequence of Mr. Madison's motion yesterday instructing the Ministers plenipo on the article of commerce, passed unanimously as follows: "*Resolved*, That the Ministers Plenipo for negotiating peace be instructed in any commercial stipulations with G. B. which may be comprehended in a Treaty of peace to endeavour to obtain for the Citizens and inhabitants of the U. S. a direct commerce to all parts of the British Dominions & Possessions, in like manner as all parts of the U. S. may be opened to a direct Commerce of British subjects; or at least that such direct Commerce be extended to all parts of the British Dominions & possessions in Europe & the West Indies; and the said Ministers are informed that this stipulation will be particularly expected by Congress, in case the Citizens & subjects of each party are to be admitted to an equality in matters of commerce with natives of the other party.

WEDNESDAY JAN<sup>Y</sup>. 1ST, 1783.

The decision of the controversy between Con. & Penn<sup>a</sup> was reported.

The communications made from the Minister of France, concurred with other circumstances in effacing the impressions made by Mr. Jay's letter & Marbois's inclosed. The vote of thanks to C<sup>t</sup>. Rochambeau passed with unanimity & cordiality & afforded a fresh proof that the resentment against France had greatly subsided.

## THURSDAY JAN<sup>Y</sup>. 2<sup>D</sup>.

Nothing requiring notice.

## FRIDAY 3<sup>D</sup>. JAN<sup>Y</sup>.

The vote of thanks to the Minister of France which passed yesterday was repealed in consequence of his having expressed to the President a desire that no notice might be taken of his conduct as to the point in question & of the latter's communicating the same to Congress. The temper of Congress here again manifested the transient nature of their irritation ag<sup>st</sup>. France.

The motion of Mr. Howel, put on the Secret Journal gave Congress a great deal of vexation. The expedient for baffling his scheme of raising a ferment in his State & exposing the foreign transactions was adopted only in the last resort; it being questioned by some whether the articles of Confederation warranted it.

The answer to the note of the French Minister passed unanimously & was a further testimony of the Abatement of the effects of Mr. Jay's letter &c.

The proceedings of the Court in the dispute between Con<sup>t</sup>. & P<sup>a</sup>. were after debates as to the meaning of the Confederation in directing such proceeding to be lodged among the acts of Congress entered at large on the Journals. It was remarked that the Delegates from Con<sup>t</sup>. particularly Mr. Dyer were more captious on the occasion than was consistent with a perfect acquiescence in the decree.

## MONDAY, JAN<sup>Y</sup>. 6<sup>TH</sup>.

The Memorial from the Army was laid before Congress and referred to a grand Committee. This reference was intended as a mark of the important light in which the memorial was viewed.[1](#)

Mr. Berkley having represented some inconveniences incident to the plan of a Consular Convention between France & U. S., particularly the restriction of Consuls from trading & his letter having been committed, a report was made purposing that the Convention should for the present be suspended. To this it had been objected that as the convention might already be concluded such a step was improper; and as the end might be obtained by authorizing the Minister at Versailles to propose particular alterations that it was unnecessary. By Mr. Madison it had been moved that the report should be postponed to make place for the consideration of an instruction & authority to the s<sup>d</sup> Minister for that purpose; and this motion had in consequence been brought before Congress. On this day the business revived. The sentiments of the members were various, some wishing to suspend such part of the convention only as excluded Consuls from commerce; others thought this exclusion too important to be even suspended; others again thought the whole ought to be suspended during the war; & others lastly contended that the whole ought to be new modelled; the Consuls having too many privileges in some respects, & too little power in others. It was observable

that this diversity of opinions prevailed chiefly among the members who had come in since the Convention had been passed in Congress; the members originally present adhering to the views which then governed them. The subject was finally postponed; 8 States only being represented, & 9 being requisite for such a question. Even to have suspended the convention after it had been proposed to the Court of France, & possibly acceded to would have been indecent and dishonorable; and at a juncture when G. B. was courting a commercial intimacy, to the probable uneasiness of France, of very mischievous tendency. But experience constantly teaches that new members of a public body do not feel the necessary respect or responsibility for the acts of their predecessors, and that a change of members & of *circumstances* often proves fatal to consistency and stability of public measures. Some conversation in private by the old members with the most judicious of the new in this instance has abated the fondness of the latter for innovations, and it is even problematical whether they will be again urged.

In the evening of this day the grand Committee met and agreed to meet again the succeeding evening for the purpose of a conference with the Superintendent<sup>t</sup> of Finance.

TUESDAY, JAN<sup>Y</sup>. 7TH, 1783.

See the Journals.

In the evening the grand Committee had the assigned conference with Mr. Morris who informed them explicitly that it was impossible to make any advance of pay in the present state of the finances to the army and imprudent to give any assurances with respect to future pay until certain funds should be previously established. He observed that if even an advance could be made it w<sup>d</sup> be unhappy that it s<sup>d</sup>. appear to be the effect of demands from the army; as this precedent could not fail to inspire a distrust of the spontaneous justice of Congress & to produce repetitions of the expedient. He said that he had taken some measures with a view to a payment for the army which depended on events not within our command, that he had communicated these measures to Gen<sup>l</sup> Washington under an injunction of secrecy, that he could not yet disclose them without endangering their success; that the situation of our affairs within his department was so alarming that he had thoughts of asking Congress to appoint a Confidential Committee to receive communications on that subject and to sanctify by their advice such steps as ought to be taken. Much loose conversation passed on the critical state of things the defect of a permanent revenue, & the consequences to be apprehended from a disappointment of the mission from the army; which ended in the appointment of friday evening next for an audience to General McDougall, Col. Brooks & Col. Ogden, the Deputies on the subject of the Memorial, the Superintendent<sup>t</sup> to be present.

WEDNESDAY JAN<sup>Y</sup>. 8, THURSDAY JAN<sup>Y</sup>. 9TH, &  
FRIDAY JAN<sup>Y</sup>. 10.

On the Report<sup>1</sup> for valuing the land conformably to the rule laid down in the federal articles, the Delegates from Connecticut contended for postponing the subject during

the war, alledging the impediments arising from the possession of N. Y., &c. by the enemy; but apprehending (as was supposed) that the flourishing State of Connecticut compared with the Southern States, would render a valuation at the crisis unfavorable to the former. Others, particularly Mr. Hamilton and Mr. Madison, were of opinion that the rule of the confederation was a chimerical one since if the intervention of the individual States were employed their interests would give a bias to their judgments, or that at least suspicions of such bias w<sup>d</sup> prevail and without their intervention, it could not be executed but at an expense, delay & uncertainty which were inadmissible; that it would perhaps be therefore preferable to represent these difficulties to the States & recommend an exchange of this rule of dividing the public burdens for one more simple easy & equal. The Delegates from S. Carolina generally & particularly Mr. Rutledge advocated the propriety of the constitutional rule & of an adherence to it, and of the safety of the mode in question arising from the honor of the States. The debates on the subject were interrupted by a letter from the Superintendent of Finance; informing Congress that the situation of his department required that a committee s<sup>d</sup> be appointed with power to advise him on the steps proper to be taken; and suggesting an appointment of one consisting of a member from each State, with authority to give their advice on the subject. This expedient was objected to as improper, since Congress w<sup>d</sup>. thereby delegate an incommunicable power, perhaps, and would at any rate lend a sanction to a measure without even knowing what it was; not to mention the distrust which it manifested of their own prudence & fidelity. It was at length proposed & agreed to, that a special committee consisting of Mr. Rutledge Mr. Osgood & Mr. Madison, should confer with the Superintend<sup>t</sup> of Finance on the subject of his letter and make report to Congress. After the adjournment of Congress this Com<sup>mittee</sup> conferred with the Superintend<sup>t</sup> who after being apprized of the difficulties which had arisen in Congress, stated to them that the last account of our money affairs in Europe shewed that contrary to his expectations and estimates there were 3½ Millions of livres short of the bills actually drawn; that further drafts were indispensable to prevent a stop to the public service; that to make good this deficiency there was only the further success of Mr. Adams' loan and the friendship of France to depend on, that it was necessary for him to decide on the expediency of his staking the public credit on those contingent funds by further drafts, and that in making this decision he wished for the sanction of a committee of Congress; that this sanction was preferable to that of Congress itself only as it w<sup>d</sup> confide the risk attending bills drawn on such funds to a smaller number, and as secrecy was essential in the operation as well to guard our affairs in general from injury, as the credit of the bills in question from debasement. It was supposed both by the Superintend<sup>t</sup>. & the Committee that there was in fact little danger of bills drawn on France on the credit of the loan of 4 Millions of dollars, applied for, being dishonored; since if the negotiations on foot were to terminate in peace, France would prefer an advance in our favor to exposing us to the necessity of resorting to G. B. for it; and that if the war s<sup>d</sup>. continue the necessity of such an aid to its prosecution would prevail. The result was that the Committee should make such report as would bring the matter before Congress under an injunction of secrecy, and produce a resolution authorizing the Superintend<sup>t</sup>. to draw bills as the public service might require on the credit of applications for loans in Europe. The report of the Committee to this effect was the next day accordingly made & adopted unanimously. Mr. Dyer alone at first opposed it as an unwarrantable & dishonorable presumption on the ability & disposition of

France; being answered however that without such a step or some other exped<sup>t</sup> which neither he nor any other had suggested, our credit would be stabbed abroad and the public service wrecked at home; and that however mortifying it might be to commit our credit, our faith & our honor to the mercy of a foreign nation, it was a mortification w<sup>ch</sup>. c<sup>d</sup> not be avoided without endangering our very existence; he acquiesced and the resolution was entered unanimously. The circumstance of unanimity was thought of consequence as it w<sup>d</sup>. evince the more the necessity of the succour and induce France the more readily to yield it. On this occasion several members were struck with the impropriety of the late attempt to withdraw from France the trust confided to her over the terms of peace when we were under the necessity of giving so decisive a proof of our dependence upon her. It was also adverted to in private conversation as a great unhappiness that during negotiations for peace, when an appearance of vigor & resource were so desirable, such a proof of our poverty & imbecility could not be avoided.

The conduct of Mr. Howel &c. had led several & particularly Mr. Peters into an opinion that some further rule & security ought to be provided for concealing matters of a secret nature. On the motion of Mr. Peters a committee composed of himself Mr. Williamson &c. was appointed to make a report on the subject. On this day the report was made. It proposed that members of Congress should each subscribe an instrument pledging their faith & honor not to disclose certain enumerated matters.

The enumeration being very indistinct and objectionable, and a written engagement being held insufficient with those who without it w<sup>d</sup>. violate prudence or honor, as well as marking a general distrust of the prudence & honor of Congress, the report was generally disrelished; and after some debate in which it was faintly supported by Mr. Williamson, the Committee asked & obtained leave to withdraw it.

A discussion of the report on the mode of valuing the lands was revived. It consisted chiefly of a repetition of the former debates.

In the evening according to app<sup>t</sup> on tuesday last, the grand Committee met, as did the Superintend<sup>t</sup> of Finance. The chairman Mr. Wolcot informed the committee that Col<sup>s</sup> Ogden & Brooks two of the deputies from the army had given him notice that Gen<sup>l</sup> McDougal the first of the deputation, was so indisposed with the rheumatism as to be unable to attend, and expressed a desire that the Committee would adjourn to his lodging at the Indian queen tavern the deputies being very anxious to finish their business among other reasons, on acc<sup>t</sup> of the scarcity of money with them. At first the Com<sup>it</sup>tee seemed disposed to comply; but it being suggested that such an adjournment by a Committee of a member from each State would be derogatory from the respect due to themselves, especially as the Mission from the army was not within the ordinary course of duty, the idea was dropped. In lieu of it they adjourned to Monday evening next, on the ostensible reason of the extreme badness of the weather which had prevented the attendance of several members.

MONDAY JAN<sup>y</sup>. 13.

Report on the valuation of land was referred to a Grand Committee.

A motion was made by Mr. Peters, 2<sup>ded</sup> by Mr. Madison, “that a com<sup>ite</sup>. be appointed to consider the expediency of making further applications for loans in Europe, & to confer with the Superin<sup>t</sup> of Finance on the subject.” In support of this motion Mr. P. observed that notwithstanding the uncertainty of success the risk of appearing unreasonable in our demands on France, and the general objections ag<sup>st</sup> indebting the U. S. to foreign nations, the crisis of our affairs demanded the experiment; that money must if possible be procured for the army and there was ground to expect that the C<sup>t</sup> of France w<sup>d</sup> be influenced by an apprehension that in case of her failure & of a pacification G. B. might embrace the opportunity of substituting her favors. Mr. Madison added that it was expedient to make the trial because if it failed, our situation c<sup>d</sup> not be made worse, that it would be prudent in France & therefore it might be expected of her, to afford the U. S. such supplies as would enable them to disband their army in tranquillity, lest some internal convulsions might follow external peace, the issue of which ought not to be hazarded, that as the affections & gratitude of this Country as well as its separation from G. B. were her objects in the Revolution, it would also be incumbent on her to let the army be disbanded under the impression of deriving their rewards through her friendship to their Country; since their temper on their dispersion through the several States and being mingled in the public councils, would much affect the general temper towards France; and that if the pay of the army could be converted into a consolidated debt bearing interest, the requisitions on the States for the principal might be reduced to requisitions for the interest, and by that means a favorable revolution so far introduced into our finances.

The Motion was opposed by Mr. Dyer because it was improper to augment our foreign debts, & would appear extravagant to France. Several others assented to it with reluctance, and several others expressed serious scruples as honest men ag<sup>st</sup> levying contributions on the friendship or fears of France or others, whilst the unwillingness of the States to invest Congress with permanent funds rendered a repayment so precarious. The motion was agreed to, and the Committee chosen—Mr. Gorham, Mr. Peters, Mr. Izard.

In the evening according to appointment the Grand Committee gave an audience to the deputies of the army, 1 viz: Gen<sup>l</sup> McDougal & Col<sup>s</sup> Ogden & Brooks. The first introduced the subject by acknowledging the attention manifested to the representations of the army by the app<sup>t</sup>. of so large a Com<sup>itee</sup>; his observations turned chiefly on the 3 chief topics of the Memorial, namely an immediate advance of pay, adequate provision for the residue, and half-pay.—On the first he insisted on the absolute necessity of the measure to soothe the discontents both of the officers & soldiers, painted their sufferings & services, their successive hopes & disappointments throughout the whole war, in very high-colored expressions, and signified that if a disappointment were now repeated the most serious consequences were to be apprehended; that nothing less than the actual distresses of the army would have induced at this crisis so solemn an application to their country; but y<sup>t</sup>. the seeming approach of peace, and the fear of being still more neglected when the necessity of their services should be over, strongly urged the necessity of it. His two colleagues followed him with a recital of various incidents & circumstances tending to evince the actual distresses of the army, the irritable state in which the deputies left them, and the necessity of the consoling influence of an immediate advance of pay. Colonel Ogden

said he wished not indeed, to return to the army if he was to be the messenger of disappointment to them. The deputies were asked 1<sup>st</sup> what particular steps they supposed would be taken by the army in case no pay c<sup>d</sup> be immediately advanced; to which they answered that it was impossible to say precisely; that although the Sergeants & some of the most intelligent privates had been often observed in sequestered consultations, yet it was not known that any premeditated plan had been formed; that there was sufficient reason to dread that at least a mutiny would ensue, and the rather as the temper of the officers at least those of inferior grades, would with less vigor than heretofore struggle ag<sup>st</sup> it. They remarked on this occasion, that the situation of the officers was rendered extremely delicate & had been sorely felt, when called upon to punish in soldiers a breach of engagements to the public which had been preceded by uniform & flagrant breaches by the latter of its engagements to the former. General McDougal said that the army were verging to that state which we are told will make a wise man mad, and Col: Brooks said that his apprehensions were drawn from the circumstance that the temper of the army was such that they did not reason or deliberate coolly on consequences & therefore a disappointment might throw them blindly into extremities. They observed that the irritations of the army had resulted in part from the distinctions made between the Civil & military lists the former regularly receiving their salaries, and the latter as regularly left unpaid. They mentioned in particular that the members of the Legislatures would never agree to an adjournment with[out] paying themselves fully for their services. In answer to this remark it was observed that the Civil officers on the average did not derive from their appointments more than the means of their subsistence; and that the military altho not furnished with their pay properly so called were in fact furnished with the same necessaries.

On the 2<sup>d</sup> point to wit “adequate provision for the general arrears due to them,” the deputies animadverted with surprise, and even indignation on the repugnance of the States, some of them at least, to establish a federal revenue for discharging the federal engagements. They supposed that the ease not to say affluence with w<sup>ch</sup> the people at large lived sufficiently indicated resources far beyond the actual exertions, and that if a proper application of these resources was omitted by the Country & the army thereby exposed to unnecessary sufferings, it must natural[ly] be expected that the patience of the latter w<sup>d</sup>. have its limits. As the deputies were sensible that the general disposition of Congress strongly favored this object, they were less diffuse on it. Gen<sup>l</sup> McDougal made a remark w<sup>ch</sup> may deserve the greater attention as he stepped from the tenor of his discourse to introduce it, and delivered it with peculiar emphasis. He said that the most intelligent & considerate part of the army were deeply affected at the debility and defects in the federal Gov<sup>t</sup>, and the unwillingness of the States to cement & invigorate it; as in case of its dissolution, the benefits expected from the Revolution w<sup>d</sup>. be greatly impaired, and as in particular, the contests which might ensue am<sup>g</sup> the States would be sure to embroil the officers which respectively belong to them.

On the 3<sup>d</sup> point to wit “half-pay for life,” they expressed equal dissatisfaction at the States which opposed it observing that it formed a part of the wages stipulated to them by Congress & was but a reasonable provision for the remnant of their lives which had been freely exposed in the defence of their Country, and would be incompatible



with a return to occupations & professions for which military habits of 7 years standing unfitted them. They complained that this part of their reward had been industriously and artfully stigmatized in many States with the name of pension, altho' it was as reasonable that those who had lent their blood and services to the public s<sup>d</sup> receive an annuity thereon, as those who had lent their money; and that the officers whom new arrangements had from time to time excluded, actually labored under the opprobrium of pensioners, with the additional mortification of not receiving a shilling of the emolum<sup>s</sup>. They referred however to their Memorial to show that they were authorized & ready to commute their half-pay for any equivalent & less exceptionable provision.

After the departure of the Deputies, the Grand Committee appointed a sub-committee, consisting of Mr. Hamilton, Mr. Madison, & Mr. Rutledge to report arrangements, in concert with the Superintend<sup>t</sup> of Finance for their consideration.

TUESDAY JAN<sup>Y</sup> 15<sup>Th</sup> [14<sup>Th</sup>] 1783.

Congress adjourned for the meeting of The Grand Committee to whom was referred the report concerning the valuation of the lands and who accordingly met.

The Committee were in general strongly impressed with the extreme difficulty & inequality if not impracticability of fulfilling the article of the Confederation relative to this point; Mr. Rutledge however excepted, who altho' he did not think the rule so good a one as a census of inhabitants, thought it less impracticable than the other members. And if the valuation of land had not been prescribed by y<sup>e</sup> federal articles, the Committee w<sup>d</sup> certainly have preferred some other rule of appointment, particularly that of numbers under certain qualifications as to Slaves. As the federal Constitution however left no option, & a few 1 only were disposed to recommend to the States an alteration of it, it was necessary to proceed 1<sup>st</sup> to settle its meaning—2<sup>dly</sup> to settle the least objectionable mode of valuation. On the first point, it was doubted by several members whe<sup>r</sup> the returns which the report under consideration required from the States would not be final and whether the Art<sup>s</sup> of Conf<sup>n</sup> w<sup>d</sup> allow Congress to alter them after they had fixed on this mode; on this point no vote was taken. A 2<sup>d</sup> question afterwards raised in the course of the discussion was how far the Art required a specific valuation, and how far it gave a latitude as to the mode, on this point also there was a diversity of opinions; but no vote taken.

2<sup>dly</sup>. As to the mode itself referred to the G<sup>d</sup> Com<sup>e</sup>., it was strongly objected to by the Delegate from Con<sup>t</sup>, Mr. Dyer—by Mr. Hamilton,—by Mr. Wilson by Mr. Carol, & by Mr. Madison, as leaving the States too much to the bias of interest, as well as too uncertain & tedious in the execution. In fav<sup>r</sup> of the Rep<sup>t</sup> was Mr. Rutledge the father of it, who thought the honor of the States & their mutual confidence a sufficient security ag<sup>st</sup> frauds & the suspicion of them. Mr. Ghoram fav<sup>d</sup> the report also, as the least impracticable mode, and as it was necessary to attempt at least some compliance with the federal rule before any attempt could be properly made to vary it. An opinion entertained by Massachusetts that she was comparatively in advance to the U. S. made her anxious for a speedy settlement of the mode by which a final apportionment of the

common burden c<sup>d</sup> be effected. The sentiments of the other members of the Committee were not expressed.

Mr. Hamilton proposed in lieu of a reference of the valuation to the States, to class the lands throughout the States under distinctive descriptions, viz: arable, pasture, wood, &c. and to annex a uniform rate to the several classes according to their different comparative value, calling on the States only for a return of the quantities & descriptions. This mode would have been acceptable to the more compact & populous States, but was totally inadmissible to the Southern States.

Mr. Wilson proposed that returns of the quantity of land & of the number of inhabitants in the respective States s<sup>d</sup>. be obtained, and a rule deducted from the combination of these data. This also would have affected the States in a similar manner with the proposition of Mr. Hamilton. On the part of the S. States it was observed that besides its being at variance with the text of the Confederation it would work great injustice, as would every mode which admitted the quantity of lands within the States, into the measure of their comparative wealth and abilities.

Lastly it was proposed by Mr. Madison, that a valuation sh<sup>d</sup>. be attempted by Congress without the intervention of the States. He observed that as the expense attending the operation would come ultimately from the same pockets, it was not very material whether it was borne in the first instance by Congress or the States, and it at least deserved consideration whether this mode was not preferable to y<sup>e</sup>. proposed reference to the States.

The conversation ended in the app<sup>t</sup> of a sub-committee consisting of Mr. Madison, Mr. Carol & Mr. Wilson who were desired to consider the several modes proposed, to confer with the Superintend<sup>t</sup> of Finance, & make such report to the G<sup>d</sup>. Com<sup>e</sup>. as they sh<sup>d</sup> judge fit.

## WEDNESDAY, JAN<sup>Y</sup>. 15.

A letter dated the 19<sup>th</sup> of December from Gen<sup>l</sup> Greene was rec<sup>d</sup>. notifying the evacuation of Charleston. It was in the first place referred to the Sec<sup>y</sup> of Cong<sup>s</sup>. for publication; excepting the passage which recited the exchange of prisoners, which being contrary to the Resolution of the 16 of Oc<sup>r</sup>. ag<sup>st</sup>. partial exchanges, was deemed improper for publication. It was in the next place referred to a com<sup>e</sup>, in order that some complimentary report might be made in favor of Gen<sup>l</sup> Greene & the South<sup>n</sup> army. Doc<sup>t</sup>. Ramsay hav<sup>g</sup> come in after this reference and being uninformed of it, moved that a committee might be appointed to devise a proper mode of expressing to Gen<sup>l</sup> Greene the high sense entertained by Congress of his merits & services. In support of his motion he went into lavish praises of G<sup>l</sup>. Greene, and threw out the idea of making him a Lieuten<sup>t</sup>. General. His motion being opposed as somewhat singular and unnecessary after the reference of Gen<sup>l</sup> Greene's letter, he withdrew it.

A letter was re<sup>d</sup>. from Gen<sup>l</sup> Washington inclosing a certificate from Mr. Chittenden of Vermont acknowledging the receipt of the communication which G<sup>l</sup> Washington had sent him of the proceedings of Congress on the [fifth] of [December.]1

THURSDAY JAN<sup>Y</sup>. 16.

Mr. Rutledge informed Congress that there was reason to apprehend that the train of negotiation in Europe had been so misrepresented in the State of S. Carolina as to make it probable that an attempt might be made in the Legislature to repeal the confiscation laws of that State, & even if such attempt sh<sup>d</sup>. fail, the misrepresentations c<sup>d</sup>. not fail to injure the sale of property confiscated in that State. In order therefore to frustrate these misrepresentations he moved that the Delegates of S. Carolina might be furnished with an extract from the letter of the 14<sup>th</sup>. of Oc<sup>t</sup>. from Doc<sup>r</sup>. Franklin, so far as it informed Congress “that something had been mentioned to the American Plenipotentiaries relative to the Refugees & to English debts, but not insisted on; it being answered on their part that this was a matter belonging to the individual States and on which Congress c<sup>d</sup> enter into no stipulations.” The motion was 2<sup>ded</sup> by Mr. Jarvais, & supported by Mr. Ramsay. It was opposed by Mr. Ellsworth & Mr. Wolcott as improper, since a communication of this intelligence might encourage the States to extend confiscations to British debts, a circumstance which w<sup>d</sup>. be dishonorable to the U. S., & might embarrass a treaty of peace. Mr. Fitzsimmons expressed the same apprehensions, so did Mr. Ghoram. His Colleague Mr. Osgood was in fav<sup>r</sup> of the motion. By Mr. Madison the motion was so enlarged and varied as “to leave *all* the delegates at liberty to communicate the extract to their const<sup>ents</sup> in such form & under such cautions as they sh<sup>d</sup>. judge prudent.” The Motion so varied was adopted by Mr. Rutledge, & substituted in place of the original one. I was however still opposed by the Opponents of the original motion. Mr. Madison observed that as all the States had espoused in some degree the doctrine of confiscations, & as some of them had given instructions to their delegates on the subject, it was the duty of Congress without inquiring into the expediency of Confiscations, to prevent as far as they c<sup>d</sup> any measures which might impede that object in negotiations for peace, by inducing an opinion that the U. S. were not firm with respect to it; that in this view it was of consequence to prevent the repeal & even the attempt of a repeal of the confiscation law of one of the States and that if a confidential communication of the extract in question would answer such a purpose, it was improper for Congress to oppose it. On a question the motion was negatived, Congress being much divided thereon. Several of those who were in the negative, were willing that the Delegates of S. Carolina sh<sup>d</sup> be licensed to transmit to their State what related to the Refugees, omitting what related to British debts and invited Mr. Rutledge to renew his motion in that qualified form. Others suggested the propriety of his contradicting the misrepresentations in general without referring to any official information rec<sup>d</sup> by Congress. Mr. R. said he w<sup>d</sup>. think further on the subject, and desired that it might lie over.

FRIDAY JAN<sup>Y</sup> 17TH.

The Com<sup>ite</sup> on the motion of Mr. Peters of the [thirteenth] day of [January] relative to a further application for foreign loans, reported that they had conferred with the Superintend<sup>t</sup>. of Finance, & concurred in opinion with him, that the applications already on foot were as great as could be made prudently, until proper funds should be established. The latent view of this report was to strengthen the arg<sup>t</sup> in fav<sup>r</sup> of such funds, and the report it was agreed should lie on the table to be considered along with

the report which might be made on the memorial from the army, & which w<sup>d</sup>. involve the same subject.

The report thanking Gen<sup>l</sup>. Greene for his services was agreed to without opposition or observation. Several however thought it badly composed, and that some notice ought to have been taken of Maj<sup>r</sup>. Burnet Aid to G<sup>l</sup> G., who was the bearer of the letter announcing the evacuation of Charleston.

Mr. Webster & Mr. Judd agents for the deranged officers of the Massachusetts & Con<sup>t</sup>. lines were heard by the G<sup>d</sup> Committee in fav<sup>r</sup>. of their Constituents. The sum of their representations was that the s<sup>d</sup> officers were equally distressed for, entitled to, & in expectation of provision for fulfilling the rewards stipulated to them, as officers retained in service.

## FROM FRIDAY 17 TO TUESDAY 21ST.

See Journals.

A letter from Mr. Adams, of the 8<sup>th</sup>. day of October 1782 containing prophetic observations relative to the expedition of L<sup>d</sup>. Howe for the relief of Gibraltar & its consequences &c &c., excited &c &c

Another letter from d<sup>o</sup>, relative to y<sup>e</sup> Treaty of Amity & Commerce & y<sup>e</sup> Convention with the States Gen<sup>l</sup>. concerning vessels recaptured, copies of which accompanied the letters. These papers were committed to Mr. Madison Mr. Hamilton & Mr. Ellsworth.

Wednesday January 22 Congress adjourned to give the Com<sup>e</sup>. on the Treaty & Convention time to prepare a report thereon.

## THURSDAY JANUARY 23.

The Report of the Com<sup>e</sup> last mentioned consisting of a state of the variations in the Treaty of Amity & Commerce with the States General from the plan proposed by Congress, of a form of ratification of the s<sup>d</sup>. Treaty & of the Convention, & of a proclamation comprehending both was accepted & passed; the variations excepted w<sup>ch</sup> were not meant to be entered on the journals. Both the Committee & Congress were exceedingly chagrined at the extreme incorrectness of the American copies of these national acts, and it was privately talked of as necessary to admonish Mr. Adams thereof, & direct him to procure with the concurrence of the other party a more correct & perspicuous copy. The Report of the Com<sup>e</sup> as agreed to hav<sup>g</sup> left a blank in the act of ratification for the insertion of the Treaty & Convention, & these being contained both in the Dutch & American languages the former column signed by the Dutch Plenipo<sup>s</sup>. only & the latter by Mr. Adams only, the Sec<sup>y</sup> asked the direction of Congress whether both columns or the American only ought to be inserted. On this point several observations were made & different opinions expressed. In general the members seemed to disapprove of y<sup>e</sup>. mode used & w<sup>d</sup>. h<sup>e</sup>. preferred y<sup>e</sup>. use of a neutral language. As to the request of the Sec<sup>y</sup>., Mr. Wilson was of opinion that the American columns only s<sup>d</sup>. be inserted. Several others concurred in

this opinion; supposing that as Mr. Adams had only signed those columns, our ratifications ought to be limited to them. Those who were of a different opinion, considered the two parts as inseparable & as forming one whole, & consequently that both ought to be inserted. The case being a new one to Congress, it was proposed & admitted that the insertion might be suspended till the next day, by which time some authorities might be consulted on the subject.

A com<sup>e</sup>, consisting of Mr. Madison, Mr. Mifflin & Mr. Williamson reported in consequence of a motion of Mr. Bland, a list of books proper for the use of Congress, and proposed that the Sec<sup>y</sup>. should be instructed to procure the same. In fav<sup>r</sup>. of the Rep<sup>t</sup> it was urged as indispensable that Congress sh<sup>d</sup> have at all times at com<sup>and</sup> and such authors on the law of Nations, treaties, Negotiations &c as w<sup>d</sup>. render their proceedings in such cases conformable to propriety; and it was observed that the want of this information was manifest in several important acts of Congress. It was further observed that no time ought to be lost in collecting every book & tract which related to American antiquities & the affairs of the U. S., since many of the most valuable of these were every day becoming extinct, & they were necessary not only as materials for a Hist: of the U. S., but might be rendered still more so by future pretensions ag<sup>st</sup>. their rights from Spain or other powers which had shared in the discoveries & possessions of the New World. Ag<sup>st</sup>. the Report were urged 1<sup>st</sup>. the inconvenience of advancing even a few hundred pounds at this crisis; 2<sup>dly</sup>., the difference of expence between procuring the books during the war & after a peace. These objections prevailed, by a considerable majority. A motion was then made by Mr. Wilson, 2<sup>ded</sup>. by Mr. Madison, to confine the purchase for the present to the most essential part of the books. This also was negated.

## FRIDAY JAN<sup>Y</sup>. 24TH.

Some days prior to this sundry papers had been laid before Congress by the War office, shewing that a Cargo of supplies which had arrived at Wilmington for the British & German Prisoners of War under a passport from the Comander in chief and which were thence proceeding by land to their destination, had been seized by sundry persons in Chester County under a law of Penns<sup>a</sup>, which required in such cases a license from the Executive authority, which exposed to confiscation all Articles not *necessary* for the prisoners, & refer<sup>d</sup>. the question of necessity to the judgment of its own Magistrates. Congress unanimously considered the violation of the passport issued under y<sup>f</sup>. Authority as an encroachment on their constitutional & essential rights; but being disposed to get over the difficulty as gently as possible appointed a Com<sup>e</sup>, consisting of Mr. Rutledge, Mr. Wolcot & Mr. Madison, to confer with the Executive of P<sup>a</sup>. on the subject. In the first conference the Executive represented to the Committee the concern they felt at the incident, their disposition to respect & support the dignity & rights of the federal Sovereignty; and the embarrassments in which they were involved by a recent & express law of the State to which they were bound to conform. The Com<sup>e</sup>. observed to them that the power of granting passports for the purpose in question being inseparable from the general power of war delegated, to Congress, & being essential for conducting the war, it could not be expected that Congress w<sup>d</sup>. acquiesce in any infractions upon it; that as P<sup>a</sup> had concurred in the alienation of this power to Congress, any law whatever contravening

it was necessarily void, and c<sup>d</sup> impose no obligation on the Executive. The latter requested further time for a consideration of the case & laid it before the Legislature then sitting; in consequence of which a Com<sup>e</sup> of their body was app<sup>d</sup>, jointly with the Executive to confer with the Committe of Congress. In this 2<sup>d</sup>. conference the first remarks made by the Com<sup>e</sup>. of Congress were repeated. The Com<sup>e</sup>. of the Legislature expressed an unwillingness to entrench on the jurisdiction of Congress, but some of them seemed not to be fully satisfied that the law of the State did so. Mr. Montgomery lately a member of Congress observed that altho' the general power of war was given to Congress yet that the mode of exercising that power might be regulated by the States in any manner which w<sup>d</sup>. not frustrate the power, & which their policy might require. To this it was answered that if Congress had the power at all, it could not either by the Articles of Confederation or the reason of things admit of such a controuling power in each of the States, & that to admit such a construction w<sup>d</sup>. be a virtual surrender to the States of their whole federal power relative to war, the most essential of all the powers delegated to Congress. The Com<sup>e</sup>. of the Legis<sup>re</sup>. represented as the great difficulty with them, that even a repeal of the law w<sup>d</sup>. not remedy the case without a retrospective law which their Constitution w<sup>d</sup>. not admit of, & expressed an earnest desire that some accommodating plan might be hit upon. They proposed in order to induce the Seizors to waive their appeal to the law of the State, that Congress w<sup>d</sup> allow them to app<sup>t</sup> one of two persons who s<sup>d</sup> have authority to examine into the supplies & decide whether they comprehended any articles that were not warranted by the passport. The Com<sup>e</sup>. of Congress answered that whatever obstacles might lie in the way of redress by the Legislature if no redress proceeded from them, equal difficulties w<sup>d</sup> lie on the other side, since Congress in case of a confiscation of the supplies under the law which the omission of some formalities req<sup>d</sup> by it w<sup>d</sup> probably produce, would be obliged by honor & good faith to indemnify the Enemy for their loss out of the common treasury; that the other States w<sup>d</sup> probably demand a reimbursement to the U. S. from P<sup>a</sup>., & that it was impossible to say to what extremity the affair might be carried. They observed to the Com<sup>e</sup> of the Leg<sup>re</sup> and the Executive, that altho' Congress was disposed to make all allowances, and particularly in the case of a law passed for a purpose recom<sup>ended</sup> by themselves, yet they c<sup>d</sup> not condescend to any expedient which in any manner departed from the respect w<sup>ch</sup> they owed to themselves & to the Articles of Union. The Com<sup>e</sup> of Congress however suggested that as the only expedient w<sup>ch</sup> w<sup>d</sup>. get rid of the clashing of the Power of Congress & the law of the State, w<sup>d</sup> be the dissuading the Seizors from their appeal to the latter, it was probable that if the Seizors w<sup>d</sup> apply to Congress for Redress such steps w<sup>d</sup> be taken as w<sup>d</sup> be satisfactory. The hint was embraced & both the Executive & the Com<sup>e</sup> of the Leg<sup>re</sup>. promised to use their influence with the persons of most influence among the Seizors for that purpose. In consequence thereof a memorial from 1 [see Journal] was sent in to Congress, com<sup>mitted</sup> to the same Com<sup>e</sup>. of Congress, & their report of this day agreed to in w<sup>ch</sup>. the Presid<sup>t</sup> of P<sup>a</sup>. is *requested* to app<sup>t</sup>. one of ye referees. It is proper to observe that this business was conducted with great temper & harmony, & that Presid<sup>t</sup>. Dickinson, in particul<sup>r</sup>, manifested throughout the course of it as great a desire to save the rights & dignity of Congress as those of the State over which he presided. As a few of the Seizors only were parties to ye Memorial to Congress, it is still uncertain whe<sup>r</sup> others may not adhere to their claims under the law in w<sup>ch</sup> case all the embarrassments will be revived.

In a late report which had been drawn up by Mr. Hamilton, and made to Congress, in answer<sup>r</sup> to a Memorial from the Legislature of P<sup>a</sup>., among other things shewing the impossibility Congress had been under of pay<sup>g</sup> their Creditors it was observed that the aid afforded by the C<sup>t</sup> of France had been appropriated by that Court at the time to the immediate use of the army. This clause was objected to as unnecessary, & as dishonorable to Congress. The fact also was controverted. Mr. Hamilton & Mr. Fitzsimmons justified the expediency of retain<sup>g</sup> it, in order to justify Congress the more completely in failing in their engagements to the public Creditors. Mr. Wilson & Mr. Madison proposed to strike out the words appropriated by France, & substitute the words applied by Congress to the immediate & necessary support of the army. This proposition w<sup>d</sup> have been readily approved had it not appeared on examination that in one or two small instances, & particularly in the paym<sup>t</sup>. of the balance due to A. Lee, Esq<sup>f</sup>., other applications had been made of the aid in question. The Report was finally recommitted.

A letter from the Super<sup>t</sup> of Finance was received & read, acquainting Congress that as the danger from the Enemy which led him into the Dep<sup>t</sup>, was disappearing & that he saw little prospect of provision being made without which injustice w<sup>d</sup> take place of which he wo<sup>d</sup>. never be the Minister, he proposed not to serve longer than may next, unless proper provision s<sup>d</sup>. be made. This letter made a deep & solemn impression on Congress. It was considered as the effect of despondence in Mr. Morris of seeing justice done to the public Cred<sup>rs</sup>., or the public finances placed on an honorable establish<sup>t</sup>; as a source of fresh hopes to the enemy when known; as ruinous both to Domestic & foreign Credit; & as producing a vacancy which none knew how to fill, & which no fit man w<sup>d</sup> venture to accept. Mr. Ghoram, after observing that the Administration of Mr. Morris had inspired great confidence and expectation in his State, & expressing his extreme regret at the event, moved that the letter s<sup>d</sup> be com<sup>it</sup>?ed. This was opposed as unnecessary & nugatory by Mr. Wilson, since the known firmness of Mr. Morris, after deliberately taking a step w<sup>d</sup>. render all attempts to dissuade him fruitless; and that as the Memorial from the Army had brought the subject of funds before Congress, there was no other object for a Com<sup>e</sup>. The motion to commit was disag<sup>d</sup> to. Mr. Wilson then moved that a day might be assigned for the consideration of the letter. Ag<sup>st</sup>. the propriety of this was observed, by Mr. Madison, that the same reasons which opposed a comitmt opposed y<sup>e</sup>. assignment of any day. Since Congress c<sup>d</sup>. not however anxious their wishes or alarming their apprehensions might be, condescend to solicit Mr. Morris, even if there were a chance of its being successful; & since it w<sup>d</sup> be equally improper for Congress however cogent a motive it might add in y<sup>e</sup> mind of every member to struggle for substantial funds, to let such a consideration appear in their public acts on that subject. The motion of Mr. Wilson was not passed. Congress supposing that a knowledge of Mr. Morris's intentions w<sup>d</sup>. anticipate the ills likely to attend his actual resignation, ordered his letter to be kept secret.

Nothing being said to day as to the mode of insertion of the Treaty & Convention with the States General the Sec<sup>y</sup> proceeded in retaining both Columns.1



In consequence of the report to the Grand Com<sup>e</sup> on the memorial from the army, by the sub-com<sup>e</sup>, the following report was made by the former to Cong<sup>s</sup>., and came under consideration to-day.

\* The Grand Com<sup>e</sup>. having considered the contents of the Mem<sup>l</sup>. presented by the army, find that they comprehend five different articles.

1. present pay.
2. A settlement of acc<sup>ts</sup> of the arrearages of pay and security for what is due.
3. A commutation of the half pay allowed by differ<sup>t</sup>. resolutions of Congress for an equivalent in gross.
4. A settlem<sup>t</sup> of the acc<sup>ts</sup> of deficiencies of rations and compensation.
5. A settlement of accounts of deficiencies of cloathing & compensation.

The Com<sup>e</sup>. are of opinion with resp<sup>t</sup> to the 1<sup>st</sup>., that the Superintend<sup>t</sup>. of finance be directed, conformably to measures already taken for that purpose, as soon as the State of the public finances will permit, to make such pay<sup>t</sup> & in such manner as he shall think proper till the further order of Congress.

With respect to the 2<sup>d</sup>. Art., so far as relates to the settlement of acc<sup>ts</sup>, that the several States be called upon to compleate the settlem<sup>t</sup>, without delay, with their respective lines of the army up to the — day of Aug; 1780; that the Sup<sup>t</sup>. be also directed to take such measures as shall appear to him most proper & effectual for accomplishing the object in the most equitable & satisfactory manner, hav<sup>g</sup>. regard to former resolutions of Cong<sup>s</sup>, & to the settle<sup>ts</sup>. made in consequence thereof.—And so far as relates to the providing of security for what shall be found due on such settlem<sup>t</sup>: Resolved that the troops of the United States in common with all the Credit<sup>ts</sup>. of the same, have an undoubted right to expect such security—and that Congress will make every effort in their power to obtain from the respective States *general* & substantial funds adequate to the object of funding the whole debt of the U. S.; and that Cong<sup>s</sup>. ought to enter upon an immediate & full consideration of the nature of such funds & the most likely mode of obtaining them.

With respect to the 3<sup>d</sup> Article, the Comm<sup>e</sup> are of opinion that it will be expedient for Cong<sup>s</sup>. to leave it to the option of all officers entitled to half pay, either to preserve their claim to that provision as it now stands by the several resolutions of Cong<sup>s</sup> upon that subject or to accept—years full pay to be paid to them in one year after the conclusion of the war in money or placed upon good funded security bearing an annual interest of 6 P<sup>r</sup>. C<sup>t</sup>., provided that the allowance to widows & orphans of such officers as have died or been killed or may die or be killed in the service during the war shall remain as established by the resolution of the — day of —.

With respect to the 4 & 5 Arts, the Com<sup>e</sup> beg leave to delay their report until they have obtained more precise information than they now possess on the subject.



The 1<sup>st</sup>. Clause of this report relative to immediate pay passed without opposition. The Sup<sup>t</sup> had agreed to make out 1 Month's pay. Indeed, long before the arrival of the deputies from the army he had made contingent & secret provision for that purpose; and to ensure it now he meant if necessary to draw bills on the late application for loans. The words "conformably to measures already taken," referred to the above secret provision and were meant to shew that the payment to the army did not originate in the Memo<sup>l</sup>, but in an antecedent attention to the wants of the army.

In the discussion of the 2<sup>d</sup> clause, the epoch of Aug: 1780 was objected to by the Eastern delegates. Their States hav<sup>g</sup> settled with their lines down to later periods, they wished now to obtain the sanction of Congress to them. After some debate, a compromise was proposed by Mr. Hamilton by substituting the last day of Dec<sup>r</sup> 1780. This was agreed to without opposition altho' several members disliked it. The latter part of the clause beginning with the word Resolved, &c. was considered as a very solemn point, and the basis of the plans by which the public engagements were to be fulfilled & the Union cemented. A motion was made by Mr. Bland to insert after the words "in their power," the words "consistent with the Articles of Confederation." This amendment as he explained it was not intended to contravene the idea of funds extraneous to y<sup>e</sup> federal articles, but to leave those funds for a consideration subsequent to providing constitutional ones. Mr. Arnold however eagerly 2<sup>ded</sup> it. No question however was taken on it, Congress deeming it proper to postpone the matter till the next day, as of the most solemn nature; and to have as full a representation as possible. With this view & to get rid of Mr. Bland's motion they adjourned, & ordering all the members not present & in town to be summoned.

## SATURDAY, JAN<sup>Y</sup>. 25.

The Sec<sup>y</sup>. of Congress hav<sup>g</sup>. suggested to a member that the Contract with the C<sup>t</sup>. of France specifying sums Due from the U. S., altho' extremely generous on the part of the former had been ratified without any such acknowledgm<sup>ts</sup> by the latter, that this was the first instance in which such acknowledgm<sup>ts</sup>. had been omitted, & that the omission w<sup>d</sup>. be singularly improper at a time when we were Soliciting further aids; the[se] observations being made to Congress, the ratification [was] reconsidered, and the words "impressed with," &c., inserted.

The rep<sup>t</sup> on the memorial was resumed. By Mr. Hamilton Mr. Fitzsimmons & one or two others who had conversed with Mr. Morris on the change of the last day of Dec<sup>r</sup> for the — day of Aug<sup>st</sup>., it was suggested that the change entirely contravened the measures pursued by his Department; and moved for a reconsideration of it in order to inquire into the subject. Without going into Details they urged this a reason sufficient. The Eastern Delegates, altho' they wished for unanimity & system in future proceedings relative to our funds & finances were very stiff in retaining the vote w<sup>ch</sup>. coincided with the steps taken by their Constituents, of this much complaint was made. Mr. Rutledge on this occasion, alledging that Congress ought not to be led by general suggestions derived from the office of finance, joined by Mr. Gervais, voted ag<sup>st</sup> the reconsideration. The consequence was, y<sup>t</sup> S. Carol<sup>a</sup>. was divided, & six votes only in fav<sup>r</sup>. of the Reconsideration. Mr. Hamilton hav<sup>g</sup>. expressed his regret at the negative & explained more exactly the interference of the change of the Epoch with

the measures & plans of the Office of Finance, w<sup>ch</sup> had limited all State advances & settle<sup>ts</sup> to Aug: 1780, Mr. Rutledge acknowledged the sufficiency of the reasons & at his instance the latter date was reinstated. On this 2<sup>d</sup>. question Con<sup>t</sup>. also voted for Aug<sup>st</sup>.[1](#)

Congress proceeded to the 3<sup>rd</sup> Clause relative to the commutation of half pay. A motion was made by Mr. Hamilton, to fill the blank with “six” this was in conformity to tables of Dr. Price, estimating the officers on the average of good lives. Liberality in the rate was urged by several as necessary to give satisfaction & prevent a refusal of the offer. For this motion there were 6 ayes 5 noes; the Southern States & New York being in the affirmative the Eastern & N. J. in the negative. Col. Bland proposed 6½ erroneously supposing the negative of 6 to have proceeded from its being too low. It was on the contrary rather doubtful whether the East States w<sup>d</sup>. concur in any arrangem<sup>t</sup>. on this head; so averse were they to what they call pensions. Several having calculated that the annual amount of half-pay was between 4 & 500,000 D<sup>rs</sup> and the interest of the gross sum funded at the rate of 6 years, nearly ? of that sum, Congress were struck with the necessity of proceeding with more caution & for that purpose committed the report to a Committee of 5—Mr. Osgood, Mr. Fitzsimmons, Mr. Gervais, Mr. Hamilton, and Mr. Wilson.[1](#)

MONDAY, 27 JAN<sup>Y</sup>. 1783.

A letter from Gen<sup>l</sup> Washington was rec<sup>d</sup>. notifying the death of Lord Stirling & inclosing a report of the Officer sent to apprehend Knowlton and Wells.

The following is an extract from the report: “He (one Israel Smith) further s<sup>d</sup>. that Knowlton & Wells had rec<sup>d</sup> a letter from Jonathan Arnold, Esq<sup>r</sup> at Congress part of which was made public, which informed them that affairs in Congress were unfavorable to them & w<sup>d</sup> have them to look out for themselves. What other information this letter contained he c<sup>d</sup> not say. I found in my March thro’ the State that the last mentioned Gentleman was much in favor with all the principal men in that State I had any conversation with.”

Mr. Arnold being present at the reading informed Congress that he was surprised how such a notion should have prevailed with respect to him; that he had never held any correspondence with either Knowlton or Wells, and requested that he might be furnished with y<sup>e</sup>. extract above. In this he was indulged without opposition. But it was generally considered notwithstanding his denial of the correspondence, that he had at least at second hand, conveyed y<sup>e</sup>. intelligence to Vermont.

A long petition was read, signed as alledged by near two thousand inhabitants (but all in the same handwriting) of the territory lately in controversy between P<sup>a</sup>. & V<sup>a</sup>, complaining of the grievances to which their distance from public authority exposed them & particularly of a late law of Pen<sup>a</sup> interdicting even consultations about a new State within its limits; and praying that Congress w<sup>d</sup>. give a sanction to their independence & admit them into the Union. The Petition lay on the table without a single motion or remark relative to it.

The order of the day was called for, to wit the Resolution of saturday last in favor of adequate & substantial funds.

The subject was introduced by Mr. Wilson with some judicious remarks on its importance & the necessity of a thorough & serious discussion of it. He observed that the U. States had in the course of the revolution displayed both an unexampled activity in resisting the enemy, and an unexampled patience under the losses & calamities occasioned by the war. In one point only he said they had appeared to be deficient & that was a cheerful payment of taxes. In other free Gov<sup>ts</sup> it had been seen that taxation had been carried further & more patiently borne than in States where the people were excluded from the Gov<sup>ts</sup>. The people considering themselves as the sovereign as well as the subject; & as receiving with one hand what they paid with the other. The peculiar repugnance of the people of the U. S. to taxes he supposed proceeded first from the odious light in which they have been under the old Gov<sup>t</sup>., in the habit of regarding them; 2<sup>dly</sup>, from the direct manner in w<sup>ch</sup>. taxes in this country had been laid; whereas in all other countries taxes were paid in a way that was little felt at the time. That it could not proceed altogether from inability he said must be obvious: Nay that the ability of the U. S. was equal to the public burden might be demonstrated. According to calculations of the best writers the inhabitants of G. B. paid before the present war at the annual rate of at least 25s Sterl<sup>g</sup> per head. According to like calculations the inhabitants of the U. S. before the revolution paid indirectly & insensibly at the rate of at least 10s Sterl<sup>g</sup>. per head. According to the computed depreciation of the paper emissions, the burden insensibly borne by the inhabitants of the U. S. had amounted during the first three or four years of the war to not less than twenty Millions of dollars per annum, a burden too which was the more oppressive as it fell very unequally on the people. An inability therefore could not be urged as a plea for the extreme deficiency of the revenue contributed by the States, which did not amount during the past year, to ½ a Million of dollars, that is to ? of a dollar per head. Some more effectual mode of drawing forth the resources of the Country was necessary. That in particular it was necessary that such funds should be established as would enable Congress to fulfill those engagements which they had been enabled to enter into. It was essential he contended that those to whom was delegated the power of making war & peace should in some way or other have the means of effectuating these objects; that as Congress had been under the necessity of contracting a large debt justice required that such funds should be placed in their hands as would discharge it; that such funds were also necessary for carrying on the war; and as Congress found themselves in their present situation destitute both of the faculty of paying debts already contracted, and of providing for future exigencies, it was their duty to lay that situation before their constituents; and at least to come to an *éclaircissement* on the subject, 1 he remarked that the establish<sup>t</sup>. of certain funds for pay<sup>g</sup>. w<sup>d</sup> set afloat the public paper; adding that a public debt resting on general funds would operate as a cement to the confederacy, and might contribute to prolong its existence, after the foreign danger ceased to counteract its tendency to dissolution. He concluded with moving that it be Resol<sup>d</sup>.

“That it is the opinion of Congress that complete justice cannot be done to the Creditors of the United States, nor the restoration of public credit be effected, nor the

future exigencies of the war provided for, but by the establishment of *general* funds to be collected by Congress.”

This motion was seconded by Mr. Fitzsimmons. Mr. Bland desired that Congress w<sup>d</sup>. before the discussion proceeded farther receive a communication of sundry papers transmitted to the Virg<sup>a</sup> Delegates by the Executive of that State; two of which had relation to the question before Congress. These were 1<sup>st</sup>., a Resolution of the Gen<sup>l</sup> Assembly declaring its inability to pay more than £50.000 V<sup>a</sup>. currency towards complying with the demands of Congress. 2<sup>dly</sup> the Act repealing the Act granting the impost of 5 Per C<sup>t</sup>. These papers were received and read.

Mr. Wolcot expressed some astonishment at the inconsistency of these two acts of V<sup>a</sup>.; supposed that they had an unfavorable aspect on the business before Congress; & proposed that the latter s<sup>d</sup> be postponed for the present. He was not seconded.

Mr. Ghoram favored the general idea of the motion, animadverting on the refusal of Virg<sup>a</sup> to contribute the necessary sums & at the same moment repealing her conCurrence in the only scheme that promised to supply a deficiency of contributions. He thought the motion however inaccurately expressed, since the word “general” might be understood to refer to every possible object of taxation as well as to the operation of a particular tax through [out] the States. He observed that the non-payment of the 1.200.000 D<sup>TS</sup> demanded by Congress for paying the interest of the debts for the year—demonstrated that the constitutional mode of annual requisitions was defective; he intimated that lands were already sufficiently taxed [&] that polls & commerce were the most proper objects. At his instance the latter part of the motion was so amended as to run “establishment of permanent & adequate funds to operate generally throughout the U. States.”

Mr. Hamilton went extensively into the subject; the sum of it was as follows he observed that funds considered as permanent sources of revenue were of two kinds 1<sup>st</sup> Such as would extend generally & uniformly throughout the U. S., & w<sup>d</sup> be collected under the authority of Cong<sup>s</sup> 2<sup>dly</sup>, such as might be established separately within each State, & might consist of any objects which were chosen by the States, and might be collected either under the authority of the States or of Cong<sup>s</sup>. Funds of the 1<sup>st</sup> kind he contended were preferable; as being 1<sup>st</sup>, more simple, the difficulties attending the mode of fixing the quotas laid down in the Confederation rendering it extremely complicated & in a manner insuperable; 2<sup>dly</sup>., as being more certain: since the States according to the sec<sup>d</sup>. plan w<sup>d</sup> probably retain the collection of the revenue, and a vicious system of collection prevailed generally throughout the U. S. a system by which the collectors were chosen by the people & made their offices more subservient to their popularity than to the public revenue; 3<sup>d</sup>, as being more economical Since the collection would be effected with fewer officers under the management of Congress than under that of the States.

Mr. Ghoram observed that Mr. Hamilton was mistaken in the representation he had given of the collection of taxes in several of the States; particularly in that of Massachusetts; where the collection was on a footing which rendered it sufficiently certain. Mr. Wilson having risen to explain some things which had fallen from him;

threw out the suggestion that several branches of the Revenue if yielded by all the States, would perhaps be more just & satisfactory than any single one; for example An impost on trade combined with a land tax.

Mr. Dyer expressed a strong dislike to a Collection by officers appointed under Congress & supposed the States would never be brought to consent to it.

Mr. Ramsay was decidedly in favor of the proposition. Justice he said entitled those who had lent their money & services to the U. S. to look to them for payment; that if general & certain revenues were not provided, the consequence w<sup>d</sup> be that the army & public Creditors would have soon to look to their respective States only for satisfaction; that the burden in this case w<sup>d</sup>. fall unequally on the States; that rivalships relative to trade w<sup>d</sup>. impede a regular impost & would produce confusion am<sup>g</sup> the States; that some of the States would never make of themselves provision for half pay and that the army w<sup>d</sup> be so far defrauded of the rewards stipulated to them by Congress; that altho it might be uncertain whether the States w<sup>d</sup> accede to plans founded on y<sup>e</sup>. proposition before the house, yet as Congress was convinced of its truth & importance it was their duty to make the experiment.

Mr. Bland thought that the ideas of the States on the subject were so averse to a general revenue in the hands of Cong<sup>s</sup>. that if such a revenue were proper it was unattainable; that as the deficiency of the contributions from the States proceeded, not from their complaints of their inability<sup>1</sup> but of the inequality of the apportionments, it would be a wiser course to pursue the rule of the Confederation, to-wit to ground the requisition on an actual valuation of lands; that Congress w<sup>d</sup> then stand on firm ground & try a practicable mode.

TUESDAY, JAN<sup>Y</sup>. 28TH, 1783.

The subject yesterday under discussion was resumed. A division of the question was called for by Mr. Wolcott so as to leave a distinct question on the words “to be collected by Congress,” w<sup>ch</sup> he did not like.

Mr. Wilson considered this mode of collection as essential to the idea of a general revenue. Since without it the proceeds of the revenue w<sup>d</sup>. depend entirely on the punctuality energy & unanimity of the States, the want of which led to the present consideration.

Mr. Hamilton was strenuously of the same opinion. Mr. Fitzsimmons informed Congress that the Legislature of Penn<sup>a</sup> had, at their last meeting been dissuaded from appropriating their revenue to the payment of their own Citizens Creditors of the U. S., instead of remitting it to y<sup>e</sup> Continental treasury; merely by the urgent representations of a Committee of Congress & by the hope that some general system in fav<sup>r</sup>. of all the public creditors would be adopted; that the Legislature were now again assembled; and altho sensible of the tendency of such an example, thought it their duty & meant in case the prospect of such a system vanished to proceed immediately to the separate appropriations formerly in contemplation.

On the motion of Mr. Madison, the whole proposition was newmodelled, as follows:

“That it is the opinion of Congress that the establishment of permanent & adequate funds to operate generally throughout the U. States is indispensably necessary for doing complete justice to the Creditors of the U. S., for restoring public credit and for providing for the future exigencies of the war.” The words “to be collected under the authority of Congress” were as a separate question left to be added afterwards.

Mr. Rutledge objected to the term “generally” as implying a degree of uniformity in the tax which would render it unequal. He had in view particularly a land tax according to quantity as had been proposed by the office of finance. He thought the prejudices of the people opposed the idea of a general tax; & seemed on the whole to be disinclined to it himself, at least if extended beyond an impost on trade; urging the necessity of pursuing a valuation of land, and requisitions grounded thereon. Mr. Lee<sup>2<sup>ded</sup></sup> the opposition to the term “general,” he contended that the States w<sup>d</sup>. never consent to a uniform tax because it w<sup>d</sup>. be unequal; that it was moreover repugnant to the articles of confederation; and by placing the purse in the same hands with the sword, was subversive of the fundamental principles of liberty. He mentioned the repeal of the impost by Virg<sup>a</sup>, himself alone opposing it & that too on the inexpediency in point of time — as proof of the aversion to a general revenue. He reasoned upon the subject finally as if it was proposed that Congress s<sup>d</sup>. assume & exercise a power immediately & without the sanction of the States, of levying money on them in consequence.

Mr. Wilson rose & explained the import of the motion to be that Congress should recommend to the States the investing them with power. He observed that the Confederation was so far from precluding, that it expressly provided for future alterations; that the power given to Congress by that Act was too little not too formidable, that there was more of a centrifugal than centripetal force in y<sup>e</sup> States & that y<sup>e</sup> funding of a common debt in the manner proposed would produce a salutary invigoration and cement to the Union.

Mr. Elsworth acknowledged himself to be undecided in his opinion; that on one side he felt the necessity of continental funds for making good the continental engagements, but on the other desponded of a unanimous concurrence of the States in such an establishment. He observed that it was a question of great importance, how far the federal Gov<sup>t</sup> can or ought to exert coercion against delinquent members of the confederacy; & that without such coercion no certainty could attend the constitutional mode which referred every thing to the unanimous punctuality of thirteen different councils. Considering therefore a continental revenue as unattainable, and periodical requisitions from Congress as inadequate, he was inclined to make trial of the middle mode of permanent State funds, to be provided at the recommendation of Cong<sup>s</sup>, and appropriated to the discharge of the common debt.

Mr. Hamilton, in reply to Mr. Elsworth, dwelt long on the inefficacy of State funds. He supposed too that greater obstacles would arise to the execution of the plan than to that of a general revenue. As an additional reason for the latter to be collected by officers under the appointment of Congress, he signified that as the energy of the

federal Gov<sup>t</sup>. was evidently short of the degree necessary for pervading & uniting the States it was expedient to introduce the influence of officers deriving their emoluments from & consequently interested in supporting the power of, Congress.1

Mr. Williamson was of opinion that continental funds altho' desirable, were unattainable at least to the full amount of the public exigencies. He thought if they could be obtained for the fereign debt, it would be as much as could be expected, and that they would also be less essential for the domestic debt.

Mr. Madison observed that it was needless to go into proofs of the necessity of pay<sup>g</sup>. the public debts; that the idea of erecting our national independence on the ruins of public faith and national honor must be horrid to every mind which retained either honesty or pride; that the motion before Congress contained a simple proposition with respect to the truth of which every member was called upon to give his opinion. That this opinion must necessarily be in the affirmative, unless the several objects: of doing justice to the public creditors, &c &c. could be compassed by some other plan than the one proposed, that the 2 last objects depended essentially on the first; since the doing justice to the Creditors alone w<sup>d</sup> restore public credit, & the restoration of this alone could provide for y<sup>e</sup>. future exigencies of the war. Is then a continental revenue indispensably necessary for doing complete justice &c? This is the question. To answer it the other plans proposed must first be reviewed.

In order to do complete justice to the public creditors, either the principal must be paid off, or the interest paid punctually. The 1<sup>st</sup> is admitted to be impossible on any plan. The only plans opposed to the contin<sup>l</sup>. one for the latter purpose are 1. periodical requisitions according to the federal articles; 2<sup>dly</sup>. permanent funds established by each State within itself & the proceeds consigned to the discharge of public debts.

Will y<sup>e</sup>. 1<sup>st</sup>. be adequate to the object? The contrary seems to be maintained by no one. If reason did not sufficiently premonish experience has sufficiently demonstrated that a punctual & unfailling compliance by 13 separate & independent Gov<sup>ts</sup> with periodical demands of money from Congress, can never be reckoned upon with the certainty requisite to Satisfy our present creditors, or to tempt others to become our creditors in future.

2<sup>dly</sup>. Will funds separately established within each State & the amount submitted to the appropriation of Congress be adequate to the object? The only advantage which is thought to recommend this plan is that the States will be with less difficulty prevailed upon to adopt it. Its imperfections are 1<sup>st</sup> that it must be preceded by a final and satisfactory adjustment of all acc<sup>ts</sup>. between the U. S. and individual States; and by an apportionment founded on a valuation of all the lands throughout each of the States in pursuance of the law of the confederation; for although the States do not as yet insist on these pre-requisites in y<sup>e</sup> case of annual demands on them, with w<sup>ch</sup> they very little comply & that only in the way of an open acc<sup>t</sup>, yet these conditions w<sup>d</sup> certainly be exacted in case of a permanent cession of revenue; and the difficulties & delays to say the least incident to these conditions can escape no one. 2<sup>dly</sup> the produce of the funds being always in the first instance in the hands & under the control of the States separately, might at any time & on various pretences, be diverted to State objects.

3<sup>dly</sup>, that jealousy which is as natural to the States as to individuals & of which so many proofs have appeared, that *others* will not fulfil their respective portions of the common obligations, will be continually & mutually suspending remittances to the common treasury, until it finally stops them altogether. These imperfections are too radical to be admitted into any plan intended for the purposes in question.

It remains to examine the merits of a plan of a general revenue operating throughout y<sup>e</sup>. U. S. under the superience of Congress.

One obvious advantage is suggested by the last objection to separate revenues in the different States; that is, it will exclude all jealousy among them on that head, since each will know whilst it is submitting to the tax, that all the others are necessarily at the same instant bearing their respective portions of the burden. Again, it will take from the States the opportunity as well as the temptation to divert their incomes from the general to internal purposes since these incomes will pass *directly* into the treasury of the U. S.

Another advantage attending a general revenue is that in case of the concurrence of the States in establishing it, it would become soonest productive; and would consequently soonest obtain the objects in view. Nay so assured a prospect would give instantaneous confidence and content to the public creditors at home & abroad, and place our affairs in a most happy train.

The consequences with respect to the Union, of omitting such a provision for the debts of the Union also claims particular attention. The tenor of the memorial from Penn<sup>a</sup>, and of the information just given on the floor by one of its Delegates, (Mr. Fitzsimmons,) renders it extremely probable that that State would as soon as it s<sup>d</sup>. be known that Congress had declined such provision or the States rejected it, appropriate the revenue required by Congress to the payment of its own Citizens & troops, creditors of the U. S. The irregular conduct of other States on this subject enforced by such an example could not fail to spread the evil throughout the whole continent. What then w<sup>d</sup> become of the confederation? What w<sup>d</sup>. be the authority of Congress? w<sup>t</sup> the tie by which the States c<sup>d</sup> be held together? what the source by which the army could be subsisted & clothed? What the mode of dividing & discharging our foreign debts? What the rule of settling the internal acc<sup>ts</sup>.? What the tribunal by which controversies am<sup>g</sup>. the States could be adjudicated?

It ought to be carefully remembered that this subject was brought before Congress by a very solemn appeal from the army to the justice & gratitude of their Country. Besides immediate pay, they ask for permanent Security for arrears. Is not this request a reasonable one? Will it be just or politic to pass over the only adequate security that can be devised, & instead of fulfilling the stipulations of the U. S. to them, to leave them to seek their rewards separately from the States to which they respectively belong? The patience of the army has been equal to their bravery, but that patience must have its limits; and the result of despair cannot be foreseen, nor ought to be risked.



It has been objected ag<sup>st</sup>. a general revenue that it contravenes the articles of confederation. These Articles as has been observed have presupposed the necessity of alterations in the federal system, & have left a door open for them. They moreover authorize Congress to borrow money. Now in order to borrow money permanent & certain provision is necessary, & if this provision cannot be made in any other way as has been shewn, a general revenue is within the spirit of the Confederation.

It has been objected that such a revenue is subversive of the sovereignty & liberty of the States. If it were to be assumed without the free gift of the States this objection might be of force, but no assumption is proposed. In fact Congress are already invested by the States with the constitutional authority over the purse as well as the sword. A general revenue would only give this authority a more certain & equal efficacy. They have a right to fix the *quantum* of money necessary for the common purposes. The right of the States is limited to the *mode* of supply. A requisition of Congress on the States for money is as much a law to them; as their revenue Acts when passed are laws to their respective Citizens. If for want of the faculty or means of enforcing a requisition, the law of Congress proves inefficient; does it not follow that in order to fulfil the views of the federal constitution, such a change s<sup>d</sup>. be made as will render it efficient? Without such efficiency the end of this Constitution, which is to preserve order & justice among the members of the Union, must fail; as without a like efficiency would the end of State Constitutions w<sup>ch</sup>. is to preserve like order & justice among their respective members.

It has been objected that the States have manifested such aversion to the impost on trade as renders any recommendations of a general revenue hopeless & imprudent. It must be admitted that the conduct of the States on that subject is less encouraging than were to be wished. A review of it however does not excite despondence. The impost was adopted immediately & in its utmost latitude by several of the States. Several also which complied partially with it at first, have since complied more liberally. One of them after long refusal has complied substantially. Two States only have failed altogether & as to one of them it is not known that its failure has proceeded from a decided opposition to it. On the whole it appears that the necessity & reasonableness of the scheme have been gaining ground among the States. He was aware that one exception ought to be made to this inference; an exception too w<sup>ch</sup>. it peculiarly concerned him to advert to. The State of Virg<sup>a</sup>, as appears by an Act yesterday laid before Congress has withdrawn its assent once given to the scheme. This circumstance c<sup>d</sup>. not but produce some embarrassment in a representative of that State advocating the Scheme, one too whose principles were extremely unfavorable to a disreg<sup>d</sup> of the sense of Constituents. But it ought not to deter him from listening to considerations which in the present case ought to prevail over it. One of these considerations was that altho' the delegates who compose Congress, more immediately represented & were amenable to the States from which they respectively come, yet in another view they owed a fidelity to the collective interests of the whole. 2<sup>dly</sup>., Although not only the express instructions, but even the declared sense of constituents as in the present case, were to be a law in general to their representatives, still there were occasions on which the latter ought to hazard personal consequences from a respect to what his clear conviction determines to be the true interest of the former; and the present he conceived to fall under this exception. Lastly the part he

took on the present occasion was the more fully justified to his own mind, by his thorough persuasion that with the same knowledge of public affairs which his station commanded the Legislature of V<sup>a</sup>. would not have repealed the law in favor of the impost & would even now rescind the repeal.

The result of these observations was that it was the duty of Congress under whose autho the public debts had been contracted to aim at a general revenue as the only means of discharging them; & that this dictate of justice & gratitude was enforced by a regard to the preservation of the confederacy, to our reputation abroad & to our internal tranquillity.

Mr. Rutledge complained that those who so strenuously urged the necessity & competency of a general revenue 1 operating throughout all the States at the same time, declined specifying any general objects from which such a revenue could be drawn. He was thought to insinuate that these objects were kept back intentionally untill the general principle c<sup>d</sup> be irrevocably fixed when Cong<sup>s</sup> would be bound at all events to go on with the project; whereupon Mr. Fitzsimmons expressed some concern at the turn w<sup>ch</sup> the discussion seemed to be taking. He said, that unless mutual confidence prevailed no progress could be made towards the attainment of those ends w<sup>ch</sup>. all in some way or other aimed at. It was a mistake to suppose that any specific plan had been preconcerted among the patrons of a general revenue.

Mr. Wilson with whom the motion originated gave his assurances that it was neither the effect of preconcert with others, nor of any determinate plan matured by himself, that he had been led into it, by the declaration on Saturday last by Cong<sup>s</sup>. that substantial funds ought to be provided, by the memorial of the army from which that declaration had resulted by the memorial from the State of P<sup>a</sup>, holding out the idea of separate appropriations of her revenue unless provision were made for the public creditors, by the deplorable & dishonorable situation of public affairs which had compelled Congress to draw bills on the unpromised & contingent bounty of their Ally, and which was likely to banish the Superint<sup>t</sup>. of Finance whose place c<sup>d</sup>. not be Supplied, from his department. He observed that he had not introduced detail [s] into the debate because he thought them premature, until a general principle should be fixed; and that as soon as the principle s<sup>d</sup> be fixed he would altho not furnished with any digested plan, contribute all in his power to the forming such a one.

Mr. Rutledge moved that the proposition might be committed in order that some practicable plan might be reported, before Congress s<sup>d</sup>. declare that it ought to be adopted.

Mr. Izard 2<sup>ded</sup>. the motion, from a conciliatory view.

Mr. Madison thought the commitment unnecessary; and would have the appearance of delay; that too much delay had already taken place, that the deputation of the army had a right to expect an answer to their memorial as soon as it could be decided by Congress. He differed from Mr. Wilson in thinking that a specification of the objects of a general revenue would be improper, and thought that those who doubted its practicabil<sup>y</sup> had a right to expect proof of it from details before they c<sup>d</sup> be expected to

assent to the general principle; but he differed also from Mr. Rutledge, who thought a commitment necessary for the purpose; since his views would be answered by leaving the motion before the house and giving the debate a greater latitude. He suggested as practicable objects of a general revenue. 1<sup>st</sup> an impost on trade 2<sup>dly</sup>. a poll tax under certain qualifications 3<sup>dly</sup>. a land-tax under do.1

Mr. Hamilton suggested a house & window-tax he was in favor of the mode of conducting the business urged by Mr. Madison.

On the motion for the comm<sup>t</sup>., 6 States were in favor of it, & 5 ag<sup>st</sup> it, so it was lost, in this vote the merits of the main proposition very little entered.

Mr. Lee said that it was a waste of time to be forming resolutions & settling principles on this subject. He asked whether these w<sup>d</sup> ever bring any money into the public treasury. His opinion was that Congress ought in order to guard ag<sup>st</sup> the inconvenience of meetings of the different Legislatures at different & even distant periods, to call upon the Executives to convoke them all at one period, & to lay before them a full state of our public affairs. He said the States would never agree to those plans which tended to aggrandize Congress; that they were jealous of the power of Congress, & that he acknowledged himself to be one of those who thought this jealousy not an unreasonable one; that no one who had ever opened a page or read a line on the subject of liberty, could be insensible to the danger of surrendering the purse into the same hands which held the sword.

The debate was suspended by an adjournment.

## WEDNESDAY, JAN<sup>Y</sup>. 29TH. 1783.

Mr. Fitzsimmons reminded Congress of the numerous inaccuracies & errors in the American column of the Treaty with Holland and proposed that a revision of it as ratified should take place in order that some steps might be taken for redressing this evil, he added that an accurate comparison of it with the treaty with France ought also to be made for the purpose of seeing whether it consisted in all its parts with the latter.1 He desired the Committee who had prepared the ratification to give some explanation on the subject to Congress.

Mr. Madison, as first on that Committee informed Congress, that the inaccuracies & errors consisting of mis-spelling, foreign idioms, & foreign words, obscurity of the sense &c were attended to by the Committee & verbally noted to Congress when their report was under consideration; that the Committee did not report in writing, as the task was disagreeable, and the faults were not conceived to be of sufficient weight to affect the ratification. He thought it w<sup>d</sup> be improper to reconsider the act as had been suggested, for the purpose of suspending it on that or any other acc<sup>t</sup>, but had no objection if Congress were disposed, to instruct Mr. Adams to substitute with the consent of the other party a more correct counterpart in the American language. The subject was dropped, nobody seeming inclined to urge it.

On the motion of Mr. Rutledge & for the purpose of extending the discussion to particular objects of General Revenue Congress resolved itself into a Committee of the whole to consider of the most effectual means of restoring public credit; and the proposition relative to general revenue was referred to the Committee. Mr. Carroll was elected into the chair, & the proposition taken up.<sup>2</sup>

Mr. Bland proposed to alter the words of the proposition so as to make it read establish<sup>t</sup> of funds “on taxes or duties, to operate generally &c.” This was agreed to as a more correct phraseology. Mr. Hamilton objected to it at first, supposing thro’ mistake that it might exclude the back lands which was a fund in contemplation of some gentlemen.

Mr. Madison, having adverted to the jealousy of Mr. Rutledge of a latent scheme to fix a tax on land according to its quantity, moved that between the words “generally” & “to operate” might be inserted the words “and in just proportion.”

Mr. Wilson said he had no objection to this amendm<sup>t</sup>, but that it might be referred to the taxes individually, & unnecessarily fetter Congress; since if the taxes collectively should operate in just proportion, it w<sup>d</sup>. be sufficient. He instanced a land-tax & an impost on trade, the former of which might press hardest on the South<sup>n</sup>, & the latter on the East<sup>n</sup>, but both together might distribute the burden pretty uniformly. From this consideration he moved that the words “on the whole” might be prefixed to the words “in just proportion.” This amend<sup>t</sup> to the amendment of Mr. Madison was 2<sup>ded</sup> by Mr. Boudinot & agreed to without opposition as was afterwards the whole amendm<sup>t</sup>.

Mr. Wilson in order to leave the scheme open for the back lands as a fund for paying the public debts, moved that the proposition might be further altered so as to read “indispensably necessary *towards* doing complete justice &c.”—The motion was 2<sup>ded</sup> by Mr. Boudinot, & passed without opposition.

The main proposition by Mr. Wilson as thus amended then passed without opposition; in the words following: “That it is the opinion of Congress that the establishment of permanent & adequate funds on taxes or duties which shall operate generally & on the whole in just proportion throughout the U. S., are indispensably necessary towards doing complete justice to the public Creditors, for restoring public Credit, & for providing for the future exigencies of the War.”

Mr. Bland proposed as the only expedient that c<sup>d</sup>. produce immediate relief to the public Creditors, that, Congress s<sup>d</sup> by a fixed resolution appropriate to the payment of interest *all* the monies which should arise from the requisitions on the States. He thought this would not only give immediate relief to the public Creditors, but by throwing into circulation the stagnant securities, enliven the whole business of taxation. This proposition was not 2<sup>ded</sup>.

Mr. Wilson proceeded to detail to Congress his ideas on the subject of a continental revenue. He stated the internal debt liquidated & unliquidated at 21 Million of Doll<sup>rs</sup>, the foreign debt at 8 Million, the actual deficiency of 1782 at 4 Million, the probable deficiency of ’83 at 4 Million. Making, in the whole 37 Million; which in round

numbers & probably without exceeding the reality may be called 40 Million. The interest of this debt at 6 Per Ct., is 2,400,000 D<sup>rs</sup>, to which it will be prudent to add 600,000, which if the war continues will be needed, and in case of peace may be applied to a navy. An annual revenue of 3 Million of D<sup>rs</sup>. then is the sum to be aimed at, and which ought to be under the management of Cong<sup>s</sup>. One of the objects already mentioned from w<sup>ch</sup>. this revenue was to be sought, was a poll tax. This he thought was a very proper one, but unfortunately the Constitution of Maryland which forbids this tax is an insuperable obstacle. Salt he thought a fit article to be taxed, as it is consumed in a small degree by all and in great quantities by none. It had been found so convenient a subject of taxation, that among all nations which have a system of revenue, it is made a material branch. In England a considerable sum is raised from it. In France it is swelled to the sum of 54,000,000 of Livres. He thought it would be improper to levy this tax during the war whilst the price w<sup>d</sup> continue so high, but the necessary fall of price at the conclusion of it w<sup>d</sup> render the tax less sensible to the people. The suspension of this particular tax during the war would not be inconvenient as it might be set apart for the debt due to France on which the interest would not be called for during the war. He computed the quantity of salt imported into the U. S. annually at 3 Million of Bushels, & proposed a duty of  $\frac{1}{2}$  of a Dollar per bushel which w<sup>d</sup> yield 100,000 D<sup>rs</sup>. This duty he observed w<sup>d</sup> press hardest on the Eastern States, on acc<sup>t</sup> of the extraordinary consumption in the fisheries.

The next tax which he suggested was on land. 1 Dollar on every 100 Acres according to the computation of the Superintend<sup>t</sup>. of finance would produce 500,000 Doll<sup>rs</sup>. This computation he was persuaded might be doubled. Since there could not be less than 100 Millions of Acres comprehended within the titles of individuals which at 1 D<sup>r</sup>. per 100 Acres yields 1,000,000 of Dollars. This tax could not be deemed too high, & would bear heaviest not on the industrious farmer, but on the great land-holder. As the tax on Salt would fall with most weight on the Eastern States, the equilibrium would be restored by this which would be most felt by the Middle and Southern States.

The impost on trade was another source of revenue which altho' it might be proper to vary it somewhat in order to remove particular objections, ought to be again & again urged upon the States by Congress. The office of Finance has rated this at 500,000 Dollars. He thought a peace would double it in which case the sum of 3,000,000 D<sup>rs</sup>. would be made up. If these computations however should be found to be too high there will still be other objects which would bear taxation. An Excise he said had been mentioned. In general this species of taxation was tyrannical & justly obnoxious, but in certain forms had been found consistent with the policy of y<sup>e</sup>. freest States. In Massachusetts a State remarkably jealous of its liberty, an Excise was not only admitted before but continued since the revolution. The same was the case with Penn<sup>a</sup>, also remarkable for its freedom. An Excise if so modified as not to offend the spirit of liberty may be considered as an object of easy & equal revenue. Wine & imported spirits had borne a heavy Excise in other Countries, and might be adopted in ours. Coffee is another object which might be included. The amount of these three objects is uncertain but materials for a satisfactory computation might be procured. These hints & remarks he acknowledged to be extremely imperfect & that he had been led to make them solely by a desire to contribute his mite towards such a system as would place the finances of the U. S. on an honorable and prosperous footing.

Mr. Ghoram observed that the proposition of Mr. Bland, however salutary its tendency might be in the respects suggested, could never be admitted because it would leave our army to starve, and all our affairs to stagnate during its immediate operation. He objected to a duty on salt as not only bearing too heavily on the East<sup>n</sup>. States, but as giving a dangerous advantage to Rivals in the fisheries. Salt he s<sup>d</sup>. exported from England for the fisheries is exempted particularly from duties. He thought it would be best to confine our attention for the present to the impost on trade which had been carried so far towards an accomplishment, and to remove the objections which had retarded it, by limiting the term of its continuance, leaving to the States the nomination of the collectors, and by making the appropriation of it more specific.

Mr. Rutledge was also for confining our attention to the Impost, & to get that before any further attempts were made. In order to succeed in getting it however he thought it ought to be asked in a new form. Few of the States had complied [with] the recommendation of Cong<sup>s</sup>., literally. Georgia had [not] yet complied. Rhode Island had absolutely refused to comply at all. Virg<sup>a</sup>, which at first complied but partially has since rescinded even that partial compliance. After enumerating the several objections urged by the States ag<sup>st</sup> the scheme, he proposed in order to remove them the following resolution; viz:

“that it be earnestly recommended to the several States to impose & levy a duty of 5 Per C<sup>t</sup>. ad valorem, at the time & place of importation, on all goods, wares & merchandizes of foreign growth & manufacture w<sup>ch</sup>. may be imported into the said States respectively, except goods of the U. S. or any of them, and a like duty on all prizes & prize goods condemned in the Court of admiralty of said States; that the money arising from such duties be paid into the continental Treasury, to be appropriated & applied to the payment of the interest and to sink the principal of the money which the U. S. have borrowed in Europe & of what they may borrow, for discharging the arrears due to the army & for the future support of the war & to no other use or purpose whatsoever; that the said duties be continued for 25 years unless the debts above m<sup>d</sup> be discharged in the mean time, in which case they shall cease & determine; that the money arising from the said duties & paid by any State, be passed to the credit of such State on account of its quota of the debt of the U. States.” The motion was seconded by Mr. Lee.

Mr. Woolcot opposed the motion as unjust towards those States which having few or no ports receive their merchandize through the ports of others; repeating the observation that it is the consumer & not the importer who pays the duty. He again animadverted on the conduct of Virg<sup>a</sup> in first giving & afterwards withdrawing her assent to the Impost recommended by Congress.

Mr. Elseworth thought it wrong to couple any other objects with the Impost; that the States would give this if any thing; and that if a land tax or an excise were combined with it, the whole scheme would fail. He thought however that some modification of the plan recommended by Cong<sup>s</sup> would be necessary. He supposed when the benefits of this contin<sup>l</sup>. revenue should be experienced it would incline the States to concur in making additions to it. He abetted the opposition of Mr. Woolcot to the motion of Mr.

Rutledge which proposed that each State should be credited for the duties collected within its ports; dwelt on the injustice of it, said that Connecticut, before the revolution did not import, perhaps not, part of the merchandize consumed within it, and pronounced that such a plan w<sup>d</sup> never be agreed to. He concurred in the expediency of new-modelling the scheme of the impost by defining the period of its continuance; by leaving to the State the nomination, & to Congress the appointment of Collectors or vice versa; and by a more determinate appropriation of the revenue. The first object to which it ought to be applied was he thought, the foreign debt. This object claimed a preference as well from the hope of facilitating further aids from that quarter, as from the disputes into w<sup>ch</sup> a failure may embroil the U. S. The prejudices ag<sup>st</sup> making a provision for foreign debts which s<sup>d</sup> not include the domestic ones was he thought unjust & might be satisfied by immediately requiring a tax in discharge of which loan-office certificates should be receivable. State funds for the domestic debts would be proper for subsequent consideration. He added, as a further objection against crediting the States for the duties on trade respectively collected by them, that a mutual jealousy of injuring their trade by being foremost in imposing such a duty would prevent any from making a beginning.

Mr. Williamson said, that Mr. Rutledge's motion at the same time that it removed some objections, introduced such as would be much more fatal to the measure. He was sensible of the necessity of some alterations, particularly in its duration & the appointment of the Collectors. But the crediting the States severally for the amount of their collections was so palpably unjust & injurious that he thought candor required that it should not be persisted in. He was of opinion that the interest of the States, which trade for others, also required it, since such an abuse of the advantage possessed by them would compel the States for which they trade to overcome the obstacles of nature & provide supplies for themselves. N. Carolina he said would probably be supplied pretty much thro Virg<sup>a</sup>, if the latter forbore to levy a tax on the former, but in case she did not forbear, the ports of N. C., which are nearly as deep as those of Holland, might & probably w<sup>d</sup> be substituted. The profits drawn by the more commercial States from the business they carry on for the others, were of themselves sufficient & ought to satisfy them.

Mr. Ramsay differed entirely from his colleague (Mr. Rutledge). He thought that as the consumer pays the tax, the crediting the States collecting the impost, unjust. N. Carolina, Maryland, N. Jersey & Connecticut would suffer by such a regulation and would never agree to it.

Mr. Bland was equally ag<sup>st</sup> the regulation. He thought it replete with injustice & repugnant to every idea of finance. He observed that this point had been fully canvassed at the time when the impost was originally recommended by Congress, & finally exploded. He was indeed he said opposed to the whole motion (of Mr. Rutledge). Nothing would be a secure pledge to Creditors that was not placed out of the Control of the grantors. As long as it was in the power of the States to repeal their grants in this respect, suspicions would prevail, & w<sup>d</sup> prevent loans. Money ought to be apprted by the States as it is by the Parliament of G. B. He proposed that the revenue to be Solicited from the States should be irrevocable by them without the consent of Congress, or of nine of the States. He disapproved of any determinate

limitation to the continuance of the revenue, because the continuance of the debt could not be fixed and that was the only rule that could be proper or satisfactory. He said he should adhere to these ideas in the face of the Act of Virg<sup>a</sup>. repealing her assent to the impost; that it was trifling with Cong<sup>s</sup> to enable them to contract debts, & to withhold from them the means of fulfilling their contracts.

Mr. Lee said he seconded the motion of Mr. Rutledge, because he thought it most likely to succeed; that he was persuaded the States would not concur in the impost on trade without a limitation of time affixed to it. With such a limitation and the right of collection, he thought Virg<sup>a</sup>, R. Island & the other States probably w<sup>d</sup>. concur. The objection of his Colleague, (Mr. Bland) he conceived to be unfounded: No Act of the States could be irrevocable, because if so called it might notwithstanding be repealed. But he thought there w<sup>d</sup>. be no danger of a repeal, observing that the national faith was all the security that was given in other countries, or that could be given. He was sensible that something was of necessity to be done in the present alarming crisis; and was willing to strike out the clause crediting the States for their respective collections of the revenue on trade, as it was supposed that it w<sup>d</sup> impede the measure.

Mr. Hamilton disliked every plan that made but partial provision for the public debts; as an inconsistent & dishonorable departure from the declaration made by Cong<sup>s</sup> on that subject. He said the domestic Creditors would take the alarm at any distinctions unfavorable to their claims; that they would withhold their influence from any such measures recommended by Congress; and that it must be principally from their influence on their respective legislatures that success could be expected to any application from Cong<sup>s</sup> for a general revenue.

## THURSDAY, 30 JAN<sup>Y</sup>.

The answer to the Memorials from the Legislature of Penn<sup>a</sup>. was agreed to as it stands on the Journal, N. Jersey alone dissenting.1

In the course of its discussion several expressions were struck out which seemed to reprehend the States for the deficiency of their contributions. In favor of these expressions it was urged that they were true and ought to be held forth as the cause of the public difficulties in justification of Congress. On the other side it was urged y<sup>t</sup>. Congress had in many respects been faulty as well as the States, particularly in letting their finances become so disordered before they began to apply any remedy; and that if this were not the case, it would be more prudent to address to the States a picture of the public distresses & danger, than a satire on their faults; since the latter would only irritate them; whereas the former w<sup>d</sup> tend to lead them into the measures supposed by Congress to be essential to the public interest.

The propriety of mentioning to the Legislature of Penn<sup>a</sup>. the exped<sup>t</sup> into which Congress had been driven of drawing bills on Spain & Holland without previous warrant; the disapp<sup>t</sup> attending it, and the deductions ultimately ensuing from the aids destined to the U. S. by the C<sup>t</sup> of France, was also a subject of discussion. On one side it was represented as a fact which being dishonorable to Congress ought not to be proclaimed by them, & that in the present case it c<sup>d</sup> answer no purpose. On the other



side it was contended that it was already known to all the world, that as a glaring proof of the public embarrassm<sup>ts</sup>. it would impress the Legislature with the danger of making those separate appropriations which w<sup>d</sup> increase the embarrassments; and particularly would explain in some degree the cause of the discontinuance of the French interest due on the loan office certificates.

Mr. Rutledge & some other members having expressed less solicitude about satisfying or soothing the Creditors within P<sup>a</sup> through the legislature than others thought ought to be felt by every one, Mr. Wilson, adverting to it with some warmth, declared that if such indifference should prevail, he was little anxious what became of the answer to the Memorials. Pen<sup>a</sup>, he was persuaded would take her own measures without regard to those of Congress, and that she ought to do so. She was willing he said to sink or swim according to the common fate, but that she would not suffer herself, with a mill-stone of 6,000,000<sup>l</sup> of the Contin<sup>l</sup> debt about her neck to go to the bottom alone.

FRIDAY, JAN<sup>Y</sup>. 31.

The instruction to the V<sup>a</sup>. delegates from that State relative to tob<sup>o</sup> exported to N. Y., under passport from the Sec<sup>y</sup> of Congress was referred to a Committee. Mr. Fitzsimmons moved that the information received from s<sup>d</sup> State of its inability to contribute more than — towards the requisitions of Congress, s<sup>d</sup>. be also committed. Mr. Bland saw no reason for such commitment. Mr. Ghoram was in fav<sup>r</sup> of it. He thought such a resolution from V<sup>a</sup> was of the most serious import; especially if compared with her withdrawal of her assent to the Impost. He said with much earnestness, that if one State should be connived at in such defaults others would think themselves entitled to a like indulgence. Mass<sup>ts</sup>., he was sure had a better title to it than V<sup>a</sup>. He said the former had expended immense sums in recruiting her line, which composed almost the whole North<sup>n</sup>. Army; that 1,200,000 £ (dollar at 6s) had been laid out; & that without this sum the army would have been disbanded.

Mr. Fitzsimmons abetting the animadversions on Virg<sup>a</sup>, took notice that of — Dollars req<sup>d</sup>. by Congress from her for the year 1782, she had paid the paltry sum only of 35,000 D<sup>ts</sup> and was notwithstanding endeavouring to play off from further contributions.—The com<sup>it</sup>ment took place without opposition.

The sub-committee, consisting of Mr. Madison, Mr. Carroll & Mr. Wilson had this morning a conference with the Superintend<sup>t</sup>. of Finance on the best mode of estimating the value of land through the U. S. The Superintend<sup>t</sup> was no less puzzled on the subject than the Committee had been. He thought some essay ought to be made for executing the Confederation, if it s<sup>d</sup> be practicable, & if not to let the impracticability appear to the States. He concurred with the sub committee also in opinion that it would be improper to refer the valuation to the States, as mutual suspicions of partiality, if not a real partiality, would render the result a source of discontent; and that even if Cong<sup>s</sup>. should expressly reserve to themselves a right of revising & rejecting it, such a right could not be exercised without giving extreme offence to the suspected party. To guard ag<sup>st</sup> these difficulties it was finally agreed, & the Sub committee accordingly reported to the G Committee,

“That it is expedient to require of the Several States a return of all surveyed & granted land within each of them; and that in such return the land be distinguished into occupied & unoccupied.

“That it also was expedient to appoint one Commiss<sup>r</sup>. for each State who should be empowered to proceed without loss of time into the several States; & to estimate the value of the lands therein according to the returns above mentioned, & to such instructions as should from time to time be given him for that purpose.”

This report was hurried in to the Grand Com<sup>tee</sup> for two reasons; 1<sup>st</sup>., it was found that Mr. Rutledge, Mr. Bland, & several others relied so much on a valuation on land, and connected it so essentially with measures for restoring public credit that an extreme backwardness on their part affected all these measures, whilst the valuation of land was left out. A 2<sup>d</sup>. reason was that the Sub-Committee were afraid that suspicions might arise of intentional delay, in order to confine the attention of Cong<sup>s</sup> to general funds as affording the only prospect of relief.

The Grand Committee for like reasons were equally impatient to make a report to Congress; and accordingly after a short consultation the question was taken whether the above report of the Sub-com<sup>e</sup>, or the report referred to them s<sup>d</sup> be preferred. In favor of the 1<sup>st</sup>. were Mr. Wilson, Mr. Carrol, Mr. Madison, Mr. Elmore, Mr. Hamilton. In favor of the 2<sup>d</sup>. were Mr. Arnold, Mr. Dyer, Mr. Hawkins, Mr. Ghoram, Mr. Rutledge & Mr. Gilman. So the latter was immediately handed in to Congress, & referred to a committee of the whole into which they immediately resolved themselves.

A motion was made by Mr. Bland, 2<sup>ded</sup>. by Mr. Madison, that this report s<sup>d</sup> be taken up in preference to the subject of General funds. Mr. Wilson opposed it as irregular & inconvenient to break in on an unfinished subject; and supposed that as some further experiment must be intended than merely a discussion of the subject in Congress, before the subject of Gen<sup>l</sup>. funds would be seriously resumed, he thought it unadvisable to interrupt the latter.

Mr. Madison answered that the object was not to retard the latter business but to remove an obstacle to it, that as the two subjects were in some degree connected as means of restoring public credit, & inseparably connected in the minds of many members, it was but reasonable to admit one as well as the other to a share of attention; that if a valuation of land s<sup>d</sup>. be found on mature deliberation to be as efficacious a remedy as was by some supposed, it w<sup>d</sup> be proper at least to combine it with the other expedient, or perhaps to substitute it altogether; if the contrary should become apparent, its patrons w<sup>d</sup>. join the more cordially in the object of a general revenue.

Mr. Hamilton concurred in these ideas & wished the valuation to be taken up in order that its impracticability & futility might become manifest. The motion passed in the Affirmative, & the report was taken up.

The phraseology was made more correct in several instances.

A motion was made by Mr. Boudinot 2<sup>ded</sup>. by Mr. Elseworth to strike out the clause requiring a return of "*the names of the owners,*" as well as the quantity of land. Mr. Elseworth also contended for a less specific return of the parcels of land. The objection ag<sup>st</sup>. the clause were that it would be extremely troublesome & equally useless. Mr. Bland thought these specific returns w<sup>d</sup>. be a check on frauds & the suspicion of them. Mr. Williamson was of the same opinion, as were also Mr. Lee, Mr. Ghoram, & Mr. Ramsay. 1 The motion was withdrawn by Mr. Boudinot.

saturday & monday. No Congress.

## TUESDAY, FEB. 4.

An indecent & tart remonstrance was re<sup>d</sup> from Vermont ag<sup>st</sup>. the interposition of Cong<sup>s</sup>. in favor of the persons who had been banished & whose effects had been confiscated. A motion was made by Mr. Hamilton 2<sup>ded</sup> by Mr. Dyer to commit it. Mr. Wolcot who had always patronized the case of Vermont wished to know the views of a committment. Mr. Hamilton said his view was to fulfill the resolution of Congress w<sup>ch</sup>. bound them to enforce the measure. Mr. Dyer s<sup>d</sup> his was that so dishonorable a menace might be as quickly as possible renounced. He said Gen<sup>l</sup> Washington was in favour of Vermont, that the principal people of N. England were all supporters of them, and that Congress ought to rectify the error into which they had been led, without longer exposing themselves to reproach on this subject. It was committed without dissent.

Mr. Wilson informed Congress that the Legislature of Pen<sup>a</sup>. having found the Ordinance of Cong<sup>s</sup> erecting a Court for piracies so obscure in some points that they were at a loss to adapt y<sup>r</sup> laws to it, had appointed a Com<sup>e</sup> to confer with a Com<sup>e</sup>. of Congress. He accordingly moved in behalf of the P<sup>a</sup> delegation that a Com<sup>e</sup> might be app<sup>d</sup> for that purpose. After some objections by Mr. Madison ag<sup>st</sup> the impropriety of holding a communication with P<sup>a</sup> through committees when the purpose might be as well answered by a Memorial or an instruction to its Delegates, a Com<sup>e</sup>. was app<sup>d</sup>, consisting of Mr. Rutledge, Mr. Madison & Mr. Wilson.

The Report proposing a commutation for the half-pay due to the army, was taken up. On a motion to allow 5½ years whole pay in gross to be funded & bear interest, this being the rate taken from Dr. Price's calculation of annuities, N. H. was no, R. I. no, Con<sup>t</sup> no, N. J., no, Virginia ay (Mr. Lee no) other States ay. So the question was lost.—5 years was then proposed, on which N. H. was no, R. I. no, C<sup>t</sup>. no, N. J. no. So there were but 6 ays, & the proposition was lost. Mr. Williamson proposed 5¼ & called for the yeas & nays. Messrs. Wolcot & Dyer observed, y<sup>t</sup>. they were bound by instructions on this subject. Mr. Arnold said the case was the same with him. They also queried the validity of the Act of Cong<sup>s</sup> which had stipulated half pay to the army, as it had passed before the Confederation, and by a vote of less than seven States. Mr. Madison s<sup>d</sup>. that he wished if the yeas & nays were called it might be on the true calculation, and not on an arbitrary principle of compromise, as the latter standing singly on the Journal w<sup>d</sup>. not express the true ideas of the yeas, and might even subject them to contrary interpretations. He s<sup>d</sup> that the act was valid because it was decided according to the rule then in force, & that as the officers had served

under the faith of it, justice fully corroborated it; & that he was astonished to hear these principles controverted. He was also astonished to hear objections ag<sup>st</sup>. a commutation come from States in compliance with whose objections ag<sup>st</sup> the half pay itself this exped<sup>t</sup>. had been substituted. Mr. Wilson expressed his surprise also that instructions s<sup>d</sup> be given which militated ag<sup>st</sup> the most peremptory & lawful engagements of Cong<sup>s</sup>, and said that if such a doctrine prevailed the authority of the Confederacy was at an end. Mr. Arnold said that he wished the report might not be decided on at this time, that the Assembly of R. I. was in session & he hoped to receive their further advice. Mr. Bland enforced the ideas of Mr. Madison & Mr. Wilson.—Mr. Gilman thought it w<sup>d</sup> be best to refer the subject of ½ pay to the several States to be settled between them & their respective lines. By general consent the Report lay over.

Mr. Lee communicated to Congress a letter he had received from Mr. Samuel Adams dated Boston Dec<sup>r</sup>. 22, 1782, introducing Mr. — from Canada, as a person capable of giving intelligence relative to affairs in Canada & the practicability of uniting that Province with the confederated States. The letter was committed.

In Com<sup>e</sup>. of the whole on the Report concerning a valuation of the lands of the U. States—

A motion was made by Mr. Rutledge w<sup>ch</sup> took the sense of Cong<sup>s</sup>. on this question whether the rule of apportionment to be grounded on the proposed valuation s<sup>d</sup>. continue in force until revoked by Cong<sup>s</sup>., or a period be now fixed beyond which it s<sup>d</sup>. not continue in force. The importance of the distinction lay in the necessity of having seven votes on every act of Cong<sup>s</sup>. The Eastern States were generally for the latter, supposing that the Southern States being impoverished by the recent havoc of the enemy would be underrated in the first valuation. The Southern States were for the same reason interested in favor of the former. On the question there were 6 ays only, which produced a dispute whether in a Committee of the whole a majority w<sup>d</sup>. decide, or whether 7 votes were necessary.

In favor of the first rule it was contended by Mr. Ghoram & others, that in Committees of Congress the rule always is that a majority decides.

In fav<sup>r</sup> of the latter it was contended that if the rule of other committees applies to a com<sup>e</sup> of the whole, the vote s<sup>d</sup>. be individual per capita, as well as by a majority, that in other deliberative assemblies, the rules of *voting* were not varied in Comm<sup>es</sup> of the whole, & that it w<sup>d</sup>. be inconvenient in practice to report to Cong<sup>s</sup>. as the sense of the body, a measure approved by 4 or 5 States, since there could be no reason to hope that in the same body in a different form 7 States w<sup>d</sup>. approve it, and consequently a waste of time would be the result.

Com<sup>e</sup> rose & Con<sup>s</sup>. Adjourned.

## WEDNESDAY FEBR<sup>Y</sup>. 5 & THURSDAY, FEB<sup>Y</sup>. 6.

In order to decide the rule of voting in a Com<sup>e</sup>. of the whole, before Cong<sup>rs</sup> should go into the said Com<sup>e</sup>, Mr. Bland moved that the rule s<sup>d</sup>. be to vote by States, & *the majority of States in Com<sup>e</sup> to decide*. Mr. Wilson moved to postpone Mr. B<sup>s</sup> motion in order to resolve that the rule be to vote by States and according to the same rules which govern Congress; as this gen<sup>l</sup> question was connected in the minds of members with the particular question to which it was to be immediately applied. The motion for postponing was negatived, Chiefly by the Eastern States. A division of the question on Mr. Bland's motion was then called for & the first part was agreed to as on the Journal. The latter clause, to wit, a majority to decide, was negatived; so nothing as to the main point was determined. In this uncertainty Mr. Osgood proposed that Cong<sup>rs</sup>. should resolve itself into a Com<sup>e</sup> of the whole. Mr. Carroll as chairman observed that as the same difficulty would occur, he wished Cong<sup>s</sup> would previously direct him how to proceed. Mr. Hamilton proposed that the latter clause of Mr. Bland's motion sh<sup>d</sup>. be reconsidered and agreed to wrong as it was, rather than have no rule at all. In opposition to which it was s<sup>d</sup>. that there was no more reason why one & that not the minor side s<sup>d</sup> wholly yield to the inflexibility of the other y<sup>n</sup>. vice versa; and that if they s<sup>d</sup>. be willing to yield on the present occasion, it w<sup>d</sup> be better to do it tacitly, than to saddle themselves with an express & perpetual rule which they judged improper. This expedient was assented to and Congress accordingly went into a Committee of the Whole.

The points arising on the several amendm<sup>ts</sup> proposed were 1<sup>st</sup>. the period beyond w<sup>ch</sup>. the rule of the first valuation s<sup>d</sup> not be in force, on this point Mr. Collins proposed 5 years, Mr. Bland 10 years, Mr. Boudinot 7 years, N. Jersey hav<sup>g</sup>. instructed her Delegates thereon. The Con<sup>t</sup> delegates proposed 3 years. On the question for 3 years, N. H. no, Mas. no, R. I. ay, Con<sup>t</sup> ay, all the other States no. On the question for 5 years, all the States ay except Con<sup>t</sup>

The 2<sup>d</sup>. point was whether & how far the rule s<sup>d</sup> be retrospective. On this point the same views operated as on the preceding. Some were ag<sup>st</sup> any retrospection, others for extending it to the whole debt, and others for extend<sup>g</sup> it so far as was necessary for liquidating and closing the accounts between the United States and each individual State.

The several motions expressive of these different ideas were at length withdrawn, with a view that the point might be better digested, & more accurately brought before Congress. So the rep<sup>t</sup>. was agreed to in the Com<sup>e</sup>. & made to Congress. When the question was about to be put Mr. Madison observed that the report lay in a great degree of confusion, that several points had been decided in a way too vague & indirect to ascertain the real sense of Cong<sup>s</sup>, that other points involved in the subject had not rec<sup>d</sup>. any decision; and proposed the sense of Cong<sup>s</sup> sho<sup>d</sup> be distinctly & successively taken on all of them & the result referred to a special Com<sup>e</sup> to be digested &c. The question was however put & negatived the votes being as they appear on the Journal. The reasons on which Mr. Hamilton's motion was grounded appear from its preamble.

FRIDAY, FEB<sup>Y</sup>. 7.

On motion of Mr. Lee who had been absent when the Report was yesterday negatived, the matter was reconsidered. The plan of taking the sense of Cong<sup>s</sup> on the several points as yesterday proposed by Mr. Madison, was generally admitted as proper.

The first question prop<sup>d</sup>. in Com<sup>e</sup>. of the whole by Mr. Madison, was: Q: Shall a valuation of land within the U. S. as directed by the Articles of confederation be immediately attempted?—8 ays N. Y. only no. The States present were N. H., Mas. Con<sup>t</sup> N. Y. N. J. P<sup>a</sup>. V<sup>a</sup>. N. C. S. C. R. I. 1 member, Mar<sup>d</sup>. 1<sup>do</sup>.

By Mr. Wilson,

Q. Shall each State be called on to return to the U. S. in Cong<sup>s</sup> ass<sup>d</sup>. the n<sup>o</sup> of acres granted to or surveyed for any person, and also the n<sup>o</sup> of buildings within it? 8 ayes—N. C. no—supposing this not to accord with the plan of referring the valuation to the States, which was patronized by that Delegation. A supplement to this question was suggested as follows.

Q. Shall the male inhabitants be also returned, the blacks & whites being therein distinguished? ay, N. C. no for the same reason as above. Con<sup>t</sup> divided.

By Mr. Madison,

Q. Shall the States be called on to return to Cong<sup>s</sup> an estimate of the value of its lands with the buildings & improvements within each respectively? After some discussion on this point in wh<sup>ch</sup>. the inequalities which w<sup>d</sup> result from such estimates were set forth at large; and effects of such an experiment in Virg<sup>a</sup> had been described by Mr. Mercer, and a comparison of an Average valuation in P<sup>a</sup>. & V<sup>a</sup> which amounted in the latter to 50 PC<sup>t</sup> more than in the former, altho' the real value of land in the former was confessedly thrice that of the latter had been quoted by Mr. Madison, the apprehensions from a reference of any thing more to the States than a report of simple facts increased, and on the vote the States were as follows: N. H. Mas N. J. P<sup>a</sup>. V<sup>a</sup>. no Mr. Bland ay Mr. Lee silent Con<sup>t</sup>: N. C. S. C. ay, N. Y. div<sup>d</sup>.: so it passed in the negative.

By Mr. Madison,

Q. Shall a period be now fixed beyond which the rule to be eventually estab<sup>d</sup>. by Cong<sup>s</sup> shall not be in force? ay, unanimously.

By Mr. Madison,

Q. What shall that period be? Con<sup>t</sup>. was again for 3 years, which being rej<sup>d</sup> 5 y<sup>rs</sup> passed unanimously.

By Mr. Madison,

Q. Shall the rule so to be estab<sup>d</sup> have retrospective operation so far as may be necessary for liquidating & closing the acct<sup>s</sup>. between the U. S. & each particular State? Ay—Con<sup>t</sup> no. Mr. Dyer & Mr. Mercer understood this as making the am<sup>t</sup> of the several requisitions of Cong<sup>s</sup>, and not of the paym<sup>ts</sup>. by y<sup>e</sup>. States, the standard by which the acc<sup>ts</sup> were to be liquidated and thought the latter the just quantum for retrospective appointment. Their reasoning however was not fully comprehended.

SATURDAY, FEB<sup>Y</sup>. 8.

Com<sup>e</sup> of the Whole.

Mr. Mercer revived the subject of retrospective operation; and after it had been much discussed & the difference elucidated w<sup>ch</sup> might happen between apportion<sup>g</sup>, according to the first valuation which s<sup>d</sup>. be made, merely the sums paid on the requisitions of Cong<sup>s</sup>, & apportion<sup>g</sup> the whole Requisitions, consisting of the sums paid & the deficiencies, which might not be p<sup>d</sup>. until some distant day, when a different rule formed under different circumstances of the States s<sup>d</sup> be in force, the assent to the last question put yesterday was reversed, & there was added to the preceding question, after “5 years,”—“and shall operate as a rule for apportioning the sums necessary to be raised for supporting the public credit & other contingent expenses & for adjusting all accounts between the U. States & each particular State for monies paid or articles furnished by them & for no other purpose whatsoever.” On this question there were 6 ays—so it became a vote of the Com<sup>e</sup> of the whole.

MONDAY, FEB<sup>Y</sup>. 10.

For The Report of the Committee on the Resolutions of V<sup>a</sup>, concerning the contract Under which Tob<sup>o</sup>. was to be exported to N. Y. 1 and the admission of circumstantial proof of acc<sup>ts</sup>. ag<sup>st</sup>. the U. S., where legal vouchers had been destroyed by the enemy, see the Journal of this date.

Mr. Mercer informed Congress that this matter had made much noise in V<sup>a</sup>.; that she had assented to the export of the first quantity, merely out of respect to Cong<sup>s</sup>.; and under an idea that her rights of Sovereignty had been encroached upon; and that, as a *further quantity* had been exported *without the license of the State*, the question was unavoidable, whether the authority of Cong<sup>s</sup> extended to the act. He wished therefore that Congress w<sup>d</sup> proceed to decide the question.

Mr. Fitzsimmons in behalf of the Committee, observed that they went no further than to examine whether the proceedings of the officers of Cong<sup>s</sup>. were conformable to the Resol<sup>n</sup>. of Cong<sup>s</sup> & not whether the latter were within the power of Cong<sup>s</sup>.

Mr. Lee s<sup>d</sup>. the Rep<sup>t</sup>. did not touch the point that, the additional quantity had been exported without application to the State, altho' the first quantity was licensed by the State with great reluctance, in consequence of the request of Cong<sup>s</sup>, and of assurances ag<sup>st</sup> a repetition, and that the Superintend<sup>t</sup> & Sec<sup>y</sup>. of Cong<sup>s</sup> ought at any rate to have made application to the Executive before they proceeded to further exportations.

Mr. Rutledge<sup>d</sup>. the Rep<sup>t</sup> went to the very point, that V. suspected the Resol<sup>s</sup> of Cong<sup>s</sup>. had been abused by the officers of Cong<sup>s</sup>, and the Rep<sup>t</sup> shewed that no such abuse had taken place; that if this information was not satisfactory, and the State<sup>d</sup>. contest the right of Cong<sup>s</sup> in the case, it w<sup>d</sup> then be proper to answer it on that point, but not before. He s<sup>d</sup>., if the gentleman (Mr. Lee) meant that the Com<sup>e</sup> authorized by Cong<sup>s</sup>. on the—day of—to make explanations on the subject to the Legislature of V<sup>a</sup>. had given the assurances he mentioned, he must be mistaken; for none such had been given. He had he s<sup>d</sup>. formed notes of his remarks to the Leg<sup>e</sup> but accord<sup>g</sup>. to his practice had destroyed them after the occasion was over, and therefore c<sup>d</sup>. only assert this from Memory; that nevertheless his memory enabled him to do it with certainty.

Mr. Lee, in explanation s<sup>d</sup> he did not mean the Com<sup>e</sup>.; that the abuse complained of was not that the Resolu<sup>ns</sup> of Cong<sup>s</sup> had been exceeded, but that the export had been undertaken without the Sanction of the State. If the acts were repeated, he said, great offence w<sup>d</sup> be given to V<sup>a</sup>.

The Report was ag<sup>d</sup> to as far as the Tob<sup>o</sup>. was concerned without a dissenting voice, Mr. Lee uttering a *no*, but not loud enough to be heard by Congress or the chair. The Part relating to the loss of Vouchers was unanimously ag<sup>d</sup>. to.

## Com<sup>E</sup> Of The Whole.

The Rep<sup>t</sup> for the valuation of land was amended by the insertion of “distinguishing dwelling houses from others.”

The Com<sup>e</sup>. adjourned & the report was made to Cong<sup>s</sup>.

Mr. Lee & Mr. Jervais moved that the Report might be postponed to adopt another plan to wit “to call on the States to return a valuation; and to provide that in case any return s<sup>d</sup>. not be satisfactory to all parties, persons s<sup>d</sup> be app<sup>d</sup>. by Cong<sup>s</sup>. & others by the States respectively to adjust the case finally.”—On this question N. H. was div<sup>d</sup>.; Mas, no, R. I., ay; Con<sup>t</sup>, no, N. Y. div<sup>d</sup>., N. J., no, P<sup>a</sup>, no, V<sup>a</sup>., no, Mr. Madison & Mr. Jones, no;—Mr. Lee & Mr. Bland, ay, N. C. ay, S. C. ay, so the motion failed.

## TUESDAY, FEB<sup>Y</sup>. 11.

The Rep<sup>t</sup> made by the Com<sup>e</sup>. of the whole havg. decided that y<sup>e</sup> mode to be grounded on the return of facts called for from y<sup>e</sup>. States ought now to be ascertained.

Mr. Rutledge proposed 2<sup>d</sup> by Mr. Gilman, that y<sup>e</sup> States s<sup>d</sup> be required to name Com<sup>rs</sup>, each of them one, who or any nine of them s<sup>d</sup> be app<sup>d</sup>. & empower<sup>d</sup>. by Cong<sup>s</sup>. to settle the valuation. Mr. Ghoram was ag<sup>st</sup> it as parting with a power which might be turned by the States ag<sup>st</sup>. Cong<sup>s</sup>., Mr. Wolcot ag<sup>st</sup> it; declares his opinion that the Confederation ought to be amended by substituting numbers of inhabitants as the rule; admits the difference between freemen & blacks; and suggests a compromise by including in the numeration such blacks only as were within 16 & 60 years of age. Mr. Wilson was ag<sup>st</sup>. relinquishing such a power to the States, proposes that the commissioners be app<sup>d</sup> by Cong<sup>s</sup>, and their proceedings subject to the ratification of



Cong<sup>s</sup>. Mr. Mercer was for submitting them to the revision of Cong<sup>s</sup>, & this amendment was rec<sup>d</sup>. Mr. Peters ag<sup>st</sup>. the whole scheme of valuation, as holding out false lights & hopes to the public. Mr. Rutledge thinks Com<sup>rs</sup>. app<sup>d</sup> by the States may be trusted as well as Com<sup>rs</sup> app<sup>d</sup>. by Cong<sup>s</sup>., or as Cong<sup>s</sup>. themselves. Mr. Wilson observes, that if app<sup>d</sup> by the States they will bring with them the spirit of agents for their respective States—if app<sup>d</sup>. by Cong<sup>s</sup>. they will consider themselves as servants of the U. S. at large & be more impartial.

Mr. Ghoram, 2<sup>ded</sup> by Mr. Wilson, proposes to postpone in order to require the States to app<sup>t</sup>. Com<sup>rs</sup>, to give Cong<sup>s</sup> information for a basis for a valuation.—On the question N. H. no, Mas: ay, R. I. ay, Con<sup>t</sup> ay, N. Y. ay, N. J. ay, P<sup>a</sup>. ay, V<sup>a</sup> no, N. C. no, S. C. no, so it was decided in the negative.

To make the resolution more clear, after the words “or any nine of them,” the words “concurring therein” were added. Mr. Rutledge says that subjecting the acts of the Com<sup>rs</sup> to the revision of Cong<sup>s</sup> had so varied his plan that he s<sup>d</sup> be ag<sup>st</sup> it.—On the main question N. H. ay, Mas: ay, R. I. ay, Con<sup>t</sup> ay, N. Y. no, N. J. no, P<sup>a</sup>. ay, V<sup>a</sup>. ay (Mr. Madison no), N. C. ay, S. C. ay, so it was agreed to & the resolution declaring that a mode s<sup>d</sup>. now be fixed struck out as executed. The whole report was then committed to a special Com<sup>e</sup>. consisting of Mr. Rutledge Mr. Ghoram & Mr. Gilman to be formed into a proper act.[1](#)

## WEDNESDAY FEB<sup>Y</sup>. 12.

The declaration of Cong<sup>s</sup> as to Gen<sup>l</sup> Funds, Passed of Jany. the 29, as appears on the Journals;[1](#) & Congress resolved itself into a Com<sup>e</sup> of the whole in order to consider the funds to be adopted and recommended to the States. On motion of Mr. Mifflin the impost of 5 Per C<sup>t</sup> was taken into consideration. As it seemed to be the general opinion that some variations from the form in which it had been first recomended w<sup>d</sup> be necessary for reconciling the objecting States to it, it was proposed that the sense of the Com<sup>e</sup> should be taken on that head. The following questions were accordingly propounded:

Que 1. Is it expedient to alter the impost as recommended on the — day of —, 1781?

Mr. Lee said the States particularly Virg<sup>a</sup>. w<sup>d</sup> never concur in the measure unless the term of years were limited, the collection left to the States, & the appropriation annually laid before y<sup>m</sup>.

Mr. Wolcot thought the revenue ought to be commensurate in point of time as well as amount to the debt; that there was no danger in trusting Cong<sup>s</sup>., considering the responsible mode of its app<sup>t</sup> and that to alter the plan w<sup>d</sup>. be a mere condescension to the prejudices of the States.

Mr. Ghoram favored the alteration for the same reason as Mr. Lee. He said private letters informed him that the opposition to the impost law was gaining ground in Mass<sup>ts</sup>., and the repeal of Virg<sup>a</sup>. would be very likely to give that opposition the

ascendance. He said our measures must be accommodated to the sentiments of the States whether just or unreasonable.

Mr. Hamilton dissented from the particular alterations suggested, but did not mean to negative the question.

Mr. Bland was for conforming to the ideas of the States as far as w<sup>d</sup>. in any manner consist with the object.

On the Question the affirmative was unanimous excepting the voice of Mr. Wolcot.

Que 2<sup>d</sup>. Shall the term of duration be limited to 25 years?

Mr. Mercer professed a decided opposition to the principle of general revenue, observed that the liberties of Eng<sup>d</sup> had been preserved by a separation of the purse from the sword; that untill the debts s<sup>d</sup>. be liquidated & apportioned he w<sup>d</sup>. never assent in Cong<sup>s</sup> or elsewhere to the scheme of the Impost.

Mr. Bland proposed an alternative of 25 years, or until the requisitions of Cong<sup>s</sup>, according to the Articles of Confed<sup>n</sup>, shall be found adequate. On this proposition the votes were of N. H. div<sup>d</sup>, R. I. no, Con<sup>t</sup>. no, N. Y. no N. J. no, P<sup>a</sup>. no, Virg<sup>a</sup> ay, N. C. div<sup>d</sup>.; S. C. ay, so the proposition was not agreed to.

On the main question for 25 years it was voted in the affirmative.

Q. 3. Shall the appointm<sup>t</sup> of Collectors be left to the States, they to be amenable to & under the controul of, Cong<sup>s</sup>.?—ay; several States as N. Y. & P<sup>a</sup>. dissenting. 1

## THURSDAY, FEB<sup>Y</sup>. 13TH.

The Com<sup>e</sup>. report to Cong<sup>s</sup> the alterations yesterday agreed on with respect to the 5 Per C<sup>t</sup> Impost.

The Deputy Sec<sup>y</sup> at War reported to Congress the result of the inquiry directed by them on the [24th] day of [January,] into the seizure of goods destined for the British Prisoners of war under passport from Gen<sup>l</sup> Washington. From this report it appeared that some of the Seizors had pursued their claim under the law of the State & that in consequence the goods had been condemned & ordered for sale. The papers were referred to a Com<sup>e</sup> consisting of Mr. Rutledge, Mr. Ghoram & Mr. Lee, who after hav<sup>g</sup> retired for a few moments reported, that the Sec<sup>y</sup> of War should be authorized & directed to cause the goods to be taken from the places where they had been deposited, to employ such force as w<sup>d</sup> be sufficient, and that the Duke de Lauzun whose Legion was in the neighbourhood, should be requested to give the Sec<sup>y</sup> such aid as he might apply for.

This report was generally regarded by Cong<sup>s</sup>. as intemperate, and the proposed recourse to the French Legion as flagrantly imprudent. Mr. Hamilton said that if the object had been to embroil the country w<sup>th</sup> their Allies the expedient would have been

well conceived.<sup>1</sup> He added that the exertion of force would not under these circumstances meet the sense of the people at large. Mr. Ghoram s<sup>d</sup> he denied this with respect to the people of Massachusetts.

Mr. Lee on the part of the Com<sup>e</sup> said that the D. de Lauzun had been recurred to as being in the neighbourhood & having Cavalry under his Command which would best answer the occasion; and that the Report was founded on wise & proper considerations.

Mr. Mercer, Mr. Williamson Mr. Ramsay Mr. Wilson & Mr. Madison, strenuously opposed the Report, as improper altogether as far as it related to the French Legion, and in other respects so until the State of P<sup>a</sup>. s<sup>d</sup>. on a summons refuse to restore the articles seized.

Mr. Rutledge with equal warmth contended for the expediency of the measures reported.

Mr. Mercer & Mr. Madison at length proposed that Congress s<sup>d</sup> assert the right on this subject & summon the State of Pen<sup>a</sup>. to redress the wrong immediately. The Report was recommitted with this proposition & Mr. Wilson & Mr. Mercer added to y<sup>e</sup>. Com<sup>e</sup>.

The speech of the K. of G. B. on the 5<sup>th</sup>. of Dec<sup>cr</sup>, 1782, arrived & produced great joy in general, except among the merch<sup>ts</sup> who had great quantities of merchandize in store the price of which immediately & materially fell. The most judicious members of Cong<sup>s</sup>. however suffered a great diminution of their joy from the impossibility of discharging the arrears & claims of the army & their apprehensions of new difficulties from that quarter.<sup>1</sup>

FRIDAY FEB<sup>Y</sup>. 14.

Mr. Jones Mr. Rutledge & Mr. Wilson to whom had been referred on Tuesday last a letter from Mr. Jefferson stating the obstacles to his voyage, reported that they had conferred with the Agent of Marine who s<sup>d</sup> there was a fit vessel ready for sea in this port but was of opinion the arrival of the British King's Speech would put a stop to the sailing of any vessels from the ports of America untill something definite should take place; and that if Congress judged fit that Mr. Jefferson s<sup>d</sup> proceed immediately to Europe it would be best to apply to the French Minister for one of the Frigates in the Chesapeake. The general opinion of Cong<sup>s</sup> seemed to be that under present circumstances he s<sup>d</sup> suspend his voyage untill the further order of Cong<sup>s</sup>; and on motion of Mr. Ghoram, seconded by Mr. Wolcot the Sec<sup>y</sup> of Foreign Affairs was accordingly without opposition directed to make this known to Mr. Jefferson.

The Report of the Com<sup>e</sup> for obtaining a valuation of land was made & considered. See the Journal of this date.

MONDAY FEB<sup>Y</sup> 17.

The report respecting a valuation of land being lost as appears from the Journal, it was revived by the motion of Mr. Dyer seconded by Mr. Mercer as it stands, 1 the appointment of Commiss<sup>rs</sup>. by Cong<sup>s</sup> for adjusting the quotas, being changed for a grand Committee consisting of a delegate present from each State, for that purpose.

A motion was made to strike out the clause requiring the concurrence of nine voices in the report to Congress; and on the question, shall the words stand? the States being equally divided the clause was expunged. It was thereafter reconsidered & re-inserted.

The whole report was agreed to with great reluctance by almost all, by many from a spirit of accommodation only, & the necessity of doing something on the subject. Some of those who were in the negative particularly Mr. Madison, thought the plan not within the spirit of the Confederation, that it would be ineffectual, and that the States would be dissatisfied with it.

A motion was made by Mr. Hamilton 2<sup>ded</sup> by Mr. Fitzsimmons to renew the recommendation of the — Feb<sup>y</sup>, 1782 for vesting Congress with power to make abatements in favor of States parts of which had been in possession of the Enemy. It was referred to a committee.

TUESDAY, FEB<sup>Y</sup>. 18.

Com<sup>E</sup>. Of The Whole On The Subject Of Gen<sup>L</sup> Funds.

Mr. Rutledge & Mr. Mercer proposed that the Impost of 5 Per C<sup>t</sup>. as altered & to be recommended to the States, should be appropriated exclusively, first to the interest of y<sup>e</sup>. debt to the army & then in case of surplus to the principal. Mr. Rutledge urged in support of this motion that it would be best to appropriate this fund to the army as the most likely to be obtained as their merits were superior to those of all other Creditors, and as it was the only thing that promised, what policy absolutely required, some satisfaction to them.

Mr. Wilson replied that he was so sensible of the merits of the army that if any discrimination were to be made among the public creditors, he should not deny them perhaps a preference, but that no such discrimination was necessary; that the ability of the public was equal to the whole debt, and that before it be split into different descriptions the most vigorous efforts ought to be made to provide for it entire. That we ought first at least to see what funds could be provided, to see how far they would be deficient, and then, in the last necessity only to admit discriminations.

Mr. Ghoram agreed with Mr. Wilson. He said an exclusive appropriation to the army would in some places be unpopular and would prevent a compliance of those States whose Citizens were the greatest Creditors of the United States; since without the influence of the public creditors, the measure could never be carried through the States, and these if excluded from the appropriation would be even interested in

frustrating the measure & keeping by that means their cause a common one with the army.

Mr. Mercer applauded the wisdom of the Confederation in leaving the provision of money to the States, said that when this plan was deviated from by Congress, their objects should be such as were best known & most approved; that the States were jealous of one another, & w<sup>d</sup>. not comply unless they were fully acquainted with & approved the purpose to which their money was to be applied, that nothing less than such a preference of the army would conciliate them, that no Civil Creditor would dare to put his claims on a level with those of the army, and insinuated that the speculations which had taken place in loan office certificates might lead to a revision of that subject on principles of equity, that if too much were asked from the States they would grant nothing. He said that it had been alledged, that the large public debt if funded under Congress would be a cement of the Confederacy. He thought on the contrary it would hasten its dissolution; as the people would feel its weight in the most obnoxious of all forms that of taxation.1

On the question the States were all no except S. Carolina, which was ay.1

A motion was made by Mr. Rutledge, 2<sup>ded</sup>. by Mr. Bland to change the plan of the impost in such a manner as that a tariff might be formed for all articles that would admit of it, and that a duty ad valorem s<sup>d</sup> be collected only on such articles as would not admit of it.

In support of such an alteration it was urged that it would lessen the opportunity of collusion between Collector & importer & would be more equal among the States. On the other side it was alledged that the States had not objected to that part of the plan, and a change might produce objections—that the nature & variety of imports would require necessarily the collection to be ad-valorem on the greater part of them, that the forming of a book of rates w<sup>d</sup> be attended with great difficulties & delays, and that it would be in the power of Congress by raising the rate of the article to augment the duty beyond the limitation of 5 per c<sup>t</sup>. and that this consideration would excite objections on the part of the States—The motion was negatived—

A motion was made by M<sup>r</sup> Hamilton 2<sup>ded</sup>. by M<sup>r</sup> Wilson; that whereas Congress was desirous that the motives & views of their measures s<sup>d</sup>. be known to their constituents in all cases where the public safety w<sup>d</sup> admit, that when the subject of finances was under debate the doors of Cong<sup>s</sup> s<sup>d</sup> be open. Cong<sup>s</sup>. adjourned it being the usual hour & the motion being generally disrelished—The P<sup>a</sup>. delegates said privately that they had brought themselves into a critical situation by dissuading their Constituents from separate provision for creditors of U. S. within Pen<sup>a</sup> hoping that Cong<sup>s</sup> w<sup>d</sup>. adopt a general provision, & they wished their constituents to see the prospect themselves & to witness the conduct of their Delegates. Perhaps the true reason was that, it was expected the presence of public creditors numerous & weighty in Phila<sup>da</sup> w<sup>d</sup>. have no influence & that it w<sup>d</sup>. be well for the public to come more fully to the knowledge of the public finances.

Letter rec<sup>d</sup> from W<sup>m</sup> Lee at Ghent notifying the desire of the Emperor [of Austria] to form a commercial treaty with the U. S., and to have a resid<sup>t</sup> from them. Com<sup>d</sup> to M<sup>r</sup>. Izard, Ghoram & Wilson.

## WEDNESDAY, FEBRUARY 19.

The motion made yesterday by Mr. Hamilton for opening the doors of Congress when the subject of the finances should be under debate was negatived, Penn<sup>a</sup> alone being ay.

A motion was made by Mr. Hamilton seconded by Mr. Bland to postpone the clause of the report made by the Com<sup>e</sup> of the whole, for altering the Impost, viz. the clause limiting its duration to 25 years, in order to substitute a proposition declaring it to be inexpedient to limit the period of its duration; first because it ought to be commensurate to the duration of the debt, 2<sup>dly</sup>. because it was improper in the present stage of the business, and all the limitation of which it w<sup>d</sup> admit had been defined in the resolutions of—, 1782.

Mr. Hamilton said in support of his motion that it was in vain to attempt to gain the concurrence of the States by removing the objections publickly assigned by them against the Impost, that these were the ostensible & not the true objections; that the true objection on the part of R. I. was the interference of the impost with the opportunity afforded by their situation of levying contributions on Con<sup>t</sup>, &c, which rec<sup>d</sup>. foreign supplies through the ports of R. I. that the true objection on the part of V<sup>a</sup>. was her having little share in the debts due from the U. S. to which the impost would be applied; that a removal of the avowed objections would not therefore, remove the obstructions whilst it would admit on the part of Cong<sup>s</sup> that their first recommendation went beyond the absolute exigencies of the public; that Cong<sup>s</sup>. having taken a proper ground at first, ought to maintain it till time should convince the States of the propriety of the measure.

Mr. Bland said that as the debt had been contracted by Congress with the concurrence of the States, and Cong<sup>s</sup> was looked to for payment by the public creditors, it was justifiable & requisite in them to pursue such means as would be adequate to the discharge of the debt; & that the means would not be adequate if limited in duration to a period within which no calculations had shewn that the debt w<sup>d</sup> be discharged.

On the motion the States were N. Hampshire divided, Mas<sup>ts</sup> no, R. Island ay; Con<sup>t</sup> div<sup>d</sup>.; N. York, ay, N. Jersey ay, Pen<sup>a</sup>. ay, Virg<sup>a</sup>. no (Mr. Bland ay) N. Carolina ay S. Carolina, ay. Mr. Rutledge said he voted for postponing not in order to agree to Mr. Hamilton's motion but to move & he accordingly renewed the motion made in Com<sup>e</sup> of the whole, viz that the Impost should be appropriated exclusively to the army. This motion was seconded by Mr. Lee.

Mr. Hamilton opposed the motion strenuously declared that as a friend to the army as well as to the other Creditors & to the public at large he could never assent to such a partial distribution of Justice; that the different States being differently attached to different branches of the public debt would never concur in establish<sup>g</sup>. a fund w<sup>ch</sup>.

was not extended to every branch; that it was impolitic to divide the interests of the civil & military Creditors, whose joint efforts in the States would be necessary to prevail on them to adopt a general revenue.

Mr. Mercer favored the measure as necessary to satisfy the army & to avert the consequences which would result from their disappointment on this subject; he pronounced that the army would not disband until satisfactory provision should be made, & that this was the only attainable provision; But he reprobated the doctrine of permanent debt supported by a general & permanent revenue & said that it would be good policy to separate instead of cementing the interests of the Army & the other public creditors, insinuating that the claims of the latter were not supported by justice & said that the loan office certificates ought to be revised.

Mr. Fitzsimmons observed that it was unnecessary to make a separate appropriation of the Impost to one particular debt, since if other funds s<sup>d</sup> be superadded, there would be more simplicity & equal propriety in an aggregate fund for the aggregate debt funded; and that if no other funds should be superadded it w<sup>d</sup>. be unjust & impolitic; that the States whose Citizens were the chief creditors of the U. S. w<sup>d</sup> never concur in such a measure; that the mercantile interest which comprehended the chief Creditors of Pen<sup>a</sup>. had by their influence obtained the prompt & full concurrence of that State in the Impost, and if that influence were excluded the State would repeal its law. He concurred with those who hoped the army w<sup>d</sup>. not disband unless provision s<sup>d</sup>. be made for doing them justice.

Mr. Lee contended that as every body felt and acknowledged the force of the demands of the army, an appropriation of the Impost to them w<sup>d</sup> recommend it to all the States; that distinct & specific appropriations of distinct revenue was the only true System of finance, and was the practice of all other nations who were enlightened on this subject; that the army had not only more merit than the mercantile creditors; but that the latter would be more able on a return of peace to return to the business which would support them.

Mr. Madison said that if other funds were to be superadded as the Gentleman (Mr. Rutledge) who made the motion admitted, it was at least premature to make the appropriation in question; that it w<sup>d</sup> be best to wait till all the funds were agreed upon & then appropriate them respectively to those debts to which they s<sup>d</sup> be best fitted that it was probable the impost would be judged best adapted to the foreign debt; as the foreign Creditors could not like the domestic ever recur to particular States for separate payments and that as this w<sup>d</sup> be a revenue little felt it would be prudent to assign it to those for whom the States w<sup>d</sup>. care least, leaving more obnoxious revenues for those Creditors who w<sup>d</sup> excite the Sympathy of their Countrymen and c<sup>d</sup> stimulate them to do justice.

Mr. Williamson was ag<sup>st</sup>. the motion; said he did not wish the army to disband until proper provision should be made for them; that if force s<sup>d</sup> be necessary to excite justice, the sooner force was applied the better.

Mr. Wilson was against the motion of Mr. Rutledge, he observed that no instance occurred in the British history of finance in which distinct appropriations had been made to distinct debts *already* contracted; that a consolidation of funds had been the result of experience; that an aggregate fund was more simple & would be most convenient; that the interest of the whole funded debt ought to be paid before the principal of any part of it; and therefore in case of surplus of the impost beyond the interest of the army debt, it ought at any rate to be applied to the interest of the other debts, and not, as the motion proposed, to the principal of the army debt. He was fully of opinion that such a motion would defeat itself, that by dividing the interest of the civil from that of the military Creditors provision for the latter would be frustrated.

On the question on Mr. Rutledge's motion the States were, N. H. no, Mass. no, Con<sup>t</sup> no, N. J. no, Virg<sup>a</sup>. no, (Mr. Lee and Mr. Mercer ay) N. C. no, S. Carolina, ay.

On the clause reported by the Com<sup>e</sup> of the whole in favor of limiting the impost to 25 years, the States were N. H. ay Mas. ay Con<sup>t</sup> div<sup>d</sup>; (Mr. Dyer ay, Mr. Wolcot no) N. Y. no, N. J. no, P<sup>a</sup>. ay (Mr. Wilson & Mr. Fitzsimmons no) V<sup>a</sup> ay (Mr. Bland no) N. Carolina ay, S. Carolina ay, so the question was lost.

On the question whether the appointment of Collectors of the Impost shall be left to the States, the Collectors to be under the controul, & be amenable to Cong<sup>s</sup>, there were 7 ays N. Y. & Pen<sup>a</sup> being no & N. J. divided.

THURSDAY, FEB<sup>Y</sup>. 20, 1783.

The motion for limiting the impost to 25 years having been yesterday lost, and some of the gentlemen who were in the negative desponding of an indefinite grant of it from the States, the motion was reconsidered.

Mr. Wolcot & Mr. Hamilton repeat the inadequacy of a definite term. Mr. Ramsay & Mr. Williamson repeat the improbability of an indefinite term being acceded to by the States, & the expediency of preferring a limited impost to a failure of it altogether.

Mr. Mercer was against the impost altogether but would confine his opposition within Congress: He was in favor of the limitation as an alleviation of the evil.

Mr. Fitzsimmons animadverted on Mr. Mercer's insinuation yesterday touching the loan-office Creditors; & the policy of dividing them from the military Creditors, reprobated every measure which contravened the principles of justice & public faith; and asked whether it were likely that Mas: & P<sup>a</sup>, to whose Citizens half the loan office debt was owing would concur with Virg<sup>a</sup>, whose Citizens had lent but little more than three hundred thousand dollars, in any plan that did not provide for that in common with other debts of the U. S. He was against a limitation to 25 years.

Mr. Lee wished to know whether by Loan office Creditors were meant the original subscribers or the present holders of the certificates, as the force of their demands may be affected by this consideration.



Mr. Fitzsimmons saw the scope of the question, and said that if another scale of depreciation was seriously in view he wished it to come out, that every one might know the course to be taken.

Mr. Ghoram followed the Sentiments of the Gentleman who last spoke, expressed his astonishment that a Gentleman (Mr. Lee) who had enjoyed such opportunities of observing the nature of public credit, should advance such doctrines as were fatal to it. He said it was time that this point s<sup>d</sup>. be explained, that if the former scale for the loan office certificates was to be revised and reduced as one member from Virg<sup>a</sup> (Mr. Mercer) contended, or a further scale to be made out for subsequent depreciation of Certificates, as seemed to be the idea of the other member, (Mr. Lee,) the restoration of public credit was not only visionary but the concurrence of the States in any arrangement<sup>ts</sup>. whatever was not to be expected. He was in favor of the limitation as necessary to overcome the objections of the States.

Mr. Mercer professed his attachment to the principles of justice but declared that he thought the scale by which the loans had been valued unjust to the public & that it ought to be revised & reduced.

On the question for the period of 25 years it was decided in the affirmative seven States being in favor of it; N. Jersey & N. York only being no.

Mr. Mercer called the attention of Congress to the case of the goods seized under a law of Pen<sup>a</sup>, on which the Com<sup>e</sup> had not yet reported, and wished that Cong<sup>s</sup>. would come to some resolution declaratory of their rights & which would lead to an effectual interposition on the part of the Legislature of Pen<sup>a</sup>. After much conversation on the subject in which the members were somewhat divided as to the degree of peremptoriness with which the State of P<sup>a</sup> should be called on, the Resolution on the Journal, was finally adopted; having been drawn up by the Sec<sup>y</sup>, & put into the hands of a member.

The Resolution<sup>1</sup> passed without any dissent.<sup>2</sup>

[The evening of this day was spent at Mr. Fitzsimmons' by Mr. Ghoram, Mr. Hamilton, Mr. Peters, Mr. Carrol, & Mr. Madison. The conversation turned on the subject of revenue under the consideration of Congress, and on the situation of the army. The conversation on the first subject ended in a general concurrence (Mr. Hamilton excepted) in the impossibility of adding to the impost on trade any taxes that w<sup>d</sup> operate equally throughout the States, or be adopted by them. On the second subject Mr. Hamilton & Mr. Peters who had the best knowledge of the temper, transactions & views of the army, informed the company that it was certain that the army had secretly determined not to lay down their arms until due provision & a satisfactory prospect should be afforded on the subject of their pay; that there was reason to expect that a public declaration to this effect would soon be made; that plans had been agitated if not formed for subsisting themselves after such declaration; that as a proof of their earnestness on this subject the Com<sup>ander</sup> was already become extremely unpopular among almost all ranks from his known dislike to every unlawful proceeding, that this unpopularity was daily increasing & industriously

promoted by many leading characters; that his choice of unfit & indiscreet persons into his family was the pretext and with some the real motive; but the substantial one a desire to displace him from the respect & confidence of the army in order to substitute Gen<sup>l</sup> [erased & illegible] as the conductor of their efforts to obtain justice. Mr. Hamilton said that he knew Gen<sup>l</sup>. Washington intimately and perfectly, that his extreme reserve, mixed sometimes with a degree of asperity of temper, both of which were said to have increased of late, had contributed to the decline of his popularity; but that his virtue his patriotism & his firmness would it might be depended upon never yield to any dishonorable or disloyal plans into which he might be called that he would sooner suffer himself to be cut to pieces; that he, (Mr. Hamilton) knowing this to be his true character wished him to be the conductor of the army in their plans for redress, in order that they might be moderated & directed to proper objects, & exclude some other leader who might foment and misguide their councils; that with this view he had taken the liberty to write to the Gen<sup>l</sup>. on this subject and to recommend such a policy to him.]

## FRIDAY, FEB<sup>Y</sup>. 21.

Mr. Mercer made some remarks tending to a re-consideration of y<sup>e</sup> act declaring general funds to be necessary, which revived the discussion of that subject.

Mr. Madison said that he had observed throughout the proceedings of Congress relative to the establishment of such funds that the power delegated to Congress by the Confederation had been very differently construed by different members & that this difference of construction had materially affected their reasonings & opinions on the several propositions which had been made; that in particular it had been represented by sundry members that Congress was merely an Executive body; and therefore that it was inconsistent with the principles of liberty & the spirit of the Constitution, to submit to them a permanent revenue which w<sup>d</sup> be placing the purse & the sword in the same hands; that he wished the true doctrine of the Confederation to be ascertained as it might perhaps remove some embarrassments; and towards that end would offer his ideas on the subject.

He said, that he did not conceive in the first place that the opinion was sound that the power of Congress in cases of revenue was in no respect Legislative, but merely Executive; and, in the second place that admitting the power to be Executive a permanent revenue collected & dispensed by them in the discharge of the debts to w<sup>ch</sup>. it s<sup>d</sup>. be appropriated would be inconsistent with the nature of an Executive body, or dangerous to the liberties of the Republic.

As to the first opinion he observed that by the Articles of Confederation, Cong<sup>s</sup> had clearly & expressly the right to fix the quantum of revenue necessary for the public exigencies, & to require the same from the States respectively in proportion to the value of their land; that the requisitions thus made were a law to the States, as much as the Acts of the latter for complying with them were a law to their individual members; that the federal constitution was as sacred and obligatory as the internal constitutions of the several States; and that nothing could justify the States in disobeying acts warranted by it, but some previous abuse and infraction on the part of

Cong<sup>s</sup>.; that as a proof that the power of fixing the quantum & making requisitions of money, was considered as a legislative power over the purse, he would appeal to the proposition made by the British Minister of giving this power to the B. Parliam<sup>t</sup>., & leaving to the American Assemblies the privilege of complying in their own modes, & to the reasonings of Congress & the several States on that proposition. He observed further that by the articles of Confederation was delegated to Cong<sup>s</sup>. a right to borrow money indefinitely, and emit bills of Credit which was a species of borrowing, for repayment & redemption of which the faith of the States was pledged & their legislatures constitutionally bound. He asked whether these powers were reconcileable with the idea that Congress was a body merely Executive? He asked what would be thought in G. B., from whose Constitution our Political reasonings were so much drawn, of an attempt to prove that a power of making requisitions of money on y<sup>e</sup> Parliament & of borrowing money for discharge of which the Parl<sup>t</sup> s<sup>d</sup> be bound, might be annexed to the Crown without changing its quality of an Executive branch, and that the leaving to the Parliam<sup>t</sup> the mode only of complying with the requisitions of the Crown would be leaving to it its supreme & exclusive power of Legislation?

As to the second point he referred again to the British Constitution & the mode in which provision was made for the public debts, observing that although the Executive had no authority to contract a debt, yet that when a debt had been authorized or admitted by the Parliament a permanent & irrevocable revenue was granted by the Legislature, to be collected & dispensed by the Executive; and that this practice had never been deemed a subversion of the Constitution, or a dangerous association of a power over the purse with the power of the Sword.

If these observations were just as he conceived them to be, the establishment of a permanent revenue not by any assumed authority of Congress, but by the authority of the States at the recommendation of Cong<sup>s</sup>, to be collected & applied by the latter to the discharge of the public debts, could not be deemed inconsistent with the spirit of the federal Constitution, or subversive of the principles of liberty; and that all objections drawn from such a supposition ought to be withdrawn. Whether other objections of sufficient weight might not lie ag<sup>st</sup>. such an establish<sup>t</sup>, was another question. For his part although for various reasons 1 he had wished for such a plan as most eligible, he had never been sanguine that it was practicable & the discussions which had taken place had finally satisfied him that it would be necessary to limit the call for a general revenue to duties on commerce & to call for the deficiency in the most permanent way that could be reconciled with a revenue established within each State separately & appropriated to the Common Treasury. He said the rule which he had laid down to himself in this business was to concur in every arrangem<sup>t</sup>. that s<sup>d</sup> appear necessary for an honorable & just fulfilment of the public engagements; & in no measure tending to augment the power of Congress which s<sup>d</sup> appear to be unnecessary; and particularly disclaimed the idea of perpetuating a public debt.

Mr. Lee, in answer to Mr. Madison, said the doctrine maintained by him was pregnant with dangerous consequences to the liberties of the confederated States; that, notwithstanding the specious arguments that had been employed it was an established truth that the purse ought not to be put into the same hands with the Sword; that like

arguments had been used in favor of ship money in the reign of Charles I it being then represented as essential to the support of the Gov<sup>t</sup>, that the Executive should be assured of the means of fulfilling its engagements for the public service. He said it had been urged by several in behalf of such an establishment for public credit that without it Congress was nothing more than a rope of sand. On this head he would be explicit; he had rather see Congress a rope of sand than a rod of Iron. He urged finally as a reason why some States would not & ought not to concur in granting to Congress a permanent revenue, that some States as Virg<sup>a</sup>, would receive back a small part by paym<sup>t</sup> from the U. S. to its Citizens, whilst others as Pen<sup>a</sup>, w<sup>d</sup>. receive a vast surplus; & consequently by draining the former of its wealth.

Mr. Mercer said if he conceived the federal compact to be such as it had been represented he would immediately withdraw from Congress & do every thing in his power to destroy its existence; that if Cong<sup>s</sup> had a right to borrow money as they pleased and to make requisitions on the States that w<sup>d</sup> be binding on them, the liberties of the States were ideal; that requisitions ought to be consonant to the Spirit of liberty; that they should go frequently & accompanied with full information, that the States must be left to judge of the nature of them, of their abilities to comply with them & to regulate their compliance accordingly; he laid great stress on the omission of Cong<sup>s</sup> to transmit half yearly to the States an acc<sup>t</sup> of the monies borrowed by them &c. and even insinuated that this omission had absolved the States in some degree from the engagements. He repeated his remarks on the injustice of the rule by which loan office Certificates had been settled & his opinion that some defalcations would be necessary.

Mr. Holten was opposed to all permanent funds, and to every arrangement not within the limits of the Confederation.

Mr. Hamilton enlarged on the general utility of permanent funds to the federal interests of this Country, & pointed out the difference between the nature of the Constitution of the British Executive & that of the U. S. in answer to Mr. Lee's reasoning from the case of Ship money.

Mr. Ghoram adverted with some warmth to the doctrines advanced by Mr. Lee & Mercer, concerning the loan office Creditors. He said the Union could never be maintained on any other ground than that of Justice; that some States had suffered greatly from the deficiencies of others already; that if Justice was not to be obtained through the federal system & this system was to fail as would necessarily follow, it was time this should be known that some of the States might be forming other confederacies adequate to the purposes of their safety.

This debate was succeeded by a discharge of the Committee from the business of devising the means requisite for restoring Public credit, &c &c. and the business referred to a Com<sup>e</sup>., consisting of Mr. Ghoram, Mr. Hamilton, Mr. Madison, Mr. Fitzsimmons & Mr. Rutledge.<sup>1</sup>

## TUESDAY, FEBRUARY 25.

No Congress till

In favor of the motion of Mr. Gilman (see the Journal of this date) to refer the officers of the army for their *half-pay* to their respective States it was urged that this plan alone would secure to the officers any advantage from that engagement;<sup>1</sup> since Congress had no independent fund out of which it could be fulfilled, and the States of Con<sup>t</sup>. & R. I., in particular would not comply with any recommendation of Cong nor even requisition, for that purpose. It was also said that it would be satisfactory to the officers; and that it would apportion on the States that part of the public burden with sufficient equality. Mr. Dyer said that the original promise of Congress on that subject was considered by some of the States as a fetch upon them, and not within the spirit of the authority delegated to Congress. Mr. Wolcot said the States w<sup>d</sup>. give Cong<sup>s</sup> nothing whatever unless they were gratified in this particular. Mr. Collins said R. I. had expressly instructed her delegates to oppose every measure tending to an execution of the promise out of monies under the disposition of Congress.

On the other side it was urged that the half pay was a debt as solemnly contracted as any other debt; and was, consequently, as binding under the 12<sup>th</sup> article of the Confederation on the States, & that they could not refuse a requisition made for that purpose; that it would be improper to countenance a spirit of that sort by yielding to it that such concessions on the part of Cong<sup>s</sup> w<sup>d</sup> produce compliances on the part of the States, in other instances, clogged with favorite conditions, that a reference of the officers to the particular States to whose lines they belong would not be satisfactory to the officers of those States who objected to half pay, and would increase the present irritation of the army; that to do it without their unanimous consent would be a breach of the contract by which the U. S. collectively were bound to them; and above all that the proposed plan, which discharged any particular State which should settle with its officers on this subject, altho' other States might reject the plan, from its proportion of that part of the public burden, was a direct and palpable departure from the law of the Confederation. According to this instrument the whole public burden of debt must be apportioned according to a valuation of land, nor c<sup>d</sup> any thing but a unanimous concurrence of the States dispense with this law. According to the plan proposed so much of the public burden as the  $\frac{1}{2}$  pay s<sup>d</sup>. amount to, was to be apportioned according to the number of officers belonging to each line; the plan to take effect as to all those States which should adopt it, without waiting for the unanimous adoption of the States; and that if Congress had authority to make the number of officers the rule of apportioning one part of the Public debt on the States, they might extend the rule to any other part or to the whole, or might substitute any other arbitrary rule which they should think fit. The motion of Mr. Gilman was negatived. See the ays & noes on the Journal.<sup>1</sup>

## WEDNESDAY, FEB<sup>Y</sup>. 26.

Mr. Lee observed to Congress that it appeared from the Newspapers of the day that sundry enormities had been committed by the refugees within the State of Delaware, as it was known that like enormities had been committed on the Shores of the

Chesapeake, notwithstanding the pacific professions of the Enemy; that it was probable how?r that if complaint were to be made to the British Commander at N. York the practice would be restrained. He accordingly moved that a Committee might be appointed to take into consideration the means of restraining such practices. The motion was 2<sup>ded</sup> by Mr. Peters. By Mr. Fitzsimmons the motion was viewed as tending to a request of favors from S<sup>f</sup> Guy Carleton. It was apprehended by others that, as Gen<sup>l</sup> Washington & the commanders of separate armies had been explicitly informed of the sense of Congress on this point, any fresh measures thereon might appear to be a censure on them; and that Congress c<sup>d</sup> not ground any measure on the case in question, having no official information relative to it. The motion of Mr. Lee was negatived. But it appearing from the vote to be the desire of many members that some step might be taken by Congress, the motion of Mr. Madison & Mr. Mercer as it stands on the Journal was proposed and agreed to as free from all objections.1

A motion was made by Mr. Hamilton to give a brevet comm?ion. to Maj<sup>r</sup> Burnet, aid to Gen<sup>l</sup> Greene & messenger of the evacuation of Charleston, of L Colonel; there being six ayes only the motion was lost. N. H., no, Mr. Lee & Mercer no.

The Committee consisting of Mr. Lee &c. to whom had been referred the motion of Mr. Hamilton recommending to the States to authorize Congress to make abatements in the retrospective apportionment by a valuation of land in favor of States whose ability from year to year had been most impaired by the war; reported that it was inexpedient to agree to such motion because one State (Virg<sup>a</sup>) having disagreed to such a measure, on a former recom?endation to Congress, it was not probable that another recommendation would produce any effect; and because the difficulties of making such abatements were greater than the advantages expected from them.

Mr. Lee argued in favor of the report & the reasons on which it was grounded. The Eastern delegations were for leaving the matter open for future determination when an apportionment should be in question.

Mr. Madison said he thought that the principle of the motion was conformable to justice & within the spirit of the Confederation; according to which apportionm<sup>ts</sup> ought to have been made from time to time throughout the war according to the existing wealth of each State. But that it would be improper to take up this case separately from other claims of equity which would be put in by other States; that the most likely mode of obtaining the concurrence of the States in any plan w<sup>d</sup>. be to comprehend in it the equitable interests of all of them; a comprehensive plan of that sort would be the only one that would cut off all sources of future controversy among the States. That as soon as the plan of revenue s<sup>d</sup> be prepared for recom?endation to the States it would be proper for Cong<sup>s</sup> to take into consideration & combine with it every object1 which might facilitate its progress, & for a complete provision for the tranquillity of the U. States. The question on Mr. Hamilton's motion was postponed.

The letter from Mr. Morris requesting that the injunction of secrecy might be withdrawn from his preceding letter signifying to Congress his purpose of resigning, was committed to.

## THURSDAY, FEBRUARY 27TH.

On the report of the Com<sup>e</sup> on Mr. Morris's letter the injunction of secrecy was taken off without dissent or observation.

The attention of Congress was recalled to the subject of half pay by Messrs. Dyer & Wolcot, in order to introduce a reconsideration of the mode of referring it separately to the States to provide for their own lines.

Mr. Mercer favored the reconsideration, representing the commutation proposed, as tending in common with the funding of other debts, to establish & perpetuate a monied interest in the U. S.; that this monied interest would gain the ascendance of the landed interest, would resort to places of luxury & splendor, and, by their example & influence, become dangerous to our republican constitutions. He said however that the variances of opinion & indecision of Congress were alarming & required that something should be done; that it w<sup>d</sup> be better to new-model the Confederation, or attempt any thing, rather than to do nothing.

Mr. Madison reminded Cong<sup>s</sup>, that the commutation proposed was introduced as a compromise with those to whom the idea of pensions was obnoxious & observed that those whose scruples had been relieved by it had rendered it no less obnoxious than pensions by stigmatizing it with the name of a perpetuity. He said the public situation was truly deplorable. If the payment of the capital of the public debts was suggested, it was said & truly said to be impossible; if funding them & paying the interest was proposed, it was exclaimed ag<sup>st</sup> as establishing a dangerous moneied interest, as corrupting the public manners, as administering poison to our republican constitutions. He said he wished the revenue to be established to be such as would extinguish the capital as well as pay the interest within the shortest possible period; and was as much opposed to perpetuating the public burdens as any one. But that the discharge of them in some form or other was essential, and that the consequences predicted therefrom could not be more heterogeneous to our republican character & constitutions, than a violation of the maxims of good faith and common honesty. It was agreed that the report for commuting  $\frac{1}{2}$  pay should lie on the table till to-morrow, in order to give an opportunity to the Delegates of Connecticut to make any proposition relative thereto which they should judge proper.

The report of the Comm<sup>e</sup>, consisting of Mr. Ghoram Mr. Hamilton Mr. Madison Mr. Rutledge & Mr. Fitzsimmons, was taken up. It was proposed that in addition to the impost of 5 Per C<sup>t</sup>. ad valorem the States be requested to enable Cong<sup>s</sup> to collect a duty of  $\frac{1}{8}$  of a dollar per bushel on salt imported; of per Gallon on all wines do. and of per Gallon on all rum & brandy do.

On the first article it was observed on the part of the East: States, that this would press peculiarly hard on them on acc<sup>t</sup> of the salt consumed in the fisheries; and that it would besides be injurious to the national interest by adding to the cost of fish. And a drawback was suggested.



On the other side it was observed that the warmer climate & more dispersed settlements of the Southern States, required a greater consumption of salt for their provisions, that salt might & would be conveyed to the fisheries without previous importation, that the effect of the duty was too inconsiderable to be felt in the cost of fish & that the rum in the N. E. States being in a great degree manufactured at home, they would have greater advantage in this respect, than the other States could have in the article of Salt, that a drawback could not be executed in our complicated govern<sup>t</sup> with ease or certainty.

Mr. Mercer on this occasion declared that altho' he thought those who opposed a general revenue right in their principles, yet as they appeared to have formed no plan adequate to the public exigencies, and as he was convinced of the necessity of doing something, he should depart from his first resolution and strike in with those who were pursuing the plan of a general revenue.

Mr. Holten said he had come lately into Congress with a predetermination against any measures for discharging the public engagements other than those pointed out in the Confederation, & that he had hitherto acted accordingly. But that he saw now so clearly the necessity of making provision for that object, and the inadequacy of the Confederation thereto, that he should concur in recommending to the States a plan of a general revenue.

A question being proposed on the duties on salt there were 9 ays, N. H. alone being no, R. I. not present.

It was urged by some that the duty on wine should be augmented; but it appeared on discussion & some calculations, that the temptation to smuggling w<sup>d</sup> be rendered too strong, & the revenue thereby diminished. Mr. Bland proposed that, instead of a duty on the Gallon an ad-valorem duty should be laid on wine, and this idea after some loose discussion, was agreed to, few of the members interesting themselves therein, and some of them having previously retired from Congress.

## FRIDAY, FEBRUARY 28.

A motion was made by Mr. Wolcot and Mr. Dyer to refer the half pay to the States, little differing from the late motion of Mr. Gilman, except that it specified 5 years' whole pay as the proper ground of composition with the Officers of the respective lines. On this proposition the arguments used for and ag<sup>st</sup>. Mr. Gilman's motion were recapitulated. It was negatived, Con<sup>t</sup>. alone answering in the affirmative, and no division being called for.

On the question to agree to the report for a commutation of 5 years' whole pay, there being 7 ays only it was considered whether this was an appropriation or a new ascertainment of a sum of money necessary for the public service. Some were of opinion at first that it did not fall under that description, viz of an appropriation. Finally the contrary opinion was deemed almost unanimously safest, as well as the most accurate. Another question was whether 7 or 9 votes were to decide doubts whether 7 or 9 were requisite on any question. Some were of opinion that the



Secretary ought to make an entry according to his own judgment and that that entry s<sup>d</sup>. stand unless altered by a positive instruction from Cong<sup>s</sup>. To this it was objected that it w<sup>d</sup>. make the Sec<sup>y</sup>. the Sovereign in many cases, since a reversal of his entry w<sup>d</sup> be impossible, whatever that entry might be; that particularly he might enter 7 votes to be affirmative on a question where 9 were necessary, and if supported in it by a few States it w<sup>d</sup>. be irrevocable. It was said, by others, that the safest rule w<sup>d</sup> be to require 9 votes to decide in all cases of doubt whether 9 or 7 were necessary. To this it was objected that one or two States, and in any situation 6 States might by raising doubts, stop seven from acting in any case which they disapproved. Fortunately on the case in question there were 9 States of opinion that nine were requisite, so the difficulty was got over for the present.

On a reconsideration of the question whether the duty on wine should be on the quantity or on the value the mode reported by the Com<sup>e</sup> was reinstated, and the whole report recom<sup>?</sup>itted to be included with the 5 Per C<sup>t</sup> ad valorem, in an Act of recom<sup>?</sup>endation to the States.

### MONDAY MARCH 3D.

The Comm<sup>e</sup> on revenues, reported in addition to the former articles recommended by them, a duty of ? of a dollar per 112 l<sup>bs</sup> on all brown sugar, 1 dollar on all powdered, lumped & clayed sugars, other than loaf sugar, 1? dollar per 112 l<sup>bs</sup>. on all loaf sugars, of a dollar per lb on all Bohea Teas, and of a dollar on all finer Indian Teas. This report without debate or opposition was recommitted to be incorporated with the general plan.

### TUESDAY MARCH 4. & WEDNESDAY MARCH 5.

The motion of Mr. Hamilton on the Journal, relative to the abatement of the quotas of distressed States<sup>1</sup> was rejected, partly because the principle was disapproved by some, and partly because it was thought improper to be separated from other objects to be recommended to the States. The latter motive produced the motion for postponing which was lost.

The Committee to whom had been referred the letters of resignation of Mr. Morris reported as their opinion that it was not necessary for Cong<sup>s</sup> immediately to take any steps thereon. They considered the resignation as conditional, and that if it s<sup>d</sup> eventually take place at the time designated, there was no necessity for immediate provision to be made.

Mr. Bland moved that<sup>1</sup> &c (see Journal of Mar. 5).

This motion produced on these two days lengthy & warm debates, Mr. Lee & Mr. Bland on one side disparaging the Administration of Mr. Morris, and throwing oblique censure on his character. They considered his letter as an insult to Cong<sup>s</sup>, & Mr. Lee declared that the man who had published to all the world such a picture of our national character & finances was unfit to be a Minister of the latter. On the other side Mr. Wilson & Mr. Hamilton went into a copious defence & Panegyric of Mr.

Morris, the ruin in which his resignation if it s<sup>d</sup> take effect w<sup>d</sup>. involve public credit and all the operations dependent on it; and the decency altho' firmness, of his letters. The former observed that the declaration of Mr. Morris, that he w<sup>d</sup>. not be the minister of Injustice c<sup>d</sup> not be meant to reflect on Cong<sup>s</sup>, because they had declared the funds desired by Mr. Morris to be necessary; and that the friends of the latter could not wish for a more honorable occasion for his retreat from public life, if they did not prefer the public interest to considerations of friendship. Other members were divided as to the propriety of the letters in question. In general however they were thought reprehensible, as in general also a conviction prevailed of the personal merit & public importance of Mr. Morris. All impartial members foresaw the most alarming consequences from his resignation. The prevailing objection to Mr. Bland's motion was that its avowed object & tendency was to re-establish a *board* in place of a single minister of finance. Those who apprehended that ultimately this might be unavoidable, thought it so objectionable that nothing but the last necessity would justify it. The motion of Mr. Bland was lost; and a Comm<sup>e</sup> appointed generally on the letters of Mr. Morris.[1](#)

## THURSDAY MARCH 6.

The com<sup>e</sup> on Revenue made a report which was ordered to be printed for each member, and to be taken up on monday next.

## FRIDAY MARCH 7.

Printed copies of the Report above-mentioned were delivered to each member, as follows, viz.

(1.) "*Resolved*, that it be recommended to the several States, as indispensably necessary to the restoration of public credit, and the punctual & honorable discharge of the public debts, to vest in the U. S. in Cong<sup>s</sup> assem<sup>d</sup>. a power to levy for the use of the U. S. a duty of 5 Per C<sup>t</sup> ad valorem, at the time and place of importation, upon all goods, wares & merchandizes of foreign growth & manufactures, which may be imported into any of the said States, from any foreign port, island or plantation, except arms, ammunition, clothing, and other articles imported on account of the U. States or any of them; and except wool cards, cotton cards, & wire for making them; and also except Salt during the war:

(2.) Also a like duty of 5 Per C<sup>t</sup> ad valorem, on all prizes & prize goods condemned in the Court of Admiralty of any of these United States as lawful prize:

(3.) Also to levy a duty of 1/8 of a dollar per bushel on all salt imported as aforesaid after the war; of a dollar per gallon on all wines, of a dollar per gallon on all rum and brandy; 1/2 of a dollar per 112 lbs on all brown sugars, 1 dollar per 112 lbs on all powdered, lump and clayed sugars other than loaf sugars, 1/2<sup>d</sup> per 112 lbs on all loaf sugars; of a dollar per pound on all Bohea Tea, and of a dollar per lb on all finer India teas, imported as aforesaid, after ———, in addition to the five per C<sup>t</sup> above-mentioned:

(4.) Provided that none of the said duties shall be applied to any other purpose than the discharge of the interest or principal of the debts which shall have been contracted on the faith of the U. S. for supporting the present war, nor be continued for a longer term than 25 years: and provided that the collectors of the said duties shall be appointed by the States within which their offices are to be respectively exercised, but when so appointed, shall be amenable to & removable by the U. S. Cong<sup>s</sup>. ass<sup>d</sup>. alone; and in case any State shall not make such appointment within — —, after notice given for that purpose, the appointment may then be made by the U. S. in Cong<sup>s</sup>. ass<sup>d</sup>.

(5.) That it be further recommended to the several States to establish for a like term not exceeding 25 years, and to appropriate to the discharge of the interest & principal of the debts which shall have been contracted on the faith of the U. S., for supporting the present war, substantial and effectual revenues of such a nature as they may respectively judge most convenient, to the amount of — — —, and in the proportion following viz.

The said revenues to be collected by persons appointed as aforesaid, but to be carried to the separate credit of the States within which they shall be collected and be liquidated and adjusted among the States according to the quotas which may from time to time be allotted to them.

(6.) That an annual account of the proceeds and application of the aforementioned revenues shall be made out & transmitted to the several States, distinguishing the proceeds of each of the specified articles, and the amount of the whole revenue received from each State.

(7.) That none of the preceding resolutions shall take effect until all of them shall be acceded to by every State, after which accession however, they shall be considered as forming a mutual compact among all the States, and shall be irrevocable by any one or more of them without the concurrence of the whole, or a majority, of the United States in Cong<sup>s</sup>. assembled:

(8.) That, as a further means, as well of hastening the extinguishment of the debts, as of establishing the harmony of the U. States, it be recommended to the States which have passed no acts towards complying with the resolutions of Congress of the 6<sup>th</sup> of Sep<sup>r</sup> and the 10<sup>th</sup> of Oct<sup>r</sup>, 1870, relative to territorial cessions, to make the liberal cessions therein recommended, & to the States which may have passed acts complying with the said resolutions in part only, to revise & complete such compliance.

(9.) That, in order to remove all objections against a retrospective application of the constitutional rule of apportioning to the several States the charges & expenses which shall have been supplied for the common defence or general welfare, it be recommended to them to enable Congress to make such equitable exceptions and abatements as the particular circumstances of the States from time to time, during the war, may be found to require:

(10.) That conformably to the liberal principles on which these recommendations are founded, and with a view to a more amicable and complete adjustment of all accounts between the U. S. and individual States, all reasonable expenses which shall have been incurred by the States without the sanction of Cong<sup>s</sup>., in their defence ag<sup>st</sup>. or attacks upon British or Savage enemies, either by sea or by land, and which shall be supported by satisfactory proofs, shall be considered as part of the common charges incident to the present war, and be allowed as such:

(11.) That as a more convenient and certain rule of ascertaining the proportions to be supplied by the States respectively to the common Treasury, the following alteration in the articles of confederation and perpetual union between these States, be and the same is hereby, agreed to in Congress, & the several States are advised to authorize their respective delegates to subscribe and ratify the same, as part of the said instrument of Union, in the words following, to wit.

(12) “So much of the 8<sup>th</sup> of the Articles of Confederation & perpetual Union between the thirteen States of America as is contained in the words following to wit ‘All charges of war &c (to the end of the paragraph)—[and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint,]’—is hereby revoked and made void, and in place thereof, it is declared and Concluded, the same having been agreed to in a Congress of the United States, that all charges of war, and all other expenses that shall be incurred for the common defence or general welfare and allowed by the U. S. in Congress assembled shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the number of inhabitants of every age, sex & condition, except Indians not paying taxes in each State; which number shall be triennially taken & transmitted to the U. S. in Cong<sup>s</sup> assembled, in such mode as they shall direct and appoint; provided always that in such numeration no persons shall be included who are bound to servitude for life, according to the laws of the State to which they belong, other than such as may be between the ages of 1—years.”

## MONDAY, MARCH 10.

See the Journal. Much debate passed relative to the proposed commutation of half pay; Some wishing it to take place on condition only that a majority of the whole army should concur others preferring the plan expressed on the journal, and not agreed to.1

## TUESDAY, MARCH 11.

The Report entered on Friday, the 7 of March was taken into consideration. It had been sent by order of Cong<sup>s</sup>. to the Sup<sup>t</sup> of Finance for his remarks which were also on the table. These remarks were in substance: that it w<sup>d</sup> be better to turn the 5 per c<sup>t</sup>

ad valorem into a Tariff, founded on an enumeration of the several classes of imports, to which ought to be added a few articles of exports; that instead of an apportionment of the residue on the States, other general revenues from a land tax, reduced to  $\frac{1}{4}$  of a dollar Per Hundred Acres, with a house tax regulated by the numbers of windows, and an excise on all Spirituous liquors to be collected at the place of distillery ought to be substituted and as well as the duties on trade made co-existent with the public debts; the whole to be collected by persons app<sup>d</sup>. by Cong<sup>s</sup>. alone. And that an alternative ought to be held out to y<sup>e</sup> States, either to establish these permanent revenues, for the interest or to comply with a constitutional demand of the principal within a very short period.

In order to ascertain the sense of Con<sup>s</sup> on these ideas it was proposed that the following short questions s<sup>d</sup> be taken:

1. Shall any taxes to operate generally throughout the States, be recommended by Cong<sup>s</sup> other than duties on foreign commerce?
2. Shall the 5 Per C ad valorem be exchanged for a tariff?
3. Shall the alternative be adopted, as proposed by the Superintend<sup>t</sup> of Finance?

On the 1<sup>st</sup>. question the States were, N. H. no, Mas: no, Con<sup>t</sup> no, N. J. no, Mary<sup>d</sup> no, Virg<sup>a</sup>. no, 6 noes & 5 ays.

On the 2<sup>d</sup> question there were 7 ays.

The 3<sup>d</sup>. question was not put, its impropriety being generally proclaimed.

In consequence of the 2<sup>d</sup>. vote in favor of a tariff, the 3 first paragraphs of the Rep<sup>t</sup>. were recommitted together with the letter from the Superintend<sup>t</sup>. of Finance.

On the fourth Par. on motion of Mr. Dyer, after the word “war,” in line 5, was inserted “agreeably to the resolution of the 16 of Dec<sup>r</sup>. last.”

A motion was made by Mr. Hamilton and Mr. Wilson to strike out the limitation of 25 years and to make the revenue co-existent with the debts. This question was lost, the States being N. H., no, Mas., no, Con<sup>t</sup> div<sup>d</sup>, N. Y., ay, N. J., ay, P<sup>a</sup>, ay, Del., ay, Mary<sup>d</sup>., ay, V<sup>a</sup>., no, N. C., ay, S. C., no.

A motion was made by Mr. Hamilton & Mr. Wilson to strike out the clauses relative to the appointment of Collectors, and to provide that the Collectors s<sup>d</sup> be inhabitants of the States within which they s<sup>d</sup> collect should be nominated by Cong<sup>s</sup>, and appointed by the States, and in case such nomination should not be accepted or rejected within — days it should stand good. On this question there were 5 ayes and 6 noes.<sup>1</sup>

## WEDNESDAY 12, TH. 13, F. 14, S. 15 OF MARCH.

These days were employed in reading the despatches brought on Wednesday morning by Capt. Barney commanding the Washington Packet. They were dated from Dec<sup>r</sup>. 4 to 24, from the Ministers Plenipo: for peace, with journals of preceding transactions, and were accompanied by the Preliminary articles signed on the 30<sup>th</sup> of Nov<sup>r</sup>., between the said Ministers & Mr. Oswald the British Minister.

The terms granted to America appeared to Cong<sup>s</sup>. on the whole extremely liberal. 1 It was observed by several however that the stipulation obliging Cong<sup>s</sup>. to recommend to the States a restitution of confiscated property, altho' it could scarcely be understood that the States would comply, had the appearance of sacrificing the dignity of Cong<sup>s</sup>., to the pride of the British King.

The separate & secret manner in which our Ministers had proceeded with respect to France & the confidential manner with respect to the British Ministers affected different members of Cong<sup>s</sup>. very differently. Many of the most judicious members thought they had all been in some measure ensnared by the dexterity of the British Minister; and particularly disapproved of the conduct of Mr. Jay in submitting to the Enemy his jealousy of the French without even the knowledge of Dr. Franklin, and of the unguarded manner in which he, Mr. A. & Dr. F., had given in writing sentiments unfriendly to our Ally, and serving as weapons for the insidious policy of the Enemy. The separate Article was most offensive, being considered as obtained by G. B. not for the sake of the territory ceded to her, but as a means of disuniting the U. S. & France, as inconsistent with the spirit of the Alliance, and a dishonorable departure from the candor rectitude & plain dealing professed by Cong<sup>s</sup>.. The dilemma in w<sup>ch</sup>. Cong<sup>s</sup>. were placed was sorely felt. If they s<sup>d</sup> communicate to the F. Minister every thing they exposed their own Ministers, destroyed all confidence in them on the part of France & might engage them in dangerous factions ag<sup>st</sup> Cong<sup>s</sup>, which was the more to be apprehended, as the terms obtained by their management were popular in their nature. If Cong<sup>s</sup> s<sup>d</sup> conceal every thing, & the F. Court s<sup>d</sup>. either from the Enemy or otherwise come to the knowledge of it all confidence w<sup>d</sup>. be at an end between the allies; the enemy might be encouraged by it to make fresh experiments, & the public safety as well as the national honor be endangered. Upon the whole it was thought & observed by many that our Ministers particularly Mr. Jay, instead of making allowances for & affording facilities to France in her delicate situation between Spain & the U. S., had joined with the enemy in taking advantage of it to increase her perplexity; & that they had made the safety of their Country depend on the Sincerity of L<sup>d</sup> Shelburne, which was suspected by all the world besides, and even by most of themselves. See Mr. L's, letter Dec<sup>r</sup> 24th.

The displeasure of the French Court at the neglect of our Ministers to maintain a confidential intercourse & particularly to communicate the preliminary articles before they were signed, was not only signified to the Sec<sup>y</sup> of F. A., but to sundry members by the Chev<sup>r</sup> de la Luzerne. To the former he shewed a letter from C<sup>t</sup>. de Vergennes directing him to remonstrate to Cong<sup>s</sup> ag<sup>st</sup> the conduct of the American Ministers; which a subsequent letter countermanded alledged that Doc<sup>r</sup> F. had given some explanations that had been admitted; & told Mr. Livingston that the American



Ministers had deceived him (de Vergennes) by telling him a few days before the preliminary articles were signed, that the agreement on them was at a distance; that when he carried the articles signed into Council, the King expressed great indignation, & asked if the Americans served him thus before peace was made, & whilst they were begging for aids, what was to be expected after peace &c To several Members he mentioned that the King had been surprised & displeased & that he said he did not think he had such allies to deal with. To one of them who asked whether the C<sup>t</sup>. of F. meant to complain of them to Cong<sup>s</sup>., M. Marbois answered that Great Powers never *complained* but that they *felt & remembered*. It did not appear from any circumstances that the separate article was known to the Court of F., or to the Chev<sup>r</sup> de la Luzerne.

The publication of the preliminary articles excepting the separate article in the Newspaper was not a deliberate act of Cong<sup>s</sup>. A hasty question for enjoining secrecy on certain parts of the despatches which included those articles, was lost; and copies hav<sup>g</sup> been taken by members & some of them handed to the Delegates of Pen<sup>a</sup>, one of them reached the printer. When the publication appeared Cong<sup>s</sup> in general regretted it, not only as tending too much to lull the States, but as leading France into suspicions that Congress favored the premature signature of the articles and were at least willing to remove in the minds of the people the blame of delaying peace from G. B. to France.

## MONDAY, MARCH 17.

A letter was rec<sup>d</sup> from Gen<sup>l</sup> Washington inclosing two anonymous & inflammatory exhortations to the army to assemble for the purpose of seeking by other means, that justice which their Country shewed no disposition to afford them. The steps taken by the Gen<sup>l</sup> to avert the gathering storm & his professions of inflexible adherence to his duty to Congress & to his Country, excited the most affectionate sentiments towards him. By private letters from the army & other circumstances there appeared good ground for suspecting that the Civil creditors were intriguing in order to inflame the army into such desperation as w<sup>d</sup> produce a general provision for the public debts. These papers were committed to Mr. Gilman Mr. Dyer, Mr. Clark Mr. Rutledge & Mr. Mercer. The app<sup>t</sup>. of These Gentlemen was brought about by a few members who wished to saddle with this embarrassment the men who had opposed the measures necessary for satisfying the army viz. the half pay & permanent funds; ag<sup>st</sup> one or other of which the individuals in question had voted.

This alarming intelligence from the army added to the critical situation to w<sup>ch</sup>. our affairs in Europe were reduced by the variance of our Ministers with our Ally, and to the difficulty of establishing the means of fulfilling the Engagem<sup>ts</sup> & securing the harmony of the U. S. & to the confusions apprehended from the approaching resignation of the Superint<sup>t</sup> of Finance, gave peculiar awe & solemnity to the present moment, & oppressed the minds of Cong<sup>s</sup>. with an anxiety & distress which had been scarcely felt in any period of the revolution.1

## TUESDAY MARCH 18.

On the report of the Committee to whom the 3 paragraphs of the Report on revenues (see March the 6 & 7) had been recommitted, the said paragraphs were expunged so as to admit the following amendments which took place without opposition, viz

“*Resolved* That it be recommended &c &c (see 1<sup>vl</sup> 1 P).[1](#)

Dol<sup>s</sup>.

Upon all rum of Jamaica proof per Gallon

Upon all other spirituous liquors

Upon Madeira wine

Upon the wines of Lisbon, Oporto, those called Sherry & upon all French wines

Upon the wines called Malaga or Teneriffe

Upon all other wines

Upon common Bohea Tea, Per lb

Upon all other Teas

Upon pepper, per lb

Upon Brown Sugar per lb

Upon loaf Sugar

Upon all other Sugars

Upon molasses per Gallon

Upon Cocoa & Coffee, per lb

Upon Salt after the war, per bushel, 1/8

And upon all goods, except arms, ammunition & clothing or other articles,[1](#) imported for the use of the U. S., a duty of 5 Per C<sup>t</sup> ad valorem:

Provided that there be allowed a bounty of 1/8 of a dollar for every Quintal of dried fish exported from the U. S., and a like sum for every Barrel of Pickled fish, beef or pork to be paid or allowed to the exporter thereof at the port from which they shall be so exported.

The arguments urged by Mr. Wilson in behalf of his motion (see Journal) for a land tax [of 1/4 of a dollar for 100 acres] other than those heretofore generally urged were that it was more moderate than had been paid before the revolution & it c<sup>d</sup> not be supposed the people w<sup>d</sup> grudge to pay as the price of their liberty what they formerly paid to their oppressors; that if it was unequal, this inequality w<sup>d</sup> be corrected by the States in other taxes—that as the tax on trade would fall chiefly on the inhabitants of the lower Country who consumed the imports, the tax on land would affect those who were remote from the Sea & consumed little.

On the opposite side it was alledged that such a tax was repugnant to the popular ideas of equality & particularly w<sup>d</sup> never be acceded to by the S. States at least unless they were to be respectively credited for the amount; and if such credit were to be given, it w<sup>d</sup> be best to let the States chuse such taxes as would best suit them.



A letter came in & was read from the Sec<sup>y</sup>. of F. A. stating the perplexing alternative to which Cong<sup>s</sup>. were reduced by the secret article relating to West Florida, either of dishonoring themselves by becoming a party to the concealment or of wounding the feelings & destroying the influence of our Ministers by disclosing the article to the French Court; and proposing as advisable on the whole

1. That he be authorized to communicate the article in question to The French Minister in such manner as would best tend to remove the unfavorable impressions which might be made on the C<sup>t</sup>. of F. as to the sincerity of Congress or their Ministers.
2. That the s<sup>d</sup>. Ministers be informed of this communication, and instructed to agree that the limit for W. F., proposed in the separate article be allowed to whatever power the said colony may be confirmed by a Treaty of peace.
3. That it be declared to be the sense of Congress that the preliminary articles between the U. S. & G. B. are not to take effect untill peace shall be actually signed between the Kings of F. & G. B.1

Ordered that to-morrow be assigned for the consideration of the said letter.

## WEDNESDAY MARCH 19.

A letter was read from the Superintend<sup>t</sup>. of Finance, inclosing letters from Doc<sup>f</sup>. Franklin, accompan<sup>d</sup> with extracts from the C<sup>t</sup> de Vergennes relative to money affairs, the Sup<sup>t</sup> thereupon declaring roundly that our credit was at an end & that no further pecuniary aids were to be expected from Europe. Mr. Rutledge denied these assertions, & expressed some indignation at them. Mr. Bland said that as the Sup<sup>t</sup>. was of this opinion it would be absurd for him to be Minister of Finance and moved that the Com<sup>e</sup> on his motion for arranging the department might be instructed to report without loss of time. This motion was negatived as censuring the Com<sup>e</sup>, but it was understood to be the sense of Cong<sup>s</sup> that they s<sup>d</sup>. report.

The order of the day viz the letter from the Secretary of F. A. was taken up.

Mr. Wolcot conceived it unnecessary to waste time on the subject as he presumed Cong<sup>s</sup> would never so far censure the Ministers who had obtained such terms for this country as to disavow their conduct.

Mr. Clarke was decided ag<sup>st</sup>. communicating the separate article, which w<sup>d</sup> be sacrificing meritorious Ministers, & w<sup>d</sup>. rather injure than relieve our national honor. He admitted that the separate article put an advantage into the hands of the Enemy, but did not on the whole deem it of any great consequence. He thought Congress ought to go no farther than to inform the Ministers that they were sorry for the necessity which had led them into the part they had taken, & to leave them to get rid of the embarrassm<sup>t</sup> as to the separate article in such a way as they s<sup>d</sup>. judge best. This expedient would save Congress & spare our Ministers who might have been governed by reasons not known to Congress.

Mr. Mercer said that not meaning to give offence any where, he should speak his sentiments freely. He gave it as his clear & decided opinion that the Ministers had insulted Congress by sending them assertions without proof as reasons for violating their instructions, & throwing themselves into the confidence of G. B. He observed that France in order to make herself equal to the Enemy had been obliged to call for aid & had drawn Spain ag<sup>st</sup> her interest into the war; that it was not improbable that she had entered into some specific engagements for that purpose; that hence might be deduced the perplexity of her situation, of which advantage had been taken by G. B. an advantage in which our Ministers had concurred for sowing jealousies between F. & U. S. & of which further advantage w<sup>d</sup> be taken to alienate the minds of the people of this Country from their ally, by presenting him as the obstacle to peace. The British Court he said hav<sup>g</sup>. gained this point may easily frustrate the negotiation & renew the war ag<sup>st</sup> divided enemies. He approved of the conduct of the Count de Vergennes in promoting a treaty under the 1<sup>st</sup>. Commiss<sup>n</sup>. to Oswald as preferring the substance to the shadow & proceeding from a desire of peace. The conduct of our Ministers throughout, particularly in giving in writing every thing called for by the British Minister expressive of distrust of France was a mixture of follies which had no example was a tragedy to America & a comedy to all the world beside. He felt inexpressible indignation at their meanly stopping, as it were to lick the dust from the feet of a nation whose hands were still dyed with the blood of their fellow-citizens. He reprobated the chicane & low cunning w<sup>ch</sup>. marked the journals transmitted to Congress, and contrasted them with the honesty & good faith which became all nations & particularly an infant republic. They proved that America had at once all the follies of youth and all the vices of old age; thinks it w<sup>d</sup> be necessary to recall our Ministers; fears that France may be already acquainted with all the transactions of our Ministers, even with the separate article, & may be only waiting the reception given to it by Cong<sup>s</sup>. to see how far the hopes of cutting off the right arm of G. B. by supporting our revolution may have been well founded; and in case of our basely disappointing her, may league with our Enemy for our destruction and for a division of the Spoils. He was aware of the risks to which such a league w<sup>d</sup>. expose France, of finally losing her share, but supposed that the British Islands might be made hostages for her security. He said America was too prone to depreciate political merit, & to suspect where there was no danger; that the honor of the King of F. was dear to him, that he never w<sup>d</sup>. betray or injure us unless he s<sup>d</sup> be provoked & justified by treachery on our part. For the present he acquiesced in the proposition of the Sec<sup>y</sup> of F<sup>n</sup>. A<sup>s</sup>. But when the question should come to be put, he s<sup>d</sup> be for a much more decisive resolution.

Mr. Rutledge said he hoped the character of our Ministers would not be affected much less their recall produced by declamations ag<sup>st</sup> them; and that facts would be ascertained & stated before any decision s<sup>d</sup> be passed; that the C<sup>t</sup>. de Vergennes had expressly declared to our Ministers his desire that they might treat apart alluded to & animadverted upon the instruction which submitted them to French councils; was of opinion that the separate article did not concern France & therefore there was no necessity for communicating it to her; & that as to Spain she deserved nothing at our hands, she had treated us in a manner that forfeited all claim to our good offices or our confidence. She had not as has been supposed entered into the present war as an ally to our Ally for our support; but as she herself had declared, as a principal & on her

own account. He s<sup>d</sup> he was for adhering religiously to the Spirit & letter of the treaty with France, that our Ministers had done so, & if recalled or censured for the part they had acted, he was sure no man of spirit would take their place. He concluded with moving that the letter from the Sec<sup>y</sup> of F. A. might be referred to a special Comm<sup>e</sup>, who might inquire into all the facts relative to the subject of it. Mr. Holten 2<sup>ded</sup> the motion.

Mr. Williamson was opposed to harsh treatment of the Ministers who had shown great ability. He said they had not infringed the Treaty, and as they had received the concurrence of the C<sup>t</sup> de Vergennes for treating apart they had not in that respect violated their instructions. He proposed that Congress s<sup>d</sup> express to the Ministers their concern at the separate article & leave them to get over the embarrassment as they sh<sup>d</sup>. find best.

Mr. Mercer in answer to Mr. Rutledge said that his language with respect to the Ministers was justified by their refusal to obey instructions, censured w<sup>th</sup> great warmth the servile confidence of Mr. Jay in particular in the British Ministers. He said the separate article was a reproach to our character, and that if Congress w<sup>d</sup> not themselves disclose it he would disclose to his Constituents who would disdain to be united with those who patronize such dishonorable proceedings. He was called to order by the Presid<sup>t</sup>, who said that the article in question was under an injunction of secrecy & he could not permit the order of the House to be trampled upon.

Mr. Lee took notice that obligations in national affairs as well as others ought to be reciprocal & he did not know that France had ever bound herself to like engagements as to concert of negotiation with those into which America had at different times been drawn. He thought it highly improper to censure Ministers who had negotiated well, said that it was agreeable to practice & necessary to the end proposed, for Ministers in particular emergencies to swerve from strict instructions. France he said wanted to sacrifice our interests to her own or those of Spain, that the French answer to the British Memorial contained a passage which deserved attention on this subject. She answered the reproaches of perfidy contained in that Memorial, by observing that obligations being reciprocal, a breach on one side absolved the other. The C<sup>t</sup> de Vergennes he was sure, was too much a Master of negotiation not to approve the management of our Ministers instead of condemning it. No man lamented more than he did any diminution of the confidence between this country & France, but if the misfortune should ensue it could not be denied that it had originated with France, who had endeavoured to sacrifice our territorial rights, those very rights which by the Treaty she had guarantied to us. He wished the preliminary articles had not been signed without the knowledge of France but was persuaded that in whatever light she might view it, she was too sensible of the necessity of our Independence to her safety ever to abandon it. But let no censure fall on our Ministers who had upon the whole done what was best. He introduced the instruction of June 15 1781 proclaimed it to be the greatest opprobrium and stain to this country which it had ever exposed itself to, and that it was in his judgment the true cause of that distrust & coldness which prevailed between our Ministers & the French Court, inasmuch as it could not be viewed by the former without irritation & disgust. He was not surprised that those

who considered France as the Patron rather than the Ally of this Country should be disposed to be obsequious to her, but he was not of that number.

Mr. Hamilton urged the propriety of proceeding with coolness and circumspection. He thought it proper in order to form a right judgment of the conduct of our Ministers, that the views of the French & British Courts should be examined. He admitted it as not improbable that it had been the policy of France to procrastinate the definite acknowledgm<sup>t</sup> of our Independence on the part of G. B., in order to keep us more knit to herself & untill her own interests could be negotiated. The arguments how<sup>er</sup>, urged by our Ministers on this subject, although strong, were not conclusive; as it was not certain, that this policy & not a desire of excluding obstacles to peace, had produced y<sup>e</sup> opposition of the French Court to our demands. Caution & vigilance he thought were justified by the appearance & that alone. But compare this policy with that of G. B., survey the past cruelty & present duplicity of her councils, behold her watching every occasion & trying every project for dissolving the honorable ties which bind the U. S. to their Ally, & then say on which side our resentments & jealousies ought to lie. With respect to the instructions submitting our Ministers to the advice of France, he had disapproved it uniformly since it had come to his knowledge, but he had always judged it improper to repeal it. He disapproved highly of the conduct of our Ministers in not shewing the preliminary articles to our Ally before they signed them, and still more so of their agreeing to the separate article. This conduct gave an advantage to the Enemy which they would not fail to improve for the purpose of inspiring France with indignation & distrust of the U. S. He did not apprehend (with Mr. Mercer) any danger of a coalition between F. & G. B. against America, but foresaw the destruction of mutual Confidence between F. & the U. S., which w<sup>d</sup>. be likely to ensue, & the danger which would result from it in case the war should be continued. He observed that Spain was an unwise nation, her policy narrow & jealous, her King old her Court divided & the heir apparent notoriously attached to G. B. From these circumstances he inferred an apprehension that when Spain sh<sup>d</sup> come to know the part taken by America with respect to her a separate treaty of peace might be resorted to. He thought a middle course best with respect to our Ministers; that they ought to be commended in general; but that the communication of the separate article ought to take place. He observed that our Ministers were divided as to the policy of the C<sup>t</sup> of France, but that they all were agreed in the necessity of being on the watch against G. B. He apprehended that if the Ministers were to be recalled or reprehended, that they would be disgusted & head & foment parties in this Country. He observed particularly with respect to Mr. Jay that, altho' he was a man of profound sagacity & pure integrity, yet he was of a suspicious temper, & that this trait might explain the extraordinary jealousies which he professed. He finally proposed that the Ministers s<sup>d</sup>. be commended and the separate article communicated. This motion was 2<sup>ded</sup>. by Mr. Osgood, as compared however with the proposition of the Secr<sup>y</sup>. for F. A., and so far only as to be referred to a Committee.

Mr. Peters favored a moderate course as most advisable. He thought it necessary that the separate article should be communicated, but that it w<sup>d</sup>. be less painful to the feelings of the Ministers if the doing it was left to themselves; and was also in favor of giving the territory annexed by the Separate art. to W. Florida, to such power as might be vested with that Colony in the Treaty of peace.

Mr. Bland said he was glad that every one seemed at length to be struck with the impropriety of the instruction submitting our Ministers to the advice of the French Court. He represented it as the cause of all our difficulties & moved that it might be referred to the Com<sup>e</sup>, with the several propositions which had been made. Mr. Lee 2<sup>ded</sup> the motion.

Mr. Wilson objected to Mr. Bland's motion as not being in order. When moved in order perhaps he might not oppose the substance of it. He said he had never seen nor heard of the instruction it referred to until this morning; and that it had really astonished him; that this Country ought to maintain an upright posture between all nations. But however objectionable this step might have been in Cong<sup>s</sup>, the magnanimity of our Ally in declining to obtrude his advice on our Ministers ought to have been a fresh motive to their confidence and respect. Altho' they deserved commendation in general for their services; in this respect they do not. He was of opinion that the spirit of the treaty with France forbade the signing of the preliminary articles without her consent; and that the separate article ought to be disclosed; but as the merits of our Ministers entitled them to the mildest & most delicate mode in which it c<sup>d</sup> be done, he wished the communication to be left to themselves as they w<sup>d</sup>. be the best judges of the explanation which ought to be made for the concealment; & their feelings w<sup>d</sup> be less wounded than if it were made without their intervention. He observed that the separate article was not important in itself & became so only by the mysterious silence in which it was wrapt up. A candid and open declaration from our Ministers of the circumstances under which they acted & the necessity produced by them of pursuing the course marked out by the interest of their Country, w<sup>d</sup>. have been satisfactory to our Ally, w<sup>d</sup>. have saved their own honor, and Would not have endangered the objects for which they were negotiating.

Mr. Higginson contended that the facts stated by our Ministers justified the part they had taken.

Mr. Madison expressed his surprise at the attempts made to fix the blame of all our embarrassments on the instruction of June 15, 1781, when it appeared that no use had been made of the power given by it to the C<sup>t</sup>. of France, that our Ministers had construed it in such a way as to leave them at full liberty; and that no one in Cong<sup>s</sup> pretended to blame them on that acc<sup>t</sup>. For himself he was persuaded that their construction was just; the advice of France having been made a guide to them only in cases where the question respected the concessions of the U. S. to G. B. necessary & proper for obtaining peace & an acknowledg<sup>t</sup>. of Indep<sup>e</sup>. not where it respected concessions to other powers & for other purposes. He reminded Congress of the change which had taken place in our affairs since that instruction was passed, 1 and remarked the probability that many who were now perhaps the loudest in disclaiming, would under the circumstances of that period have been the foremost to adopt it. He admitted that the change of circumstances had rendered it inapplicable, but thought an express repeal of it might at this crisis at least have a bad effect. The instructions he observed for disregarding which our Ministers had been blamed, and which if obeyed would have prevented the dilemma now felt, were those which required them to Act in concert & in confidence with our Ally; & these instructions he said had been repeatedly confirmed in every stage of the Revolution by unanimous votes of

Congress; Several of the Gentlemen present<sup>2</sup> who now justified our Ministers having concurred in them, and one of them<sup>3</sup> having penned two of the Acts, in one of which Cong<sup>s</sup> went farther than they had done in any preceding act; by declaring that they would not make peace until the interests of our allies and friends, as well as of the U. S. s<sup>d</sup>. be provided for.

As to the propriety of communicating to our Ally the separate article, he thought it resulted clearly from considerations both of national honor & national security. He said that Congress having repeatedly assured their ally that they would take no step in a negotiation but in concert and in confidence with him, and hav<sup>g</sup>. even published to the world solemn declarations to the same effect, would if they abetted this concealment of their Ministers be considered by all nations as devoid of all Constancy & good faith; unless a breach of these assurances and declarations c<sup>d</sup> be justified by an absolute necessity or some perfidy on the part of France; that it was manifest no such necessity could be pleaded, & as to perfidy on the part of France, nothing but suspicions & equivocal circumstances had been quoted in evidence of it, and even in these it appeared that our Ministers were divided; that the embarrassm<sup>t</sup> in which France was placed by the interfering claims of Spain & the U. S. must have been foreseen by our Ministers, and that the impartial public would expect that instead of co-operating with G. B. in taking advantage of this embarrassment, they ought to have made every allowance & given every facility to it consistent with a regard to the rights of their Constituents; that admitting every fact alledged by our Ministers to be true, it could by no means be inferred that the opposition made by France to our claims was the effect of any hostile or ambitious designs ag<sup>st</sup>. them, or of any other design than that of reconciling them with those of Spain; that the hostile aspect w<sup>ch</sup>. the separate art: as well as the concealment of it bore to Spain, would be regarded by the impartial world as a dishonorable alliance with our enemies against the interests of our friends; but notwithstanding the disappointments & even indignities which the U. S. had rec<sup>d</sup>. from Spain it could neither be denied nor concealed that the former had derived many substantial advantages, from her taking part in the war & had even obtained some pecuniary aids; that the U. S. had made professions corresponding with these obligations; that they had testified the important light in which they considered the support resulting to their cause from the arms of Spain by the importunity with which they had courted her alliance, by the concessions with which they had offered to purchase it, and by the anxiety which they expressed at every appearance of her separate negotiations for a peace with the common Enemy.

That our national safety would be endangered by Congress making themselves a party to the concealment of the separate article, he thought could be questioned by no one. No definitive treaty of peace, he observed had as yet taken place, the important articles between some of the belligerent parties had not even been adjusted, our insidious enemy was evidently laboring to sow dissensions among them, the incaution of our Ministers had but too much facilitated them between the U. S. and France; a renewal of the war therefore in some form or other was still to be apprehended & what would be our situation if France & Spain had no confidence in us; and what confidence could they have if we did not disclaim the policy which had been followed by our Ministers.

He took notice of the intimation given by the British Minister to Mr. Adams of an intended expedition from N. York ag<sup>st</sup> W. Florida, as a proof of the illicit confidence into which our Ministers had been drawn, & urged the indispensable duty of Cong<sup>s</sup> to communicate it to those concerned in it. He hoped that if a Com<sup>e</sup> s<sup>d</sup> be app<sup>d</sup> for w<sup>ch</sup> however he saw no necessity that this w<sup>d</sup> be included in their report & that their report w<sup>d</sup>. be made with as little delay as possible.

In the event the lett<sup>f</sup>. from the Sec<sup>y</sup>. of F. A., with all the despatches & the several propositions which had been made, were committed to Mr. Wilson, Mr. Ghoram, Mr. Rutledge, Mr. Clarke & Mr. Hamilton.

## THURSDAY MARCH 20.

An instruction from the Legislature of Virg<sup>a</sup>. to their Delegates ag<sup>st</sup>. admitting into the Treaty of Peace any stipulation for restoring confiscated property was laid before Congress.

Also resolutions of the Executive Council of Penn<sup>a</sup>. requesting the Delegates of that State to endeavour to obtain at least a reasonable term for making the payment of British debts stipulated in the preliminary articles lately rec<sup>d</sup>..

These papers were committed to Mr. Osgood, Mr. Mercer & Mr. Fitzsimmons.

Mr. Dyer whose vote on the [tenth] day of [March] frustrated the commutation of the half pay made a proposition substantially the same w<sup>ch</sup> was committed. This seemed to be extorted from him by the critical state of our affairs, himself personally & his State being opposed to it.

The Motion of Mr. Hamilton on the Journals, [1](#) was meant as a testimony on his part of the insufficiency of the report of the Com<sup>e</sup>. as to the establishm<sup>t</sup> of revenues, and as a final trial of the sense of Cong<sup>s</sup> with respect to the practicability & necessity of a *general* revenue equal to the public wants. The debates on it were chiefly a repetition of those used on former questions relative to that subject.

Mr. Fitzsimmons on this occasion declared that on mature reflection he was convinced that a *complete* general revenue was unattainable from the States, was impracticable in the hands of Congress, and that the modified provision reported by the Com<sup>e</sup>. if established by the States w<sup>d</sup> restore public credit among ourselves. He apprehended however that no *limited* funds w<sup>d</sup> procure loans abroad, which w<sup>d</sup> require funds commensurate to their duration.

Mr. Higginson described all attempts of Cong<sup>s</sup> to provide for the public debts out of the mode prescribed by the Confederation, as nugatory; s<sup>d</sup>. that the States w<sup>d</sup> disregard them that the impost of 5 Pe C<sup>t</sup> had passed in Mass<sup>ts</sup> by 2 voices only in the lower, & one in the upper house; and that the Gov<sup>f</sup>. had never formally assented to the law; that it was probable this law w<sup>d</sup> be repealed, & almost certain that the extensive plans of Congress would be reprobated.



## FRIDAY MARCH 21.

The Report on Revenue was taken into consideration; and the 5 and 6 paragraphs after discussion being judged not sufficiently explicit were recommitted to be made more so.

A motion was made by Mr. Clarke, 2<sup>ded</sup> by Mr. Bland to complete so much of the Report as related to an impost on Trade & send it to the States immediately apart from the residue.

In support of this motion it was urged that the Impost was distinct in its nature was more likely to be adopted & ought not therefore to be delayed or hazarded by a connection with the other parts of the Report. On the other side it was contended that it was the duty of Cong<sup>s</sup> to provide a system adequate to the public exigencies; & that such a system w<sup>d</sup> be more likely to be adopted by the States than any partial or detached provision, as it would comprise objects agreeable as well as disagreeable to each of the States, and as all of them w<sup>d</sup> feel a greater readiness to make mutual concessions & to disregard local considerations in proportion to the magnitude of the object held out to them.

The motion was disagreed to, N. J. being in favor of it & several other States divided.

## SATURDAY 22. MARCH.

A letter was rec<sup>d</sup> from Gen<sup>l</sup> Washington inclosing his address to the convention of Officers with the result of their consultations. The dissipation of the cloud which seemed to have been gathering afforded great pleasure on the whole to Congress; but it was observable that the part which the Gen<sup>l</sup> had found it necessary & thought it his duty, to take, would give birth to events much more serious if they s<sup>d</sup>. not be obviated by the establishment of such funds as the Gen<sup>l</sup>, as well as the army had declared to be necessary. 1

The report of the com<sup>e</sup> on Mr. Dyer's motion, in favor of a commutation for the half pay was agreed to. The preamble was objected to, but admitted at the entreaty of Mr. Dyer who supposed the considerations recited in it w<sup>d</sup> tend to reconcile the State of Con<sup>t</sup> to the measure.

An order passed for granting 35 licenses for vessels belonging to Nantucket, to secure the Whaling vessels ag<sup>st</sup> the penalty for double papers. This order was in consequence of a deputation to Cong<sup>s</sup> representing the exposed situation of that island, the importance of the Whale fishery to the U. S., the danger of its being usurped by other nations & the concurrence of the Enemy in neutralizing such a number of Vessels as w<sup>d</sup> carry on the fisheries to an extent necessary for the support of the inhabitants.

The Com<sup>e</sup>, to whom was referred the letter from the Sec<sup>y</sup> of F. A., with the foreign despatches &c reported.



1. That our Ministers be thanked for their zeal & services in negotiating the preliminary articles.
2. that they be instructed to make a communication of the separate article to the Court of France, in such way as would best get over the concealment.
3. that the Sec<sup>y</sup> of F. A. inform them that it is the wish of Congress that preliminary articles had been communicated to the Court of France before they had been executed.

Mr. Dyer said he was opposed to the whole report; that he fully approved of every step taken by our Ministers as well towards G. B. as towards France; that the separate article did not concern the interests of France & therefore could not involve the good faith of the U. S.

Mr. Lee agreed fully with Mr. Dyer, said that the special report of facts ought to have been made necessary for enabling Cong<sup>s</sup> to form a just opinion of the Conduct of the Ministers, and moved that the report might be recommitted. Mr. Wolcott 2<sup>ded</sup> the motion which was evidently made for the sole purpose of delay. It was opposed by Mr. Clarke, Mr. Wilson & Mr. Ghoram the 1<sup>st</sup>. & last of whom had however no objection to postponing; by Mr. Mercer who repeated his abhorrence of the confidence shewn by our Ministers to those of G. B. said that it was about to realize the case of those who kicked down the ladder by w<sup>ch</sup> they had been elevated, & of the viper which was ready to destroy the family of the man in whose bosom it had been restored to life, observed that it was unwise to prefer G. B. to Spain as our neighbours in W. Florida.

Mr. Higginson supported the sentiments of Mr. Lee, s<sup>d</sup>. that the C<sup>t</sup> de V. had released our Ministers & that he agreed with those who thought the instruction of June 15. c<sup>d</sup>. relate only to questions directly between G. B. & U. S.

Mr. Holten thought there was no sufficient evidence for praise or blame; and that both ought to be suspended untill the true reasons s<sup>d</sup>. be stated by the Ministers. He supposed that the separate article had been made an ultimatum of the preliminaries by G. B. & that there might also be secret art<sup>s</sup>. between G. B. & F. If the latter were displeas'd he conceived that she w<sup>d</sup>. officially notify it. Mr. Rutledge was ag<sup>st</sup> recommitting but for postponing. The motion for recomm<sup>g</sup> was disagreed to, but several States being for postponing, the vote was no index as to the main question.

It had been talked of among sundry members as very singular that the British Minister should have confided to Mr. Adams an intended expedition from N. Y. ag<sup>st</sup> W. Florida; as very reprehensible in the latter to become the depository of secrets hostile to the Friends of his Country, and that every motive of honor & prudence made it the duty of Cong<sup>s</sup> to impart the matter to the Spaniards. To this effect a motion was made by Mr. Mercer 2<sup>ded</sup> by Mr. Madison. But it being near the usual hour of adjournment, the house being agitated by the debates on the separate article; and a large proportion of members predetermined ag<sup>st</sup>. every measure w<sup>ch</sup>. seem'd in any manner to blame y<sup>e</sup>. Ministers & the Eastern delegates in general extremely jealous of the honor of Mr. Adams, an adjournment was press'd & carried without any vote on the motion.

## MONDAY MARCH 24TH.

On the day preceding this, intelligence arrived which was this day laid before Cong<sup>s</sup>, that the Preliminaries for a general peace had been signed on the 20<sup>th</sup>. of Jan<sup>y</sup>.. This intelligence was brought, by a French Cutter from Cadiz despatched by C<sup>t</sup>. d'Estaing to notify the event to all vessels at sea, and engaged by the zeal of the Marquis de la Fayette to convey it to Congress.<sup>1</sup> This confirmation of peace produced the greater joy, as the preceding delay, the cautions of Mr. Lauren's Letter of the 24 of Dec<sup>r</sup>. and the general suspicions of L<sup>d</sup>. Shelburne's sincerity had rendered an immediate & general peace extremely problematical in the minds of many.

A letter was rec<sup>d</sup> from Gen<sup>l</sup> Carleton thro Gen<sup>l</sup>. Washington inclosing a copy of the Preliminary articles between G. B. & the U. S., with the separate article annexed.

Mr. Carroll after taking notice of the embarrassment under which Cong<sup>s</sup>. was placed by the injunction of secrecy as to the separate article after it had probably been disclosed in Europe & it now appeared was known at N. York, called the attention of Cong<sup>s</sup> again to that subject.

Mr. Wolcot still contended that it would be premature to take any step relative to it, until further communications should be rec<sup>d</sup> from our Ministers.

Mr. Gilman being of the same opinion, moved that the business be postponed. Mr. Lee 2<sup>ded</sup> it.

Mr. Wilson conceived it indispensably necessary that something should be done; that Cong<sup>s</sup> deceived themselves if they supposed that the separate art: was any secret at N. York after it had been announced to them from S<sup>f</sup> Guy Carleton. He professed a high respect for the character of the Ministers which had received fresh honor from the remarkable steadiness and great abilities displayed in the negotiations, but that their conduct with respect to the separate article could not be justified. He did not consider it as any violation of the instructions of June 15<sup>th</sup>. 1781, the C<sup>t</sup> de Vergennes having happily released them from the obligation of it. But he considered it with the signing of the preliminaries secretly as a violation of the spirit of the Treaty of Alliance as well as of the unanimous professions to the Court of France, unanimous instructions to our Ministers, & unanimous declarations to the world, that nothing should be discussed towards peace but in confidence and in concert with our Ally. He made great allowance for the Ministers, saw how they were affected and the reasons of it, but could not subscribe to the Opinion that Cong<sup>s</sup> ought to pass over the separate article in the manner that had been urged; Cong<sup>s</sup> ought he said to disapprove of it in the softest terms that could be devised & at all events not to take part in its concealment.

Mr. Bland treated the separate article with levity and ridicule; as in no respect concerning France, but Spain with whom we had nothing to do.

Mr. Carroll thought that, unless something expressive of our disapprobation of the article & of its concealment, was done, that it would be an indelible stain on our character.

Mr. Clarke contended that it was still improper to take any step, either for communicating officially, or for taking off the injunction of secrecy, that the article concerned Spain, and not France, but that if it s<sup>d</sup> be communicated to the latter she would hold herself bound to communicate it to the former that hence an embarrassment might ensue; that it was probably this consideration which led the Ministers to the concealment, and he thought they had acted right. He described the awkwardness attending a communication of it under present circumstances; remarking, finally that nothing had been done contrary to the Treaty, and that we were in possession of sufficient materials<sup>1</sup> to justify the suspicions w<sup>ch</sup>. had been manifested.

Mr. Rutledge was strenuous for postponing the subject, said that Cong<sup>s</sup> had no occasion to meddle with it that the Ministers had done right, that they had maintained the honor of the U. S. after Congress had given it up; that the manœuvre practiced by them was common in all courts & was justifiable ag<sup>st</sup>. Spain who alone was affected by it; that instructions ought to be disregarded whenever the public good required it; and that he himself would never be bound by them when he thought them improper.

Mr. Mercer combatted the dangerous tendency of the Doctrine maintained by Mr. Rutledge with regard to instructions; and observed that the Delegates of Virg<sup>a</sup>. hav<sup>g</sup> been unanimously instructed not to conclude or discuss any Treaty of Peace but in confidence & in concert with his M. C. M. he conceived himself as much bound as he was of himself inclined to disapprove every other mode of proceeding, and that he should call for the yeas & nays on the question for his justification to his constituents.

Mr. Bland tartly said that he of course was instructed as well as his colleague & s<sup>d</sup> himself require the yeas and nays to justify an opposite conduct, that the instructions from his constituents went no farther than to prohibit any *Treaty* without the concurrence of our Ally;<sup>1</sup> which prohibition had not been violated in the case before Congress.

Mr. Lee was for postponing & burying in oblivion the whole transaction; he s<sup>d</sup> that delicacy to France required this; since if any thing should be done implying censure on our Ministers, it must & ought to be done in such a way as to fall ultimately on France whose unfaithful conduct had produced & justified that of our Ministers. In all national intercourse he said a reciprocity was to be understood; and as France had not communicated her views & proceedings to the American Plenipotentiaries, the latter were not bound to communicate theirs. All instructions he conceived to be conditional in favor of the public good; and he cited the case mentioned by S<sup>f</sup> W<sup>m</sup>. Temple in which the Dutch Ministers concluded of themselves an Act which required the previous sanction of all the members of the Republic.

Mr. Hamilton said that whilst he despised the man who w<sup>d</sup>. enslave himself to the policy even of our Friends he could not but lament the overweening readiness which

appeared in many to suspect everything on that side & to throw themselves into the bosom of our enemies. He urged the necessity of vindicating our public honor by renouncing that concealment to which it was the wish of so many to make us parties.

Mr. Wilson in answer to Mr. Lee observed that the case mentioned by S<sup>r</sup>. W<sup>m</sup>. T. was utterly inapplicable to the case in question; adding that the conduct of France had not on the principle of reciprocity, justified our Ministers in signing the provisional preliminaries without her knowledge, no such steps having been taken on her part. But whilst he found it to be his duty thus to note the faults of these gentlemen, he with much greater pleasure gave them praise for their firmness in refusing to treat with the British Negotiator until he had produced a proper commission, in contending for the fisheries, and in adhering to our Western claims.

Congress adjourned without any question.

## TUESDAY NO CONGRESS.

## WEDNESDAY MARCH 26.

Communication was made, thro' the Secr<sup>y</sup>. of F. A., by the Minister of France, as to the late negotiation, from letters rec<sup>d</sup> by him from the C<sup>t</sup> de Vergennes, dated in Dec<sup>r</sup> last & brought by the Washington Packet. This communication shewed, though delicately that France was displeas'd with our Ministers for signing the prel<sup>y</sup>. art<sup>s</sup>. separately; that she had labored by recommending mutual concessions to compromise disputes between Spain & the U. S., and that she was apprehensive that G. B. would hereafter as they already had endeavored to sow discords between them. It signified that the "intimacy between our Ministers & those of G. B." furnished a handle for this purpose.

Besides the public communication to Congress other parts of letters from the C<sup>t</sup> de Vergennes were privately communicated to the Presid<sup>t</sup> of Cong<sup>s</sup>. & to sundry members, expressing more particularly the dissatisfaction of the C<sup>t</sup>. of F. at the conduct of our Ministers; and urging the necessity of establishing permanent revenues for paying our debts & supporting a national character. The substance of these private communications, as taken on the 23. instant by the President, is as follows;

## FINANCE.

"That the C<sup>t</sup>. de Vergennes was alarmed at the extravagant demands of Doc<sup>r</sup>. Franklin in behalf of the U. S.; that he was surprised at the same time that the inhabitants paid so little attention to doing something for themselves. If they could not be brought to give adequate funds for their defence during a dangerous war, it was not likely that so desirable an end could be accomplished when their fears were allayed by a general peace that this reasoning affected the credit of the U. S., and no one could be found who would risque their money under such circumstances; that the King would be glad to know what funds were provided for the security and payment of the 10 Millions borrowed by him in Holland, that the Count de Vergennes hardly dared to report in

favor of the U. S. to the King & Council, as money was so scarce that it would be with the greatest difficulty that even a small part of the requisition could be complied with. The causes of this scarcity were a five years' war which had increased the expenses of Government to an enormous amount—the exportation of large sums of specie to America for the support and pay of both French and English armies—the loans to America—the stoppage of Bullion in S. America, which prevented its flowing in the usual channels.”<sup>1</sup> A letter of a later date added.

“That he had received the Chev<sup>TS</sup> letter of Oc<sup>F</sup> and rejoiced to find that Congress had provided funds for their debts, which gave him great encouragem<sup>t</sup>, and he had prevailed on the Comptroller General to join him in a report to his Majesty & Council for 6 Millions of livres for the U. S. to support the war, but assures the Chevalier de la Luzerne, that he must never again consent to a further application.”

## NEGOTIATIONS.

“He complains of being treated with great indelicacy by the American Commiss<sup>TS</sup>., they having signed the Treaty without any confidential communication, that had France treated America with the same indelicacy she might have signed her Treaty first as every thing between France & England was settled, but the King chose to keep faith with his allies, and therefore always refused to do any thing definitively, till all his allies were ready; that this conduct had delayed the definitive Treaty, England having considered herself as greatly strengthened by America; that Doc<sup>F</sup>. Franklin waited on the C<sup>t</sup> de Vergennes & acknowledged the indelicacy of their behavior & had prevailed on him to bury it in oblivion; that the English were endeavouring all in their power to sow seeds of discords between our Commiss<sup>TS</sup>. & the Court of Spain, representing our claims to the Westward as extravagant and inadmissible, that it became Congress to be attentive to this business, & to prevent the ill effects that it might be attended with, that the King had informed the Court of Spain, that tho' he heartily wished that the U. S. might enjoy a cordial coalition with his Cat<sup>h</sup> Majesty, yet he should leave the whole affair entirely to the two States and not interfere otherwise than as by his counsel & advice when asked, that altho' the U. S. had not been so well treated by Spain as might have been expected, yet that his Majesty wished that America might reap the advantage of a beneficial Treaty with Spain. That as the peace was not yet certain, it became all the powers at war, to be ready for a vigorous campaign, and hoped Cong<sup>S</sup> would exert themselves to aid the common cause by some offensive operations against the Enemy, but if the British should evacuate the U. S., the King earnestly hoped Cong<sup>S</sup> would take the most decided measures to prevent any intercourse with the British, and particularly in the way of merchandize or supplying them with provisions, w<sup>ch</sup> would prove of the most dangerous tendency to the campaign in the W. Indies, that the British now had hopes of opening an extensive trade with America, tho' the war should continue, which, if they should be disappointed in, might hasten the definitive Treaty, as it would raise a clamor among the people of England.

The Chev<sup>F</sup>. added that as he had misinformed his Court with regard to Cong<sup>S</sup> having funded their debts, on which presumption the 6 Mil<sup>on</sup>. had been granted, he hoped

Cong<sup>s</sup>. would enable him in his next despatches to give some satisfactory account to his Court on this head.”

## THURSDAY, MARCH 27. THIS DAY NOT NOTED IN THE JOURNAL AS IN SOME OTHER INSTANCES.

Revenues taken up as reported Mar. 7.<sup>1</sup>

The 5 paragraph in the Report on Revenue hav<sup>g</sup>. been judged not sufficiently explicit, and recommitted to be made more so, the following paragraph was rec<sup>d</sup>. in its place viz “That it be further recommended to the several States, to establish for a term limited to 25 years, and to appropriate” &c (to the word 2 Million of dollars annually) which proportions shall be fixed and equalized from time to time according to such rule as is or may be prescribed by the Articles of Confederation; and in case the revenues so established and appropriated by any State shall at any time yield a sum exceeding its proportion, the excess shall be refunded to it, and in case the same shall be found to be defective the immediate deficiency shall be made good as soon as possible, and a future deficiency guarded against by an enlargement of the Revenues established provided that untill the rule of the Confederation can be applied, the proportions of the 2,000,000 of dollars aforesaid shall be as follows, viz.

This amendment was accepted; a motion of Mr. Clarke to restrain this apportionm<sup>t</sup>, in the first instance, to the term of 2 years, being first negatived. He contended that a valuation of land would probably never take place, and that it was uncertain whether the rule of numbers w<sup>d</sup> be substituted and therefore that the first apportionment might be continued throughout the 25 years, altho it must be founded on the present relative wealth of the States, which would vary every year, in favor of those which are the least populous.

This reasoning was not denied, but it was thought that such a limitation might leave an interval in which no apportionment w<sup>d</sup>. exist, whence confusion would proceed, & that an apprehension of it would destroy public Credit.

A motion was made by Mr. Bland, 2<sup>ded</sup>. by Mr. Lee to go back to the first part of the report & instead of the word “levy” an impost of 5 Per C., to substitute the word “collect” an impost &c. It was urged in favor of this motion that the first word imported a legislative idea, & the latter an executive only, and consequently the latter might be less obnoxious to the States. On the other side it was said that the States would be governed more by things than by terms; that if the meaning of both was the same, an alteration was unnecessary; that if not, as seemed to be the case, an alteration would be improper. It was particularly apprehended, that if the term “collect” were to be used, the States might themselves fix the *mode* of collection; whereas it was indispensable that Cong<sup>s</sup> s<sup>d</sup> have that power as well as that it might be varied from time to time as circumstances or experience s<sup>d</sup>. dictate, as that a uniformity might be observed throughout the States. On the motion of Mr. Clarke, the negative was voted by a large Majority, there being 4 ays only.

On the (8) parag. there was no arg<sup>t</sup> or opposition.

The (9) paragraph being considered by several as inaccurate in point of phraseology, a motion was made by Mr. Madison to postpone it, to take into consideration the following to wit “That in order to remove all objections against a retrospective application of the constitutional rule to the final apportionment on the several States, of the monies & supplies actually contributed in pursuance of requisitions of Congress, it be recommended to the States to enable the U. S., in Cong<sup>s</sup>. assembl<sup>d</sup> to make such equitable abatements & alterations as the particular circumstances of the States from time to time during the war may require, and as will divide the burden of such actual contributions among them in proportion to their respective abilities at the periods at which they were made.” On a question of striking out, the original paragraph was agreed to without opposition. On the question to insert the amendment of Mr. M., the votes of the States were, 5 ays, 6 noes, viz N. H. no—Con<sup>t</sup> no—N. J. no.—Del<sup>te</sup> no.—Maryl<sup>d</sup> no.—S. C. no. the rest ay.

On the (10) paragraph relative to expences incurred by the States without the sanction of Cong<sup>s</sup>., Mr. Clarke exclaimed ag<sup>st</sup>. the unreasonableness of burdening the Union with all the extravagant expenditures of particular States; and moved that it might be struck out of the Report. Mr. Helmsly 2<sup>ded</sup>. the motion.

Mr. Madison said that the effects of rejecting this paragraph w<sup>d</sup> be so extensive that a full consideration of it ought at least to precede such a step that the expences referred to in the paragraph were, in part such as would have been previously sanctioned by Cong<sup>s</sup>., if applicat<sup>d</sup>. have been made; since similar ones had been so with respect to States within the vicinity of Cong<sup>s</sup> and therefore complaints of injustice would follow a refusal; that another part of the expences had been incurred in support of claims to the territory of which cessions were asked by Cong<sup>s</sup>, and therefore these c<sup>d</sup>. not be expected, if the expences incident to them should be rejected; that it was probable if no previous assurance were given on this point, it would be made a condition by the States ceding, as the Cessions of territory would be made a condition by the States most anxious to obtain them; that by these means the whole plan would be either defeated, or the part thereof in question be ultimately forced on Cong<sup>s</sup>, whilst they might with a good grace yield it in the first instance; not to mention that these unliquidated & unallowed claims would produce hereafter such contests & heats among the States as w<sup>d</sup> probably destroy the plan even if it s<sup>d</sup>. be acceded to by the States without this paragraph.

Mr. Dyer was in favor of the paragraph.

Mr. Rutledge opposed it as letting in a flood of claims which were founded on extravagant projects of the States.

Mr. Higginson and Mr. Ghorham were earnest in favor of it, remarking that the distance of Massachusetts from Cong<sup>s</sup> had denied a previous sanction to the Militia operations ag<sup>st</sup>. General Burgoyne &c. The Penobscot expedition, also, had great weight with them.

Mr. Williamson was in favor of it.

Mr. Wilson said he had always considered this Country with respect to the war as forming one community; and that the States which by their remoteness from Cong<sup>s</sup>, had been obliged to incur expences for their defence without previous sanction, ought to be placed on the same footing with those which had obtained this security; but he could not agree to put them on a better which w<sup>d</sup>. be the case if their expenses should be sanctioned in the lump; he proposed therefore that these expences s<sup>d</sup>. be limited to such as had been incurred in a *necessary defence*; and of which the object in each case should be approved by Congress.

Mr. Madison agreed that the expressions in the parag<sup>h</sup> were very loose, & that it w<sup>d</sup> be proper to make them as definite as the case w<sup>d</sup> admit; he supposed however that all operations ag<sup>st</sup> the enemy within the limits assigned to the U. S. might be considered as defensive, & in that view the expedition ag<sup>st</sup> Penobscot might be so called. He observed that the term *necessary* left a discretion in the Judge as well as the term *reasonable*; and that it w<sup>d</sup> be best perhaps for Congress to determine & declare that they w<sup>d</sup> constitute a tribunal of impartial persons to decide on oath as to the propriety of claims of States not authorized heretofore by Cong<sup>s</sup>. He s<sup>d</sup> this w<sup>d</sup> be a better security to the States & w<sup>d</sup> be more satisfactory than the decisions of Cong<sup>s</sup>, the members of w<sup>ch</sup> did not act on oath, & brought with them the Spirit of advocates for their respective States rather than of impartial judges between them. He moved that the clause with Mr. Wilson's proposition be recommitted; which was agreed to without opposition.

(11 & 12 Parag<sup>hs</sup>) Mr. Bland opposed it: s<sup>d</sup> that the value of land was the best rule, and that at any rate no change s<sup>d</sup> be attempted until its practicability s<sup>d</sup> be tried.

Mr. Madison thought the value of land, could never be justly or satisfactorily obtained; that it w<sup>d</sup> ever be a source of contentions among the States, and that as a repetition of the valuation would be within the course of the 25 years, it w<sup>d</sup> unless exchanged for a more simple rule mar the whole plan.

Mr. Ghorham was in fav<sup>r</sup> of the parag<sup>hs</sup>. He represented in strong terms the inequality & clamors produced by valuations of land in the State of Mass<sup>ts</sup> & the probability of the evils being increased among the States themselves which were less tied together & more likely to be jealous of each other.

Mr. Williamson was in fav<sup>r</sup> of the parag<sup>hs</sup>.

Mr. Wilson was strenuous in favor of it, s<sup>d</sup> he was in Cong<sup>s</sup> when the Articles of Confederation directing a valuation of land were agreed to, that it was the effect of the impossibility of compromising the different ideas of the Eastern & Southern States as to the value of Slaves compared with the Whites, the alternative in question.

Mr. Clarke was in favor of them. He said that he was also in Cong<sup>s</sup> when this article was decided that the Southern States w<sup>d</sup> have agreed to numbers, in preference to the value of land if ½ their Slaves only s<sup>d</sup> be included; but that the Eastern States would not concur in that proposition.



It was agreed on all sides that, instead of fixing the proportion by ages, as the report proposed it would be best to fix the proportion in absolute numbers. With this view & that the blank might be filled up, the clause was recommitted.

## FRIDAY MARCH 28.

The Com<sup>e</sup>. last ment<sup>d</sup>., reported that two blacks be rated as one freeman.

Mr. Wolcott was for rating them as 4 to 3.

Mr. Carrol as 4 to 1.

Mr. Williamson s<sup>d</sup> he was principled ag<sup>st</sup> slavery; & that he thought slaves an incumbrance to Society instead of increasing its ability to pay taxes.

Mr. Higginson as 4 to 3.

Mr. Rutledge s<sup>d</sup>, for the sake of the object he w<sup>d</sup> agree to rate Slaves as 2 to 1, but he sincerely thought 3 to 1 would be a juster proportion.

Mr. Holten as 4 to 3.

Mr. Osgood s<sup>d</sup> he c<sup>d</sup>. not go beyond 4 to 3.

On a question for rating them as 3 to 2 the votes were N. H., ay. Mas., no. R. I., div<sup>d</sup>. Con<sup>t</sup>, ay. N. J., ay. P<sup>a</sup>, ay. Del<sup>r</sup>, ay. Mary<sup>d</sup>, no. Virg<sup>a</sup>, no. N. C., no. S. C., no.

The Paragraph was then postponed by general consent, some wishing for further time to deliberate on it; but it appearing to be the general opinion that no compromise w<sup>d</sup> be agreed to.

After some further discussions on the report in which the necessity of some simple & practicable rule of apportionment came fully into view, Mr. Madison said that in order to give a proof of the sincerity of his professions of liberality, he w<sup>d</sup> propose that Slaves should be rated as 5 to 3. Mr. Rutledge 2<sup>ded</sup> the motion. Mr. Wilson s<sup>d</sup> he would sacrifice his opinion on this compromise.

Mr. Lee was ag<sup>st</sup> changing the rule, but gave it as his opinion that 2 slaves were not equal to 1 freeman.

On the question for 5 to 3 it passed in the affirmative N. H. ay. Mass. div<sup>d</sup> R. I., no. Con<sup>t</sup> no. N. J. ay. P<sup>a</sup>, ay. Mary<sup>d</sup>, ay. V<sup>a</sup>, ay. N. C. ay. S. C. ay.

A motion was then made by Mr. Bland, 2<sup>ded</sup> by Mr. Lee to strike out the clause so amended and on the question “shall it stand” it passed in the negative; N. H. ay. Mas: no. R. I. no. Conn. no. N. J., ay. P<sup>a</sup>, ay. Del. no. Mar. ay. Virg<sup>a</sup>, ay. N. C., ay. S. C., no; so the clause was struck out.

The arguments used by those who were for rating slaves high were, that the expence of feeding & clothing them was as far below that incident to freemen as their industry & ingenuity were below those of freemen; and that the warm climate within w<sup>ch</sup> the States having slaves lay, compared w<sup>th</sup> the rigorous climate & inferior fertility of the others, ought to have great weight in the case & that the exports of the former States were greater than of the latter. On the other side it was said that Slaves were not put to labor as young as the children of laboring families—that, having no interest in their labor, they did as little as possible, & omitted every exertion of thought requisite to facilitate & expedite it; that if the exports of the States having slaves exceeded those of the others, their imports were in proportion, slaves being employed wholly in agriculture, not in manufactures; & that in fact the balance of trade formerly was much more ag<sup>st</sup> the S<sup>o</sup>. States than the others.

On the main question see Journals. [1](#)

## SATURDAY MARCH 29TH.

The objections urged ag<sup>st</sup> the motion of Mr. Lee on the Journal calling for a specific Report of the Sup<sup>t</sup>. of Finance as to monies passing thro' his hands were that the information demanded from the Office of Finance had during a great part of the period, been laid before Congress & was then actually on the Table—that the term *application* of money was too indefinite no two friends of the motion agreeing in the meaning of it and that if it meant no more than immediate payments under the warrants of the Superintend<sup>t</sup> to those who were to expend the money, it was unnecessary, the Superintend<sup>t</sup> being already impressed with his duty on that subject; that if it meant the ultimate payment for articles or service for the public, it imposed a task that w<sup>d</sup> be impracticable to the Superin<sup>t</sup>, and useless to Congress, who could no otherwise examine them than through the department of Accounts & the Committees app<sup>d</sup> half yearly for enquiring into the whole proceedings; & that if the motion were free from those objections, it ought to be so varied as to oblige the office of Finance to report the information periodically; since it would otherwise depend on the memory or vigilance of members, and w<sup>d</sup>. moreover have the aspect of suspicion towards the Officer called upon. N. B. As the motion was made at first, the word “immediately” was used; which was changed for the words “as soon as may be,” at the instance of Mr. Holten.

The object of the motion of Mr. Madison was to define & comprehend every information practicable & necessary for Cong<sup>s</sup>. to know, & to enable them to judge of the fidelity of their Minister, and to make it a permanent part of his duty to afford it. The clause respecting copies of receipts was found on discussion not to accord with the mode of conducting business, & to be too voluminous a task; but the question was taken without a convenient opportunity of correcting it. The motion was negated. See the Journal. [2](#)

## MONDAY MARCH 31.

A letter was rec<sup>d</sup> from the Gov<sup>r</sup> of R. Island with resolutions of the Legislature of that State justifying the conduct of Mr. Howell.

On the arrival of the French Cutter with the acc<sup>t</sup> of the signing of the general preliminaries, it was thought fit by Congress to hasten the effect of them by calling in the American Cruisers. It was also thought by all not amiss to notify simply the Intelligence to the British Commanders at N. Y. In addition to this it was proposed by the Sec<sup>y</sup> of F. A. and urged by the Delegates of P<sup>a</sup>, by Mr. Lee, Mr. Rutledge & others, that Congress should signify their desire & expectation that hostilities sh<sup>d</sup> be suspended at sea on the part of the Enemy. The arguments urged were that the effusion of blood might be immediately stopped & the trade of the Country rescued from depredation. It was observed on the other side that such a proposition derogated from the dignity of Cong<sup>s</sup>; shewed an undue precipitancy; that the intelligence was not authentic enough to justify the British com<sup>manders</sup> in complying with such an overture, and therefore that Cong<sup>s</sup> would be exposed to the mortification of a refusal. The former consideration prevailed & a verbal sanction was given to Mr. Livingston's expressing to the s<sup>d</sup> com<sup>manders</sup> the expectation of Cong<sup>s</sup>. This day their answers were rec<sup>d</sup> addressed to Rob<sup>t</sup> R. Livingston, Esq<sup>r</sup> &c &c &c declining to accede to the stopping of hostilities at sea & urging the necessity of authentic orders from G. B. for that purpose. With their letters Mr. Livingston communicated resolutions proposed from his office, "that in consequence of these letters the orders to the American Cruisers s<sup>d</sup> be revoked: and that the Executives s<sup>d</sup> be requested to embargo all vessels. Cong<sup>s</sup> were generally sensible after the re<sup>t</sup>. of these papers that they had committed themselves in proposing to the British Commanders at N. Y., a stop to naval hostilities, & were exceedingly at a loss to extricate themselves. On one side they were unwilling to publish to the world the affront they had rec<sup>d</sup>, especially as no written order had been given for the correspondence and on the other it was necessary y<sup>t</sup>. the continuance of hostilities at sea should be made known to American Citizens. Some were in favor of the revocation of hostilities, others proposed as Col: Bland, & Gen<sup>l</sup> Mifflin, that the Sec<sup>y</sup> of F. A. should be directed verbally to publish the letters from Carleton & Digby. This was negatived. The superscription was animadverted upon, particularly by Mr. Mercer, who said, that the letters ought to have been sent back unopened. Finally it was agreed that any member might take copies & send them to the press & that the subject should lie over for further consideration.

## TUESDAY APRIL 1.

Mr. Ghorham called for the order of the day to wit the Report on Revenue &c and observed as a cogent reason for hastening that business that the Eastern States at the invitation of the Legislature of Mass<sup>ts</sup>., were with N. Y. about to form a convention for regulating matters of common concern, & that if any plan should be sent out by Cong<sup>s</sup>. during their session, they would probably co-operate with Cong<sup>s</sup>. in giving effect to it.

Mr. Mercer expressed great disquietude at this information, considered it as a dangerous precedent, & that it behoved the Gentleman to explain fully the objects of the Convention, as it would be necessary for the S. States to be otherwise very circumspect in agreeing to any plans on a supposition that the general confederacy was to continue.

Mr. Osgood said that the sole object was to guard ag<sup>st</sup>. an interference of taxes among States, whose local situation required such precautions; and that if nothing was definitively concluded without the previous communication to & sanction of Cong<sup>s</sup>, the Confederation could not be said to be in any manner departed from; but that in fact nothing was intended that could be drawn within the purview of the federal articles.

Mr. Bland said he had always considered those Conventions as improper & contravening the spirit of the federal Governm<sup>t</sup>. He said they had the appearance of young Congresses.

Mr. Ghorham explains as Mr. Osgood.

Mr. Madison & Mr. Hamilton disapproved of these partial conventions, not as absolute violations of the Confederacy, but as ultimately leading to them & in the mean time exciting pernicious jealousies; the latter observing that he wished instead of them to see a General Convention take place & that he s<sup>d</sup>. soon in pursuance of instructions from his Constituents propose to Cong<sup>s</sup>. a plan for that purpose, the object w<sup>d</sup>. be to strengthen the federal Constitution.

Mr. White informed Cong<sup>s</sup>. that N. Hampshire had declined to accede to a plan of a Convention on foot.

Mr. Higginson said that no Gentleman need be alarmed at any rate for it was pretty certain that the Convention would not take place. He wished with Mr. Hamilton to see a General Convention for the purpose of revising and amending the federal Government.

These observations having put an end to the subject, Cong<sup>s</sup> resumed the Report on Revenue &c. Mr. Hamilton who had been absent when the last question was taken for substituting numbers in place of the value of land, moved to reconsider that vote. He was 2<sup>ded</sup>. by Mr. Osgood. (See the Journal.) Those who voted differently from their former votes were influenced by the conviction of the necessity of the change & despair on both sides of a more favorable rate of the slaves. The rate of ? was agreed to without opposition. On a preliminary question, the apportionm<sup>t</sup>. of the sum & revision of the same ref<sup>d</sup> to Grand Com<sup>e</sup>. 1

The Report as to the Resignation of Foreign Ministers was taken up & in the case of Mr. Jefferson see Journal. 1 The Eastern delegates were averse to doing anything as to Mr. Adams untill further advices s<sup>d</sup> be received. Mr. Laurens was indulged not without some opposition. The acceptance of his resignation was particularly enforced by Mr. Izard.

WEDNESDAY AP<sup>L</sup> 3.—THURSDAY AP<sup>L</sup> 4.—FRIDAY AP<sup>L</sup>. 5.—SATURDAY AP<sup>L</sup>. 6. 2 See Journals.

The Grand Com<sup>e</sup>. appointed to consider the proportions for the blanks in the Rep<sup>t</sup> on Revenue &c, reported the following, grounded on the number of Inhabitants in each

State; observing that N. H., R. I., Con<sup>t</sup>., & Mar<sup>d</sup>. had produced authentic documents of their numbers; & that in fixing the numbers of other States, they had been governed by such information as they could obtain. They also reduced the interest of aggregate debt to 2, 500,000 D<sup>ts</sup>

	N <sup>o</sup> . of Inhab <sup>ts</sup> .	proportions of 1,000	proportions of 1 Mil <sup>n</sup> .
N. H.	82,200	35	52,500
Mas.	350,000	148	222,000
R. I.	50,400	21	31,500
Con <sup>t</sup>	206,000	87	130,500
N. Y.	200,000	85	127,500
N. J.	130,000	55	82,500
Pen <sup>a</sup>	320,000	136	204,000
Del.	35,000	15	22,500
Mar <sup>d</sup>	220,700	94	141,000
Virg <sup>a</sup>	400,000	169	253,500
N. C.	170,000	72	108,000
S. C.	170,000	72	108,000
Georg <sup>a</sup>	25,000	11	16,500
	2,359,300	1,000	1,500,000

annual int<sup>st</sup> of debt after deducting 1,000,000 D<sup>ts</sup> expected from Impost on Trade.

A Com<sup>e</sup>, consisting of Mr. Hamilton, Mr. Madison & — was appointed to report the proper arrangements to be taken in consequence of peace. The object was to provide a system for foreign affairs, for Indian affairs, for military & naval establishments; and also to carry into execution the regulation of weights & measures & other articles of the Confederation not attended to during the war. To the same Com<sup>e</sup>. was referred a resolution of the Executive Council of P<sup>a</sup>., requesting the delegates of that State to urge Cong<sup>s</sup> to establish a general peace with the Indians.

## MONDAY APRIL 7.

The sense of Cong<sup>s</sup> having been taken on the truth of the numbers reported by the Grand Committee, the n<sup>o</sup>. allotted to S. C. was reduced to 150,000, on the representation of the Delegates of that State. The Delegates of N. J. contended also for a reduction, but were unsuccessful. Those of Virg<sup>a</sup> also, on the principle that Cong<sup>s</sup>. ought not to depart from the relative numbers given in 1775, without being required by actual returns which had not been obtained either from that State or others whose relation w<sup>d</sup> be varied. To this reasoning were opposed the verbal & credible information rec<sup>d</sup>. from different persons & particularly Mr. Mercer, which made the n<sup>o</sup>. of Inhabitants in V<sup>a</sup>, after deducting ? of the Slaves, exceed the number allotted to that State. Cong<sup>s</sup>. were almost unanimous ag<sup>st</sup>. the reduction. A motion was made by Mr. Gervais, 2<sup>d</sup>. by Mr. Madison to reduce the n<sup>o</sup>. of Georgia to 15,000., on the probability that their real n<sup>o</sup>. did not exceed it, & the cruelty of overloading a State which had been so much torn & exhausted by the war. The motion met with little support & was almost unanimously negatived.

A letter was rec<sup>d</sup> from Gen<sup>l</sup> Washington expressing the joy of the army at the signing of the general preliminaries notified to him & their satisfaction at the commutation of half pay agreed to by Cong<sup>s</sup>.1

## TUESDAY APRIL 8TH.

Estimate of the debt of the U. S., reported by the Grand Committee.

### FOREIGN DEBT.

To the Farmers General of France	Liv <sup>rs</sup> 1,000,000
To Beaumarchais	3,000,000
To the King of France, to the end of 1782	28,000,000
To d <sup>o</sup> for 1783	6,000,000
	Liv <sup>rs</sup> . 38,000,000 = \$7,037,037
Rec <sup>d</sup> on loan in Holland, 1,678,000 florins	671,200
Borrowed in Spain by Mr. Jay	150,000
In <sup>t</sup> on Dutch one year, at 4 P <sup>r</sup> . C <sup>t</sup>	26,848
Total for. debt	\$7,885,085

### DOMESTIC DEBT.

Loan Office	\$11,463,802
Interest unpaid for 1781	190,000
Interest unpaid for 1782	687,828
Credit to sundry persons on Treasury books	638,042
Army debt to 31 D <sup>r</sup> 1782	5,635,618
Unliquidated d <sup>o</sup>	8,000,000
Deficiencies in 1783	2,000,000
Total dom. debt	\$28,615,290
Aggregate debt	\$36,500,375

### INTEREST.

On for debt, 7,885,085, at 4 Per C <sup>t</sup>	\$315,403
On domestic debt, 28,615,290, at 6 Per C <sup>t</sup>	1,716,917
On commutation of half-pay, estimated at 5,000,000 at 6 Per C <sup>t</sup>	300,000
Bounty to be pd, estim <sup>d</sup> . at 500,000, at 6 Per C <sup>t</sup>	30,000
Aggreg of In <sup>t</sup> .	\$2,362,320

A motion was made by Mr. Hamilton who had been absent on the question on the 9<sup>th</sup> paragraph of the Report on Revenue assessing quotas, to reconsider the same. Mr. Floyd who, being the only delegate from N. Y. then present on that question c<sup>d</sup>. not vote, 2<sup>ded</sup> the motion. For the arg<sup>ts</sup> repeated see the former remarks on the 7<sup>th</sup>. of Ap<sup>l</sup>.

On the question the votes were Mas: no. R. I. no. Con<sup>t</sup>. no. N. Y. ay. N. J. no. Pa<sup>a</sup> ay. Mary<sup>d</sup>., no. Virg<sup>a</sup>. ay. S. C. no.

## WEDNESDAY APRIL 9.

A memorial was rec<sup>d</sup> from Gen<sup>l</sup>. Hazen in behalf of the Canadians who had engaged in the cause of the U. S., praying that a tract of vacant land on L. Erie might be allotted to them.

Mr. Wilson thereupon moved that a Com<sup>e</sup> be appointed to consider and report to Congress the measures proper to be taken with respect to the Western Country. In support of his motion he observed on the importance of that Country, the danger from immediate emigrations of its being lost to the public; & the necessity on the part of Congress of taking care of the federal interests in the formation of new States which could not take place by the authority of any particular States.

Mr. Madison observed that the appointment of such a Com<sup>e</sup>. could not be necessary at this juncture & might be injurious that Cong<sup>s</sup> were about to take in the report on Revenue &c the only step that could now be properly taken viz to call again on the States claiming the W. Territory to cede the same; that until the result s<sup>d</sup> be known every thing w<sup>d</sup> be premature & w<sup>d</sup> excite in the States irritations & jealousies that might frustate the Cessions; that it was indispensable to obtain these Cessions, in order to compromise the disputes, & to derive advantage from the territory to the U. S.; that if the motion meant merely to prevent irregular settlements, the recommendation to that effect ought to be made to the States—that if ascertaining & disposing of garrisons proper to be kept up in that Country was the object it was already in the hands of the Com<sup>e</sup>. on peace arrangements, but might be expressly referred to them.

Mr. Mercer supported the same ideas.

Mr. Clarke considered the motion as nowise connected with the peace arrangements; his object was to define the western limits of the States which Cong<sup>s</sup>. alone c<sup>d</sup>. do, and which it was necessary they s<sup>d</sup> do in order to know what territory properly belonged to the U. S., and what steps ought to be taken relative to it. He disapproved of repeatedly courting the States to make *Cessions* w<sup>ch</sup>. Cong<sup>s</sup> stood in no need of.

Mr. Wilson seemed to consider as the property of the U. S. all territory over which particular States had not exercised jurisdiction particularly N. W. of Ohio, & said that within the Country confirmed to the U. S. by the Provisional articles, there must be a large Country over which no particular claims extended.

He was answered that the exercise of jurisdiction was not the criterion of territorial rights of the States; that Pen<sup>a</sup> had maintained always a Contrary Doctrine; that if it were a criterion V<sup>a</sup>. had exercised jurisdiction over the Illinois & other places conquered N. W. of the Ohio; that it was uncertain whether the limits of the U. S., as fixed by the Prov<sup>l</sup>. Art<sup>s</sup>, did comprehend any territory out of the claims of the individual States; that s<sup>d</sup>. it be the case a decision or examination of the point had best be put off till it s<sup>d</sup> be seen whether Cessions of the States w<sup>d</sup> not render it unnecessary; that it c<sup>d</sup> not be immediately necessary for the purpose of preventing settle<sup>ts</sup>. on such extra lands, since they must lie too remote to be in danger of it.

Congress refused to refer the motion to the Com<sup>e</sup>. on peace arrangements, and by a large majority referred it to a Special Com<sup>e</sup>., viz Mrs. Osgood, Wilson Madison, Carrol & Williamson; to whom was also referred the Mem<sup>l</sup> of Gen<sup>l</sup> Hazen.

On the preceding question, Con<sup>t</sup> was strenuous in fav<sup>r</sup>. of Mr. Wilson's motion.

A motion was made by Mr. Dyer to strike out the drawback on salt fish &c. Mr. Ghorham protested in the most solemn manner that Mass<sup>ts</sup> w<sup>d</sup>. never accede to the plan without the drawback. The motion was very little supported.

## THURSDAY AP<sup>L</sup>. 10.

Letters rec<sup>d</sup> from Gen<sup>l</sup> Carleton & Admiral Digby inclosing British proclamation<sup>1</sup> of cessation of arms & also letters from Doc<sup>t</sup> Franklin & Mr. Adams notifying the conclusion of Preliminaries between G. B. & F. & Spain, with a declaration entered into with Mr. Fitzherbert applying the epochs of cessation to the case of G. B. & the U. S. These papers were referred to the Sec<sup>y</sup> of F. A. to report a proclamation for Cong<sup>s</sup> at 6 O'Clock, at which time Cong<sup>s</sup> met & rec<sup>d</sup> report nearly as it stands on the Journal of Friday Ap<sup>l</sup> 11.<sup>2</sup> After some consideration of the Report as to the accuracy & propriety of which a diversity of sentiments prevailed, they postponed it till next day. The Sec<sup>y</sup> also reported a Resolution directing the Sec<sup>y</sup> at War and Agent of Marine to discharge all prisoners of war.

## FRIDAY AP<sup>L</sup> 11.

This day was spent in discussing the Proclamation which passed. Mr. Wilson proposed an abbreviation of it which was disagreed to. The difficultys attending it were that 1<sup>st</sup> the Agreement of our Ministers with Fitzherbert that the Epochs with Spain as well as France s<sup>d</sup> be applied to the U. S. to be computed from the ratifications which happened at different times, the former on the 3<sup>d</sup>, the latter on the 9<sup>th</sup>, of Feb<sup>y</sup>; 2<sup>d</sup>. the circumstance of the Epochs having passed at w<sup>ch</sup> the Cessation of hostilities was to be enjoined. The impatience of Cong<sup>s</sup> did not admit of proper attention to these & some other points of the Proclamation; particularly the authoritative style of enjoining an observance on the U. S., the Gov<sup>rs</sup> &c. It was ag<sup>st</sup> these absurdities & improprieties that the solitary *no* of Mr. Mercer was pointed. See the Journal.

## SATURDAY AP<sup>L</sup> 12.

A letter of the 16<sup>th</sup>. of Dec<sup>[Editor: illegible figure]</sup> O. S. was rec<sup>d</sup>. from Mr. Dana, in which he intimates that in consequence of the news of peace taking place & independence being acknowledged by G. B. he expected soon to take his proper station at the C<sup>t</sup> of St. Petersburg & to be engaged in forming a Commercial Treaty with her Imperial Majesty.

Mr. Madison observed that as no powers or instructions had been given to Mr. Dana relative to a Treaty of Com<sup>er</sup>ce, he apprehended there must be some mistake on the



part of Mr. Dana; that it w<sup>d</sup> be proper to inquire into the matter & let him know the intentions of Cong<sup>s</sup> on this subject. The letter was committed to Mr. Madison Mr. Ghorham & Mr. Fitzsimmons.

Mr. Rutledge observed that as y<sup>c</sup>. instructions to Foreign Ministers now stood it was conceived they had no powers for commercial stipulations other than such as might be comprehended in a definitive Treaty of Peace with G. B. He said he did not pretend to commercial knowledge but thought it w<sup>d</sup> be well for the U. S. to enter into commercial Treaties with all nations & particularly with G. B. He moved therefore that the Com<sup>e</sup> s<sup>d</sup> be instructed to prepare a General Report for that purpose.

Mr. Madison & Mr. Fitzsimmons thought it w<sup>d</sup> be proper to be very circumspect in fettering our trade with stipulations to foreigners, that as our stipulations w<sup>d</sup> extend to all the possessions of the U. S. necessarily—& those of foreign Nations hav<sup>g</sup> colonies to part of their possessions only; and as the most fav<sup>d</sup> nations enjoyed greater privileges in the U. S. than elsewhere. The U. S. gave an advantage in Treaties on this subject, & finally that negotiations ought to be carried on here, or our Ministers directed to conclude nothing without previously reporting every thing for the sanction of Cong<sup>s</sup>. It was at length agreed that the Com<sup>e</sup> s<sup>d</sup> report the general state of instructions existing on the subject of Commercial Treaties.

Congress took into consideration the report of the Sec<sup>y</sup> for F. A. for immediately setting at liberty all the Prisoners of war & ratifying the provisional articles. Several members were extremely urgent on this point from motives of Oeconomy. Others doubted whether Cong<sup>s</sup> were bound thereto, & if not bound whether it would be proper. The first question depended on the import of the provisional articles, which were very differently interpreted by different members. After much discussion from which a general opinion arose of extreme inaccuracy & ambiguity as to the force of these articles, the business was committed to Mr. Madison, Mr. Peters, & Mr. Hamilton who were also to report on the expediency of ratifying the said articles immediately.

## MONDAY APRIL 14.

The Committee on the report of the Secretary of foreign Aff<sup>ts</sup> reported as follows. Mr. Hamilton dissenting.

1. That it does not appear that Congress are any wise bound to go into the ratification proposed. “The Treaty” of which a ratification is to take place, as mentioned in the 6<sup>th</sup> of the Provisional articles, is described in the title of those articles to be “a Treaty of Peace proposed to be concluded between the Crown of G. B. and the said U. S., but which is not to be concluded until terms of Peace shall be agreed upon between G. B. & France.” The Act to be ratified therefore is not the Prov<sup>l</sup> articles themselves, but an Act *distinct,—future,—and even contingent*. Again altho’ the Declaratory Act entered into on the 20<sup>th</sup>. of Jan<sup>y</sup> last, between the American & British Plenipotentiaries relative to a cessation of hostilities, seems to consider the contingency on which the Prov<sup>l</sup>. articles were suspended as having taken place, yet that act cannot itself be considered as the *Treaty of Peace meant to be concluded*; nor does it stipulate that

either the Prov<sup>l</sup>. articles, or the act itself should be ratified in America; it only engages that the U. S. shall cause hostilities to cease on their part, an engagement which was duly fulfilled by the Proclamation issued on the 11<sup>th</sup>. instant; lastly it does not appear from the correspondence of the American Ministers, or from any other information, either that such ratification was expected from the U. S. or intended on the part of G. B.; still less that any exchange of mutual ratifications has been in contemplation.

2. If Congress are not bound to ratify the articles in question, the Com<sup>e</sup> are of opinion that it is inexpedient for them to go immediately into such an Act; inasmuch as it might be thought to argue that Congress meant to give to those articles the quality & effect of a definitive Treaty of Peace with G. B., tho' neither their allies nor friends have as yet proceeded farther than to sign preliminary articles; and inasmuch as it may oblige Cong<sup>s</sup> to fulfil immediately all the stipulations contained in the prov<sup>l</sup> articles, tho' they have no evidence that a correspondent obligation will be assumed by the other party.

3. If the ratification in question be neither obligatory nor expedient, the Com<sup>e</sup> are of opinion, that an immediate discharge of all prisoners of war, 1 on the part of the U. S., is premature and unadvisable; especially as such a step may possibly lessen the force of demands for a reimbursement of the sums expended in the subsistence of the prisoners.

Upon these considerations the Com<sup>e</sup> recommend that a decision of Cong<sup>s</sup> on the papers referred to them be postponed.

On this subject a variety of sentiments prevailed.

Mr. Dyer, on a principle of frugality was strenuous for a liberation of the prisoners.

Mr. Williamson thought Cong<sup>s</sup> not obliged to discharge the Prisoners previous to a definitive treaty, but was willing to go into the measure as soon as that public honor would permit. He wished us to move *pari passu*, with the British Com<sup>ander</sup> at New York. He suspected that the place would be held till the interests of the Tories should be provided for.

Mr. Hamilton contended that Congress were bound, by the tenor of the Prov<sup>l</sup>. Treaty immediately to Ratify it, and to execute the several stipulations inserted in it; particularly that relating to a discharge of Prisoners.

Mr. Bland thought Cong<sup>s</sup> not bound.

Mr. Elsworth was strenuous for the obligation and policy of going into an immediate execution of the treaty. He supposed that a ready & generous execution on our part w<sup>d</sup> accelerate the like on the other part.

Mr. Wilson was not surprised that the obscurity of the Treaty s<sup>d</sup>. produce a variety of ideas. He thought upon the whole that the Treaty was to be regarded as "contingently definitive."

The Report of the Com<sup>e</sup> being not consonant to the prevailing sense of Cong<sup>s</sup>, it was laid aside.

## TUESDAY APRIL 15.

The ratification of the Treaty & discharge of prisoners were again agitated. For the result in a unanimous ratification see the secret Journal of this day; the urgency of the majority producing an acquiescence of most of the opponents to the measure.

## WEDNESDAY APRIL 16.

Mr. Hamilton acknowledged that he began to view the *obligation* of the pro<sup>l</sup>. Treaty in a different light and in consequence wished to vary the direction of the Com<sup>ander</sup> in chief from a positive to a preparatory one as his motion on the Journal states. [1](#)

## THURSDAY APRIL 17.

Mr. Madison with the *permission* of the Com<sup>e</sup> on Revenue reported the following clause to be added to the 10<sup>th</sup>. paragraph in the first report viz.

“And to the end that convenient provision may be made for determining in all such cases how far the expences may have been reasonable as well with respect to the object thereof as the means for accomplishing it, thirteen com<sup>is</sup><sup>rs</sup>. namely one out of each State shall be appointed by Congress, any seven of whom (having first taken an oath for the faithful & impartial execution of their trust) who shall concur in the same opinion, shall be empowered to determine finally on the reasonableness of the claims for expences incurred by particular States as aforesaid; And in order that such determinations may be expedited as much as possible, the Com<sup>is</sup><sup>rs</sup> now in appointment for adjusting acc<sup>ts</sup> between the U. S. and individual States, shall be instructed to examine all such claims & report to Cong<sup>s</sup>. such of them as shall be supported by satisfactory proofs, distinguishing in their reports the objects and measures in which the expences shall have been incurred; provided that no balances which may be found due under this regulation, or the Resolutions of the — day of —, shall be deducted out of the preceding Revenues; but shall be discharged by separate requisitions to be made on the States for that purpose.”

In support of this proposition it was argued that in a general provision for public debts and public tranquillity satisfactory measures ought to be taken on a point w<sup>ch</sup>. many of the States had so much at heart, & which they w<sup>d</sup>. not separate from y<sup>e</sup>. other matters proposed by Congress; that the nature of the business was unfit for the decision of Cong<sup>s</sup>, who brought with them y<sup>e</sup>. spirit of advocates rather than of Judges, and besides required more time than could be spared for it.

On the opposite side some contended that the Acc<sup>ts</sup>. between the U. S. & particular States s<sup>d</sup> not be made in any manner to encumber those between the former and private persons. Others thought that Cong<sup>s</sup> could not delegate to Com<sup>rs</sup> a power of

allowing claims for which the Confed<sup>on</sup> req<sup>d</sup> nine States. Others were unwilling to open so wide a door for claims on the Common Treasury.

On the question, Mas<sup>ts</sup> divided. Con<sup>t</sup>. ay. R. I<sup>d</sup> no. N. Y. no. N. J. no. P<sup>a</sup> no. Mary<sup>d</sup> no. V<sup>a</sup>. ay. N. C. no. S. C. no.

## FRIDAY APRIL 18.

Application was made from the Council of P<sup>a</sup>. for the determination of Cong<sup>s</sup> as to the effect of y<sup>e</sup> acts terminating hostilities, on Acts to be enforced during the war. Cong<sup>s</sup> declined giving any opinion.

The motion of Mr. Bland for striking out the recommendation to the States which had agreed to cede territory, to revise & *compleat* their Cessions, raised a long debate. In favor of the motion it was urged by Mr. Rutledge that the proposed Cession of V<sup>a</sup> ought to be previously considered & disallowed; that otherwise a renewal of the recommendation w<sup>d</sup> be offensive; that it was possible the Cession might be accepted in which case the renewal w<sup>d</sup>. be improper. Virg<sup>a</sup>, he observed alone could be alluded to as having complied in part only.

Mr. Wilson went largely into the subject. He said, *If the investigation of right* was to be considered, the U. S. ought rather to make cessions to individual States than receive Cessions from them, the extent of y<sup>e</sup> Territory ceded by the Treaty being larger than all the States put together; that when the claims of the States came to be limited on principles of right, the Alleghany Mountains would appear to be the true boundary; this could be established without difficulty before any Court, or the Tribunal of the World. He thought however policy req<sup>d</sup>. that such a boundary s<sup>d</sup>. be established as w<sup>d</sup>. give to the Atlantic States access to the Western Waters. *If accommodation* was the object, the clause ought by no means to be struck out. The Cession of Virg<sup>a</sup>. would never be accepted because it guarantied to her the Country as far as the Ohio, which never belonged to Virg<sup>a</sup>. (Here he was called to order by Mr. Jones.) The question he s<sup>d</sup>. must be decided. The indecision of Cong<sup>s</sup>. had been hurtful to the interests of the U. S. If the compliance of V<sup>a</sup>. was to be sought she ought to be urged to comply fully.

For the vote in the affirmative, with the exception of Virg<sup>a</sup>. & S. Carol. see Journal.

The plan of Revenue was then passed as it had been amended, all the States present concurring except R. I., w<sup>ch</sup>. was in the negative & N. Y., w<sup>ch</sup>. was divided Mr. Floyd & Mr. Hamilton no. [1](#)

## MONDAY APRIL 21.

A motion was made by Mr. Hamilton, 2<sup>ded</sup> by Mr. Madison, to annex, to the plan of the 18<sup>th</sup> instant, the part omitted relating to expences incurred by individual States. On the question, N. York, Pen<sup>a</sup>. & Virg<sup>a</sup> alone were in the affirmative, Con<sup>t</sup>. & Georgia not present.

Tuesday Ap<sup>l</sup> 22. See Journal.[1](#)

## WEDNESDAY APRIL 23.

The resolution permitting the soldiers to retain their arms was passed at the recommendation of Gen<sup>l</sup> Washington. See his letter on the files.

The resolution for granting furloughs or discharges was a compromise between those who wished to get rid of the expence of keeping the men in the field, and those who thought it impolitic to disband the army whilst the British remained in the United States.

Ap<sup>l</sup> 24, Friday, 25 Ap<sup>l</sup>. See Journal.[2](#)

## SATURDAY APRIL 26.

Address to the States passed nem. con. It was drawn up by Mr. Madison.[3](#) The address to Rh. I<sup>d</sup> referred to as No. 2, had been drawn up by Mr. Hamilton.

The writer of these notes absent till Monday May 5<sup>th</sup>.[1](#)

## MONDAY, MAY 5TH.

Mr. Bland & Mr. Mercer moved to erase from the Journal the resolution of Friday, the 2<sup>d</sup> ins<sup>t</sup>. applying for an addition of three Millions to the grant of six millions, by H. M. X<sup>n</sup>. Majesty, as in part of the loan of four Millions requested by the Resolution of September the 14, 1782. As the resolution of the 2<sup>d</sup>. had been passed by fewer than nine States, they contended that it was unconstitutional. The reply was that as the three Millions were to be part of a loan heretofore authorized, the sanction of nine States was not necessary. The motion was negatived The two movers alone voting in the Affirmative.

## TUESDAY MAY 6.[1](#)

A motion was made by Mr. Lee to recommend to the several States to pass laws indemnifying Officers of the Army for damages sustained by individuals from Acts of such officers rendered necessary in the execution of their military functions. It was referred to Mr. Lee, Mr. Williamson & Mr. Clarke.

He proposed also that an Equestrian statue should be erected to General Washington.

A report from the Sec<sup>y</sup> of For: Affairs of a Treaty of Commerce to be entered into with G. Britain, was referred to Mr. Fitzsimmons, Mr. Higginson, Mr. Rutledge, Mr. Helmsley & Mr. Madison.

## WEDNESDAY MAY 7.

The Resolution moved yesterday by Mr. Lee for indemnifying military Officers, being reported by the Committee was agreed to.

The Committee on a motion of Mr. Dyer, reported “that the States which had settled with their respective lines of the Army for their pay since Aug 1. 1780, should receive the securities which would otherwise be due to such lines.”

The Report was opposed on the ground that the settlements had not been discharged in the value due. The Notes issued in payment by Connecticut were complained of, as being of little value.

The Report was disagreed to. See Journal.

## THURSDAY MAY 8.

Mr. Bland suggested that the Prisoners of War should be detained, until an answer be given as to the delivery of slaves, represented in a letter to Mr. Thomas Walke to be refused on the part of S<sup>r</sup>. Guy Carleton.

On his motion seconded by Mr. Williamson it was ordered that the letter be sent to Gen. Washington for his information, in carrying into effect the Resolution of Ap<sup>l</sup> 15. touching arrangements with the British Commander for delivery of the Posts, Negroes &c.

A Portrait of Don Galvez was presented to Congress by Oliver Pollock.

## FRIDAY MAY 9.

A question on a Report relating to the occupying the Posts when evacuated by the British was postponed by Virginia in right of a State.

Mr. Dyer moved a recommendation to the States to restore confiscated property conformably to the Provisional Articles. The motion produced a debate which went off without any positive result.

Adjourned to Monday.

## MONDAY MAY 12.

See Journal.[1](#)

## TUESDAY MAY 13.

No Congress.[2](#)

## WEDNESDAY MAY 14.

Mr. Hamilton & Mr. Elseworth moved a call on the States, to fulfil the recommendation relative to the Tories. After some remarks on the subject, the House adjourned.

Thursday, May 15. See Journal.1 The Report relating to the Dep<sup>t</sup>. of For. Affairs taken up, and, after some discussion of the expediency of raising the salary of the Sec<sup>y</sup> Congress adjourned.

## FRIDAY MAY 16.

See Journal.1

## SATURDAY MAY 17.

No Congress.

## MONDAY MAY 19.

Spent in debating the Report recommending provision for the Tories according to the Provisional Artic. of peace.

## TUESDAY MAY 20.

On the proposal to discharge the troops who had been enlisted for the war (amounting to ten thousand men,) from the want of means to support them.

Mr. Carroll urged the expediency of caution, the possibility that advantage might be taken by G. B. of a discharge both of prisoners and of the army, and suggested the middle course, of furloughing the troops.

Mr. Dyer was strenuous for getting rid of expence; considered the war at an end; that G. B. might as well renew the war after the definitive Treaty as now; that not a moment ought to be lost in disburdening the public of needless expence.

Mr. Rutledge viewed the conduct of G. B. in so serious a light that he almost regretted having voted for a discharge of Prisoners. He urged the expediency of caution, and of consulting the Commander chief. He accordingly moved that the Report be referred to him for his opinion & advice. The motion was seconded by Mr. Izard.

Mr. Clarke asked whether any military Operation was on foot that the Commander in Chief was to be consulted. This was a national question, which the National Council ought to decide. He was ag<sup>st</sup> furloughing the men because they would carry their arms with them. He said we were at peace, & complained that some could not separate the idea of a Briton from that of cutting throats.

Mr. Ellsworth enlarged on the impropriety of submitting to the Commander in Chief a point on which he could not possess competent materials for deciding. We ought either to discharge the men engaged for the war or to furlough them. He preferred the former.

Mr. Mercer descanted on the insidiousness of G. B., and warmly opposed the idea of laying ourselves at her mercy that we might save fifty thousand dollars; altho' Congress knew they were violating the Treaty as to Negroes.

Mr. Williamson proposed that the Soldiers be furloughed. Mr. Carroll seconded him, that the two modes of furlough & discharge might both lye on the table.

By general consent this took place.

The Report as to confiscated property, on the Instructions from Virg<sup>a</sup> and Penn<sup>a</sup>, was taken up, & agreed to be recommitted, together with a motion of Mr. Madison to provide for the case of Canadian Refugees & for settlement of acc<sup>ts</sup> with the British, and a motion of Mr. Hamilton to insert, in a definitive Treaty, a mutual stipulation not to keep a naval force on the Lakes.

## WEDNESDAY MAY 21. THURSDAY MAY 22.

See the Secret Journal for these two days.

The passage relating to the armed neutrality was generally concurred in for the reasons which it expresses.[1](#)

The disagreements on the questions relating to a Treaty of Commerce with Russia were occasioned chiefly by sympathies, particularly in the Massachusetts Delegation with Mr. Dana; and by an eye in the navigating & Ship building States to the Russian Articles of Iron & Hemp. They were supported by S. Carolina, who calculated on a Russian market for her Rice.

## FRIDAY MAY 23.

The Report from M<sup>r</sup> Hamilton, Ghorham and Peters, in favor of discharging the soldiers enlisted for the war, was supported on the ground that it was called for by Economy and justified by the degree of certainty that the war would not be renewed. Those who voted for furloughing the soldiers wished to avoid expence, and at the same time to be not wholly unprepared for the contingent failure of a definitive treaty of peace. The view of the subject taken by those who were opposed both to discharging and furloughing, were explained in a motion by Mr. Mercer seconded by Mr. Izard to assign as reasons, first that S<sup>r</sup>. Guy Carleton had not given satisfactory reasons for continuing at N. York, second, that he had broken the Articles of the provisional Treaty relative to the negroes, by sending them off.



This motion appeared exceptionable to several, particularly to Mr. Hamilton & rather than it should be entered on the Journal by yeas and nays, it was agreed that the whole subject should lye over.

The Report relative to the Department of For. Affairs being taken up; Mr. Carroll seconded by Mr. Williamson moved that no public Minister should be employed by the U. S. except on extraordinary occasions.

In support of the proposition it was observed that it would not only be economical, but would withhold our distinguished Citizens from the corrupting scenes at foreign Courts, and what was of more consequence would prevent the residence of foreign Ministers in the U. S., whose intrigues & examples might be injurious both to the Gov<sup>t</sup> & the people.

The considerations suggested on the other side were that Diplomatic relations made part of the established policy of Modern Civilized nations, that they tended to prevent hostile collisions by mutual & friendly explanations & that a young Republic ought not to incur the odium of so singular & as it might be thought disrespectful an innovation. The discussion was closed by an Adjournment till Monday.

## MONDAY MAY 26.

The Resolutions on the Journal instructing the Ministers in Europe to remonstrate ag<sup>st</sup>. the carrying off the Negroes; also those for furloughing the troops passed *unanimously*.

TUESDAY 27 MAY × No Congress. WEDNESDAY 28 MAY  
×

## THURSDAY MAY 29.

The report of the Committee concerning Interest on British debts was committed, after some discussion.

## FRIDAY MAY 30.

The debates on the Report recommending to the States a compliance with the 4<sup>th</sup> 5 & 6<sup>th</sup> of the provisional Articles were renewed; the Report being finally committed nem. con. See Secret Journal.

The Report, including the objections to interest on British debts; was also agreed to nem. con.; not very cordially by some who were indifferent to the objects; and by others who doubted the mode of seeking it by a new stipulation.

## MONDAY & TUESDAY JUNE 2 & 3.

See Journal.[1](#)

## WEDNESDAY JUNE 4.

The Report of the Committee for giving to the Army certificates for land was taken up. After some discussion of the subject, some members being for some ag<sup>st</sup>. making the certificates transferable it was agreed that the Report should lie on the table.

For what passed in relation to the Cession of vacant territory by Virg<sup>a</sup>. see the Journal.[1](#)

Whilst Mr. Hamilton's motion relating to Mr. Livingston, Secretary of For. aff<sup>ts</sup> was before the House, Mr. Peters moved, in order to detain Mr. Livingston in office, that it be declared, by the seven States present that the Salary ought to be augmented. To this it was objected 1. that it would be an assumption of power in 7 States to say, what 9 States ought to do. 2. that it might ensnare Mr. Livingston. 3. that it would commit the present, who ought to be open to discussion when 9 States should be on the floor. The motion of Mr. Peters being withdrawn, that of Mr. Hamilton was agreed to.

## THURSDAY JUNE 5.

See Journal.[1](#)

## FRIDAY JUNE 6.

The Report as to the territorial Cession of Virg<sup>a</sup> after some uninteresting debate was adjourned.[2](#)

## MONDAY JUNE 9TH.

Not States enough assembled to form a Congress. Mr. Clarke signified to those present, that the Delegates of N. Jersey being instructed on the subject of the Back lands he should communicate the Report thereon to his Constituents.

## TUESDAY JUNE 10.

The Report on the Cession of Virg<sup>a</sup> was taken up. Mr. Elseworth urged the expediency of deciding immediately on the Cession. Mr. Hamilton joined him, asserting at the same time the right of the U. States. He moved an amendment in favor of private claims. Mr. Clarke was strenuous for the Right of the U. S., and ag<sup>st</sup> waiting longer, (this had reference to the absence of Maryland which had always taken a deep interest in the question.) Mr. Ghorham supported the policy of acceding to the Report. Mr. Fitzsimmons recommended a postponement of the question, observing that he had sent a copy of the Report to the Maryland Delegates. The

President was for a postponement till the sense of N. Jersey be known. The Delaware Delegates expecting instructions were for postponing till Monday next. It was agreed at length that a final vote should not be taken till that day. Mr. M. yielding to the sense of the House, but warning that the opportunity might be lost by the rising of the Legislature of Virg<sup>a</sup>..

Mr. Hamilton & Mr. Peters with permission, moved for a recommitment of the Report, in order to provide for Crown titles within the territory reserved to the State. Mr. Madison objected to the motion, since an amendment might be prepared during the week & proposed on Monday next. This was acquiesced in. It was agreed that the President might informally notify private companies & others as well as the Maryland Delegates of the time at which the Report would be taken into consideration.

The order of the day for appointing a Secretary of Foreign Affairs was called for, & none having been put in nomination, the order was postponed. Mr. Bland then nominated Mr. Arthur Lee. Mr. Ghorham nominated Mr. Jefferson, but being told he would not accept, then named Mr. Tilghman. Mr. Higginson then nominated Mr. Jonathan Trumbull. Mr. Montgomery nominated Mr. George Clymer. It was understood that Gen<sup>l</sup> Schuyler remained in nomination.1

### WEDNESDAY JUNE 11.1

See Journals, secret and public.

### THURSDAY JUNE 12.

The Instruction in the Secret Journal touching the principles &c of the Neutral Confederacy, passed unanimously.

The Resolution as reported by the Committee, being in a *positive* style, and *eight* States only being present, the question occurred whether nine States were not necessary. To avoid the difficulty a negative form was given to the Resolution, by which the preamble became somewhat unsuitable. It was suffered to pass however rather than risk the experiment of further alteration.

### FRIDAY JUNE 13.

The mutinous memorial from the Sergeants was rec<sup>d</sup> & read. It excited much indignation & was sent to the Secretary at War.

### MONDAY JUNE 16.

No Congress.

## TUESDAY JUNE 17.

The day was employed chiefly in considering the Report on the Journal relative to the Department of Finance.<sup>1</sup> Some thought it ought to lie on the files; some that it ought to receive a vote of approbation, and that the Superintendent, should, for the period examined, be acquitted of further responsibility. Mr. Gorham particularly was of that opinion. Finally the Report was entered on the Journal without any Act of Congress thereon, by a unanimous concurrence.

## WEDNESDAY JUNE 18.

Nothing done.<sup>1</sup>

## THURSDAY JUNE 19.

A motion<sup>1</sup> was made by Mr. Williamson seconded by Mr. Bland, to recommend to the States to make it a part of the Confederation, that whenever a *fourteenth* State should be added to the Union, *ten* votes be required in cases now requiring nine. It was committed to Mr. Williamson, Mr. Hamilton & Mr. Madison. The motion had reference to the foreseen creation of the western part of N. Carolina into a separate State.

Information was rec<sup>d</sup> by Congress, from the Executive Council of Pennsylvania, that 80 Soldiers, who would probably be followed by the discharged soldiers of Armand's Legion were on the way from Lancaster to Philadelph<sup>a</sup> in spite of the expostulations of their officers, declaring that they would proceed to the seat of Congress and demand justice, and intimating designs ag<sup>st</sup> the Bank. This information was committed to Mr. Hamilton, Mr. Peters, and Mr. Ellsworth, for the purpose of conferring with the Executive of Pennsylvania and taking such measures as they should find necessary. The Committee after so conferring informed Congress, that it was the opinion of the Executive that the Militia of Philadelph<sup>a</sup> would probably not be willing to take arms before their resentments should be provoked by some actual outrage; that it would hazard the authority of Gov<sup>t</sup> to make the attempt, & that it would be necessary to let the soldiers come into the city, if the officers who had gone out to meet them could not stop them.

At this information Mr. Izard Mr. Mercer & others being much displeased, signified that if the City would not support Congress, it was high time to remove to some other place. Mr. Wilson remarked that no part of the U. States was better disposed towards Congr<sup>s</sup> than Pennsylvania, where the prevailing sentiment was, that Congress had done every thing that depended on them. After some conversation, and directing Gen<sup>l</sup> St. Clair, who had gone out of town, to be sent for, and it appearing that nothing further could be done at present, Congress adjourned. The Sec<sup>y</sup> at War had set out for Virginia yesterday. It was proposed to send for him, but declined as he had probably gone too great a distance, and Gen<sup>l</sup> St. Clair, it was supposed, would answer.

## FRIDAY JUNE 20.

The Soldiers from Lancaster came into the City under the guidance of sergeants. They professed to have no other object than to obtain a settlement of Accounts, which they supposed they had a better chance for at Philadelphia than at Lancaster. (See the Report of the Committee on this subject.)

The Report of the Committee (see the Journal) on the territorial Cession of Virg<sup>a</sup> being taken up, & the amendment on the Journal proposed by Mr. McHenry & Mr. Clarke, being lost,<sup>1</sup> Mr. Bedford proposed that the second condition of the Cession be so altered as to read, “that in order to comply with the said Condition, so far as the same is comprised within the Resolution of Oc<sup>t</sup> the 10, 1780, on that subject, Commissioners as proposed by the Committee, be appointed &c and that instead of “for the purposes mentioned in the said Condition,” be substituted “agreeably to that Resolution.” In support of this alteration, it was urged by Mr. McHenry, Mr. Bedford, & Mr. Clarke that the terms used by Virginia were too comprehensive & indefinite. In favor of the Report of the Committee, it was contended by Mr. Ellsworth that the alteration was unreasonable inasmuch as *Civil* expenses were on the same footing of Equity as Military and that a compromise was the object of the Committee. Sundry members were of opinion that Civil expences were comprised in the Resolution of October the 10. 1780. Mr. Bland & Mr. Mercer acceded to the alteration proposed. Mr. Madison alone dissented, and therefore did not insist on a call for the votes of the States. Mr. McHenry moved but without being seconded “that the Commissioners instead of deciding finally should be authorized to report to Congress only.”

In the course of the debate Mr. Clarke laid before Congress the Remonstrance of New Jersey as entered on the Journal.<sup>2</sup>

As the Report had been postponed at the instance of the President & other Delegates of N. Jersey, in order to obtain this answer from their Constituents, and as the Remonstrance was dated on the 14<sup>th</sup>. of June, and was confessed privately by Mr. —, to have been in possession of the Delegates on Monday last, an unfairness was complained of. They supposed that if it had been laid before Congress sooner the copy which would have been sent by the Virg<sup>a</sup> Delegates might hasten the opening of the Land Office of that State. Mr. Clarke said there were still good prospects, and he did not doubt that the time would yet come when Congress would draw a line limiting the States to the westward & say thus far shall ye go & no further.

Mr. Bedford moved that with respect to the 4<sup>th</sup> & 5<sup>th</sup> Conditions of the Cessions, “it be declared, that Clark & his men, & the Virginia Line, be allowed the same bounty beyond the Ohio as was allowed by the U. S. to the same Ranks.” This motion was seconded by —; Congress adjourned without debating it; there being seven States only present and the spirit of compromise decreasing.

From several circumstances there was reason to believe that R. Island, N. Jersey, Pennsylvania & Delaware, if not Maryland also retained latent views of confining Virginia to the Alleghany Mountains.

Notice was taken by Mr. Madison of the error in the Remonstrance, which recites “that Congress had declared the Cession of Virginia to be a partial one.”

## SATURDAY JUNE 21 1783.

The mutinous soldiers presented themselves, drawn up in the street before the State House, where Congress had assembled. The executive Council of the State sitting under the same roof, was called on for the proper interposition. President Dickinson came in, and explained the difficulty under actual circumstances, of bringing out the militia of the place for the suppression of the mutiny. He thought that without some outrages on persons or property, the militia could not be relied on. Gen<sup>l</sup> St. Clair then in Philad<sup>a</sup>. was sent for, and desired to use his interposition, in order to prevail on the troops to return to the Barracks. His report gave no encouragement.

In this posture of things, it was proposed by Mr. Izard that Cong<sup>s</sup> sh<sup>d</sup> adjourn. It was proposed by Mr. Hamilton, that Gen<sup>l</sup> St. Clair in concert with the Executive Council of the State should take order for terminating the mutiny. Mr. Reed moved that the Gen<sup>l</sup> sh<sup>d</sup> endeavour to withdraw the troops by assuring them of the disposition of Cong<sup>s</sup>. to do them justice. It was finally agreed that Cong<sup>s</sup> sh<sup>d</sup>. remain till the usual hour of adjournment, but without taking any step in relation to the alledged grievances of the Soldiers, or any other business whatever. In the meantime the Soldiers remained in their position, without offering any violence, individuals only occasionally uttering offensive words and wantonly pointed their Muskets to the Widows of the Hall of Congress. No danger from premeditated violence was apprehended, But it was observed that spirituous drink from the tippling houses adjoining began to be liberally served out to the Soldiers, and might lead to hasty excesses. None were committed however, and about 3 O’C., the usual hour Cong. adjourned; the Soldiers, tho in some instances offering a mock obstruction, permitting the members to pass thro their ranks. They soon afterwards retired themselves to the Barracks.

In the Evening Congress re-assembled and passed the resolutions on the Journal, authorizing a Committee to confer anew with the Executive of the State and in case no satisfactory grounds sh<sup>d</sup> appear for expecting prompt and adequate exertions for suppressing the mutiny & supporting the Public authority, authorizing the President, with the advice of the Committee, to summon the members to meet at Trenton or Princeton in New Jersey.

The conference with the Executive produced nothing but a repetition of doubts concerning the disposition of the militia to act unless some actual outrage were offered to persons or property. It was even doubted whether a repetition of the insult to Congress would be a sufficient provocation.

During the deliberations of the Executive, and the suspense of the Committee, Reports from the Barracks were in constant vibration. At one moment the Mutineers were penitent & preparing submissions; the next they were meditating more violent measures.<sup>1</sup> Sometimes the bank was their object; then the seizure of the members of Congress with whom they imagined an indemnity for their offence might be

stipulated. On Tuesday about 2 O'Clock, the efforts of the State authority being despaired of, & the Reports from the Barracks being unfavorable, the Committee advised the President to summon Congress to meet at Princeton which he did verbally as to the members present, leaving behind him a general Proclamation for the Press.

After the departure of Cong<sup>s</sup>, the Mutineers submitted, and most of them accepted furloughs under the Resolution of Congress, on that subject. At the time of submission they betrayed their leaders the chief of whom proved to be a Mr. Carberry a deranged officer, and a Mr. Sullivan a Lieutenant of Horse; both of whom made their escape. Some of the most active of the sergeants also ran off.

END OF VOL. I.

[1] His amendment may be seen on pp. 40, 41.

[1] Rives's *Life and Times of James Madison*, ii., 220.

[1] Department of State, Madison MSS.

[1] It is a fact worth noticing in passing that Edward Livingston, who opposed bitterly the Alien and Sedition Laws and championed the Virginia and Kentucky resolutions in the House of Representatives, wrote Jackson's proclamation against the nullifiers thirty years later, and that the Union party of South Carolina frequently appealed to the Virginia resolutions as offering sound doctrine in their opposition to Calhoun's creed.

[1] Department of State, Madison MSS.

[2] *Ibid.*

[1] At a dinner party in Washington in March, 1829, Henry Clay and his political opponent Samuel Harrison Smith, of the *National Intelligencer*, were analyzing the characters of Jefferson and Madison. "Mr. Clay preferred Madison and pronounced him after Washington our greatest statesman and first political writer. He thought Jefferson had the most genius—Madison the most judgment and common sense—Jefferson a visionary and theorist, often betrayed by his enthusiasm into rash imprudent and impracticable measures—Madison cool, dispassionate safe."—From a private letter of Mrs. Smith's to her son among the family papers of J. Henley Smith, Esq., of Washington.

[1] See the testimony of an eye-witness, James Barbour, in his *Eulogium*, Washington, 1836.

[2] See his will, dated April 15, 1835.

[3] St. George Tucker and Mrs. Madison, August 23, 1836. N. Y. Public Library (Lenox) MSS.



[1] Francis Preston Blair to Mrs. Madison Nov. 26, 1836. N. Y. Public Library (Lenox) MSS.

[2] James Barbour to Mrs. Madison, December 22, 1836. N. Y. Public Library (Lenox) MSS.

[3] *Stats. at Large*, v., 171.

[4] *Ibid.*, 300.

[5] *Ibid.*, ix., 235.

[6] *Ibid.*, 117.

[1] The established minister of the parish, Madison's tutor before he went to Princeton. He lived with the family at Montpelier.—Rives's *Life and Times of James Madison*, vol. i., 10.

[1] Madison's father was, during the earlier part of his son's career, his chief correspondent. He was a planter of substantial estate without being wealthy. Although he is represented as not having received much education the few of his letters which are extant show that he wrote with tolerable correctness. He was County Lieutenant of Orange and wielded an influence in local affairs which was considerable. He inherited Montpelier from his father, Ambrose Madison.

[2] "This gentleman afterwards tarnished all his honors by defection from the American cause."—Rives, i., 18.

[1] Delegate from Maryland to the Continental Congress, 1778-81, and again in 1784-7; Senator from Maryland, 1789-97; Governor of the State from 1797 to his death, Dec. 16, 1798.

[1] From Madison's works. This and the following Bradford letters are not found in the Madison MSS. Bradford was successively Major in the Pennsylvania militia, in command of a company in Col. Hampton's regiment of regular troops, and Deputy Muster Master-General, with rank of Lieutenant-Colonel, during the Revolution; Attorney-General of Pennsylvania in 1780, Judge of the Supreme Court of the State in 1791, and Attorney-General of the United States in 1794.

[1] Nov. 22, 1772, Philip Freneau wrote to Madison from Somerset Co., Md., where he was, as he expressed it, teaching school, sleeping, and writing poetry: "I should have been glad to have heard from you before now; while I was at College I had but a short participation of your agreeable friendship, and the few persons I converse with and yet fewer, whose conversation I delight in, makes me regret the Loss of it."—*Mad. MSS.* It was chiefly through Madison's agency that Freneau was subsequently appointed translating clerk of the State Department, a position which he held while he was editing the *National Gazette* and leading the abuse of Washington. See Ædanus Burke's letter to Madison concerning him in *The American Historical Review* for January, 1898, p. 279.



[2] Brokholst Livingston, afterwards Judge of the Supreme Court of the United States.

[1] This act repeals an act requiring the personal labor of the inhabitants for repairing roads. [Note in MS.]

This draft never reached a maturer stage. The “Act for the more effectually keeping the publick roads and bridges in repair” (November, 1762, *3d George III.*) put the building and repair of roads in the hands of surveyors of public roads, or, where the building was let out, required bonds from the constructors. The act was to run for three years and was renewed, November, 1766 (*7th George III.*), for five years. Having run out it was revived, February, 1772 (*12th George III.*), and renewed for two years.—Hening’s *Statutes at Large*, vii, 577; viii, 192, 542.

[1] “Even at Philadelphia, which had been so long celebrated, for the excellency of its police and government, and the temperate manners of its inhabitants, printed papers were dispersed, warning the pilots on the river Delaware, not to conduct any of these tea ships into their harbour, which were only sent out for the purpose of enslaving and poisoning all the Americans; at the same time, giving them plainly to understand it was expected, that they would apply their knowledge of the river, under the colour of their profession, in such a manner, as would effectually secure their country from so imminent a danger.”—*Annual Register*, xvii., 49.

[1] Hugh Henry Brackenridge, a classmate of Madison’s. In conjunction with Philip Franeau he wrote a poetical dialogue, called “The Rising Glory of America,” which was read at the graduating exercises at Princeton and printed in 1772.

[1] Tucker, in his life of Jefferson, states it as Madison’s opinion, “That the proportion of dissenters in Virginia, at the breaking out of the Revolution, was considerably less than one half of those who professed themselves members of any church.” Rives, i., 55, *n.*

[1] On the dispute between England and America, recommending as a practical solution, a voluntary separation. Rives, i., 35.

[1] The first portion of this letter is devoted to a discussion of his friend Brackenridge’s poem, of which he disapproves. “In short, the theme is not interesting enough, nor the dress sufficiently *à la mode* to attract the notice of the generality.”

[1] From Rives’s *Life of Madison*. Madison was without doubt, Rives says, the author of the address.—Rives, i., 94, 95.

[1] The whole of this paper was transcribed by Madison after his retirement to private life. An exhaustive establishment of George Mason’s authorship of the Declaration of Rights as a whole may be found in Kate Mason Rowland’s *Life of George Mason*. The authorship of the clause concerning religious liberty, which, as the draft shows, was originated by Madison, is in dispute. Edmund Randolph attributed it to Patrick Henry, but Miss Rowland insists that Mason wrote it. See *Life of George Mason*, i., 241 *et seq.*; also Conway’s *Edmund Randolph*, 158. Madison introduced his

amendment in the convention itself, but if he spoke upon it, which is improbable, as he was then mastered by his modesty and youth, there is no record of it. The Plan of Government, from which the Constitution was evolved, was, according to unsupported tradition, written by Meriwether Smith (see Madison's letter to Mason's grandson, 29 December, 1827). In the construction of the Constitution itself Mason's was the master hand, and it is highly probable that he also wrote the Plan. See Miss Rowland's *Life of George Mason*; also for an earlier impression of Madison, Madison to Washington, Oct. 18, 1787, where he incidentally speaks of the Constitution as having been drawn by Mason; and his letter to Judge Woodward, Sept. 11, 1824; also Rives, i., 163 n.

[\*] Quere—its date.

[\*] It was drafted by George Mason.

[\*] On the printed paper here literally copied, is a manuscript variation of this last article making it read "That Religion or the duty we owe our Creator, and the manner of discharging it, being under the direction of reason and conviction only, not of violence or compulsion, all men are equally entitled to the full and free exercise of it, according to the dictates of conscience; and therefore that no man or class of men, ought, on account of religion to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless under colour or religion, the preservation of equal liberty and the existence of the State be manifestly endangered."

This variation is in the handwriting of J. M. and is recollected to have been brought forward by him with a view, more particularly to substitute for the idea expressed by the term "toleration," an absolute and equal right in all to the exercise of religion according to the dictates of conscience. The proposal was moulded into the last article in the Declaration, as finally established, from which the term "toleration" is excluded. [Note in MS.]

[\*] An alteration in the handwriting of J. M. erases "of the House" and inserts after "committee," *appointed for that purpose*; and adds, at the end, after "members," *of the House* making the whole read—Laid before the committee appointed for that purpose, which they have ordered to be printed for the perusal of the members of the House.

From this correction, it appears that what was laid before the Committee was printed by its order not by that of the convention, as was done in the case of the "Declaration of Rights" reported by Mr. Cary, from the appointed committee: nor is there in the Journal any order for printing any plan of Government reported to the Convention, from a committee. [Note in MS.]

[\*] It is not known with certainty from whom this first draught of a Plan of Government proceeded. There is a faint tradition that Meriwether Smith spoke of it as originating with him. What is remembered by J. M. is, that George Mason was the most prominent member in discussing and developing the Constitution in its passage

through the convention. The Preamble is known to have been furnished by Thomas Jefferson. [Note in MS.]

[1] The first paragraph of this letter relates to family affairs, his brother Anthony having ague and a swelling in the arm. “I ventured however to have a pretty large quantity of blood taken from him and had his arm kept moist by the usual Poultices, which has answered every purpose.”

[1] Rev. James Madison, President of William and Mary.

[1] Ambrose Madison, four years younger than James, joined the army at the outbreak of hostilities.

[1] “His father was still the county lieutenant of Orange; but having reached an age when the duties of the office were felt to be burdensome to declining years, he wished to relieve himself of them in favor of a successor, who should be younger and more capable of exertion.”—Rives, i., 191.

[1] The youngest of James Madison’s three brothers.

[1] Rev. James Maury, of Fredericksville, Louisa Co. He was Jefferson’s teacher—“a correct classical scholar, with whom I continued two years.” See *Jefferson’s Writings* (Ford), 1, 3, and n.

[1] A short postscript, partly mutilated, relates to a warrant on “S. Young’s Claim.”

[2] Monday, March 20, 1780, “Mr. James Madison, jun. a delegate from Virginia, attended and produced credentials of his appointment, which were read.”—*Journals of Congress*, iii., 444.

[1] Then Governor of Virginia. The letter is from the Madison papers (1840). It marks the beginning of the correspondence with Jefferson.

[1] From the Madison papers (1840).

[1] From the Madison papers (1840).

[1] From the Madison papers (1840).

[1] From the Madison papers (1840). Pendleton was chosen President of the Virginia Court of Appeals in 1779, and held the office until his death in 1803.

[2] It would appear that shortly before this date Madison was offered an opportunity of representing the United States abroad. His kinsman, Rev. James Madison, wrote to him from Williamsburg, August 3, 1780.

“But is it true that I had like to have lost my valuable Correspondent & Friend. We hear that you have refused an important place in a foreign Embassy.—If so, yr Refusal does you Honour, but at your Time, I think, it wd have been ye highest

Gratification to a Person who wd. have viewed ye Improvement & ye. [torn out] with a philosophical Eye.—And no Doubt all ye Honours America could confer wd. in Time have succeeded.”—Mad. MSS.

[1] From the Madison papers (1840). Jones served in Congress from 1780 to 1783, and was temporarily absent in Virginia during September and October. See *Letters of Joseph Jones*, Department of State, 1889.

[1] “I think you acted very prudently in declining to press on the part of Virginia the Resolutions I left for the consideration of Congress. Had I been present, I should have done the same, as I had no intention when they were offered that Virginia should appear anxious about them.”—Jones to Madison, October 9, 1780, *Letters of Joseph Jones*, 30.

[1] Under date of August 2, 1780, George Mason wrote to Madison, saying that if Congress decided to appoint a consul to Spain he would recommend Richard Harrison for the place.—Mad. MSS.

[2] From the Madison papers (1840).

[1] Jones was a member of the Virginia Legislature as well as of the Continental Congress.

[1] From the Madison papers (1840).

[1] Endorsed: “Report of Comee appd to Draught a letter to the Ministers at the courts of Versailles and Madrid &c.” The whole paper is in Madison’s hand.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] Colonel Theoderick Bland. He and Madison were the only two delegates from Virginia then in attendance on Congress. Their differences on this subject culminated in the following request for instructions:

## His Excellency Thomas Jefferson EsqR. Governor Of Virginia

Philadelphia, December 13th 1780.

Sir,—

The complexion of the intelligence received of late from Spain, with the manner of thinking which begins to prevail in Congress with regard to the claims to the navigation of the Mississippi, makes it our duty to apply to our constituents for their precise, full and ultimate sense on this point. If Spain should make a relinquishment of the navigation of that river on the part of the United States an indispensable condition of an alliance with them, and the State of Virginia should adhere to their former determination to insist on the right of navigation, their delegates ought to be so instructed, not only for their own satisfaction, but that they may the more effectually obviate arguments drawn from a supposition that the change of circumstances, which has taken place since the former instructions were given, may have changed the opinion of Virginia with regard to the object of them. If, on the other side, any such change of opinion should have happened, and it is now the sense of the State that an alliance with Spain ought to be purchased even at the price of such a cession if it can not be obtained on better terms, it is evidently necessary that we should be authorized to concur in it.—It will also be expedient for the Legislature to instruct us in the most explicit terms whether any and what extent of territory on the East side of the Mississippi and within the limits of Virginia, is in any event to be yielded to Spain as the price of an alliance with her.—Lastly, it is our earnest wish to know what steps it is the pleasure of our Constituents we should take, in case we should be instructed in no event to concede the claims of Virginia either to territory or to the navigation of the above-mentioned river, and Congress should without their concurrence agree to such concession.

We have made use of the return of the Honble W. Jones to N. Carolina to transmit this to your Excellency, and request that you will immediately communicate it to the General Assembly.

We have the honor to be, with the most perfect respect and esteem,

YR ExcellYs Most ObT & Humble Servants,

James Madison, JunrTheok Bland

The foregoing is a true copy of a document communicated by Governor Jefferson to the General Assembly, and filed in my office. Wm Mumford, Keeper of the Rolls.—*Mad. MSS.* Richmond, Augt 31st 1819.

[1] From the Madison Papers (1840).

[2] The scheme of a negro bounty was discussed on several occasions in the Virginia legislature, as Jones's letters show. "But my notion is," he says in the letter to which

Madison alludes, “and I think the mode would be more just and equally certain in procuring the men, to throw the militia into divisions as by the last law, and require the divisions to find a negro of a certain value or age, or money equivalent to that value \* \* \* But the negro bounty cannot fail to procure men for the war under either scheme, with the draught as the *dernier resort*.” In reply to this letter of Madison’s, Jones wrote Dec. 8: “The negro scheme is laid aside upon a doubt of its practicability in any reasonable time, and because it was generally considered as unjust, sacrificing the property of a part of the community to the exoneration of the rest. It was reprobated also as inhuman and cruel. How far your idea of raising black regiments, giving them freedom would be politic, in this and the negro States, deserves well to be considered, so long as the States mean to continue any part of that people in their present subjection; as it must be doubtful whether the measure would not ultimately tend to increase the army of the enemy as much or more than our own. For if they once see us disposed to arm the blacks for the field they will follow the example and not disdain to fight us in our own way, and this would bring on the southern States inevitable ruin. At least it would draw off immediately such a number of the best labourers for the culture of the earth as to ruin individuals, distress the State, and perhaps the Continent, when all that can be raised by their assistance is but barely sufficient to keep us jogging along with the great expence of the war. The freedom of these people is a great and desirable object. To have a clear view of it would be happy for Virginia; but whenever it is attempted, it must be, I conceive, by some gradual course, allowing time as they go off for labourers to take their places, or we shall suffer exceedingly under the sudden revolution which perhaps arming them would produce.”—*Letters of Joseph Jones*, 48, 63, 64.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] The free navigation of the Mississippi.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] The father of the proposition to send such a delegate was Patrick Henry. There was a ballot for the delegate and the House evenly divided between the Speaker, Benjamin Harrison, and R. H. Lee. The casting vote being with the Speaker, who could not vote for himself, an embarrassing situation was presented, which Lee relieved by withdrawing from the contest, “so that Harrison stood elected. Braxton says the old fellow was so disgusted with the vote that he believed he would resign the appointment.” Jones to Madison, January 2, 1781, *Letters of Joseph Jones*, 65, 66. The object of the appointment was “to lay before Congress a clear state of the war in this quarter, the resources of this State in men, money, provisions,” etc., and to concert measures “necessary in the present conjuncture of affairs in the South.”—*Journal of House of Delegates*, 35; Rives, i., 269, 270.

[1] From the Madison Papers (1840).

[2] The sufferings in Virginia from the invasion of the enemy called forth the following peculiar proposition from George Mason. It was addressed to the Virginia delegates in Congress

Virginia, Gunston-Hall, April 3d., 1781.

Gentlemen,—

.....

Whoever considers the Importance of the Trade of these States to Great Britain, and her Expectations of great part of it returning into British Channels, upon a peace, may readily conceive that She will be alarmed at any Measures which may affect it hereafter, by imposing such Burdens upon it, as will give a lasting Preference to other Nations. If therefore Congress were to recommend to the Legislatures of the different States immediately to enact Laws, declaring that all private property, which hath been, or shall be plundered or destroyed, by the British Troops, or others acting under the authority of the King of Great Britain, beyond high water mark, from a certain Day, shall be hereafter reimbursed & made good to the individual Sufferers, & their Heirs, by Dutys to be imposed upon all Imports from Great Britain into the respective States, after a peace, and to be continued until full Reparation shall be accordingly made; and for this purpose, directing Valuations, upon oath, to be made of all private property so plundered or destroyed, to be returned, with the names & places of abode of the owners, to some certain public office within each State, & there duly registered, it is more than probable it wou'd produce good effects.—*Mad. MSS.*

[1] From the Madison Papers (1840).

[2] “Whereas it is stipulated and declared in the 13th Article of the Confederation, ‘that every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this Confederation are submitted to them: And that the Articles of this Confederation shall be inviolably observed by every State;’ by which Article a general and implied power is vested in the United States in Congress assembled, to enforce and carry into effect all the Articles of the said Confederation against any of the States which shall refuse or neglect to abide by such their determinations, or shall otherwise violate any of the articles; but no determinate and particular provision is made for that purpose. And whereas the want of such provision may be a pretext to call into question the legality of such measures as may be necessary for preserving the authority of the Confederation, and for doing justice to the States which shall duly fulfil their federal engagements; and it is, moreover, most consonant to the spirit of a free Constitution, that, on the one hand, all exercise of power should be explicitly and precisely warranted, and, on the other, that the penal consequences of a violation of duty should be clearly promulged and understood: And whereas it is further declared by the said 13th Article of the Confederation, that no addition shall be made to the articles thereof, unless the same shall be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of



every State: The United States in Congress assembled, having seriously and maturely deliberated on these considerations, and being desirous as far as possible to cement and invigorate the Federal Union, that it may be both established on the most immutable basis, and be the more effectual for securing the immediate object of it, do hereby agree and recommend to the Legislatures of every State, to confirm and to authorize their Delegates in Congress to subscribe the following clause as an additional article to the thirteen Articles of Confederation and perpetual union:

It is understood and hereby declared, that in case any one or more of the confederated States shall refuse or neglect to abide by the determinations of the United States in Congress assembled, and to observe all the Articles of Confederation as required by the 13th Article, the said United States in Congress assembled, are fully authorized to employ the force of the United States, as well by sea as by land, to compel such State or States to fulfil their federal engagements; and particularly to make distraint on any of the effects, vessels, and merchandizes of such State or States, or of any of the citizens thereof, wherever found, and to prohibit and prevent their trade and intercourse as well with any other of the United States and the citizens thereof, as with any foreign State, and as well by land as by sea, until full compensation or compliance be obtained with respect to all requisitions made by the United States in Congress assembled, in pursuance of the Articles of Confederation.

And it is understood, and is hereby agreed, that this article shall be binding on all States not actually in possession of the enemy, as soon as the same shall be acceded to and duly ratified by each of the said States.”

[1] From Madison's Works.

[1] From the Madison Papers (1840).

[1] Also a delegate from Maryland.

[1] From the Madison Papers (1840).

[1] From Madison's Works.

[2] Mazzei was an Italian who had come to Virginia to introduce the planting of olives and grapes. He was an ardent revolutionist at this time and held a commission from Virginia to purchase supplies for the army. He had a scheme for borrowing money in Italy, but insisted that the purchases should be made where it might be borrowed. Before leaving America he wrote to Madison from Hob's Hole, Va., June 13, 1779:

“I have put my papers with a 4 pound ball in a bag to be thrown overboard, if prudence should require it. . . . However well disposed the Gran-Duke, or the Genose, might be to lend us money, I am confident that as soon as they know that part of it is to be drawn in favour of another part of Europe to pay for things, which could have been bought in this country, they would withdraw highly, & in my opinion justly, disgusted. . . . The late Governor, Mr. Page, & you agreed in January last, that, in



good feeling as well as gratitude, as much money as it was necessary to employ in goods, was to be layed out in the Country of the Lender, or Lenders.”—mad. mss.

[\*] They have lately taken West Florida with a garrison of 1,500 troops. [Note probably in MS.]

[1] The first two paragraphs relate to the purchases of family supplies and the sending of newspapers containing the latest news.

[1] In a postscript he corrects this statement, saying he sends six grammars and the price is 42/. Pennsylvania equal to about 33/6 Virginia currency.

[2] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] The Legislature of Virginia instructed her delegates November 5, 1779, to use their utmost endeavors to maintain the freedom of the Mississippi. On January 2, 1781, these instructions were modified, the navigation to be claimed only co-extensively with our territory and “every further or other demand of the said navigation be ceded, if insisting on the same is deemed an impediment to a treaty with Spain.”—Rives, i., 247, 248.

[2] John Jay, Minister to Spain.

[1] From the Madison Papers (1840.)

[1] From the Madison Papers (1840).

[1] From the Madison papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[2] June 5, 1781, the Virginia Assembly ordered an investigation of Jefferson’s administration as Governor. It resulted in a favorable report. He was appointed a Peace Commissioner by Congress June 14 and declined June 30.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840)

[1] From the Madison Papers (1840).

[1] J. Ambler, Treasurer of Virginia, wrote to Madison, May 11, 1782. “I sincerely wish our Treasury would enable us to make you a remittance. We have not had ten pounds Specie in it since my coming into office, and it is much to be feared there will not any come in for a long time. . . . Want of commerce prevents a due circulation of

what Money is in the State so that tho' the Army of our Allies spend some with us, it remains in few hands.—The officers of Civil Government have not been paid for the last ten months.” August 24th, he writes that accounts should be rendered for the number of days of service as a delegate at \$8.00 a day. Madison was charged with £2000, paid in December, 1779, before he left Virginia. From that date up to November, 1782, £500 was paid him. March 22, 1783, Ambler announced that £865, 8s, 3d was still due him.—Mad. MSS.

[1] From the Madison Papers (1840).

[2] Mr. P. Lee Phillips, Superintendent of the Map Department of the Library of Congress, identifies this as the map of Virginia Farrer, published in London in 1650 or 1651. It is described as a curious combination of fact and fiction and an evidence of ignorance in England of the geographical position of Virginia with reference to “the Sea of China and the Indies,” which are placed west of “ould Virginia and new.” The Potomac River at its mouth is called “Maryland River,” and the Carolinas appear as “Rawliana.” Virginia Farrer also wrote a paper on “The Reformed Virginia Silk Worm.” See Phillips’s *Virginia Cartography, Smithsonian Miscellaneous Collections*, 1039.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] Jefferson had just been elected to the Legislature.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[2] He had temporarily retired from public life.

[1] The letter appeared in the *Pennsylvania Packet* for June 11, 1782, as an “Extract of a letter, written from Philadelphia by a gentleman in office, to one of the principal officers of the State of New Jersey.” Marbois’ authorship was carefully concealed, the letter purporting to come from an American. It confirmed the reported victory of Sir G. Rodney over the French in the West Indies, but declared it to be a barren one, and that it had “afforded us an occasion of displaying a national character, a good faith, a constancy and firmness worthy of a people who are free, and determined to perish sooner than cease to be so,” as the resolutions to reject offers of a separate peace passed in Maryland, Pennsylvania, Virginia, and New Jersey showed. The article is printed in full in the Madison Papers, vol. iii., xxxvi.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] “8th [July]. Last part recommitted.” These words in Charles Thomson’s hand.

[2] From the Madison papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[1] From the Madison papers (1840).

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[1] November 5, 1782, Madison wrote to Edmund Randolph (*italics stand for cypher*).

“My last informed you that a proposition had been made in Congress for accepting the territorial cession of N. York. The paper enclosed contains the proceedings which ensued. The acceptance of this cession *singly* met with a negative from Virginia for obvious reasons. In the first place such a measure, instead of terminating all controversy as to the western country, the object proposed by the original plan, introduces new perplexities. And in the 2d place, an assent from us might be hereafter pleaded as a voluntary acceptance of the U. States in the room of N. York, as litigants against Virginia.

“On the subsequent motion you will find Virgn divided. The proviso expressed in this motion if referred to the territory retained by N. York appeared to me to be at least nugatory, or rather to imply that a Resolution of Congress might operate towards depriving another State of the benefits of the Confederation; and if referred to the territory ceded by N. Y. to imply that the 9th art: was the constitutional rule of deciding controversies as well where the U. S. as where a particular state were the party. All that Congress could, as I supposed, have properly done, would have been to guard against any bias on future decisions by declaring that their acceptance of the cession of N. Y. was not to be considered as expressing any opinion as to the rightful claims or limits of that State. But I did not feel myself at liberty to substitute such a proposition because it militated against the guaranty required by Virga. and would have prejudged that condition of her cession.

“The success of *the Middle States* in obtaining the cession of N. Y. has given great encouragement; and they are pursuing steadily the means of availing themselves of the other titles. That of Connecticut is proposed for the next object. Virginia will be postponed for the last. By *enlisting the two preceding into their party they hope to render their measures more effectual with respect to the last.*

“Besides the effect which may be expected from this *coalition with New York* on territorial questions in Congress it will I surmise prove very *unfriendly to the pretensions of Vermont*. Duane seems not unapprized of the advantage which *New York has gained*, and is already taking measures for a speedy vote on that question. Upon the whole *New York has* by a fortunate coincidence of circumstances, or by skilful management or by both succeeded in a very important object by ceding a claim which was tenable neither by force nor by right; she has acquired with Congress the merit of liberality rendered the title to her reservation more respectable and at least damp the zeal with which Vermont has been abetted. If you should be surprized that these considerations did not dissuade Connecticut from an unqualified acceptance of the cession of New York you will only be affected as others were at the time. The truth is they were surprized at it themselves after it was too late and would gladly have revoked their error.

“You were also informed in my last of the situation in wch. the affair of Lippencot remained. In the midst of our *perplexities* a letter arrived from Genl Washington enclosing an intercession from the Count de Vergennes in favour of the life of young Asgill, founded on a most pathetic and importunate memorial from his mother. The Ct writes to Genl. Washington, as he says not in the quality of a public minister, but of a man who feels the force of Mrs. Asgills supplications. He backs his intercession however, with the desire of the King & Queen who were much affected with the memorial, observes that, altho’ Asgill is no doubt a prisoner to the U. States, yet as he became such by an event to which the arms of his Majesty contributed, the interest he takes in behalf of this officer, is the more admissible, & signifies that if the British commander should not in this instance fully comply with the demands of Justice there is reason to believe that future instances of barbarity will be presented.

“The judgment *formed of this intercession by different members is very different. All agree that retaliation cannot be executed in the face of it, but some are of opinion that it luckily affords and ought to be made the ground of retreat from that measure; whilst others suppose that our honour will be more wounded by such a public exposition both of our obsequiousness to France and of her disapprobation of our views than by a retreat of ourselves on the ground of Carleton’s promise of continued pursuit of the murderer. Some fear also that an omission in our act of the wish expressed by the King & Queen of France may give umbrage. Others again infer from the circumstance of the letter from the count being addressed to Genl. Washington not to Congress and in his private not official quality that a public notice of it can not be expected and that a private explanation by the secretary of foreign affairs to the minister of France will be as much as will be proper.*

“The *minister also received an instruction to interest himself in the affair and had even prepared a memorial to Congress relative to it. Having discovered however the diversity of sentiments prevailing in Congress and being apprehensive that his interposition might render the case more perplexing and possibly be not treated with due notice in the final act of Congress he has very prudently desisted from his purpose.*

“Until Congress shall have come to some decision with respect to the notice to be taken of *the intercession above mentioned* I would not wish it to be *generally* spoken of from this letter.

\* \* \* \* \*

“A letter from Carmichael dated 8 July, says that the Resolutions of Congress & the States against separate negotiations with the new British Ministry were exceedingly applauded at the Spanish court; and that he had discovered that the Imperial & Russian Ministers had renewed an offer of the mediation of their Courts to Spain. The silence of our other ministers in letters of later date renders the latter article very doubtful.

“A letter of the 5th. of Sept. from Mr. Laurens at Nantz repeats his purpose to return to America; adding that the risk of capture & and the advice of his friends had led him

to apply to the Court of London for a passport via Falmouth & N. York to Philada. that Ld. Cornwallis had interested himself in his case, and that the passport was to be transmitted to him. It was uncertain whether he was to embark this fall, or wait till the Spring. *Unless the embarkation from a British port was more [necessary] than I am aware, a direct passport from France would in my view have been more eligible.*

“The army we are informed by a letter from Genl. Washington of the 30th. ult. are going into their winter cantonments. Part of the British fleet, consisting of 14 ships of the line, 1 of 40 guns, 7 frigates & 14 transports sailed from N. York on the 26th. supposed to be bound to the W. Indies, and to have no troops on board. Two vessels were dispatched it is said for Charlestown immediately after the arrival of the last packet, for the purpose of countermanding the evacuation.

“Mr. Jones has recovered rapidly within a few days past & has once more got about.

“Your favor of the 26th. past was duly received yesterday. I am anxious for the new Cypher which it promises as well for my use as yours; and for the same reasons. I conclude from your silence as to my late communications in L—ls Cypher that the key I sent you some time ago answered its purpose.”—*Mad. MSS.*

The affair of Asgill alluded to above was this:

Captain Huddy, commanding a body of troops in Monmouth County, N. J., was captured by a band of refugees and hung in New York by Captain Lippencot, of the British army. In retaliation, Captain, afterwards Sir Charles, Asgill, a prisoner in Washington’s hands, was chosen by lot to suffer the same fate.

[1] “Resolved, That Congress will not go into any partial exchange of prisoners of war in future, but will take the most effectual measures in their power, for the safe keeping of all prisoners of war, until a general cartel on liberal and national principles be agreed to and established.”—*Journals of Congress*, iv., 90.

[1] “We have recd no intelligence from Europe since my last. I have inclosed to the Govr a copy of a late letter from Carlton, which breathes a much less conciliatory spirit than his preceding correspondence. No steps have been taken by Congress as to the cessions since the acceptance of that of N. York. Asgill is directed to be set at liberty, without any special reason being assigned for it, and G1 Washington instructed to call upon G1 Carlton to fulfil his promise to pursue the guilty. If the interval between this & the post produces any thing, you shall then have it.”—*Madison to Edmund Randolph*, Nov. 10, 1782. *Mad. MSS.*

[1] Madison sent the resolution to Edmund Randolph November 12th:

“Resolved

“That the appointment of T. Jefferson Esqr as a Minist: for nego: peace made on the day be & the same is hereby renewed: & that on his acceptance thereof he be invested with all the powers & subject to all the instructions which have been or may be issued

by Congress to the Min's [torn] for nego: peace, in the same manner as if his original appt had taken-effect.

“This Resolution passed a few minutes ago I sent you a line for the post but I fear too late. This catches Docr Tucker in the street proceeding by the State House. You will let it be known to Mr J. as quickly as secrecy will admit. An official notification will follow by the first oppy. This will prepare him for it: It passed unan: & with a single remark adverse to it. On this subjt again by the post next week or by Col: B. if earlier

Adieu”

November 14th, he wrote again:

“By a line dropped from the post, tho' perhaps too late to get into the mail, and by another by Dr Tucker who soon followed, I informed you of the reappointment of Mr. Jefferson, that the act passed unanimously & without even an unfavorable remark. Col. Bland by whom this goes, conveys an official notification from Mr Livingston under cover to Col. Monroe. As you will probably in consequence of it, if not before have an interview with Mr. [J.], no observations on the subject are necessary. I confide in his acceptance and flatter myself with the pleasure of soon seeing him in Philada.

“I inclose you the late papers which are very barren, but contain everything which falls under the head of news.”

*Mad. MSS.*

[1] Madison set forth the delinquency of Virginia in complying with the requisitions of Congress in the following letter to Edmund Randolph, dated November 26th (cypher represented by italics):

“The Governor in his letter to the Delegates of the 8th. of the prest month, after observing that the great scarcity of cash in Virga will put it out of her power to comply with the demands of Congress, unless the Financier will accept Tobo. in payment, desires us to sound the latter on that subject. We accordingly called on Mr Morris, and to our astonishment were told that a proposition to this very effect, and to the amount of *sixty thousand dollars* had been a considerable time *lying before* him that his agent had been instructed to *allow the current price* and that he wished to have obtained *the tobacco* because it could be immediately sent under a *fortunate convoy to Holland* where its influence on *public credit* might be critical and important. Either therefore Mr M. must have been basely *deceived by his agent* which can *hardly be supposed* or *the Governor must in the first case* have rejected a fair offer and in the next imposed on us a very nugatory and awkward negotiation as we concealed from the Superintendt that our enquiries with *the Govt* he escaped the risk to which he had *exposed his* character with *that Minister* [sic] I cannot pass over this circumstance without a lamentation on the *obloquy which Virginia* brings on herself by submitting to be *eclipsed by even the feeble efforts of other states*. The monthly *lash of the Receiver's* proclamation, which has *roused so many other states* into some



*degree of emulation* has produced *no effect on her*. In our conversation with Mr M. we were indeed told that Mr *Webb* had a prospect of *between two and three thousand dollars*. But if any thing can add to the mortification which *we feel at the receipt of nothing* it will be *the receipt of so beggarly a sum*. I confide therefore that there is at least *enough of pride in the state to prevent it*.

.....

“The obstinacy of Rhode Island in rejecting the Impost is a subject of very general *pointed crimination* not only among *the public creditors and their friends* who deem it equivalent to *denial of justice*, but among the most *enlightened patrons of the fœdral interests* who pronounce it a *blow to our credit abroad*, as well as *our future credit at home*. And in truth who can combine this consideration with the paltry *payments on the last requisition of Congress and not shudder at the prospect*. This obstinacy on the part of R I. is supposed, on good grounds, to be much *cherished by the limited manner in which other states have acceded to the impost* from which she infers a latent repugnance to the measure. Would it not then be prudent *in Virga. to revise and enlarge her act of compliance?* If *her example* should prove *less efficacious* than might be wished it would at least *have a conciliatory effect on other states and gain her general credit*. I see no possible objection, unless indeed she wishes the *plan to be frustrated*; in which case I can only give it as my firm opinion that a thorough knowledge of public affairs would speedily reconcile her to it. If your own ideas correspond with those here expressed, and the temper of the Legislature be not unfavorable, you will give such suggestions as may be best adapted to the object, and make them the subject of a future paragraph.”—*Mad. MSS.*

[1] This act recited the depreciation of the bills of credit to at least below their nominal value and the necessity of decreasing the quantity of paper in circulation. It was resolved that the States should pay their quotas at the rate of one Spanish milled dollar for forty dollars of the bills, that the bills as paid in be destroyed, that as fast as funds should be provided other bills should be issued not to exceed one-twentieth part of the nominal sum of bills destroyed, that the new bills bear interest at five per cent. per annum and be redeemed within six years in specie, that the new bills be issued to the States in proportion according to their monthly quotas.—*Journals of Congress*, iii., 443.

[1] “Its reasonableness and its *fate both* will depend much on the scale by which as well the *redeemed as the outstanding bills is to be valued*. In all questions relative to this subject, the defect of information under which we lie makes it difficult for us to deduce the general interest from a just & fair comparison of particular interests. To supply in some degree this defect with regard to Virginia I shall enclose to Mr Ambler for his answers, a number of queries, of which I herein add a copy for you. Some of the queries indeed have a greater reference to other subjects. If you can assist Mr. A. or can enlarge the plan by other queries I beg you to do it. If the sense of the *leading members of the Assembly can be conveniently gathered it might also be of use*. A *public consultation* would *violate the secrecy* which is judged necessary to *prevent a revival of speculation* and which *led me to the use of the cypher* on this occasion.”—*Madison to Edmund Randolph*, Dec. 3, 1782. (Italics for cypher.)



“Queries put to [Jaquelin] Ambler [Treasurer of Virginia].

“1. What is the amount of the old Contl bills actually sunk by Virga in pursuance of the Act of 18th of March?

“2. What is the probable sum remaining in the hands of Individuals in Virga.?

“3. Does it circulate and at what value?

“4. How stands the law with respect to it & what is the prospect of its further redemption?

“5. How much of the ths of the new Contl emissions has been issued?

“6. How much of the sum issued has been redeemed?

“7. At what value was it generally issued?

“8. At what value does the outstanding sum (if any) circulate?

“9. Have the state emissions been all funded at 1 for 1000 under the act for that purpose and what is the sum of the specie certificates issued thereupon?

“10. At what rate are these certificates negotiated?

“11. What is the conjectured amount of certificates in Virga issued by continental officers? and at what rate are they negotiated?

“12. What is the conjectured amount of certificates issued by the state for continental purposes? and at what rate negotiated?

“13. What is the amount of debits in the auditor’s office agst. the U. S. for advances made by Virginia independent of the Requisitions of Congress?

“14. What is the amount of credits independent of the same?

“15. In what degree and at what times is there a prospect of payments under the Requisition of 8 million for the current year?

“16. What appears from the returns to be the aggregate valuation of lands made under the act of Jany. 1, 1782 directing the same?

“17. Is the valuation deemed pretty true on the whole and pretty equal among individuals?

“18. What is the computed number of white inhabitants?

“19. What of Black do?

“20. What is the amount of the losses from the enemy returned under the act of June 6, last.”

Answers to all the questions are not found. He replied to Question 9. “A small sum only has been funded, the greater part being laid out in the purchase of back lands—The time continued for bringing in the same til first June next.” To Question 10: “No demand for such—the day of redemption being too distant.” To Question 11: “About £100,000.—has been issued *to* Conl. officers in Certificates, and others daily issuing—negotiated from 2. to 4. for 1.—Those issued *by* them cannot be ascertained.” To Questions 12, 13, and 14: “The Auditors of public accounts can only answer these, who are much engaged at present.—The debits are supposed to be very large.” To Question 15: “No probability soon—Taxes for the Current year are not payable till first May—& those chiefly commutable for; as you will observe by the Gazette of the 1st Feby.” To Question 16: “£6,042,401.2.5—N. B. Eight Counties have made no returns.” To Question 17: “Very unequal, especially among Individuals—a law passed last Session for equalizing the land Tax, is intended to remedy the evil complained of.” To Question 18: “Many of the Returns did not distinguish between the whites & blacks, so that this cannot be at present answered.” To Question 19: “About 230,000.” To Question 20: “Returns not fully made.”—*Mad. MSS.*

[1] Dec. 3, Madison wrote to Randolph (*italics for cypher*): “I leave it to yourself to decide how far it may be worth while to *feel the pulse* of our friend McClurg with respect to the *vacancy in question*.”—*Mad. MSS.*

[2] Livingston consented to remain until the following May and did in fact serve until June 4. The office of Secretary for Foreign Affairs was practically vacant from Livingston’s departure until Jay entered upon the duties of the office September 21, 1784. Livingston, however, expressed a willingness to return and temporarily resume the office in order to affix his signature to a final treaty of peace. He wrote to Madison from Clermont, his seat on the Hudson River, July 19, 1783: “I believe I mentioned to you before I left Philadelphia that if Congress should make no appointment of a secretary before the arrival of the treaty it would give me great pleasure to be permitted to sign it in that character & thus conclude my political career. . . . As the grand treaty which sets the seal to our independance should not want the usual forms, & as several little matters may be necessary in consequence thereof, perhaps they may be induced to recite that their removal & their want of a full representation having prevented their supplying the place of the late Secretary for foreign affairs that it would be agreeable to them that he resume the direction of the department *till the ratification of the definitive treaty*.”—*Mad. MSS.*

[1] May 22, 1799, it was resolved that no state should be divested of any land over which it held jurisdiction before the separation from Great Britain, and that no part of the states should be permitted to separate and become independent without the consent of the states concerned, and that the inhabitants of the pretended state of Vermont be recommended to return peaceably to their former jurisdiction, those who

had separated from New York to New York and those who had separated from New Hampshire to New Hampshire.—*Journals of Congress*, iii., 285, 286.

[1] “Resolved, That the agent of marine be informed, that Congress having a high sense of the merit and services of Capt. J. P. Jones, and being disposed to favour the zeal manifested by him to acquire improvement in the line of his profession, do grant the permission which he requests: and that the said agent be instructed to recommend him accordingly to the countenance of his excellency the Marquis de Vaudreuil.” The committee making the report was composed of Osgood, Madison and Hamilton.—*Journals of Congress* iv., 111.

[1] Madison wrote to Edmund Randolph, Dec. 10, 1782. (Italics for cypher.)

“The Assembly of Penna have with much difficulty been prevailed on to desist from a plan in which a part of the Requisition of Congress allotted for other uses was to be appropriated to their Citizen Creditors of the U. S. The consequences apprehended by Congress from such an example, and the probability that the plan will be renewed at the next meeting unless some intermediate provision be made for the Credit of the U. S., have produced two Resolutions, 1st an instruction to the Superintendent of Finance to represent to the States the pernicious tendency of such unconstitutional appropriation; 2dly, a deputation of Mr. Osgood, Mr. Mifflin & Mr. Nash, to enforce on Rhode I. the impost of 5 Per Ct. The latter Resolution besides its tendency to the immediate end proposed by the first, was called for [by] *the general pressure of our necessities*. Our official letter incloses these Resolutions to the Executive, and hazards some *very free and alarming* remarks for *the legislature*, directly pointing to *a fuller compliance with the impost*. I have added a private letter to the Governor which is still more explicit & pointed on the subject. In the present situation of our Affairs, we did not think less would justify us to ourselves or to our constituents.

“Mr. Harrison at Cadiz has advised the Secy of Foreign Affairs that the British fleet under Admiral Howe had effected the relief of Gibraltar, by destroying the combined fleets from their station, & throwing in Succours, before the weather would allow the latter to regain it. He says the British fleet on the return was pursued by the Combined fleet. The Vessel by which the letter came reports that she passed through the Combined fleet after she left Cadiz, and that two Spanish Ships had been lost, one fallen into the hands of the Enemy & the other chased on shore by them. Mr Harrison adds as a more welcome Article that a detachment of Frigates &c. which had been sent from Cape Francois for the demolition of the British Fortress on Hudson’s Bay had arrived in Europe with a report of complete success, having destroyed & taken effects to the value of half a Million Sterlg.

“The Secy of F. A. has resigned his office in form, but will continue to act for the present month to prevent an interregnum in the Department. The 19th instant is fixed for the choice of a Successor. None has yet been put in nomination.

“By Mr. Jefferson’s letter to the Office of F. A. and a private one to myself, he may be expected here about the end of this month. It is improper therefore to address anything to him.

“The Grand Committee have had another meeting on the subject mentioned in a late letter. The Scheme of Mr. Fitz[simo]ns was adopted with the *rates of depreciation left blank*. The ideas on this point varied from *forty to one hundred and upwards for one*.”—*Mad. MSS.*

[1] Henry Marchant.

[1] Carroll seconded the motion: “Whereas there is reason to suspect, that as well the national character of the United States and the honor of Congress, as the finances of the said states may be injured, and the public service greatly retarded, by some publications that have been made concerning the foreign affairs of said states:

“Resolved, that a committee be appointed to enquire into this subject, and report what steps they conceive are necessary to be taken thereon.”—*Journals of Congress* iv., 114.

[1] It directed the superintendent of finance to represent to the several State legislatures the necessity of complying with the requisitions of Congress for \$1,200,000 for a year’s interest on the domestic debt, and \$2,000,000 estimated as the expenses for the ensuing year, and the injuries to the public service likely to arise from the States individually making appropriations of any part of the \$2,000,000 or other monies required by Congress; also that a deputation be sent to Rhode Island to represent the condition of affairs and induce that State to comply with the national demands.—*Journals of Congress*, iv., 115.

[1] The letter gave Barclay careful instructions for settling the accounts of de Beaumarchais and other debts in Europe.—*Secret Journals of Congress, For. Affs.* 255, *et. seq.*

[1] The committee were Madison, Hamilton, and Fitzsimmons. It is probable that Madison was the author since he included the letter in his address to the States of April 25. The letter combated the statement of Rhode Island that the proposed duty would bear hardest on the commercial states. It was, it said, an established general principle, “ ‘That every duty on imports is incorporated with the price of the commodity, and ultimately paid by the consumer, with a profit on the duty itself, as a compensation to the merchant for the advance of his money.’ ” As a consumer the merchant paid his share of the duty. It thus bore upon all classes in just proportion, and promoted frugality by taxing extravagance. That the collection of the impost would introduce into the states officers unaccountable to them was an idle objection, since it would apply equally to postmasters, and if acceded to would militate against the appointment of any federal internal officers. No government could exist under these circumstances. The proposed measure was one of necessity. The revenue was insufficient and could no longer be supplied by loans. The measure was within the spirit of the confederation. Congress was vested with the power to borrow money, and by implication with power to concert the nucleus necessary to accomplish that end. The measure proposed they had decided upon after the most solemn deliberation.—*Cont. Cong.*

[1] Howell's protest was:—That Congress had no power to call any member to account for information conveyed to his constituents, “the secrets only of Congress excepted,” and especially not to call to account a member of the late Congress; that the appointment of a committee to examine into the matter of a publication in the public press was undignified and “a precedent dangerous to the freedom of the press”; that the report of the committee demanding the delivery up by the Executive of Rhode Island of the writer of the publication was an infraction of the fifth article of the confederation, which allowed freedom of speech and debate in Congress, and as a consequence free communication of such speeches and debates to the constituents; that the facts stated concerning the foreign loans were substantially true [that they had been successful and there was danger of incurring too large a debt], that he was not alone in his opinions; that it was unfair to report on a single paragraph of his letter and had a tendency to establish a despotism over the minority by deterring the members of it from writing freely to their constituents; that he was well known as an opponent of the five per cent. impost, and his constituents expected him to oppose it, the lower assembly of his state having unanimously rejected it; that he was accountable to his constituents and was their servant, and not the servant of Congress.—*Journals of Congress* iv., 121.

[1] See note, p. 74.

[1] The following letter is from Madison to Edmund Randolph, December 17, (cypher being represented by italics)

“Since the appointment of the deputation to Rho: Island Congress have recd a copy of the refusal of the Legislature of that State to concur in the impost, with the reasons on which the refusal is grounded. The reasons assigned are 1st the inequality of the tax which will bear hardest on the commercial States, and peculiarly hard on Rho: Island which is the most commercial; 2dly the inexpediency of admitting to a collection within the State of so large a tax an officer unknown to the Constitution, and unaccountable to the authority of the State. 3dly the danger to public liberty from such an accession of weight to the federal Government. I give this recital from memory and therefore only of the substance of the objections. They are in the hands of a Committee, who will report such observations as they may deem a fit answer to them. The deputation has not yet set out, but probably will in the course of this week.

“Vermont has been again on the tapis. Its only advocates were the Delegates of Rho: Island who are charged with interested views in the case, and those of N. Jersey who are fettered by instructions from their constituents. I understand that a Mr. Tichner one of the Agents formerly here is arrived from Vermont probably in consequence of a signal given of the revolution wch is taking place in the federal Councils with respect to them. A little time will display his errand.

“General Greene has referred to Congress a case which admonishes them of the necessity of a code for captures & recaptures on land as well as on water. A detachment of the Continental forces having retaken a number of Horses which had been taken by the enemy from the Citizens of S. Carolina; the Executive Authority of the State demanded a restitution, on the general principle that the Original owners

were entitled to all recaptured property. This demand was laid before a Council of Officers which decided against its validity. “The General has submitted the case to Congress for their final judgment. It appears from a review of the proceedings of Congress, that a very defective provision only has been made for captures, and no provision at all for recaptures, on land. The opinion of the Council of war is conformable to the practice of the Army in like cases, and to the rules observed by other nations. The demand of restitution in favor of the original proprietors is warranted by the principles of equity and the spirit of the Ordinance relating to Captures on Water. All that Congress can do in the case will be to remit to the Original owners the prize which has been adjudged to the U. S. But some general provision for future cases will be necessary in which it will be not easy to define the species of property of which restitution may be claimed. To extend the rule to every species of property would open a door to innumerable disputes and abuses. I observed on this occasion what had escaped me before, that if Congress should establish a Court for Captures on land, such cases can come before it on *appeal*.

*“Letters from Franklin and Jay dated late in [September] shew that a commission has been issued to Oswald to treat with Commissioners of the Thirteen U. States, by which some 275 [key not discovered] obstacles were surmounted; and that Spain meditates an immoderate defalcation of our Western territory. All this intelligence however has come to us in obscure fragments. I commit it to you as to a member of Congress on whom secrecy is enjoined and in this cypher as certainly unknown to all but official persons.*

“The inclosed Gazette will inform you of the good fortune of Captain Barry of the Alliance frigate. It appears from various letters from Europe that the Jamaica fleet has suffered severely from privateers & the storm.

“The Court at Trenton will finish their business this week it is said. The Pennsylvanians allege that the cause is going hollow in their favor.

“I have no letter from you by this post which I impute to your visit to Williamsbg.”—*Mad. MSS.*

[\[1\]](#)

“Philada December 24th. 1782.

“My Dear Sir,—

Since my last the Danae a French frigate has arrived from France with money for the French army and public despatches. A snow storm drove her on shore in this Bay where she was in danger of following the fate of one of the last Frigates from France. The accident as it turned out only cost her all her masts. The despatches for Congress are from Mr. Franklin, Mr. Jay, & the Marquis de la Fayette, and come down to the 14th of Octr. They advise that the 1st Commission issued to Mr. Oswald empowered him to treat with certain colonies &c., which being objected, another issued explicitly empowering him to Treat with commisrs from *the thirteen United States*. The latter,

of which a copy was inclosed, and which will be transmitted to the Executives, is grounded on the Act of Parliament, but is to continue in force no longer than July 1783. It is no doubt on the whole a source of very soothing expectations, but if we view on one side the instability & insidiousness of the British Cabinet, and, on the other the complication of interest and pretensions among the Allies, prudence calls upon us to temper our expectations with much distrust.

“Mr. Adams concluded his Treaty of Amity & Commerce on the 7th of Octr, and had in hand 1? million of florins out of the 5 million for which subscriptions had been opened. As this however was the sum *subscribed* in June last, it is no certain evidence of any other progress than that of the *payments*.

“There are accounts but neither official nor certain that Madras had been taken by the combined arms of France & Hyder Ally. ? of Constantinople had been, reduced to ashes by incendiaries, inspired with the desperate purpose by the public distresses and a blind revenge agst the Vizier who was regarded as the cause of them. The havoc suffered by the French & Spaniards in the attempt to storm Gibraltar before its relief appears to have been dreadful indeed. The loss on the English side which amounted to about 500 is a proof that the effort was a bloody one.

“Mr. Livingston has been prevailed on to hold his office for this winter. The election of a successor was within a moment of being made when the practicability of retaining his services was discovered. The gentlemen in nomination were *Genl. Schuyler* & *Mr. Clymer*. *Mr. Read* had been nominated but withdrawn.

“The deputation for Rhode Island is still here. A report that Maryland is receding with respect to the object of their mission, and information conveyed in a letter from Mr. Pendleton to me, that Virga on hearing of the unanimous refusal of R. I., had repealed her accession, by disarming them of their most pointed argument had produced great hesitation. They wait at present only for intelligence with respect to Md & Va. which was expected by yesterday’s post. But the post is not even yet come. The inferences which R. I. will probably draw from Oswald’s Commission are another source of apprehension. If justice & honor however preside in her Councils she will feel as much the obligation of providing for the discharge of past engagements as for contracting those which may be necessary in future. Our debts at this moment liquidated & unliquidated, cannot I conceive be less than *forty millions* Dollars. The interest therefore alone is a very serious object, and I am persuaded that unless it be raised by some plan which will operate at the same time & in due proportion throughout the Union, neither its amount nor punctuality can be confided in. Besides the other obvious causes, a jealousy is already perceived among some States that others will eventually *elude their share of the burden*. The interest on the sum borrowed by Mr. A. is now running, and soon will if a part hath not already become due. Nor is there any fund in contemplation for its payment but that of the Impost.

“*Official Cypher—The French army are embarking for the W. Indies. Count Rochambeau* says that in case *the war should be renewed against us they will instantly return*. Great efforts will I fancy be *made on that theatre unless arrested by peace*. I need not give other intimations of secrecy on these points than the nature of



them, & the use of the Cypher.” (*Italics for cypher*). Madison to Edmund Randolph.—*Mad. MSS.*

[1]

“Philada Decr 30th, 1782.

“My Dear Sir

“Your favor of the 13th instant arrived a few minutes after I sealed my last. That of the 20th came duly to hand yesterday. The sensations excited in Mr. Jones and myself by the Repeal of the law in favor of the Impost were such as you anticipated. Previously to the receipt of your information a letter from Mr. Pendleton to me had suspended the progress of the Deputies to Rhode Island. Yours put an entire stop to the mission, until the plan or some other can be extended to the case of Virga. The letter from the Govr, of the same date with your last, gives a hope that our representations may regain her support to the impost without further steps from Congress. Your doubt as to her power of revoking her accession would, I think have been better founded, if she had not been virtually absolved by the definite rejection of Rho: Island; altho’ that rejection ought perhaps have been previously authenticated to her. I beg you to be circumstantial on this subject especially as to the parties and motives which led to the repeal, and may oppose a reconsideration.

“Mr. *Jefferson* arrived here on friday last, and is industriously arming himself for the field of negotiation. The commission issued to Mr. Oswald impresses him with a hope that he may have nothing to do on his arrival but join in the celebrations of victory & peace. Congress, however, anxiously espouse the expediency of his hastening to his destination.

“General McDougall, Col. Ogden & Colonel Brooks arrived yesterday on a mission from the army to Congress. The representations with which they are charged have not yet been handed in but I am told they breathe a proper spirit and are full of good sense. I presume they will furnish new topics in favor of the Impost which alone promises a chance of establishing that credit, by which the inadequacy of taxation can be supplied.

The French fleet and army sailed a few days ago from Boston *for the West Indies*. A storm happened soon after their departure from which it is feared they *may* have suffered.

“The ship South Carolina procured in Europe for the State after wch she was called, was taken by three British ships & carried into N. Y. a few days ago. Besides the loss sustained by those interested immediately in her, her fitness for annoying our trade renders the capture a general misfortune.” \* \* \* Madison to Edmund Randolph.—*Mad. MSS.*

[1] Fitzsimmons, Madison and Rutledge were the committee making the report. The agreement made the previous August, with the consent of the governor and executive



of Georgia, was with certain Savannah merchants, “subjects of the crown of Great Britain,” permitting them to remain unmolested and to dispose of their effects to citizens of the United States, and “to export produce of the state of Georgia to the amount of the goods so disposed of to the next British post.” Congress ordered “that all commanders of armed vessels, in the service of the United States, or belonging to any of the inhabitants thereof, do pay due regard to the passports which have or shall be given by the governor of the state of Georgia for the purpose aforesaid.”—*Journals of Congress*, iv., 127.

[1] “The deputation from the army, which arrived here a few days ago, have laid their grievances before Congress. They consist of sundry articles, the capital of which are, a defect of an immediate payment, and of satisfactory provision for completing the work hereafter. How either of these objects can be accomplished, and what will be the consequence of failure, I must leave to your own surmises. I wish the disquietude excited by the prospect, was the exclusive portion of those who impede the measures calculated for redressing complaints against the justice and gratitude of the public.

“The Resolution of the House of Delegates against restitution of confiscated effects is subject to the remark you make. The preliminary requisition of an acknowledgment of our independence, in the *most ample manner*, seems to be still more incautious, since it disaccords with the Treaty of Alliance which admits the sufficiency of a tacit acknowledgment.” Madison to Edmund Randolph, Jany. 7, 1783. From the Madison Papers (1840).

[1] This proposed to require the States to value the land and return the valuations to Congress. The above to be a marginal note. [Note in Madison’s hand.]

[1]

“Philada Jany 14, 1783.

.....

“The deputies from the army are still here. The explanations which they have given to a Committee on the topics of the memorial are of the most serious nature. I wish they could with propriety be promulged throughout the U. S. They would I am sure at least put to shame all those who have laboured to throw a fallacious gloss over our public affairs, and counteracted the measures necessary to ye. real prosperity of them.

“The deliberations of Congress have been turned pretty much of late on the valuation of lands prescribed by the articles of confederation. The difficulties which attend that rule of apportionment seem on near inspection to be in a manner insuperable. The work is too vast to be executed without the intervention of the several states, and if their intervention be employed, all confidence in an impartial execution is at end.

.....

“Mr. Jefferson has not yet taken his departure. We hope the causes which have prevented it will not continue many days longer.”—Madison to Edmund Randolph, *Mad. MSS.*

[1] Mr. Hamilton was most strenuous on this point. Mr. Wilson also favd. the idea. Mr. M[adison] also but restrained in some measure, by the declared sense of Vira Mr. Ghoram, & several others also, but wishing previous experience. [Note in MS.]

[1] On that day Congress resolved, that, whereas the people inhabiting the west side of the Connecticut River commonly known as the New Hampshire Grants had undertaken to exercise jurisdiction over certain persons who professed to be citizens of New York, such proceedings were highly derogatory to the authority of the United States and dangerous to the confederacy. It was ordered that restitution be made and that a copy of the resolutions be sent to Thomas Chittenden, Esq., of Bennington, to be communicated to the people.—*Journals of Congress*, iv., 112.

[1] John Hannum, Persifor Frazer, and Joseph Gardner.—*Journals of Congress*, iv., 151.

[1] See Madison’s letter of Jan. 28, to Edmund Randolph, p. 33 n.

[\*] Drawn by Col. Hamilton. [Note in MS.]

[1] The — day of August being reinstated before a question on the whole paragraph was taken, Mr. Ghoram objected to the word “general” before funds as ambiguous, and it was struck out; not however as improper if referring to all the States, & not to all objects of taxation. Without this word the clause passed unanimously, even Rhode Island concurring in it. [Note in MS.]

[1] On the motion of Mr. Wilson Monday next was assigned for the consideration of the Resolu [tion] on the 2d clause of the Report on the Memorial from the army. He observed that this was necessary to prevent the resol[ution] from being like many others,—*vox et preterea nihil*. [Note in MS.]

[1] The precarious condition of affairs prompted Madison at this time to make the suggestion of starting a newspaper in Virginia to influence public opinion. The project was not a new one, however, for Jaqueline Ambler wrote to him from Richmond, December 29, 1781.

“Oh Sir we want some Publications that will rouse our citizens. I sincerely wish you could spare an hour now and then to this salutary Work. I will take care, if you will transmit the pieces to me, that they shall be safely lodged with the printer, and none made acquainted with the writer but those you may direct.—believe me they will render us most essential good and especially on the approach of a new election.”

Madison wrote Edmund Randolph,—January 28, 1783:

“The revival of committees would be a ticklish experiment, and I conceive not

admissible but in the last necessity. Would not the circulation of a free & well-informed gazette sufficiently counteract the malignant rumours wch. require some antidote? The preparation & circulation of such a paper wd be a much more easy & economical task, than the services which the other expedient would impose if extended throughout the country, besides that it would produce other useful effects & be liable to no objections. The state of darkness in which the people are left in Va. by the want of a diffusion of intelligence is I find a subject of complaint.

“Yesterday was employed in agitating the expediency of a proposition declaring it to be the ‘opinion of Congress that the establishment of *Genl.* funds is essential for doing complete justice to the creditors of the U. S. for restoring public credit, & for providing for the exigencies of the war.’ The subject was brought on by the memorial from the army. Such of the Virga. Delegates as concur in this opinion are put in a delicate situation by the preamble to the late repeal of the impost. Persuaded as I am however of the truth of the proposition, & believing as I do that with the same knowledge of facts which my station commands, my constituents would never have passed that act, and would now rescind it, my assent will be hazarded. For many reasons which I have not time to explain in cipher it is my decided opinion that unless such funds be established, the foundations of our Independence will be laid in injustice & dishonor, and that the advantages of the Revolution dependent on the fœderal compact will be of short duration.

“We yesterday laid before Congress sundry papers transmitted by the Govr. The light in which the protest of inability to pay the annual registration, compared with the repeal of the impost law placed Virga did not you may be sure escape observation.

“Penna continues to be visited by the consequences of her patronage of Vermont. A Petition from the inhabitants of territory lately in dispute between her & Virga was yesterday read in Congs complaining among other grievances of the interdict agst even consultations on the subject of a new state within the limits of the former; and praying for the sanction of Congress to their independence, & for an admission into the Union.

.....

“The only despatches recd. since my last from abroad are those from Mr Adams containing copies of the Treaty of amity & commerce with the U. Provinces & a convention relative to recaptures. They are engrossed in two columns one Dutch & the other American, the former signed by the Dutch Plenipos & the latter by Mr Adams. The language of the American column is obscure abounding in foreign idioms & new coined words, with bad grammar & misspellings. They have been ratified & will as soon as possible be proclaimed. It became a question in Congress on which intelligent members were divided whether both columns or the American only ought to be inserted in the act of ratification. The former mode will be pursued. If yr Library or your recollection can decide the point, favor me with the information.”—*Mad. MSS.*

The preamble to the Virginia act of repeal of the impost announced opposition to the

power of congress to collect any general revenue.

It recited—“Whereas, the permitting any power, other than the General Assembly of this Commonwealth, to levy duties or taxes upon the citizens of this State within the same, is injurious to its sovereignty, may prove destructive of the rights and liberties of the people, and, so far as Congress might exercise the same, is contravening the spirit of the confederation in the eighth article thereof: II Be it therefore,”  
etc.—*Hennings Stat.*, xi., 171.

[1]The paper just read from Virga. complained of her inability without mentioning an inequality. This was deemed a strange assertion. [Note in MS.]

[1]This remark was imprudent & injurious to the cause wch it was meant to serve. This influence was the very source of jealousy which rendered the States averse to a revenue under collection as well as appropriation of Congress. All the members of Congress who concurred, in any degree with the States in this jealousy smiled at the disclosure. Mr. B[land] & still more Mr. L[ee], who were of this number took notice in private conversation, that Mr. Hamilton had let out the secret. [Note in MS.]

[1]He was apprehensive that a tax on land according to its quantity not value as had been recomd. by Mr. Morris, was in contemplation. [Note in MS.]

[1]A poll tax to be qualified by rating blacks somewhat lower than whites—a land-tax by considering the value of land in each State to be in an inverse proportion of its quantity to the no. of people; and apportioning on the aggregate quantity in each State accordingly, leaving the State at liberty to make a distributive apportionment on its several districts, on a like or any other equalizing principle. [Note in MS.]

[1]Mr. Hamilton told Mr. Madison privately that M. de Marbois speaking of the treaty asked him emphatically whether there were not some articles which required ammadversion. Mr. H. did not at the time know what was alluded to. He now supposed the allusion to be to some article supposed to be inconsistent with the Treaty with France; particularly the article referring to the select articles of the latter instead of the whole; which art. Mr. Adams informed Congress had been satisfactory to the D. de Vauguyon. [Note in MS.]

[2]“The subject which my last left under the consideration of Congress has employed the chief part of the week. The generality of the members are convinced of the necessity of a continental revenue for an honorable discharge of the continental engagements and for making future provision for the war. The extent of the plan however compared with the prepossessions of their constituents produces *despondence & timidity*. It appears that the *annual* revenue which prudence calls for for the objects above mentioned, amounts to the *enormous sum of three millions of dollars*. You will ask perhaps from what sources this revenue could be drawn if the States were willing to establish it? Congress have done nothing as yet from which the answer they wd dictate can be informed. By individuals on the floor, *the imposts, a land [or] poll tax, a tax on salt a &c* have been suggested, and some computation of their productiveness has made them competent to the object. The valuation of the land

accordg. to the Articles of confederation is also before Congress & by some considered as a great step towards obtaining the necessary revenue. If you ask by what operation? I shall be more incapable of answering it than the preceeding question.

“The repeal of the impost by Virga is still *unriddled*. *Dr. Lee says that he was the only man who opposed the torrent* from which it is the more suspected that there has been some *manœvring in the transaction*. Mr. Jones quotes the instance of *your last election to Congress*.

“I find a great check to secret communications from the defects of your cypher. It in the first place is so scanty as to be extremely tedious and in the next both the letters & figures are in so ambiguous a character that great caution is necessary to avoid errors. I wish we could some how or other substitute a more convenient one.”—Madison to Edmund Randolph, February 4, 1783. (Italics for cypher.) *Mad. MSS.*

[1] The answer entered at length into the existing condition of the continental finances, stating that no State had taken separate measures for satisfying its own citizens, as Pennsylvania threatened to do, and that, as the various certificates had passed from one person to another a provision by a State for their redemption must exclude the demands of many of its own citizens or admit the demands of all; that it would be impossible to pay past debts and run the government, wherefore provision should be made for the interest only. It called attention to the fact that the five per cent. impost was recommended February 3, 1781, but after a delay of two years Congress had the mortification to find that one State [Rhode Island] entirely refused to agree to it, and that another [Virginia] had withdrawn its assent, and a third [Georgia] had taken no action, that Congress had been unable to fulfill its engagements with the public creditors, because of the defective compliances by the States at every stage of the war. For the year 1782, it said, Congress had asked \$8,000,000 and had been supplied by the States with only \$430,031. The King of France had lent the United States 6,000,000 livres and John Adams had opened a loan in Holland and obtained only 3,000,000 livres, making in all 9,000,000 livres, which after deducting anticipations left but 5,000,000 livres, which at the existing rate of exchange amounted to \$833,333. At the beginning of the year 1782 there was \$292,453 in the Treasury, so that the whole amount for carrying on the government during 1782 amounted to \$1,545,812. The cost of the army alone amounted to \$5,713,610, for feeding, clothing, and pay, excluding horses, tents, forage, etc. Therefore, in spite of discouraging obstacles, Congress conceived it to be its duty to persevere in the endeavor to procure revenues equal to the purpose of funding all the debts, and the subject was then under solemn deliberation. Finally they called attention to their recommendation of September 6, 1780, for a cession of part of the Western territory claimed by particular states.—*Journals of Congress*, iv., 153, *et seq.*

[1] He supposed that sum due by the U. S. to Citizens of Penna, for loans. [Note in MS.]

[1] Mr. Dyer ludicrously proposed as a proviso to the scheme of referring the valuation to the States, “that each of the States should cheat equally.” [Note in MS.]

[1] It found that the Superintendent of Finance in arranging for the tobacco and the Secretary of Congress in granting it a passport had both acted in conformity with the authority of Congress.—*Journals of Congress*, iv., 159, 160.

[1] “The valuation of the lands of the U. S. as directed by the articles of Union has employed & puzzled Congress for the past week; and after all the projects & discussions which have taken place, we seem only to have gone round in a circle to the point at which we set out. The only point on which Congress are generally agreed is that something ought to be attempted; but what that something ought to be, is a theorem not solved alike by scarcely any two members; and yet a solution of it seems to be made an indispensable preliminary to other essays for the public relief. The Deputation from the army is waiting the upshot of all these delays & dilemmas.

“When I mentioned to you the subject of your conversation with Dr. McClurg, I ought to have added that one reason which influenced the resig—of Mr. Livingston was an expence experienced of three thousand dollars beyond the salary. I wish this circumstance not to be withheld as it must be material in the case, and it would be a real affliction to me to be accessory to a disappointment. For the same reason it is incumbent on me to observe that I hold it to be very uncertain whether [the] place in question will be within the option of our friend, as I hold, indeed, the continuance of the place itself to be a little precarious.

“Mr. J. is detained at Baltimore by the danger wch. besets the capes. The situation he writes me is far from being a pleasant one and yet I fear the avidity & vigilance of the enemy will prevent his being quickly relieved from it. Mr. Mercer filled up the remaining blank in the Delegation on Wednesday last.

“This city is full of reports concerning peace, but they all come by the way of the W. I., and are the more uncertain as they come too thro’ mercantile channels. The fall of goods which is taking place augurs well, however.”—*Madison to Edmund Randolph*, February 11, 1783. *Mad. MSS.*

[1] *Resolved*, That Congress be resolved into a committee of the whole, to consider of the most effectual means of restoring and supporting public credit; and that the motion before the house be referred to that committee.”—*Journals of Congress*, iv., 153.

[1] In the meantime tidings of peace were momentarily expected. Madison wrote to his father Feby. 12:

“I readily suppose, from the reports prevalent here, that some information on the subject of peace will be expected, & I wish it were in my power to gratify you. The truth is, we are in nearly as great uncertainty here as you can be. Every day almost brings forth some fresh rumour, but it is so mingled with mercantile speculations that little faith is excited. The most favorable evidence on the side of peace seems to be a material fall in the price of imported goods, which considering the sagacity and good intelligence of merchants is a circumstance by no means to be despised. A little time



will probably decide in the case, when I shall follow this with something more satisfactory.” *Mad. MSS.*

[1] This was an oblique allusion to Mr. Lee, whose enmity to the French was suspected by him &c. [Note in MS.]

[1] “I heartily congratulate you on the dawn of peace, presented in the enclosed paper. Apprehending that the commercial sagacity of this and intervening places may seize the crisis to speculate on the staple of Virginia, we have judged it prudent to despatch a messenger, with the intelligence to the Government. Private letters will also scatter it along the road.

“I will not damp your joy by dwelling on prospects which have that tendency; but it will not be improper to hint to you, that there is much reason to believe that the cloud which has been some time lowering on the North river, will not be dispelled by the rays of peace. The opinion seems to be well founded, that the arms which have secured the liberties of their country will not be laid down, until justice is secured to those who have wielded them; and that dangerous convulsions would be hazarded by orders for that purpose. I have not time to add more at present.—*Madison to Edmund Randolph*, February 15, 1783. *Madison Papers* (1840).

[1] Voting Aye were New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina and South Carolina; voting No were New York and New Jersey; evenly divided were Rhode Island and Connecticut. Maryland had but one delegate present, Charles Carroll, who voted No. In the Virginia delegation, Jones, Bland, and Mercer voted Aye, Madison and Lee voting No.—*Journals of Congress*, iv., 163.

On Dyer’s motion all the States but New York and Maryland, through Carroll, whose vote did not count, voted Aye. Outside of New York and Maryland, Madison and Lee were the only delegates voting No.—*Id.*, 164.

[1] “I am glad to find by your favor of the 7th. [ins] tant that the necessity of a readoption of the impost presses so strongly on your mind. To give it a fair experiment with the ensuing Assembly it will be indispensable that you should be its advocate on the floor. Those who effected its repeal will never inactively suffer it to be reinstated in our code. *Mercer* from *what motive God knows* says that *he will crawl to Richmond on his bare knees to prevent it*. Having already *changed his opinion on the subject he fears perhaps the charge of unsteadiness*. Perhaps too *his zeal against a general revenue may be cooled by the accomplishment in Congress of a plan for a valuation of land on the ruins of which he among others suspected the former was to be established*. This plan passed Congress yesterday. It proposes that the States shall return to Congs before Jany next their respective quantities of land the number of houses thereon distinguishing dwelling houses from others, and the no of Inhabitants distinguishing Whites from blacks. These data are to be referred to a Grand Come, by whom a report in which nine voices must unite, is to be made to Congress which report is to settle the proportions of each State, & to be ratified or rejected by Congs. without alteration. Who could have supposed that such a measure could ever have been the offspring of a zealous and scrupulous respect for the Confederation? . .

.”—Madison to Edmund Randolph, February 18, 1783. (Italics for cypher.)

On the same day he wrote to Jefferson:

“The last paper from N. Y., as the inclosed will show you has brought us another token of the approach of peace. It is somewhat mysterious nevertheless that the preliminaries with America should be represented by Sect. Townsend as *actually signed* and those with France as *to be signed*, as also that the signing of the latter would constitute a general peace. I have never been without my apprehensions that some tricks would be tried by the British Court notwithstanding their exterior fairness of late, and these apprehensions have been rendered much more serious by the *tenor of some letters which you have seen* and particularly by the *intimation of Minister of France to Mr. Livingston*. These considerations have made me peculiarly solicitous that your mission should be pursued as long as a possibility remained *of your sharing in the object of it*.” (Italics for cypher).—*Mad. MSS.*

[1] Virga—Mr. Jones, Mr. Madison, Mr. Bland, no; Mr. Lee, Mr. Mercer, ay. [Note in MS.]

[1] “*Resolved*, That it does not appear to Congress that any abuse has been made of the passport granted by the commander in chief, for the protection of clothing and other necessaries sent from New York in the ship *Amazon*, for the use of the British and German prisoners of war.

“*Resolved*, That the goods imported in the said ship *Amazon*, and contained in the returns laid before Congress by the assistant secretary at war, are fully covered and protected by the said passport, and ought to be sent with all expedition, and without any let or hindrance, to the prisoners for whose use they were designed.”—*Journals of Congress*, iv., 165.

The Legislature of Pennsylvania in reply to this declared the State law under which the seizures had been made unconstitutional and void.

[2] The result proved that mildness was the soundest policy. The Legislature in consequence having declared the law under which the goods were seized to be void as contradictory to the federal Constitution. Some of the members in Conversation sd that if Congress had declared the law to be void, the displeasure of the Legislature might possibly have produced a different issue. [Note in MS.]

[1] Among other reasons privately weighing with him, he had observed that many of the most respectable people of America supposed the preservation of the Confederacy essential to secure the blessings of the revolution; and permanent funds for discharging debts essential to the preservation of Union. A disappointment to this class wd certainly abate their ardor & in a critical emergency, might incline them to prefer some political connection with G. B., as a necessary cure for our internal instability. Again Without permanent & general funds he did not conceive that the danger of convulsions from the army could be effectually obviated. Lastly he did not think that any thing wd. be so likely to prevent disputes among the States with the



calamities consequent on them. The States were jealous of each other, each supposing itself to be on the whole a creditor to the others. The Eastern States in particular thought themselves so with regard to the S. States. (See Mr. Ghoram, in the debates of this day.) If general funds were not introduced it was not likely the balances wd. ever be discharged, even if they sd. be liquidated. The consequence wd. be a rupture of the confederacy. The E. States would at sea be powerful & rapacious; the Southern, opulent & weak. This wd. be a temptation; the demands on the S. St. would be an occasion; reprisals wd. be instituted; Foreign aid would be called in by first the weaker then the stronger side, & finally both be made subservient to the wars & politics of Europe. [Note in MS.]

[1]“Congress are still engaged on the subject of providing adequate revenues for the public debts, particularly that due to the army. The recommendation of the Impost will be renewed with perhaps some little variation, to which will be superadded probably a duty on a few enumerated articles. *Mr Mercer altho' he continues to be adverse to the measure declares now that he will not carry his opposition out of Congress.* Whether any other general revenues will be recommended is very uncertain. A poll tax seems to be the only one sufficiently simple & equal for the purpose, and besides other objections to which even that is liable, the Constitution of Maryland which interdicts such a tax is an insuperable bar. The plan talked of by some for supplying the deficiency is to call on the States to provide each its proportion of a permanent revenue within itself, and to appropriate it to the continental debt. The objections against this plan are that as the execution of it will depend on a unanimous & continued punctuality in the 13 States, it is a precarious basis for public credit, that this precariousness will be increased by mutual jealousies among the States that others may be sparing themselves exertions which they are submitting to; and that these jealousies will be still more increased by the mutual opinion which prevails that they are comparatively in advance to the U. States; an opinion which cannot be corrected without closing the accounts between all of them & the U. States; pre-requisites to which are a valuation of the land, and a final discrimination of such parts of the separate expenditures of the States as ought to be transferred to the common mass, from such parts as ought in justice to fall on the particular States themselves. Some States also will contend and it would seem neither agst the principles of justice nor the spirit of the Confederation, for a retrospective abatement of their share of the past debt according to their respective disabilities from year to year throughout the war. What will be the end of this complication of embarrassments time only can disclose. But a greater embarrassment than any is still behind. *The discontents and designs of the army are every day taking a more solemn form. It is now whispered that they have not only resolved not to lay down their arms till justice shall be done them but that to prevent surprise a public declaration will be made to that effect. It is added and I fear with too much certainty, that the influence of General Washington is rapidly decreasing in the army insomuch that it is even in contemplation to substitute some less scrupulous guardian of their interests.*

“There are a variety of rumors concerning peace but none of them of sufficient authority to be particularized. The speech of the King of G. B. to his parliament, and the letter to the Lord Mayor of London from Secy Townsend as it is stated, are the only respectable evidence yet recd. There are also rumors on the adverse side which

have still less the complexion of authenticity.

“A quantity of clothing on its passage through this State to the British prisoners of war under a passport of Genl Washington was lately seized and condemned under a law of this State agst the importation of British goods. After several fruitless experiments to prevail on the Seizors to relinquish their appeal to the law, the Legislature have I am told cut the business short by declaring the law as far as it interfered with the authority of the passport to be unconstitutional & void ab initio.

“You will suffer me to renew my exhortations to an exchange of your office under the State for a seat in the Legislature. It depends much in my opinion on the measures which may be pursued by Congress & the several States within the ensuing period of 6 months whether prosperity & tranquility, or *confusion and disunion* are to be the fruits of the Revolution. The seeds of the latter are so thickly sown, that nothing but the most enlightened and liberal policy will be able to stifle them. The *Eastern States*, particularly *Massachusetts* conceive that *compared with the Southern*, they are greatly in *advance in the general account*. A respectable *Delegate from Massachusetts*, a few days ago, being a little *chafed* by some *expressions of Messrs. Lee & Mercer* unfavorable to *loan-office creditors* said that if *justice* was not to be *obtained thro’ general confederacy*, *the sooner it was known the better*, that some *States* might be *forming other confederacies adequate to the purpose* adding that *some had suffered immensely from the want of a proportional compliance with demands for men & money by others*. However erroneous these ideas may be, do they not *merit serious attention*? Unless some amicable & adequate arrangements be speedily taken for adjusting all the subsisting accounts, and discharging the public engagements, *a dissolution of the Union* will be *inevitable*. Will not, in that event, the Southern States *which at sea* will be *opulent & weak*, be an *easy prey to the Eastern*, which *will be powerful & rapacious*? and particularly if supposed *claims of justice* are *on the side of the latter* will there not be a *ready pretext for reprisals*? The consequence of such a situation would probably be that *alliances* would be *sought first by the weaker & then by the stronger party* & this *country* be *made subject to the wars & politics of Europe*.”—Madison to Edmund Randolph, February 25, 1783. (Italics for cypher.)

[1]“Either by giving them security for the payment of the same as it may become due, or by commutation for such sum in gross, as may be mutually agreed on by each state, and the officers to them respectively belonging; that each and every state, which shall make compensation to their officers, agreeably to the foregoing resolution, shall be exonerated and fully and finally discharged from their respective proportions of all taxes and all other payments of monies whatsoever, on account of half-pay to the officers belonging to the United States or any of them; provided always that nothing in this resolution shall extend to discharge any state from paying their just proportion of the half-pay which may be due to such officers as have not heretofore or do not now belong to the line of any particular state, or to the officers belonging to any particular state, which may by the events of the war be rendered unable to make such compensation.”—*Journals of Congress*, iv., 166.

[1]Against the motion were New York, New Jersey, Maryland, Virginia; North Carolina and South Carolina; in favor of it New Hampshire and Connecticut.

Massachusetts and Rhode Island each voted in favor but by one delegate only. New Jersey was divided.—*Journals of Congress*, iv., 166, 167.

[1] It recommended to the executives of the several States to inform the commander-in-chief or “commander of a separate army” whenever outrages on person or property were committed by persons in the service of the enemy, in order that retaliatory measures might be taken.—*Journals of Congress*, iv., 167.

[1] He had in view the following objects: 1. The abatements proposed by Mr. Hamilton. 2. A transfer into the common mass of expenses of all the separate expenses incurred by the States in their particular defence. 3. An acquisition to the U. States of the vacant territory. The plan thus extended would affect the interest of the States as follows, viz. N. Hampshire would approve the establishment of a General revenue, as tending to support the confederacy, to remove causes of future contention, and to secure her trade against separate taxation from the States thro’ which it is carried on. She would also approve of a share in the vacant territory. Having never been much invaded by the enemy her interests would be opposed to the abatements, & throwing all the separate expenditures into the common mass. The discharge of the public debts from the common treasury would not be required by her interest the loans of her citizens being under her proportion. See the statement of them.

Massachusetts, is deeply interested in the discharge of the public debts. The expedition to Penobscot alone interests her, she supposes, in making a common mass of expenses; her interest is opposed to abatements; the other objects wd. not peculiarly affect her.

Rhode Island, as a weak State is interested in a General revenue as tending to support the Confederacy and prevent future contentions, but against it as tending to deprive her of the advantage afforded by her situation of taxing the commerce of the contiguous States. As tending to discharge with certainty the public debts, her proportion of loans interest her rather against it. Having been the seat of war for a considerable time, she might not perhaps be opposed to abatements on that account. The exertions for her defence having been *previously* sanctioned, it is presumed in most instances, she would be opposed to making a common mass of expenses. In the acquisition of vacant territory she is deeply and anxiously interested.

Connecticut is interested in a general revenue as tending to protect her commerce from separate taxation from N. York & Rhode Island; and somewhat as providing for loan office creditors. Her interest is opposed to abatements, and to a common mass of expenses. Since the condemnation of her title to her Western Claims, she may perhaps consider herself as interested in the acquisition of the vacant lands. In other respects, she wd. not be peculiarly affected.

N. York is exceedingly attached to a general revenue as tending to support the confederacy and prevent future contests among the States. Although her Citizens are not lenders beyond the proportion of the State, yet individuals of great weight are deeply interested in provision for public debts. In abatements N. York is also deeply interested. In makg a common mass also interested, and since the acceptance of her

cession, interested in those of other States.

N. Jersey is interested as a smaller State, in a General revenue as tendg to support the confederacy, and to prevent future contests and to guard her commerce agst the separate taxation of Pennsylvania and N. Y. The loans of her citizens are not materially disproportionate. Although this State has been much the theatre of the war, she wld not perhaps be interested in abatements. Having had a previous sanction for particular expenditures her interest wd be opposed to a common mass. In the vacant territory, she is deeply and anxiously interested.

Penna. is deeply interested in a general revenue, the loans of her Citizens amounting to more than ? of that branch of the public debt. As far as a general impost on trade would restrain her from taxing the trade of N. Jersey, it would be against her interest. She is interested against abatements; and against a common mass, her expenditures having been always previously sanctioned. In the vacant territory, she is also interested.

Delaware is interested by her weakness in a general revenue as tending to support the confederacy & future tranquillity of the States; but not materially, by the credits of her Citizens. Her interest is opposed to abatements & to a common mass. To the vacant territory she is firmly attached.

Maryland. Having never been the Seat of war & her Citizens being creditors below her proportion, her interest lies agst a general revenue, otherwise than as she is interested in common with others in the support of the confederacy & tranquillity of the U. S.; but against abatements, and against a common mass. The vacant lands are a favorite object to her.

Virga, in common with the Southern States as likely to enjoy an opulent and defenceless trade is interested in a general revenue, as tending to secure to her the protection of the confederacy agst the maritime superiority of the E. States, but agst it as tending to discharge loan office debts and to deprive her of the occasion of taxing the com?erce [of] N. Carolina. She is interested in abatements, and essentially so in common mass, not only her eccentric expenditures being enormous, but many of her necessary ones havg recd. no previous or subsequent sanction. Her cession of territory would be considered as a sacrifice.

N. Carolina is interested in a general revenue as tending to ensure the protection of ye Confederacy agst the maritime superiority of E. States and to guard her trade from separate taxation by Virginia and S. Carolina. The loans of her Citizens are inconsiderable. In abatements and in a common mass she is essentially interested. In the article of territory, she would have to make a sacrifice.

South Carolina is interested, as a weak & exposed State in a general revenue as tending to secure to her the protection of the confederacy agst. Enemies of *every* kind, and as providing for the public Creditors, her Citizens being not only loan office Creditors beyond her proportion, but having immense unliquidated demands agst the U. States. As restraining her power over the commerce of N. Carolina, a general

revenue is opposed to her interests. She is also materially interested in abatements, and in a common mass. In the article of territory her sacrifice wd. be inconsiderable.

Georgia as a feeble an[d] opulent & frontier State is peculiarly interested in a general revenue, as tending to support the confederacy. She is also interested in it somewhat by the creditors of her Citizens. In abatements she is also interested, and in a common mass essentially so. In the article of territory She would make an important sacrifice.

To make this plan still more complete for the purpose of removing all present complaints, and all occasions of future contests, it may be proper to include in it a recommendation to the States to rescind the rule of apportioning pecuniary burdens according to the value of the land, & to substitute that of numbers, reckoning two slaves as equal to one freeman.

STATE OF THE LOAN  
OFFICE DEBT.

	Specie	Dollars
N. H.	336,579	58 7
Mass.	2,361,866	66 5
R. Island	699,725	37 4
Con <sup>t</sup>	1,270,115	30 0
N. York	949,729	57 5
N. Jersey	658,883	69
Pen <sup>a</sup>	3,948,904	14 4
Delaware	65,820	13 7
Maryland	410,218	30
Virg <sup>a</sup>	313,741	82 3
N. Carolina	113,341	11 1
S. Carolina	90,442	10 1
Total	11,437,410	80

This it is to be observed is only the list of loan office debts. The unliquidated debts and liquidated debts of other denominations due to individuals will vary inexpressibly the relative quantum of credits of the several States. It is to be further observed that this only shews the original credits transfers having being constant; heretofore they have flowed into Pa. Other States may hereafter have an influx. [Note in MS.]

[1]“Whereas, in the opinion of Congress, it is essential to those principles of justice and liberality, which ought to govern the intercourse between these States, that in the final adjustment of accounts for the supplies or contributions of the States respectively, toward the common expenses in the course of the war, equitable allowances should be made in favor of those States, parts of which have been at different periods in possession of the enemy; and whereas the strict application of the rule prescribed by the 8th article of the confederation, as declared by the resolution of the 17th February, would operate greatly to the prejudice of such States, and to the calamities of war, and an undue proportion of the public burden

“*Resolved*, That Congress will, in the application of the said rule, make such abatements in favor of the said States, as from a full consideration of circumstances shall appear to them just and equitable, for the time the said parts of the said States may have been in possession of the enemy.”—*Journals of Congress*, iv., 169, 170.

[1]“A committee be appointed to devise the most proper means of arranging the Department of Finance.”—*Journals of Congress*, iv., 171.

[1]“Provision for the public debt continues the wearisome topic of congressional discussion. *Mercer declared* that although *he deems the opponents of a general revenue right in principle, yet as they had no plan and it was essential that something should be done he should strike in with the other side.*

“A letter from Genl*Knox* is in Town which I understand, places the *temper and affairs of the army in a less alarming view* than some preceding *accounts*.

“The resignation of the Superintendent of finance with his motives are contained in the paper enclosed. It is, as you may well suppose a subject of general and anxious conversation. Its effect on public credit will be fully anticipated by your knowledge of our affairs. Yesterday’s mail brought me no letter from you.”—Madison to Edmund Randolph, March 4, 1783. (Italics for cypher.) *Mad. MSS.*

[1]In the draught as laid before the Come by — — the (7) paragraph was placed last of all, so as to render the plan individual. In the (10) paragraph the word “reasonable” before the word “expenses,” was not inserted; but to the paragraph was added “provided that this allowance shall not be extended to any expenses which shall be declared by nine votes in Congress to be manifestly unreasonable.” In other respects the original draught was unaltered, except that a former resolution of Congress in the words of the (6) paragraph was incorporated by the Secy before it went to the press. [Note in MS.]

[1]It was introduced by Carroll, Dyer, and Mifflin and provided “That such officers as are now in service, and continue therein to the end of the war, shall be entitled to receive the sum of five years’ full pay in money, or securities on interest at six per cent. per annum, at the option of Congress, instead of the half-pay promised for life by the resolution of the 21st of October, 1780: the said securities to be such as shall be given to the other creditors of the United States; provided that it be at the option of the lines of the respective States, and not of officers individually in those lines, to accept or reject the same: that all officers who have retired from service upon the promise of half-pay for life, shall be entitled to the benefits of the above resolution; provided that those of the line of each State, collectively, agree thereto; that the said commutation shall extend to the corps not belonging to the lines of particular States, the acceptance or refusal to be determined by corps; that all officers entitled to half-pay for life, not included in the above resolution, may collectively agree to accept or refuse the commutation.”—*Journals of Congress*, iv., 173.

[1]“Another week has passed without affording the least relief from our suspense as to the progress of peace. At New York they are so much in the dark that their curiosity



has recourse to the gleanings of the Philada. gazettes. The length of the negotiation may be explained, but the delay of all parties to notify its progress is really astonishing. Our last official information is nearly 5 months old & that derived from the royal speech upwards of three months.

“The peremptory style & publication of Mr. M[orris]’s letters have *given offence to many without & to some within Congress. His enemies of both descriptions, are industrious in displaying their impropriety.* I wish *they had less handle for the purpose.*”

“The plan before Congress for the arrangement of our affairs is to ask from the States a power to levy for a term not exceeding 25 years the 5 Per Ct impost, with an additional impost on salt, wine, spirituous liquors, sugar & teas; to recommend to them to establish & appropriate permanent revenues for a like term for the deficiency; the proceeds to be carried to their credit; the whole to be collected by persons amenable to Congress, but approved by the States; to complete the territorial cessions; to enable Congress to make abatements in favor of suffering States; Congress on their part declaring that all reasonable military expenses separately incurred by the States without their sanction either by sea or land shall be part of the common mass; and proposing to the States a substitution of numbers in place of a valuation of land; 3 slaves to be equal to 1 freeman. The fate of this plan in Congress is uncertain, & still more so among the States. It makes a decent provision for the public debts & seems to comprehend the most dangerous sources of future contests among ourselves. If the substance of it is rejected, and nothing better introduced in its place, I shall consider it as a melancholy proof that narrow & local views prevail over that liberal policy & those mutual concessions which our future tranquillity & present reputation call for.

“Mr. J. is still here, agitated as you may suppose with the suspense in which he is kept. He is anxious as myself for your going into the Legislature. Let me know your final determination on this point.”—Madison to Edmund Randolph, March 11, 1783. (Italics for cypher.). *Mad. MSS.*

[1]“Capt. Barney commanding the American packet boat which has been long expected with official intelligence from our Ministers in Europe arrived here this morning. He brings a supply of money the sum of which I cannot as yet specify & comes under a passport from the King of G. B. The despatches from our Ministers are dated the 5, 14 & 24 of Decr.. Those of the 14th inclose a copy of the preliminary articles, provisionally signed between the American & British Plenipotentiaries. The tenor of them is that the U. S. shall be acknowledged & treated with as free, sovereign & independent; that our boundaries shall begin at the mouth of the St. Croix, run thence to the ridge dividing the waters of the Atlantic from those of St. Laurence, thence to the head of Cont river, thence, down to 45° N. L. thence to Cadaraqui; thence thro’ the middle of Lakes Ontario, Erie, Huron, & Superior, to Long Lake to the Lake of the Woods & thence due W. to the Missipi, thence down the middle of the river to L. 31, thence to Apalachicola, to Flint river, to St. Marys, & down the same to the Atlantic; that the fisheries shall be exercised nearly as formerly; that Congress shall earnestly recommend to the States a restitution of confiscated property, a permission to the refugees to come & remain for 1 year within the States to solicit restitution, and

that in the most obnoxious cases restitution may be demanded of purchasers on reimbursing them the price of the property, that debts contracted prior to 1775 shall be mutually paid according to sterling value; that all prisoners shall be mutually set at liberty, troops withdrawn & all records & papers restored; that the navigation of the Mississippi, from the source to the mouth, shall be mutually free for the subjects of G. B. & the Citizens of America, a proposition comprehending the W. I., was offered on the subject of Commerce, but not admitted on the part of G. B.

“In the course of the negotiation G. B. contended for not only the limits marked out in the Quebec Act, but all ungranted soil, for a contraction of the fisheries, and for absolute stipulations in favor of the loyalists.

“The despatches of the 14th Speak also of the principal preliminaries between F. & G. B. being settled; but of little progress being made in those between Hold & Spn; & the latter; & of none between Spn & the U. S.

“A letter of the 24th of Decr from Dr. Franklin varies the scene somewhat. It says that uncertainties were arising from the unsettled state of minds in England & incloses a letter from the Ct de Vergennes, observing that difficulties had arisen from the very facilities yielded on the part of France; & concluding with these words as well as I can recollect, ‘Je ne désespère pas; J’espère plutôt, mais tout est incertain.’

“Franklin’s correspondence on this occasion denotes a vigor of intellect, which is astonishing at his age. A letter to the British Minister on the case of the Tories in particular is remarkable for strength of reasoning of sentiment & of expression. He concludes his letter to Congs with observing that he is now entering on his 78th year, 50 of which have been spent in the public Service and that having lived to see like Simeon of old the salvation of his Country his prayer is that he may be permitted to retire from public life. Mr. Adams has also transmitted his resignation.

“The arrival of this intelligence will probably procure from Congs. some final decision with respect to Mr. Jefferson.”—Madison to Edmund Randolph, March 12, 1783. *Mad. MSS.*

[1] “My letter by Express communicated to you the outlines of the intelligence brought by Capt. Barney from our Ministers in Europe. The tediousness of the Cypher does not permit me now to enter into detail. I can only add that notwithstanding the flattering aspect of the preliminary Articles there are various circumstances which check our confidence in them, as there are some which will *detract from our joy* if they should be *finally established*. To explain this it must suffice to observe that The latest letters from our Ministers express the greatest *jealousy* of G. B. and, secondly that the situation of *France between the interfering claims of Spain & the U. S.*, to which may perhaps be added some particular *views of her own* having carried *her into a discountenance of claims the suspicions of our ministers on that side* gave an opportunity to *British address to decoy them into a degree of confidence* which seems to leave their *own reputations* as well as the *safety of their country at the mercy of Shelburne*. In this *business Jay has taken the lead & proceeded to a length of which you can form little idea Adams has followed with cordiality. Franklin has been*



*dragged into it. Laurens in his separate letter professes a violent suspicion of G. B. and good will & confidence toward France The dilemma to which Congress are reduced is infinitely perplexing. If they abet the proceedings of their Ministers, all confidence with France is at an end which in the event of a renewal of the war, must be dreadful as in that of peace it may be dishonorable. If they [dis]avow the conduct of their Ministers, by their usual frankness of communication, the most serious inconveniences also present themselves. The torment of this dilemma cannot be justly conveyed without a fuller recital of facts than is permitted. I wish you not to hazard even an interlined decypherment of those which I have deposited in your confidence.*

“Despatches were yesterday recd from Genl Washington which have *revived & increased our apprehensions on that side.* There seems to be reason to *suspect that the intrigues of the civil creditors fan the discontents of the army. The conduct of Washington does equal honor to his prudence and to his virtue.*

“The state of *our foreign affairs and of the army* combined with the difficulty and uncertainty of providing for justice & for our finances & with the *approaching exit of Morris, give a peculiar solemnity to the present moment.* God send us a speedy & *honorable deliverance from every danger.* Pray hasten the new cypher which you have promised.”—Madison to Edmund Randolph, March 18, 1783. (Italics represent cypher.) *Mad. MSS.*

[1] See pp. 397, 398.

[1] The other exception, as to the Cards & the wire for making them &c., was struck out unanimously on the motion of Mr. Clark; being considered as no longer necessary & contrary to the general policy of encouraging necessary manufactures among ourselves. [Note in MS.]

[1] This was meant to guard agst a construction that they were to take effect when peace sd be agreed on by those powers, & the latter be *ready* to sign, altho' the former sd. be restrained untill the other parties sd. be ready for signing. [Note in MS.]

[1] The Committee who reported the instruction were, Mr. Carroll, Mr. Jones, Mr. Witherspoon Mr. Sullivan & Mr. Matthews. Mr. Witherspoon was particularly prominent throughout. [Note in MS.]

[2] Mr Bland, Lee & Rutledge. [Note in MSS.]

[3] Mr. Rutledge, he framed in the Committee the first draught of the declaration made in Sept last & the instruction abt. the same time. This was considerably altered but not in that respect. [Note in MSS.]

[1] It provided that the States be recommended to provide funds to be gathered from the five per cent. *ad valorem* on importations, except on rum, etc., on which a specific duty should be charged; also five per cent. *ad valorem* on prizes and prize goods; also a land tax of — ninetieths of a dollar on every hundred acres of land; also a house-tax

of half a dollar on each dwelling-house (cottages excepted), and two and a-half per cent. on rent above \$20.—*Journals of Congress*, iv., 177.

[1] See note, p. 407.

[1]

“Philada March 24. 1783.

“Dear Sir

“The express by whom I send this conveys to the Governor the wellcome event of a general peace. The preliminary articles were signed on the 20th. of Jany. The day to which hostilities are limited is omitted in the abstract of the preliminaries transmitted to Congs. This intelligence altho’ not from our Ministers is authenticated beyond all possibility of doubt. For the outlines of the articles I refer to the letter to the Govr. & for the articles themselves as red by Congs. to my letter by tomorrows post.”—Madison to Edmund Randolph. *Mad. MSS.*

[1] Alluding probably to the intercepted letter from M. de Marbois. [Note in MS.]

[1] This construction of the instructions was palpably wrong. [Note in MS.]

[1] Another cause mentioned was the large balance of specie in favor of the N. Powers during the war. [Note in MS.]

[1] “The pecuniary aid of France for the year 1783, had been unalterably limited to 6 Millions of livres. The greatest part of this sum had been anticipated and how our army could have been kept together for three months is utterly beyond my solution. As it is, God only knows how the plans in agitation for satisfying their just expectations will terminate; or what will be the issue in case they should be abortive. The effects of the anonymous addresses mentioned in my last on the irritable state of their minds, have been effectually obviated by the seasonable & judicious steps taken by the Commander-in-Chief. The manner however in which he found it necessary, and indeed felt it to be his duty, to espouse their interest enforces in the highest degree the establishment of adequate and certain revenues. The provision reported by a comite on this subject and of which I sketched you the import, is still before Congress. The past deliberations upon it do not with certainty prognosticate its fate. I fear it calls for more liberality & greater mutual confidence than will be found in the American Councils.”—Madison to Edmund Randolph, March 25, 1783. *Mad. MSS.*

[1] New Hampshire, aye; Massachusetts, no; Rhode Island, no; Connecticut, no; New York (Mr. Floyd, aye); New Jersey, aye; Delaware, no; Maryland, aye; Virginia, aye; North Carolina, aye; South Carolina, no.

[2] Six noes and four ayes. *Journals of Congress*, iv., 182.

[1] Madison had for some time past been urging Randolph to go into the State Legislature where his influence on the side of adequate provisions for general funds would be most efficacious. He wrote to him April 1, 1783:

“My dear Friend: Your favor of the 22 Ulto verifies my fears that some disappointment would defeat your plan of going into the Legislature. I regret it the more, as every day teaches me more & more the necessity of such measures as I know you would have patronized; and as are losing ground so fast in the temper of the States as to require every possible support. Unless some speedy & adequate provision be made beyond that of the Confederation, the most dismal alternative stares me in the face. And yesterday’s post brought us information that a bill repealing the impost had passed the lower house of Massts. and one of a like import had made equal progress in the Legislature of S. Carolina. These defections are alarming but if a few enlightened & disinterested members would step forward in each Legislature to advocate for the necessary plans, I see with so much force the considerations that might be urged, that my hopes would still prevail. If advantage should be taken of popular prepossessions on one side without counter-efforts there is, to be sure, room for nothing but despair.

“The extract from — —’s [Adams’?] letter recited in yours astonishes me more than it would do you, because I must be more sensible of its contrast to truth. High as my opinion of the object [Franklin] of it was, the judgment, acuteness & patriotism displayed in the last despatches from him have really enhanced it. So far are they in particular from studiously leaving us in the dark, that some of them are of as late date as any if not later than those from several & perhaps as voluminous as all the rest put together.

“The zeal of Congs to hasten the effect of the general preliminaries led them (precipitately as conceive) to authorize the Secy of F. A. to notify to Sir G. Carleton & Adml Digby the intelligence received by the French Cutter on that subject, with their recall of American Cruizers, in order that correspondent measures might be taken at N. Y. The answers from these Commanders were addressed to Robt R. Livingston, Esqre, &c &c &c, and imported that they could not suspend hostilities at sea without proper authority from their Sovereign; but as Congress placed full reliance on the authenticity of the intelligence they supposed no objection cd lie on their part agst releasing all prisoners &c. A letter from Digby to the French Minister is I am told remarkably surly & indecent even for a British Admiral. We have received no official report of the signing of the General Preliminaries, nor any further particulars relative to them. Your surmise as to the dangerous phraseology which may be used in designating our limits, may be realized, if our Ministers are not cautious, or sd yield to improper considerations. But I trust that no such defaults will happen on that side: & that even if they should, the language used by Congress in all their own acts on that head Will overpower any arguments that may be drawn from acts of their Ministers.”—*Mad. MSS.*

[1] His mission was dispensed with and he was thanked for the readiness he had shown in undertaking the service. Dana’s desire to return from St. Petersburg was

approved of, unless he was engaged in any negotiations, in which event he might remain.—*Journals of Congress*, iv., 184.

[2] The dates are so given in the MS. but should read, Wednesday, April 2, Thursday, April 3, Friday, April 4, and Saturday, April 5. The proceedings on April 4 are the only ones recorded in the printed journals.

[1] “Your favor of the 29th. ult: was duly recd yesterday. Your apprehensions from the article in favor of British Creditors correspond with those entertained by all whose remarks I have heard upon it. My hope is that in the definitive treaty the danger may be removed by a suspension of their demands for a reasonable term after peace.

“The publication of Mr. Morris’s letters was neither previously assented to nor known by Congress. Whether it was the act of Mr. M himself is even unknown to them. After the injunction of secrecy was taken off, the curiosity of any individual, or the interest of the printer might obtain copies for the press.

“The imperfect information brought by the French Cutter is all that we have yet recd relative to peace. It is reported from N. York that similar intelligence had been brought thither by a Vessel from Lisbon. Hostilities however continue to devour our commerce.

“The report on revenue of which I gave you the outlines is still in an unfinished state; but in a way I flatter myself of being ultimately & substantially adopted. The admission into the common mass, of all expenses of the war not authorized by Congress, is the remaining article of difficulty. Even this however under some qualifications is so respectably patronized & so intimately linked with the article concerning the back lands that I do not despair altogether of seeing that also finally comprehended. A change of the valuation of Lands for the number of Inhabitants deducting of the Slaves, has recd. a tacit sanction & unless hereafter expunged will go forth in the general recommendation, as material to future harmony & justice among the members of the Confederacy. The deduction of was a compromise between the wide opinions & demands of the Southern & other States.

“A letter was recd. yesterday from Genl. Washington in answer to a notification from the Presidt. of the signing of the Genl. preliminaries on the 20 Jany., expressing the joy of the army at the glorious event, and the satisfaction they had recd from the Act of Congs. commuting the half-pay &c.”—Madison to Edmund Randolph, April 6, 1783. *Mad. MSS.*

[1] “The important contents of the inclosed paper were brought hither yesterday by a British officer sent for that purpose by Sr G. Carleton. To-day Congr recd letters from Dr. F. & Mr. Adams, inclosing a declaration entered into by them & the British Plenipy, by which the epochs at which hostilities are to cease between France & G. B. are adopted between the latter & America. A great diversity of opinion prevails as to the time at which they were to cease on this Coast. The Merchants & the lawyers are most affected by the question.”—Madison to Edmund Randolph, April 10, 1783. *Mad. MSS.*

[2] This was the proclamation “Declaring the cessation of arms, as well by sea as by land, agreed upon between the United States of America and his Britannic majesty; and enjoining the observance thereof.”—*Journals of Congress*, iv., 186, 187.

[1] “Genl Carleton is very importunate for an immediate execution of the provisional articles on the part of Congress in the points of liberating the prisoners, and recommending restitution to the Loyalists. On his part he has set the example on the first point but says nothing of executing the other important conditions which are in our favor. This proposition has led Congs into a critical discussion of the import of the Provl Articles, in which the opinions are almost as numerous as the articles themselves. Some think that the instrument was converted by the signature of preliminary articles between F. & G. B. into the Treaty of Peace, of which a ratification in America is alluded to in the 6 art. Others think that it was conditioned no otherwise on terms of peace between these powers, than that such an agreement rendered it a lawful & necessary foundation for a Treaty of peace between the U. S. & G. B. Some again suppose that the provl. art: need no ratification from Congs but that they ought to wait for a Treaty to be grounded on them. Others suppose that a ratification is essential or at least proper. The latter description again are divided—some proposing to ratify them as articles still contingent, others to ratify them as having taken effect in consequence of the preliminary Articles between G. B. & F. This variety & contrariety of interpretation arise in a great measure from the obscurity & even contrariety of the articles themselves.”—Madison to Edmund Randolph, April 15, 1783. *Mad. MSS.*

[1] “That the commander in chief be directed to enter into preparatory arrangements, relative to the 7th article of the said treaty, with the commanders in chief of the British land and naval forces in America.”—*Journals of Congress*, iv., 188.

[1] “The report on funds &c, passed Congress on Saturday last with the dissent of R. Island, and the division of N. York only. The latter vote was lost by the rigid adherence of Mr. Hamilton to a plan which he supposed more perfect. The clause providing for unauthorized expenditures could not be reinstated, and, consequently no attempt was made to link all the parts of the acts inseparably together. As it now stands it has I fear no bait for Virga, which is not particularly interested either in the object or the mode of the revenues recommended, nor in the territorial Cessions, nor in the change of the constitutional rule of dividing the Public burdens. A respect for justice, good faith & national honor is the only consideration which can obtain her compliance.

“We have recd no intelligence from abroad which deserves to be noted, since your departure. The interval between the preliminary & definitive Treaties has produced several new & interesting questions. One is whether laws prohibiing commerce with British Ports during the war, have expired with the cessation of hostilities? A similar one is, whether the Soldiers enlisted for the war are entitled to a discharge. At least half of the army under Genl Washington are under this description and are urgent for such a construction of their engagements. A third question is whether the preliminary treaty between F. & G. B. has given such effect to the provisional articles between the latter & the U. S. as to require an execution of the stipulations in the 6 & 7th artis. or

whether a definitive Treaty only can produce this effect.

“The system for foreign affairs is not yet digested, and I apprehend will be long on the anvil, unless the actual return of our Ministers from Europe should Stimulate Congress on the subject.”—Madison to Thomas Jefferson, April 22, 1783. *Mad. MSS.*

[1] Several unimportant private measures were under consideration.

[2] According to the Journal (IV. 194.) the address to the States was agreed to April 24.

[3] “Address to the States, to accompany the Recommendations of the 18th.

“The prospect which has for some time existed, and which is now happily realized, of a successful termination of the war, together with the critical exigencies of public affairs have made it the duty of Congress to review and provide for the debts which the war has left upon the United States and to look forward to the means of obviating dangers, which may interrupt the harmony and tranquillity of the Confederacy. The result of their mature & solemn deliberations on these great Objects is contained in their several recommendations of the 18th instant, herewith transmitted. Although these recommendations, speak themselves the principles on which they are founded, as well as the ends which they propose, it will not be improper to enter into a few explanations and remarks in order to place in a stronger view the necessity of complying with them.

“The first measure recommended is effectual provision for the debts of the United States. The amount of these debts, as far as they can now be ascertained is forty-two millions three hundred and seventy-five dollars as will appear by the schedule N. 1. To discharge the principle of this aggregate debt at once or in any short period is evidently not within the compass of our resources; and even if it could be accomplished the ease of the community would require that the debt itself should be left to a course of gradual extinguishment and certain funds be provided for paying in the meantime the annual Interest. The amount of the annual interest as will appear by the paper last referred to is computed to be two millions four hundred and fifteen thousand nine hundred and fifty-six dollars. Funds, therefore, which will certainly & punctually produce this annual sum at least, must be provided.

“In devising these funds Congress did not overlook the mode of supplying the common treasury provided by the Articles of Confederation. But after the most respectful consideration of that mode, they were constrained to regard it as inadequate & inapplicable to the form into which the public debt must be thrown. The delays & uncertainties incident to a revenue to be established & collected from time to time by thirteen independent authorities is at first view irreconcilable with the punctuality essential in the discharge of the interest of a national debt. Our own experience, after making every allowance for transient impediments has been a sufficient illustration of this truth. Some departure therefore in the recommendation of Congress from the federal constitution was unavoidable; but it will be found to be as small as could be reconciled with the object in view and to be supported besides by solid considerations



of interest and sound policy.

“The fund which first presented itself on this as it did on a former occasion, was a tax on imports. The reasons which recommended this branch of revenue have heretofore been stated in an Act, of which a copy, N. 2 is now forwarded & need not be here repeated. It will suffice to recapitulate that taxes on consumption are always least burdensome because they are least felt and are borne too by those who are both willing and able to pay them; that of all taxes on consumption those on foreign commerce are most compatible with the genius and policy of free states; that from the relative positions of some of the more commercial States it will be impossible to bring this essential resource into use without a concerted uniformity; that this uniformity cannot be concerted through any channel so properly as through Congress, nor for any purpose so aptly as for paying the debts of a revolution from which an unbounded freedom has accrued to Commerce.

“In renewing this proposition to the states we have not been unmindful of the objections which heretofore frustrated the unanimous adoption of it. We have limited the duration of the revenue to the term of twenty five years and we have left to the States themselves the appointment of the officers who are to collect it. If the strict maxims of national credit alone were to be consulted, the revenue ought manifestly to be co-existent with the object of it; and the collection placed in every respect under that authority, which is to dispense the former and is responsible for the latter. These relaxations will, we trust, be regarded, on one hand as the effect of a disposition in Congress to attend at all times to the sentiments of those whom they serve, and on the other hand, as a proof of their anxious desire that provision may be made in some way or other for an honorable and just fulfilment of the engagements which they have formed.

“To render this fund as productive as possible and at the same time to narrow the room for collusions and frauds, it has been judged an improvement of the plan to recommend a liberal duty on such articles as are most susceptible of a tax according to their quantity and are of most equal and general consumption, leaving all other articles, as heretofore proposed, to be taxed according to their value.

“The amount of this fund is computed to be 915,956 dollars. The estimates on which the computation is made are detailed in paper No 3. Accuracy in the first essay on so complex and fluctuating a subject is not to be expected. It is presumed to be as near the truth as the defect of proper materials would admit.

“The residue of the computed interest is 1,500,000 dollars & is referred to the States to be provided for by such funds as they may judge most convenient. Here again the strict maxims of public credit gave way to the desire of Congress to conform to the sentiments of their constituents. It ought not to be omitted however with respect to this portion of the revenue that the mode in which it is to be supplied varies so little from that pointed out in the articles of Confederation and the variations are so conducive to the great object proposed, that a ready & unqualified compliance on the part of the States may be the more justly expected. In fixing the quotas of this sum, Congress, as may be well imagined, were guided by very imperfect lights, and some

inequalities may consequently have ensued. These however can be but temporary; and as far as they may exist at all, will be redressed by a retrospective adjustment as soon as a constitutional rule can be applied.

“The necessity of making the two foregoing provisions one indivisible & irrevocable act is apparent. Without the first quality, partial provision only might be made, where complete provision is essential; nay as some states might prefer and adopt one of the funds only, and the other States the other fund only, it might happen that no provision at all would be made. Without the second, a single state out of the thirteen might at any time involve the nation in bankruptcy; the mere practicability of which would be a fatal bar to the establishment of national credit. Instead of enlarging on these topics, two observations are submitted to the justice and wisdom of the legislatures. First, the present creditors or rather the domestic part of them having either made their loans for a period which has expired or having become creditors in the first instance involuntarily, are entitled on the clear principles of justice and good faith to demand the principal of their credits instead of accepting the annual interest. It is necessary therefore as the principal cannot be paid to them on demand, that the interest should be so effectually & satisfactorily secured as to enable them, if they incline to transfer the stock at its full value. Secondly if the funds be so firmly constituted as to inspire a thorough & universal confidence, may it not be hoped that the capital of the domestic debt, which bears the high interest of 6 per cent. may be cancelled by other loans obtained at a more moderate interest? The saving by such an Operation would be a clear one, and might be a considerable one. As a proof of the necessity of substantial funds for the support of our credit abroad we refer to paper N 4.

“Thus much for the interest of the national debt. For the discharge of the principal, within the term limited, we rely on the natural increase of the revenue from commerce, on requisitions to be made from time to time for that purpose as circumstances may dictate, and on the prospect of vacant territory. If these resources should prove inadequate it will be necessary at the expiration of 25 years to continue the funds now recommended or to establish such others as may then be found more convenient.

“With a view to the resource last mentioned, as well as to obviate disagreeable controversies and confusions, Congress have included in their present recommendations a renewal of those of the 6 day of Septr and of the 10 day of October 1780. In both these respects a liberal and final accommodation of all interfering claims of vacant territory is an object, which cannot be pressed with too much solicitude.

“The last object recommended is a constitutional change of the rule by which a partition of the common burthens is to be made. The expediency and even necessity of such a change, has been sufficiently enforced by the local injustice and discontents which have proceeded from valuations of the soil in every state where the experiment has been made. But how infinitely must these evils be increased on a comparison of such valuations among the States themselves! On whatever side indeed this rule be surveyed the execution of it must be attended with the most serious difficulties. If the valuations be referred to the authorities of the several states, a general satisfaction is



not to be hoped for. If they be executed by Officers of the United States traversing the country for that purpose, besides the inequalities against which this mode would be no security, the expense would be both enormous and obnoxious. If the mode taken in the act of the 17th day of february last, which was deemed on the whole least objectionable, be adhered to, Still the insufficiency of the data to the purpose to which they are to be applied must greatly impair, if not utterly destroy all confidence in the accuracy of the result; not to mention that as far as the result can be at all a just one, it will be indebted for the advantage to the principle on which the rule proposed to be substituted is founded. This rule, although not free from objections, is liable to fewer than any other that could be devised. The only material difficulty, which attended it in the deliberations of Congress was to fix the proper difference between the labour and industry of free inhabitants and of all other inhabitants. The ratio ultimately agreed on was the effect of mutual concessions, and if it should be supposed not to correspond precisely with the fact, no doubt ought to be entertained that an equal spirit of accommodation among the several legislatures will prevail against little inequalities which may be calculated on one side or on the other. But notwithstanding the confidence of Congress as to the success of this proposition, it is their duty to recollect that the event may possibly disappoint them, and to request that measures may still be pursued for obtaining and transmitting the information called for in the act of the 17 of february last, which in such event will be essential.

“The plan thus communicated & explained by Congress must now receive its fate from their constituents. All the objects comprised in it are conceived to be of great importance to the happiness of this confederated Republic, are necessary to render the fruits of the Revolution a full reward for the blood, the toils, the cares, and the calamities which have purchased it. But the object, of which the necessity will be peculiarly felt, and which it is peculiarly the duty of Congress to inculcate, is the provision recommended for the national debt. Although this debt is greater than could have been wished, it is still less on the whole than could have been expected and when referred to the cause in which it has been incurred and compared with the burthens which wars of ambition and of vain glory have entailed on other nations ought to be borne not only with cheerfulness but with pride. But the magnitude of the debt makes no part of the question. It is sufficient that the debt has been fairly contracted and that justice and good faith demand that it should be fully discharged. Congress had no option but between different modes of discharging it. The same option is the only one that can exist with the states. The mode which has after long and elaborate discussion been preferred is we are persuaded, the least objectionable of any that would have been equal to the purpose. Under this persuasion we call upon the justice and plighted faith of the several states to give it its proper effect, to reflect on the consequences of rejecting it; and to remember that Congress will not be answerable for them.

“If other motives than that of justice could be requisite on this occasion, no nation could ever feel stronger. For to whom are the debts to be paid?

“To an ally, in the first place, who, to the exertion of his arms in support of our cause has added the succours of his treasure; who to his important loans has added liberal donations, and whose loans themselves carry the impression of his magnanimity and

friendship. For more exact information on this point we refer to paper no. 5.

“*To individuals in a foreign country*, in the next place, who were the first to give so precious a token of their confidence in our justice, & of their friendship for our cause; and who are members of a republic, which was second in espousing our rank among nations. For the claims and expectations of this class of creditors we refer to paper No 6.

“Another class of creditors is *that illustrious & patriotic band of fellow-citizens*, whose blood and whose bravery have defended the liberties of their country, who have patiently borne, among other distresses, the privation of their stipends, whilst the distresses of their country disabled it from bestowing them; and who even now ask for no more than such a portion of their dues as will enable them to retire from the field of victory and glory into the bosom of peace and private citizenship, and for such effectual security for the residue of their claims as their country is now unquestionably able to provide. For a full view of their sentiments & wishes on this subject we transmit the paper n 7, and as a fresh & lively instance of their superiority to every species of seduction from the paths of virtue and of honor we add the paper No 8.

“The remaining class of creditors is composed partly of such of our fellow citizens as originally lent to the public the use of their funds, or have since manifested most confidence in their country by receiving transfers from the lenders; and partly of those, whose property has been either advanced or assumed for the public service. To discriminate the merits of these several descriptions of creditors would be a task equally unnecessary & invidious. If the voice of humanity plead more loudly in favour of some than of others; the voice of policy no less than of justice pleads in favour of all. A wise nation will never permit those who relieve the wants of their country, or who rely most on its faith, its firmness and its resources, when either of them is distrusted, to suffer by the event.

“Let it be remembered finally that it has ever been the pride and boast of America, that the rights for which she contended were the rights of human nature. By the blessing of the Author of these rights on the means exerted for their defence they have prevailed against all opposition and form the basis of thirteen independent States. No instance has heretofore occurred, nor can any instance be expected hereafter to occur, in which the unadulterated forms of Republican government can pretend to so fair an opportunity of justifying themselves by their fruits. In this view the citizens of the United States are responsible for the greatest trust ever confided to a political society. If justice, good faith, honor, gratitude and all the other qualities which enoble the character of a nation & fulfil the ends of government, be the fruits of our establishments, the cause of liberty will acquire a dignity and lustre, which it has never yet enjoyed, and an example will be set, which cannot but have the most favourable influence on the rights of Mankind. If on the other side, our governments should be unfortunately blotted with the reverse of these cardinal and essential virtues, the great cause which we have engaged to vindicate, will be dishonored and betrayed; the last and fairest experiment in favor of the rights of human nature will be turned against them; and their patrons and friends exposed to be insulted and silenced

by the votaries of tyranny and usurpation.”—Cont. Cong.

Paper No. 1 referred to in the address was an estimate of the national debt. As to the foreign debt the figures are the same as in the estimate of April 8 (p. 443); as to the domestic debt they are the same with the addition of “Commutation to the army” (Act of March 22) 5,000,000 livres and “Bounty due to privates” 500,000 livres, making the total domestic debt \$34,115,290 and the total debt \$42,000,375, the aggregate of interest being \$2,415,956. For Paper No. 2, the letter of December 16 to Rhode Island on the subject of the import duties, see p. 288 n. Paper No. 3 was an estimate of the revenue that the import duties would produce. All goods from Europe, exclusive of tea, brandy and wine were estimated at a value of £3,000,000 sterling, which at 4s. 6d. per dollar would make \$15,555,554, giving, at five per cent., \$777,773. From spirits, wines, teas, sugar, coffee and cocoa, and molasses the revenue would be \$217,777, making a total of \$995,550. Deducting 8 per cent. for collection, the net estimated revenue would be \$915,956. Paper No. 4 was a copy of Franklin’s letter from Passy, December 23, 1782, stating that a knowledge that the states had not agreed to the impost had hurt the credit of the United States in France and Holland, and of the French Minister’s letter to Congress, March 15, 1783, stating that no further assistance could be expected from France, or from any other source abroad, unless measures for securing regular revenue should be concerted. Papers No. 5 and 6 gave the contracts between the United States and France and Holland, respectively, for the repayment of the loans made by those governments. Paper No. 7 was the address of the army dated “Cantonments, Hudson’s River, December, 1782,” setting forth the unendurable distress caused by a want of funds. Paper No. 8 was a copy of Washington’s letter giving the anonymous communications to the army and his orders for the meeting of the officers, the results of the meeting and all the correspondence. All the papers may be found *in extenso* in Journals of Congress, iv, 197, *et seq.*

[1] He accompanied the family of James Floyd on their journey back to New York as far as Brunswick, sixty miles from Philadelphia, returning to Philadelphia Friday evening. He was then paying his addresses to Miss Floyd, who soon afterwards rejected him.

[1] Madison related the march of events outside of Congress in the two following letters:

## TO EDMUND RANDOLPH.

Philada 6 May, 1783.

After a silence of 4 weeks your favor of the 26 Ult, was particularly welcome. Your conjecture was but too well founded as to the compiler of the Proclamation. The offensive passages were adverted to by some, but the general eagerness on the occasion, increased by some unavoidable delays, rendered all attempts to draw the attention of Congress to smaller inaccuracies unacceptable. We have no late despatches from Paris, except a letter from Mr. Adams which affords a new & signal exemplification of those qualities which have so much distinguished his correspondence with Congress. We are informed from Madrid by Mr. Carmichael &

the Marquis de la Fayette, that that Court since the British acknowledgment of our Independence has dismissed its hauteur & reserve towards the U. S. has treated the American Chargé d’Affaires with due attention & has signified its acquiescence in the limits fixed by the provisional articles between the U. S. & G. B. The navigation of the Mississippi remains to be discussed.

Yesterday was fixed for an interview between Genl W. and Sr G. Carleton for the purpose of taking arrangements for carrying the stipulations of the provisional articles into effect. The interview was proposed by the former, who intimated that as the evacuation of the Post of N. Y. was particularly interesting to the State of N. Y. Govr Clinton would accompany him on the interview. The answer of Carleton imported that he did not decline the proposition, but suggested that as Genl Gray was expected with final orders it might be best to postpone the conference, adding that he should be attended by *Lt - Govr Elliott* and *Chief-Justice Smith*.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Philada. May 6, 1783.

Your favor of the 21. Ult. written at Col. Pendleton’s was brought to hand by the Post of last week. Col. Floyd’s family did not set out until the day after it was received. I accompanied them as far as Brunswick, about 60 miles from this and returned hither on Friday evening. . . . *Congress have recd a long and curious letter from Mr. Adams, dated in Feb. addressed to the president not to the Secretary for foreign affairs. He animadverts on the revocation of his commn for a treaty of commerce with great Britain presses the appointment of a minister to that Court with such a commn draws the picture of a fit character in which his own likeness is ridiculously & palpably studied finally praising and recommending Mr. Jay for the appointment provided injustice must be done an older servant.*

Letters from the Marquis de la Fayette and Mr. Carmichael that the Court of Spain has become pretty tractable since the acknowledgment of our Independence by G. B. The latter has been treated with due respect, and the Court has agreed to accede to the territorial line it fixed for W. Florida in the provisional Articles. The navigation of the Mississippi remains to be settled.

My absence from Congs the past week disables me from giving you exact information of their latest proceedings. I am told that in consequence of *Mr. Adams’s letter the secretary of foreign affairs has been instructed to project a treaty of commerce with great Britain, which will probably bring the attention of Congress to the general department of foreign affairs.* (Italics for cypher.)—*Mad. MSS.*

[1] The Commander in Chief was directed to place in the frontier posts, whenever they should be evacuated in pursuance of the articles of the treaty of peace, troops whose service had not expired, until further measures should be decided upon. The Superintendent of Finance was ordered to pay the officers deputed by the army to present their memorial to Congress on January 8th their reasonable expenses during their stay in town.—*Journals of Congress*, iv., 221.

[2]The project for a treaty of commerce with great Britain was brought forward by Livingston at this time. It prompted Madison to write the two following letters:

## TO THOMAS JEFFERSON.

Philada, May 13, 1783.

Dear Sir

*Marbois lately took occasion in our family to complain of ungenerous proceedings of the British against individuals, as well as against their enemies at large, and finally signified that he was no stranger to the letter transmitted to Congress which he roundly averred to be spurious. His information came from Boston, where the incident is said to be no secret; but whether it be the echo of letters from Philada or has transpired from the correspondence of Mr. Adams to his private friends is uncertain. This conversation passed during my absence in new Jersey, but was related to me by Mr. Carroll. A project for a treaty of commerce with Britain has been reported by the Secretary of foreign affairs and is now in the hands of a commee. The objects most at heart are first a direct trade between this country & the West Indies. Second a right of carrying between the latter & other parts of the British empire. Thirdly a right of carrying from the West Indies to all other parts of the world. As the price of these advantages it is proposed that we shall admit British subjects to equal privileges with our own citizens. As to the first object it may be observed that the bill lately brought into the British Parliament renders it probable that it may be obtained without such a cession, as to the second that it concerns the Eastern States chiefly & as to the third that it concerns them alone, whilst the privilege to be conceded will chiefly if not alone affect the Southern States. The interest of these seems to require that they should retain at least the faculty of giving any encouragement to their own merchants' ships or mariners, which may be necessary to prevent a relapse under scotch monopoly, or to acquire a maritime importance. The Eastern States need no such precaution.*

Genl. Washington & Genl Carleton have had an interview on the subject of arrangements for executing the provisional Treaty. It was interrupted by the sudden indisposition of the latter. In the conversation which took place, he professed intentions of evacuating New York & all the posts in the U. S. held by British Garrisons as soon as possible, but did not authorize any determinate or speedy expectations. (Illegible) that a number of Negroes had gone off with the Refugees since the arrival of the Treaty, and undertook to justify the permission by a palpable & scandalous misconstruction of the Treaty, and by the necessity of adhering to the proclamations under the faith of which the Negroes had eloped into their service. He said that if the Treaty should be otherwise explained, compensation would be made to the owners and to make this the more easy, a register had been & would be kept of all Negroes leaving N. Y. before the surrender of it by the British Garrison. This information has been referred by Congs. to a Committee. But the progress already made in the discharge of the prisoners, the only convenient pledge by which fair

dealing, on the other side, could be enforced, makes it probable that no remedy will be applied to the evil. (*Italics for cypher.*) Mad. MSS.

## TO EDMUND RANDOLPH.

Philada. May — 1783.

My Dear Sir,

Your favor of the 9th inst. was duly brought by yesterday's Mail. My impatience is great to know the reception given to the propositions of Congress by the Assembly. I foresaw some of the topics which are employed against them, & I dread their effect from the eloquent mouths which will probably enforce them; but I do not despair. Until those who oppose the plan, can substitute some other equally consistent with public justice & honor, and more conformable to the doctrines of the Confederation, all those who love justice and aim at the public good will be advocates for the plan. The greatest danger is to be apprehended from the difficulty of making the latter class sensible of the impracticability or incompetency of any plan short of the one recommended; the arguments necessary for that purpose being drawn from a general survey of the federal system, and not from the interior polity of the States singly.

The letter from the Delegation by the last post to the Govr. appr the Legislature, thro him that negotiations for a Treaty of Commerce with G. B. might be expected soon to take place; and that if any instructions should be deemed proper no time ought to be lost in giving the subject a legislative discussion. For my own part I wish sincerely that the commercial interests of Virginia were thoroughly investigated & the final sense of the State expressed to its representatives in Congress.

The power of forming Treaties of Commerce with foreign nations is among the most delicate with which Congs are entrusted and ought to be exercised with all possible circumspection. Whilst an influence might be expected from them on the event or duration of the war, the public interest required that they should be courted with all the respectable nations of Europe, and that nice calculations of their tendency should be dismissed. The attainment of the object of the war has happily reversed our situation and we ought no longer to enslave ourselves to the policy of the moment. The state of this Country in relation to the Countries of Europe it ought to be observed, will be continually changing, and regulations adapted to its commercial & general interests at present may hereafter be directly opposed to them. The general policy of America is at present pointed at the encouragement of Agriculture, and the importation of the objects of consumption. The wider therefore our ports are opened, and the more extensive the privileges of all competitors in our commerce, the more likely we shall be to buy at cheap & sell at profitable rates. But in proportion as our lands become settled, and spare hands for manufactures & navigation multiply, it *may* become our policy to favor those objects by peculiar privileges bestowed on our citizens; or at least to introduce regulations [not] inconsistent with foreign engagements suited to the present state of things.

The relative situation of the different States in this respect is another motive to circumspection. The variance of their policy & interests, in the article of Commerce strikes the first view, and it may with great truth be noted that as far as any concessions may be stipulated in favor of foreign nations they will chiefly be at the expense of those States which will share least in the compensations obtained for them. If, for example, restrictions be laid on the legislative rights of the States to prohibit, to regulate or to tax as they please their imports & exports, & to give such preferences as they please to the persons or vessels employed in them, it is evident that such restrictions will be most felt by those States who have the greatest interest in exports & imports. If on the other side the Citizens of the U. S. should in return for such a stipulation be allowed to navigate & carry, in forbidden channels, is it not equally evident that the benefit must fall to the share of those States which export & consume least, and abound most in resources of ships & seamen.

Nor should it be overlooked that as uniform regulations of the Commerce of the different States will so differently affect their several interests, such regulations must be a strong temptation to measures in the aggrieved States which may first involve the whole confederacy in controversies with foreign nations, and then in contests with one another. I may safely suggest also to your ear, that a variety of circumstances make it proper to recollect that permanent engagements, entered into by the Confederacy with foreign powers, may survive the Confederacy itself; that a question must then arise how far such engagements formed by the States in their federal character, are binding on each of them separately and that they may become pretexts for quarrels with particular States, very inconvenient to the latter, or for a general intrusion into American disputes. On the other hand candor suggests that foreign connections, if founded on principles equally corresponding with the policy & interests of the several States might be a new bond to the federal compact.

Upon these considerations I think it would be advisable to form all our commercial Treaties in future with great deliberation, to limit their duration to moderate periods, & to restrain our Ministers from acceding finally to them till they have previously transmitted them in the terms adjusted, for the revision and express sanction of Congress. In a Treaty of Commerce with G. B., it may be the policy of Virga, in Particular, to reserve her right as unfettered as possible over her own commerce. The monopoly which formerly tyrannized over it has left wounds which are not yet healed, & the numerous debts due from the people, & which by the provisional articles they are immediately liable for, may possibly be made instruments for re-establishing their dependence. It cannot therefore be for the interest of the State to preclude it from any regulations which experience may recommend for its thorough emancipation. It is possible that experience may never recommend an exercise of this right, nor do my own sentiments favor, in general, any restrictions or preferences in matters of commerce but those who succeed us will have an equal claim to judge for themselves, and will have further lights to direct their judgments. Nor ought the example of old & intelligent nations to be too far or too hastily condemned by an infant and inexperienced one. That of G. B. is in the science of commerce, particularly worthy of our attention; And did she not originally redeem the management of her Commerce from the monopoly of the Hanse towns by peculiar exemptions to her own subjects? Did she not dispossess the Dutch by a like policy? And does she not still make a

preference of her own Vessels and her own mariners the basis of her maritime power? If Holland has followed a different system the reason is plain. Her object is not to exclude rivals from her own navigation, but to insinuate herself into that of other nations.

The leading objects in the proposed Treaty with G. B. are, 1. a direct commerce with the W. Indies. 2, the carrying trade between the different parts of her dominions. 3, a like trade between these & other parts of the world. In return for these objects we have nothing to offer of which we could well deprive her, but to secure to her subjects an entire equality of privileges with our own citizens. With regard to the 1. object it may be observed, that both the temper & the interest of the nation leave us little ground to apprehend an exclusion from it. The French have so much the advantage of them from the facility of raising food as well as the other produce of their Islands, that the English will be under the necessity of admitting supplies from the U. S. into their Islands, and they surely will prefer paying for them in commodities to paying for them in cash. With regard to the 2nd & 3d objects it may be observed that altho' they present great advantages, they present them only to those States which abound in maritime resources. Lastly with regard to the concession to be made on the part of the U. S., it may be observed that it will affect chiefly if not solely those States which will share least in the advantages purchased by it. So striking indeed does this contrast appear that it may with certainty be inferred that If G. B. were negotiating a Treaty with the former States only, she would reject a mutual communication of the privileges of natives; nor is it clear that her apprehensions on this side will not yet lead her to reject such a stipulation with the whole.

If this subject should be taken up by the Legislature, I hope that, altho' not a member, your attention & aid will be given to it. If it sd not be taken up publicly I wish for your own private sentiments & those of the most intelligent members which you may be able to collect.

We have no European intelligence. Sr G. Carleton in a letter to Gel W. avows the same sentiments as were expressed in the conference relative to the negroes, but repeats his caution agst their being understood as the national construction of the Treaty. . . .

In reviewing the freedom of some of the remarks which I have hazarded above, I am almost induced to recall them till I can cover them with cypher. As there is little danger attending the mail at present and your own (illegible) will take care of such as may be improper to be reverberated to this place I shall upon the whole let them stand.—*Mad. MSS.*

[1] The committee to whom was referred a claim of the officers of a brigade raised in Rhode Island in 1779 for one year for depreciation of their pay reported against an allowance, since none had thus far been made to any officers or soldiers discharged before April 10, 1780.—*Journals of Congress*, iv., 222.

[1] The pay for Chaplains and for couriers and postage for our missions abroad was under consideration.—*Journals of Congress*, iv., 222.



[1] Hamilton made the motion, seconded by Madison, that Dana be informed that the primary object of his mission to St. Petersburg was terminated, and that the benefits of a commercial treaty were remote and without present inducements, that if any such treaty should be made it should be of brief duration, as experience would show more clearly the principles upon which the intercourse between the two countries should be conducted. The passage relating to armed neutrality was as follows.

“That though Congress approve the principles of the armed neutrality, founded on the liberal basis of a maintenance of the rights of neutral nations and of the privileges of Commerce, yet they are unwilling, at this juncture, to become a party to a confederacy which may hereafter too far complicate the interests of the United States with the politicks of Europe, and therefore, if such a progress is not yet made in this business as may make it dishonorable to recede, it is their desire, that no further measures may be taken at present towards the admission of the United States into that confederacy.”—*Secret Journals of Congress, For. Affs.*, 346.

[1] Oliver Pollock was commissioned as commercial agent to the Havana and the agent of marine was instructed to take legal measures against the bonds of privateers for abuses committed by them.—*Journals of Congress*, iv., 226.

[1] January 2, 1781, Virginia offered a cession of the whole territory claimed by her northwest of the Ohio River, on condition that she be reimbursed for her expenses in conquering and defending the ceded territory; that the inhabitants be protected; that Congress fulfill the promises Virginia had made to George Rogers Clarke and his officers and soldiers of grants of land for their services in reducing the British posts; that further grants be made, if necessary, to her continental and state troops, and that the land be used for the common benefit. The land companies arrayed themselves against the cession, as it provided that their claims should be considered void. November 3, a committee of Congress reported that the lands, pretended to be ceded, belonged to the Six Nations of Indians, and were under the government of New York. The subject came up again in Congress September 6, 1782, and on October 29, the cession of all rights, interests and *claims* of New York was accepted. Virginia's cession was accepted September 13 substantially as originally offered. See also Rives's *Madison*, 1., 445, *et seq.*

Madison anticipated the discussion in the following letter of May 20 to Jefferson:

“For the tenor of the conditions on which Congs were formerly willing to accept the Cession of Virga, I beg leave to refer to their resolutions of the 6 of Sepr & 10 of Octr 1780. I take it for granted you have the Journals. The expunging of the article relative to State expenses was a subject of no less regret with me than it is with you & for the same reason, but I acknowledge that considering the probable defect of vouchers in Virga and the ardor with which the clause was supported from some other quarters, mine was much diminished in the course of the discussion. On the last trial there were but two or three States besides Virga. that favored it. S. Carolina's opposition to it had great weight. After this clause was expunged it was thought improper to retain the connective clause as Virga will now be at liberty to confine her accession to the revenue part of the plan, without enlarging her territorial Cession or being deprived of

the opportunity of annexing any Condition she may think fit. The connective clause however could not have been carried I believe either before or after the mutilation of the plan. Notwithstanding this disappointment I adhere to my wishes not only that the revenue may be established, but that the federal rule of dividing the burdens may be changed, and the territorial disputes accommodated. The more I revolve the latter subject, the less inducement I can discover to pertinacity on the part of Virga. and the more interesting it appears to the Union.

“I am sorry your departure from Richmond became necessary before more of the members were assembled. I make no doubt that useful impressions have been left with those who were so & were susceptible of them. I shall keep in mind the intimation relative to Mr. Short. The idea of adding a fraction of a year to my Congressional Service is totally new, and even if it should prevail, will not as far as I can see, coincide with my private convenience.”—*Mad. MSS.*

[1] “*Resolved*, That if any captain or commander of any packet, ship of war or armed vessel in the service of the United States, shall load, or suffer to be laden on board the vessel of which he has command, any goods and merchandise, without express order or permission of Congress or their agent of marine, he shall forfeit his commission for such offence.”—*Journals of Congress*, iv., 227.

[2] Madison was in the meantime becoming highly impatient to know how the plan for raising revenue was being received in Virginia. He wrote to Edmund Randolph, May 27.

“A letter recd yesterday from Mr F. Webb, inclosing bills in my favor for £200 Virga currency informed me of the successful effort of your friendship for my relief. Mr Ambler informed me that your attempt was for £100 more, but was abridged on a doubt as to the balance due to me. My answer to him by this conveyance will shew that you would have been sufficiently under the mark.

“The next post I hope will bring me your remarks on the Budget of Congress, with the pulse of the Assembly with regard to it. The example of Virga will have great & perhaps decisive influence on the event of it. In Rhode Island they are attacking it in the Newspapers before it has appeared. But that State is swayed by a party which has raised & connected its importance with an opposition to every Contl measure. The bulk of the people are taken in by a belief that, if no general impost on Trade be levied, their State will be able to tax the neighboring States at pleasure. Should all the other States unite heartily in the plan, I do not think any single State will take upon itself the odium & the consequences of persevering in a veto upon it.

“I wish much to know how far your hope was well founded of an introduction of Mr. Jefferson into the Legislature. The hopes of some I find extend to his Mission to Congress. The latter would be exceedingly fortunate &, if his objections are not insuperable ought & I trust will be urged upon him by his friends. I have been also indulging a hope that your return for such periods as would be most interesting, & would least interfere with the exercise of your profession, might be reconciled to your views. Unless temperate & experienced members come in for the ensuing year, I

foresee that the exclusions reqd by the Confederation will make way for a change in the federal Councils not favorable to those catholic arrangements on which the harmony & stability of the Union must greatly depend.

“We have recd. no accession of intelligence either as to the progress of the definitive Treaty, of the bill in the British Parlt for commerce with the U. S. or of the negociations among the hungry suitors for the loaves & fishes of the Administration.”

[1]“Mr. Livingston has taken his final leave of the Department of Foreign Affairs. He would have remained, if such an augmentation of his salary had been made as would have secured him against future expense. But besides the disinclination of several members to augment salaries, there was no prospect of a competent number of States for an appropriation of money until he must have lost the option of Chancellorship of New York. No successor has been yet nominated, although the day for a choice has passed. I am utterly at a loss to guess on whom the choice will ultimately fall. Arthur Lee will be started, if the defect of a respectable competitor should be likely to force votes upon him.

“The general arrangement of the foreign system has been suspended by the thinness of Congress, in part, and partly by the desire of further information from Europe. I fear much the delay will be exceedingly protracted. Nothing but final resignations of the Minister abroad, and the arrival of Foreign Ministers here, will effectually stimulate Congress into activity and decision on the subject. How far, and at what time, the first cause will operate is precarious. The second seems less so.”—Madison to Jefferson, June 10, 1783, Madison Papers (1840).

On the same day he wrote to Edmund Randolph—

“We have recd the instruction relative to comercial Treaties. The principle on which it is founded corresponds precisely with my idea. But I know not how far the giving an opportunity to the States of exercising their judgments on proposed Treaties will correspond in all cases with the doctrine of the Confederation which provides for secrecy in some such cases. The deviation however if there be any is trivial, and not being an intended one can have no ill consequences. No progress has been made towards a Treaty with G. B. owing partly to a desire of hearing further from Europe & partly to the paucity of States represented in Congs. It would seem that the plan of regulating the Trade with America by a Parliamentary Act has been exchanged by the present Ministry for an intended Treaty for that purpose. Mr. Laurens was asked by Mr. Fox whether the American Ministers had powers for a commercial Treaty. His answer was that he believed so: that a revocation of Mr. Adams’s powers had appeared some time ago in print, but he considered the publication as spurious. From this it wd seem that this Act of Cong had never been communicated by the latter to his colleagues. He lately complained of the revocation in a very singular letter to Congr. I consider it as a very fortunate circumstance that this business is still within our controul, especially as the policy of authorizing *conditional* Treaties only in Europe is so fully espoused by Virginia. . . .

“The offers of N. Y. & Maryld of a seat for Congs are postponed till Ocr next in order

to give time for other offers & for knowing the sense of the States on the subject. Copies of those Acts are to be sent to the Executives of each State. . . .

“Congress have resumed at length the Cession of Virga, the old obnoxious report was committed, and a new report has been made which I think a fit basis for a compromise. A copy of it is inclosed for the Govr: I have also transcribed it in my letter to Mr. Jones. As it tacitly excludes the pretensions of the companies, I fear obstacles may arise in Congs from that quarter. Clarke from N. Jersey informed Congs. that the Delegates from that State being fettered by instructions, must communicate the plan to their constituents. If no other causes of delay should arise the thinness of Congs at present will prove a material one. I am at some loss for ye policy of the companies in opposing a compromise with Virga They can never hope for a specific restitution of their claims, they can never even hope for a cession of the country between the Alleghany & the Ohio by Virga, as little can they hope for an extension of a jurisdiction of Congs over it by force. I should suppose therefore that it wd. be their truest interest to promote a general cession of the vacant Country to Congress and in case the titles of which they have been stripped sd be deemed reasonable, and Congs sd be disposed to make any equitable compensation, Virga wd be no more interested in opposing it than other States.”—*Mad. MSS.*

[1] The Secretary of War was authorized to furlough certain Pennsylvania, Delaware, Maryland and Virginia troops.

[1] The committee commended the conduct of the department and found all public monies entrusted to continental officers duly accounted for, but that the States had not accounted for the “specifics by them respectively supplied for the use of the continent,” and that a number of people who had been entrusted with public money neglected or refused to settle their accounts and could not be compelled to do so, because of the want of necessary laws in the States. They found that the whole sum brought into the public treasury from May 14, 1781, to January 1, 1783, amounted to \$2,726,304, and the whole expenditure \$3,131,046, the expenditures exceeding the receipts in 1782 by \$404,713, “which was supplied by a circulation in the notes of the financier.” They were ordered to consider what measures might be necessary to compel accounts being rendered by delinquent persons.—*Journals of Congress*, iv., 228-241.

[1] “The definitive Treaty is not yet on this side the watr., nor do we yet hear what stage it is in on the other side. Mr. Dana informs us in a letter of the 17 of Feby that, in consequence of proper encouragement he had finally announced himself at the Court of St. Petersburg., but does not gratify us with a single circumstance that ensued. The Gazette of this morning inclosed contains the latest intelligence from the British Parliamt which I have seen.

“The measure of furloughing the troops enlisted for the war has been carried into effect with the main army, and will save a great expense to the public. The prospect which it presented to the officers who were to retire from their subsistence without receivg the means of subsistence elsewhere produced a very pathetic representation to the Commander in chief. His answer by rectifying some errors on which it dwelt, and

explicitly giving it as his opinion that Congress had now done every thing wch could be expected from them towards fulfilling the engagements of their Country, had the effect to which it was entitled. The troops in the barracks at this place, emboldened by the arrival of a furloughed Regt returning to Maryland, sent in a very mutinous remonstrance to Congress, signed by the non-commissioned officers in behalf of the whole. It painted the hardships which they had suffered in the defence of their Country & the duty of their Country to reward them, demanding a satisfactory answer the afternoon on which it was sent in, with a great threat of otherwise taking such measures as would right themselves. The prudent & soothing measures taken by the Secy of War & Genl St. Clair have I believe obviated the embarrassment.

“Another embarrassment, and that not a small one will soon be laid before them by a Committee. Genl Washington, the Secy of War and all the professional men who have been consulted, report that at least 3 or 4 Regts will be essential as a peace establishmt for the U. States, & that this establishmt ought to be a Continental one. West point, the frontier posts to the Westward, and a few Garrisons on the sea-shore, are conceived by them to be indispensable. Some naval force is deemed at least equally so, with a few docks & protections for them. On looking into the Articles of Confederation, the military power of Congress, in time of peace, appears to be at least subject to be called in question. If Congress put a construction on them favorable to their own power, or even if they ask the States to sanction the exercise of the power, the present paroxysm of jealousy may not only disappoint them, but may exert itself with more fatal effect on the Revenue propositions. On the other side to renounce such a construction, and refer the establishment to the separate & internal provision of the States, will not only render the plan of defence either defective in a general view or oppressive to particular States, but may hereafter when the tide of prejudice may be flowing in a contrary direction, expose them to the reproach of unnecessarily throwing away a power necessary for the good of the Union, and leaving the whole at the mercy of a single State. The only expedient for this dilemma seems to be delay; but even that is pregnant with difficulties equally great; since on the arrival of the definitive Treaty, Congs must in pursuance of such a neutral plan suffer the whole military establishmt to be dissolved, every Garrisoned-post to be evacuated, and every strong hold to be dismantled. The remaining ships of war too must be sold, and no preparatory steps taken for future emergencies on that side.

“I am exceedingly pleased to find Mr. Jefferson’s name at the head of the new Delegation. I hope it has been placed there with his knowledge and acquiescence.

“The order of the day for electing a Secy of F. Affairs was called for on Tuesday last, but no nominations having been then made the business was put off till the present day. The nominations since made are, Mr. A. Lee by Mr. Bland, Mr. Jonathan Trumbull, Jur, by Mr. Higginson, Col. Tilghman by Mr. Ghorham, Mr. George Clymer by Mr. Montgomery. Genl. Schuyler has remained on the list since the fall, but was withdrawn by the Delegates of N. Jersey at the instance of Mr. Hamilton. Mr. Jefferson was nominated by Mr. Ghorham; but withdrawn also on intimation that he would not undertake the service.”—Madison to Edmund Randolph, June 17, 1783.—*Mad. MSS.*

[1] Motion of Mr. Williamson 2ded. by Mr. Bland June 19, 1783, com?ited to Mr. Williamson, Mr. Hamilton & Mr. Madison.

Whereas the safety and peace of the U. S. are greatly interested in the No of States that may be reqd to vote on Questions of a particular class: and whereas it is provided by the 9th. article of the Confederation that the U S in C asd shall never engage in a war nor grant letters of marque & reprisal in time of peace, nor enter into any Treaties or Alliances nor coin money, nor regulate the value thereof, nor ascertain the sums & expences necessary for the defence & welfare of the U. S. or any of them, nor emit bills nor borrow money on the Credit of the U. S. nor appropriate money nor agree upon the No. of Vessels of War to be built or purchased or the no of land or Sea forces to be raised, nor appt. a Com?der in chief of the army or Navy, unless nine States assent to the same. It is also provided by the eleventh Art: That no Colony except Canada shall be admitted into the Union unless such admission be agreed to by nine States, but no provision is made for the no. of States that may be reqd. to agree in determining such questions when the prest no of States shall have been increased: And Whereas the determination of these great questions by 9 States alone when the origl. no. may be considerably increased wd. be a sufficient departure from the Spirit of the Confederation & might prove dangerous to the Union, Therefore Resd. that whenever a 14 State sd be admitd into ye. prest Union, the vote & agret of 10 Sts. shall become necessary. for determg all those quests. in y. Confn of U. S. wch. are now determd. by no less than 9.

Resd. that ye asst. of 3 addl. States shall be necessary. in determg those questions for every 4 addl. Sts Yt may be admd into the Union.

Resd. that ye. sevl. Sts be advised to authorise their respective Delags. to subscribe & ratify the above Resolves as part of the instrumt of Union. [Note in MS.]

[1] The motion was “that all reasonable and necessary expenses, incurred in subduing the British posts at the Kaskaskies and St. Vincents, and the expense of maintaining garrisons there, or to the northwest of the river Ohio, since the reduction of the said posts, ought to be allowed, being agreeable to the aforesaid act.” New Jersey, Pennsylvania and Delaware voted aye.—*Journals of Congress*, iv., 230.

[2] The remonstrance expressed surprise at the matter coming up for consideration and called attention to the previously expressed claim of New Jersey to its full proportion of all vacant territory. “We cannot be silent,” it said, “while viewing one state aggrandizing herself by the unjust detention of that property, which has been procured by the common blood and treasure of the whole, and which on every principle of reason and justice, is vested in Congress for the use and general benefit of the union they represent.” It was urged that the cession be not accepted, but that Congress press upon Virginia “to make a more liberal surrender of that territory of which they claim so boundless a proportion.”—*Journals of Congress*, iv., 231.

[1] “Their grievances, all terminate as you may suppose, in the want of their pay which Congs are unable to give them; and the information we received from the States is far from opening any fresh sources for that purpose. Indeed the prospect on

the side of the latter compared with the symptoms beginning to appear on the side of the army is to the last degree afflicting to those who love their country and aim at its prosperity. If I had leisure to use a Cypher, I would dilate much upon the present state of our Affairs; which as it is I must defer to another occasion.

I was prepared by Mr. Jones's late letters for the fate to which the Budget of Congs has been consigned, but the circumstances under which it arrived here gave peculiar pungency to the information. I wish that those who abuse Congs, and baffle their measures, may as much promote the public good as they profess to intend. I am sure they will not do it more effectually than is intended by some at least, of those who promote the measure of Congress." Madison to Edmund Pendleton June 24, 1783.—*Mad. MSS.*



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CONTENTS OF VOLUME II.

	PAGE
Chronology . . . . .	XV
1783.	
To Edmund Randolph, July 8th . . . . .	2
Impost in the Assembly—Nathan award—Place of sitting of Congress.	
To Edmund Randolph, July 15th . . . . .	2
Attachment of Philadelphia to Federal Government.	
To Edmund Randolph, July 28th . . . . .	3
Return of Congress to Philadelphia—Seat of Federal Government—The definitive treaty of peace.	
To Thomas Jefferson, August 11th . . . . .	5
The definitive treaty—Dane's mission to Russia—Ratification of treaty with Sweden—The peace establishment—Fate of the budget.	
To Edmund Randolph, August 12th . . . . .	8
Penurious spirit of Massachusetts—Status voted for General Washington—His counsel sought.	
To Edmund Randolph, August 18th . . . . .	9
Seat of Government—Letters from Laurens—South Carolina agrees to the impost.	
To Edmund Randolph, August 24th . . . . .	10
Carleton's evacuation of New York.	
To Edmund Randolph, August 30th . . . . .	11
British pamphlet on the subject of commercial treaty—Seat of Federal Government.	
To James Madison, August 30th . . . . .	13
Evacuation of New York—Seat of Federal Government.	

45518

## Table Of Contents

[Chronology of James Madison. 1783-1787.](#)  
[The Writings of James Madison.](#)  
[1783 - to Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Thomas Jefferson.](#)  
[To Edmund Randolph.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[1784 - to Edmund Randolph. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To General Washington. Wash. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[Notes of Speech Against Assessments For Support of Religion. November —  
1784. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Richard Henry Lee. Mad. Mss. Extract From a Letter From J. M. To Rich D  
. H. Lee, Dec R . 25, 1784.](#)

[Resolutions Touching the Navigation and Jurisdiction of the Potomac. Mad. Mss.](#)  
[1785 - to Thomas Jefferson. Mad. Mss.](#)  
[To Marquis De Lafayette. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[James Monroe Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To R. H. Lee. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Caleb Wallace. 1 Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Memorial and Remonstrance Against Religious Assessments. 1](#)  
[To General Washington. Wash. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[Notes For Speech In the Virginia House of Delegates November, 1785. 1](#)  
[Commercial Regulations. Mad. Mss.](#)  
[To General Washington. Wash. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Ambrose Madison. 1](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[1786 - Church Establishment. Mad. Mss. to the Hole the Speaker & Gentlemen the General Assembly of Virginia. \(1786.\) 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monore. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Thomas Jefferson.](#)  
[To James Monroe. 1](#)  
[To Ambrose Madison. 1](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)

[Speech In the Virginia House of Delegates, November, 1786, Against Paper Money. 1 Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Henry Lee. 1 Mad. Mss. \( Copy. \)](#)  
[To James Madison. Mad. Mss.](#)  
[To Henry Lee. Mad. Mss. \( Copy \)](#)  
[To James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To General Washington. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To George Washington. Mad. Mss.](#)  
[1787 - to Edmund Pendleton. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Edmund Randolph. 1](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Randolph. 1](#)  
[To Edmund Randolph. 1](#)  
[To George Washington. Wash. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Thomas Jefferson. 1](#)  
[Of Ancient & Modern Confederacies. 1 Mad. Mss.](#)  
[Origin of the Constitutional Convention. Mad. Mss. a Sketch Never Finished Nor Applied. 1](#)

The Knickerbocker Press, New York

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1783-1787.



1783. July to Dec. In attendance on Congress.
1783. Dec. Back in Orange.
1784. May 1. Leaves Orange for Richmond.
1784. May 13. In the House of Delegates.
1784. June. Makes a Speech in favor of amending the State constitution.
1784. June 28. Madison's bill for joint commissioners with Maryland to regulate navigation of the Potomac passed.
1784. July 1. Madison appointed a commissioner for Virginia. Assembly adjourns.
1784. Aug. At home in Orange.
1784. Sept. 1. Makes journey from Baltimore with Marquis de Lafayette.
1784. Sept. 4. Arrives in Philadelphia.
1784. Sept. 15 to Oct. On journey to Indian treaty at Fort Schuyler with Marquis de Lafayette.
1784. Oct. 11. Arrives in New York on his way to Virginia.
1784. Oct. 17. In Philadelphia.
- Attends session of the Assembly in Richmond.
1784. Nov. Makes speech against assessments for religious purposes.
1784. Dec. 28. Madison's resolutions giving Potomac commissioners authority to ask co-operation of Pennsylvania in trade regulations passed.
1785. Jan. 8. Assembly adjourns.
1785. Mar. to Sept. At Home in Orange.
1785. Aug. 25. Outlines plan of constitution for Kentucky to Caleb Wallace.
1785. Sept. Goes to Philadelphia.
1785. Oct. Writes the "Memorial and Remonstrance against Religious Assessments."
1785. Nov. Attends session of Assembly in Richmond.
- Speaks on commercial regulations.
1786. Jan. Writes remonstrance against incorporation of Episcopal church.
1786. Jan. 21. Madison's bill for federal convention to consider commercial regulations passed and Madison named as a delegate.
1786. Feb. to Aug. Assembly adjourns.
1786. Aug. At home in Orange.

1786. Sept. 5. Goes to Philadelphia.
1786. Sept. 11. Arrives in Annapolis.
1786. Oct. 5. Convention meets.
1786. Oct. 30. In Philadelphia in interest of projected federal convention.
1786. Nov. Returns to Richmond.  
Speaks in House of Delegates against paper money.
1786. Nov. 7. Appointed delegate to serve in Congress till the first Monday in  
November, 1787.
1786. Dec. Introduces in Assembly resolutions for appointment of delegates to  
federal convention.
1786. Dec. 5. Named as a delegate to the convention.
1787. Jan. 15. Sets out from Richmond for New York.
1787. Feb. 15. In New York attending Congress.
1787. Mar. 19. Outlines plan of constitution to Jefferson.
1787. April 8. Outlines plan of constitution to Edmund Randolph.
1787. April 16. Outlines plan of constitution to Washington.
1787. May 2. Leaves New York for Philadelphia.

[\[Back to Table of Contents\]](#)

## THE WRITINGS OF JAMES MADISON.

### TO EDMUND RANDOLPH.

Philad<sup>a</sup>., July 8, 1783.

Mad. Mss.

My Dear Friend,—

Yours of the 28 of June like the preceding one found me at this place, where my preparations for leaving Cong<sup>s</sup>. will keep me much of the remainder of my time. The footing on which the Impost is placed by the Assembly is not an eligible one, but preferable to a total rejection. It is to be regretted that immediate use was not made of the impression of the letter from Gen<sup>l</sup>. W. The interval preceding the next Session will give full scope to malignant insinuations. The reversal of the award in the case of Nathan may possibly be just in itself; but it will require all your eloquence I fear to shield the honor of the State from its effects. The Agency which the Delegation had in the affair will impart no small share of the mortification to them. I suppose the feelings of M<sup>r</sup>. Jefferson & M<sup>r</sup>. Harrison also will not be much delighted by it.

Gen<sup>l</sup>. How is here with a corps of N. England troops detached by G<sup>l</sup>. W. for the purpose of quelling the Mutiny. His only employment will now be to detect & punish the promoters of it. Cong<sup>s</sup>. remain at Princeton. Their removal from that place will soon become an interesting question. Not a few maintain strenuously the policy of returning to this City in order to obviate suspicions abroad of any disaffection in the mass of so important a State to the federal Gov<sup>t</sup>. and to restore mutual confidence with a State which has of late been so firm in adhering to federal measures. It is supposed too that a freer choice might have been made am<sup>s</sup>. the permanent seats offered by the States, than at a place where the necessity of a speedy removal w<sup>d</sup>. give undue advantage to an offer which happened to be in greatest readiness for immediate use. The Citizens here in general regret the departure of Cong<sup>s</sup>., disavow the idea that they were unwilling to take arms in defence of Cong<sup>s</sup>., and will probably enter into some declaration tending to invite their return.

We hear nothing from our Ministers in Europe. The evacuation of N. York, as to the time seems as problematical as ever. The sending off the negroes continues to take place under the eyes & remonstrances of the Inspectors of Embarkations.

[\[Back to Table of Contents\]](#)

TO EDMUND RANDOLPH.

Philad<sup>r</sup>., July 15, 1783.

Mad. Mss.

My Dear Sir,—

Yesterday's post brought me no letter from you. The contents of the inclosed paper make up every thing of consequence which I have for a subject at present. The enquiry into the Mutiny has not advanced far enough to bring forth any discoveries. An address is circulating & will be generally signed by the Citizens here reciting to Congress the proofs they have heretofore given of attachm<sup>t</sup>. to the foederal Gov<sup>t</sup>. professing a continuance of that attachm<sup>t</sup>. and declaring their readiness to support the dignity & privileges of Cong<sup>s</sup>., in case the conveniency of this place for transacting the public affairs s<sup>d</sup>. give it a preference to others untill a final residence shall be fixed.

M<sup>r</sup>. Lee arrived here the day before yesterday and goes to Princeton to-day. M<sup>r</sup>. Mercer's indisposition carries him to the Sea board of N. Jersey. My absence not producing any chasm in the representation and some private business requiring my stay here, I shall not return to Princeton for 7 or 8 days.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

[July 28, 1783.]

Mad. Mss.

My Dear Sir,—

Yesterday's mail brought me no letter from you. The Address from the Citizens of P<sup>a</sup>. came before Cong<sup>s</sup>. on thursday and was referred to a comm<sup>e</sup>. of 5 members. The answer will probably be a very civil one, but will leave open the question touching the return of Cong<sup>s</sup>. This question if decided at all in the affirmative, must be preceded by despair of some of the competitors for the permanent residence, almost all of whom now make a common cause ag<sup>st</sup>. Philad<sup>a</sup>. It is not improbable that when the urgency of the scanty accommodations at Princeton comes to be more fully felt, with the difficulty of selecting a final seat among the numerous offers, N. Y. in case of its evacuation may be brought into rivalry with Philad<sup>a</sup>. for the temporary residence of Congress. My own opinion is that it would be less eligible as removing every thing connected with Cong<sup>s</sup>., not only farther from the South but farther from the Center, and making a removal to a Southern position finally more difficult than it would be from Philad<sup>a</sup>.. Williamsb<sup>g</sup>. seems to have a very slender chance as far as I can discover. Annapolis I apprehend w<sup>d</sup>. have a greater number of advocates. But the best chance both for Maryland & Virg<sup>a</sup>, will be to unite in offering a double jurisdiction on the Potowmack. The only dangerous rival in that case will be a like offer from N. J. & P<sup>a</sup>. on the Delaware; unless indeed Cong<sup>s</sup>. s<sup>d</sup>. be carried to N. York before a final choice be made in which case it would be difficult to get them out of the State.

In order to prepare the way to their permanent residence Cong<sup>s</sup>. have app<sup>d</sup>. a Com<sup>e</sup>. to define the jurisdiction proper for them to be invested with. Williamsb<sup>g</sup>. has asked an explanation on this point. The nearer the subject is viewed the less easy it is found to mark the just boundary between the authority of Cong<sup>s</sup>. & that of the State on one side & on the other between the former & the privileges of the inhabitants. May it not also be made a question whether in constitutional strictness the gift of any State, without the Concurrence of all the rest, can authorize Cong<sup>s</sup>. to exercise any power not delegated by the Confederation? As Cong<sup>s</sup>. it would seem are incompetent to every act not warranted by that instrument or some other flowing from the same source. I wish you could spare a little attention to this subject & transmit your ideas on it. Contrary to my intention I shall be detained here several weeks yet, by a disappointm<sup>t</sup>. in some circumstances which must precede my setting out for Virg<sup>a</sup>..

There is considerable ground to believe that Carleton is possessed of the definitive Treaty. He has lately sent Cong<sup>s</sup>. several depositions relative to forgeries of Mr. Morris' Notes, the authors of which he has confined in N. York, & has requested that persons may be sent in to attend the examination.

The Court Martial is still proceeding in the investigation of the Mutiny, but have disclosed no result.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>., Aug. 11<sup>th</sup>. 1783.

My Dear Sir,—

At the date of my letter in April I expected to have had the pleasure by this time of being with you in Virginia. My disappointment has proceeded from several dilatory circumstances on which I had not calculated. My journey to Virg<sup>a</sup>. tho' still somewhat contingent in point of time cannot now be very long postponed. I need not I trust renew my assurance that it will not finally stop on this side of Monticello.

The reserve of our foreign Ministers still leaves us the sport of misinformations concerning the def: Treaty. We all thought a little time ago that it had certainly arrived at N. York. This opinion however has become extinct, and we are thrown back on the newspaper evidence which as usual is full of contradictions. The probability seems to be that the delay arises from discussions with the Dutch. Mr. Dana has been sorely disappointed in the event of his announcing himself to the Court of Russia. His written communications obtain verbal answers only & these hold up the Mediation to which the Empress, with the Emperor of G[erman]y have been invited as a bar to any overt transaction with the U. S. and even suggest the necessity of new powers from the latter of a date subsequent to the acknowledgment of their Sovereignty by G. B. Having not seen the letters from Mr. Dana myself, I give this idea of them at second hand, remarking at the same time that it has been taken from such passages only as were not in Cypher; the latter being not yet translated. Cong<sup>s</sup>. remain at Princeton utterly undecided both as to their ultimate seat and their intermediate residence. Very little business of moment has been yet done at the new Metropolis, except a ratification of the Treaty with Sweden. In particular nothing has been done as to a foreign establishment. With regard to an internal peace establishment, though it has been treated with less inattention, it has undergone little discussion. The Commander-in-Chief has been invited to Princeton with a view to obtain his advice and sanction to the military branches of it, and is every day expected there. The Budget of Cong<sup>s</sup>. is likely to have the fate of many of their other propositions to the States. Delaware is the only one among those which have bestowed a consideration on it that has acceded in toto. Several Legislatures have adjourned without giving even that mark of their condescension. In the Southern States a jealousy of Congressional usurpations is likely to be the bane of the system: in the Eastern an aversion to the half-pay provided for by it. New Jersey & Maryland have adopted the impost, the other funds recommended being passed for one year only by one of these States, and postponed by the other. P<sup>a</sup>. has hitherto been friendly to liberal and foederal ideas and will continue so, unless the late jar with Cong<sup>s</sup>. s<sup>d</sup> give a wrong bias of which there is some danger. Mass<sup>ts</sup>. has in the election of Delegates for the ensuing year stigmatized the concurrence of those now in place, in the provision for half-pay, by substituting a new representation; and has sent a Memorial to Cong<sup>s</sup>. which I am told is pregnant with the most penurious ideas not only on that subject but on several others which

concern the national honor & dignity. This picture of our affairs is not a flattering one; but we have been witnesses of so many cases in which evils & errors have been the parents of their own remedy, that we cannot but view it with consolations of hope. Remind Miss Patsy of my affection for her & be assured that I am D<sup>r</sup>. Sir

Y<sup>R</sup>. Sincere Friend

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup>., Aug: 12, 1783.

Dear Sir,—

The arrival of yesterday's mail has not enabled me to acknowledge the rec<sup>t</sup>. of a favor. Perhaps the post office may be again in fault.

Our late belief of the arrival of the Defini: Treaty at N. York has become utterly extinct. From the tenor of the Newspapers the delay seems to be the effect of discussions with the Dutch. The inclosed letter from our friend Hawkins provides for the article of Russian intelligence. I understand from Mr. Mercer who is here on business as well as myself that Mr. Dana's despatches were in part undecyphered when Mr. Hawkins' transcript was made. The Legislature of Ma<sup>ts</sup> have sent a memorial to Congress wearing a very unpropitious aspect on the grant of ½ to the army and in other respects breathing a penurious spirit which if indulged will be fatal to every establishment that requires expence. They profess great poverty, and have declined any decision on the Revenue propositions of Cong<sup>s</sup>. Rhode Island did not even bestow a consideration on them. Mr. H[owel]l from the latter State after being informed of the course taken by V<sup>a</sup>. said that her backwardness very much emboldened the States that were disinclined to a Gen<sup>l</sup>. Revenue. Cong<sup>s</sup>. have voted Gen<sup>l</sup> W. an elegant Bronze Statue. He has been invited to Princeton as well to relieve him from the tedium which he suffers on the North River as to make use of his Counsel in digesting a peace Establishm<sup>t</sup>. We shall probably be reinforced by Mr. Jones in a few days. I shall give you notice when my departure will make it proper for your correspondence to be discontinued.



[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup>. Aug 18, 1783.

Mad. Mss.

Dear Sir,—

I have not this week any more than the last the pleasure of acknowledging a favor from you. Perhaps I may find one at Princeton when I get there. On thursday a question for returning to Philad<sup>a</sup> was put and decided in the Negative by a large majority. The friends of the measure foreseeing its fate, and supposing that a negative declaration c<sup>d</sup>. answer no good purpose and might an ill one, withdrew it. The more moderate opponents concurred in the inexpediency of proclaiming unnecessarily an aversion in Cong<sup>s</sup> to Philad<sup>a</sup>. But some of this class were so keen in their hostility, that a motion was made by two of them to return, who on the question voted ag<sup>st</sup> their own motion. The public will not I believe fix on this proceeding as one of the brightest pages of the Journals? The abuses to which such an artifice may be extended are palpable. The merit of it in this application belongs to Mr. Howel of R. I. and Mr. B[lan]d of V. The motion was first made by Mr. L[ee] but in the course of the transaction devolved on Mr. Howel. I know of none that will read with pleasure this affair unless it be the Executive of P<sup>a</sup> and those who wish to refer the removal of Cong<sup>s</sup> to *other motives* than the national dignity & welfare.

Cong<sup>s</sup> have letters from Mr. Laurens of the 17th June but they decide nothing as to the definitive Treaty. We have no reason, how, to impute the delay to any cause which renders the event suspicious. It is said that the British Councils grow more & more wary on the subject of a Coer<sup>l</sup> Treaty with the U. S. and that the spirit of the Navigation act is likely to prevail over a more liberal system.

S. Carolina we learn has agreed to the Impost on condition only that the revenue be collected by her own officers, & be credited to her own quota. It is supposed that she will agree to exchange the valuation of land for the proposed rule of numbers. But on this point R. I. was more inflexible than on that of the Impost. I pity from my heart the officers of the Eastern line who are threatened by these prospects with disappointments which the Southern officers have no Idea of. From much conversation which I have lately had with some of the former, and from other information, there appears great reason to believe that if no *continental provision* be made for them they will not only be docked of their half-pay, but will run great hazard of being put off with regard to a great share of their other pay on the pretence of their States that they have already advanced beyond their proportion.

I expect Mr. Jones every moment.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup>. Aug 24, 1783.

Mad. Mss.

My Dear Sir,—

Mr. Jones who arrived the beginning of the week acquainted me with your abortive mission to Maryland which I had not before heard of. To this absence from Richmond I impute your silence by the late mails. I hope for the pleasure of a line by the mail now on its way, which will not however be acknowledged till the ensuing week as I am about returning to Princeton when it will find me too late for the post of this week. All that I have now to tell you is that S<sup>r</sup> G. Carleton has notified to Cong<sup>s</sup> his having received orders for the evacuation of N. York but he specifies no time fixed either by the orders or by his own plans. He repeats his lamentations touching the Loyalists and insinuates that the proceedings of the people ag<sup>st</sup> them are a proof that little or no gov<sup>t</sup> exists in the U. States.

With great affection I am y<sup>r</sup> fr<sup>d</sup> & Svt

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Princeton, Aug 30, 1783.

Mad. Mss.

My Dear Sir,—

We hear nothing from Europe that can be depended on relative to the definitive Treaty, nor any thing from N. York as to the time it will be evacuated. A Pamphlet has lately come over from G. Britain which appears to be well adapted to retard if not prevent a commercial Treaty, & which is said to be much attended to. It urges an adherence to the principle of the Navigation Act by which American Vessels will be excluded from the trade between the separate parts of the Empire, and from all intercourse with the dependent territories. It undertakes to shew from an enumeration of the produce of the U. S. & the manufactures consumed by them, that those of G. B. recommended by the superior credit which her Merchants can give, will be sufficiently sure of a preference in the American Market. And lastly it maintains that the interests of the States are so opposite in matters of Commerce, & the authority of Cong<sup>s</sup> so feeble that no defensive precautions need be feared on the part of the U.S. and threatens that in case they should refuse to let British Vessels exclusively carry on a Commerce between the U. S. and the W. Indies as far as the interest of the Islands may require, the vessels of one State shall not be permitted to carry the product of another to any British Port. The Whole tenor of the reasoning supposes that France will not permit Vessels of the U. S. to trade with their Islands in which there is *good reason* to believe they are not mistaken. The object of the French Administration is said to be to allow a direct trade between the U. S. & their W. India possessions, but to confine it to French Bottoms.

The Legislature of Penn<sup>a</sup> have unanimously adopted the Recoendations of Cong<sup>s</sup> both as to Revenue & a change of the fœderal rule for apportioning the common burdens. They will also present an invitation to Cong<sup>s</sup>. we understand, to resume their Sessions at Philad<sup>a</sup>, if that place be judged most fit for the despatch of public business, untill a permanent seat be chosen & prepared; giving at the same time explicit assurances of support in case it should on any occasion be needed. What effect this conciliatory proposition may have on the temper of Cong<sup>s</sup> is precarious. With some the complaisance shewn to the late recommendations of Cong<sup>s</sup> will be far from softening the dislike. With others Philad<sup>a</sup> will ever be obnoxious while it contains and respects an *obnoxious Character*. Annapolis has seized the present occasion to forward her views with respect to Cong<sup>s</sup>., and has courted their presence in the most flattering terms. During this contest among the rival seats, we are kept in the most awkward situation that can be imagined; and it is the more so as we every moment expect the Dutch Ambassador. We are crowded too much either to be comfortable ourselves or to be able to carry on the business with advantage. Mr. Jones & myself on our arrival were extremely put to it to get any quarters at all, and are at length put into one bed in a room not more than 10 feet square.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Princeton Aug: 30, 1783.

Mad. Mss.

Hond Sir,—

I rec<sup>d</sup>. great pleasure from your's recd. by the last post which removed the apprehensions excited by your preceding one regarding the state of my mother's health. I hope this will find her still further recovered. The time of my setting out for Virg<sup>a</sup>. is still somewhat precarious: several matters being before Cong<sup>s</sup>. which I wish to see first decided. An answer to this if not delayed will probably find me here.

The definitive Treaty is not yet come over. S<sup>r</sup>. G. Carlton has notified to Cong<sup>s</sup>. his receipt of final orders for the evacuation of N. York, but fixes no time at which they are to be carried into execution. Gen<sup>l</sup>. Washington has been here some days at the invitation of Cong<sup>s</sup>. & will be consulted on the provision necessary in time of peace for the security of this country. I inclose you one of the latest papers containing the address of the Presid<sup>t</sup>. to the assembly of Pen<sup>a</sup>. The latter have unanimously acceded to the late recoendations of Cong<sup>s</sup>. with respect to revenue, and a change of the rule for apportioning the common burdens. It is said they are also about to address Cong<sup>s</sup>. on the event which occasioned their removal, & to provide expressly for the protection of Cong<sup>s</sup>. in case they s<sup>d</sup>. deem Philad<sup>a</sup>. the fittest place for the transaction of business untill a final residence shall be chosen. What effect this may have is uncertain. We are exceedingly crowded in this place; too much so both for our own comfort & for the despatch of business. M<sup>r</sup>. Jones & myself are in one room scarcely ten feet square & in one bed. With the best regards for all the family

I Am Yr. Dutiful Son

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Philad<sup>a</sup>. Sep<sup>r</sup>. 8. 1783.

Mad. Mss.

Hond Sir,—

Mr Jones & myself being here transacting some private business which brought us from Princeton the end of last week, I here receive your letter of the 22<sup>d</sup>. ult. The favorable turn of my mother's state of health is a source of great satisfaction to me, and will render any delay in my setting out for Virg<sup>a</sup>. the less irksome to me. I shall return to Princeton tomorrow; my final leaving of which will depend on events, but can not now be at any very great distance. On a view of all circumstances I have judged it most prudent not to force Billey back to V<sup>a</sup>. even if [it] could be done; and have accordingly taken measures for his final separation from me. I am persuaded his mind is too thoroughly tainted to be a fit companion for fellow slaves in Virg<sup>a</sup>. The laws here do not admit of his being sold for more than 7 years. I do not expect to get near the worth of him; but cannot think of punishing him by transportation merely for coveting that liberty for which we have paid the price of so much blood, and have proclaimed so often to be the right, & worthy the pursuit, of every human being.

We have no later advices from Europe than when I wrote by Merry Walker.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup>. Sep<sup>t</sup>. 8 1783.

Mad. Mss.

My Dear Sir,—

M<sup>r</sup>. Jones & myself having come down to this city the end of the past week for the purpose of negotiating some pecuniary matters I am here to date my acknowledgment of your favor of the 30<sup>th</sup>. ulto. We return again tomorrow.

The delay of the definitive Treaty although not fully explained to Congress, excites less disquietude here than I find it does in Virginia. Our latest official advices were from Mr. Laurens, of the [seventeenth] of June. The Conduct of the British administration was far from explicit, according to his state of it, but probably proceeded more from the discordant materials of which it is composed & doubts as to the commercial footing on which America ought to be placed, than from any insidious views. Why indeed a Commercial Treaty should be made to clog the Treaty of peace is left to conjecture. Perhaps the fact may not be true & the delay of the latter may be owing still to the old cause, to wit, a discussion of the intricate points with the Dutch. The situation of G. B. is such that nothing but some signal change in the aspect of things in this hemisphere can inspire a fresh disposition for war; notwithstanding the menacing tone of S<sup>r</sup>. G. Carleton.

The Legislature of P<sup>a</sup>. have taken every possible step to expiate the default of the Executive short of an impeachment of its members, which the rigor of some members of Cong<sup>s</sup>. included among the terms of reconciliation with the State. They have expressly invited Cong<sup>s</sup>. back, assured them of honorable protection, and given up the State-House with the appendages for their temporary use. They have also made German Town a competitor for the permanent abode of Congress.

The opposition in the N. England States to the grant of half-pay instead of subsidizing has increased to such a degree as to produce almost a general anarchy. In what shape it will issue is altogether uncertain. Those who are interested in the event look forward with very poignant apprehensions. Nothing but some continental provision can obtain for them this part of their reward. \* \* \*

Why did not the Assembly stop the sale of land warrants? They bring no profit to the public Treasury, are a source of constant speculation on the ignorant, and will finally arm numbers of Citizens of other States & even foreigners with claims & clamors against the faith of Virginia. Immense quantities have from time to time been vended in this place at immense profit, and in no small proportion to the subjects of our Ally. The credulity here being exhausted I am told the land Jobbers are going on with their commodity to Boston & other places.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Princeton, Sep<sup>r</sup>. 13, 1783.

Mad. Mss.

My Dear Sir,—

Our Ministers in Europe have made some amends for y<sup>e</sup> long silence by voluminous despatches brought down to 27<sup>th</sup>. July. They were rec<sup>d</sup>. yesterday by Congress. No definitive treaty had then been signed by any of the parties, though all had been ready except Holland & America. The former is said to have settled her difficulties. The American Ministers have been endeavouring to incorporate some important commercial stipulations, but in vain; and in case of emergency must come forward with the provisional articles to be signed as y<sup>e</sup>. definitive Treaty. The conduct of G. B. in the negociation with America has shewn great unsteadiness if not insidiousness on the subject of commerce; and the inclosed proclamation of the 2<sup>d</sup>. of July is a proof that some experiment is intended on the wisdom firmness & union of the States before they will enter into a Treaty in derogation of her Navigation Act. Congress will probably recoend some defensive plan to the States. If it s<sup>d</sup>. meet with the fate of former recommendations, it will not probably be owing to Rhode Island whose staple interest more than that of any others lies in carrying between the U. S. & the West Indies. If it fails at all it will prove such an inefficacy in the Union as will extinguish all respect for it & reliance on it. My situation here for writing is so incommodious that you must excuse my brevity.

[\[Back to Table of Contents\]](#)

TO EDMUND RANDOLPH.

Princeton, Sep<sup>r</sup> 20, 1783.

Mad. Mss.

Dear Sir,—

I have nothing to add to my last on the subject of foreign affairs, further than that the Court of France has fixed on L'Orient as a free port for the U. S. The Virg<sup>a</sup> Cession underwent a decision of Cong<sup>s</sup> a day or two after my last. The form which they have given it may be seen in the hands of the Executive. I sincerely hope it may meet the ultimatum of Virg<sup>a</sup>. The circumstances which produced brevity in my last as strongly recommended it at present. Adieu.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Princeton, Sep<sup>r</sup>. 20, 1783.

Mad. Mss.

Dear Sir,—

Your favor of the 31 ult: came to hand yesterday. As the reason which chiefly urged my departure for Virg<sup>a</sup> has ceased I have been led to protract my attendance on Congress by the interest I felt in some measures on foot, and the particular interest which my Constituents have in them. Two of these were the territorial Cession and the permanent seat of Congress. The former was a few days ago put into a form which I hope will meet the ultimatum of Virginia. The first monday in next month is fixed for a decision of the latter; after which it may still be necessary to choose a temporary residence until the permanent one can be made ready. I am utterly unable to foretell how either of these points will be determined. It is not impossible that an effective vote may be found attainable on neither; in which case the Winter must be spent in this village where the public business can neither be conveniently done, the members of Congress be decently provided for, nor those connected with Congress provided for at all. I shall lose no time in looking out for quarters for you & entering into provisional engagements in your favor. Your other request relative to Miss Patsy shall be equally attended to as soon as I go to Philad<sup>a</sup>, which will probably be towards the end of the present week.

It will give me real concern if we should miss one another altogether in the journies before us; and yet I foresee the danger of it. Mr. Jones & myself will probably be on the road by the middle of next month or a few days later. This is the time about which you expect to commence your journey. Unless therefore we travel the same road a disappointment of more [than] an interview will be unavoidable. At present our plan is to proceed thro' Baltimore & Alexandria & Fredericksb<sup>g</sup> and we may possibly be at the races of the second place. I am at a loss by what regulation I can obey your wishes with regard to the notes I have on hand; having not yet made any copy of them, having no time now for that purpose, and being unwilling for several reasons to leave them all behind me. A disappointment however will be of the less consequence as they have been much briefer & more interrupted since the period at which you run them over, and have been altogether discontinued since the arrival of Cong<sup>s</sup> here.

My plan of spending this winter in Philad<sup>a</sup>. in close reading was not entirely abandoned untill Congress left that City and shewed an utter disinclination to return to it. The prospect of agreeable and even instructive society was an original consideration with me; and the subsequent one having yours added to it would have confirmed my intention after the abortive issue of another plan,<sup>1</sup> had not the solicitude of a tender & infirm parent exacted a visit to Virg<sup>a</sup> and an uncertainty of returning been thereby incurred. Even at present if Cong<sup>s</sup>. s<sup>d</sup>. make Phila<sup>a</sup> their seat this winter & I can decline a visit to Virg<sup>a</sup>. or speedily get away from it, my anxiety on the subject will be renewed.

Our last information from Europe is dated the 27th July. France & Spain were then ready for the definitive signing of the Peace. Holland was on the point of being so. The American Plenipo<sup>s</sup>. had done nothing on the subject and in case of emergency could only sign the provisional Treaty as final. Their negotiations had been spent chiefly on commercial stipulations from which G. B. after very different professions & appearances, altogether drew back. The ready admission she found into our commerce without paying any price for it has suggested the policy of aiming at the entire benefit of it, and at the same time saving the carriage of the W. India trade the price she at first bid for it. The supposed contrariety of interests among the States and the impotence of the fœderal Gov<sup>t</sup>, are urged by the ministerial pamphleteers as a safeguard ag<sup>st</sup>. retaliation. The other nations of Europe seem to have more honorable views towards our commerce, sundry advances having been made to our Ministers on that subject.

Congress have come to no decision even as yet on any of the great branches of the peace establishment. The military branch is supported and quickened by the presence of the Commander in Chief, but without any prospect of a hasty issue. The department of foreign Affairs both internal & external remains as it has long done. The election of a Sec<sup>y</sup>. has been an order of the day for many months without a vote being taken. The importance of the marine department has been diminished by the sale of almost all the Vessels belonging to the U. S. The department of Finance is an object of almost daily attack and will be reduced to its crisis on the final resignation of Mr. M., which will take place in a few months. The War Office is connected with the Military establishment & will be regulated I suppose in conformity to what that may be. Among other subjects which divide Congress, their Constitutional authority touching such an establishment in time of peace is one. Another still more puzzling is the precise jurisdiction proper for Congress within the limits of their permanent seat. As these points may possibly remain undecided till Nov<sup>r</sup>, I mention them particularly that your aid may be prepared. The investigation of the Mutiny ended in the condemnation of several Sergeants who were stimulated to the measure without being apprized of the object by the two officers who escaped. They have all rec<sup>d</sup>. a pardon from Congress. The real plan & object of the mutiny lies in profound darkness. I have written this in hopes that it may get to Monticello before you leave it. It might have been made more interesting if I had brought the Cypher from Philad<sup>a</sup>., tho' my present situation required a great effort to accomplish as much as I have. I am obliged to write in a position that scarcely admits the use of any of my limbs, Mr. Jones & myself being lodged in a room not 10 feet square and without a single accommodation for writing.

I am Dear Sir your sincere friend & Ob<sup>t</sup> Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup> Sept<sup>r</sup> 30, 1783.

Mad. Mss.

My Dear Sir,—

Your favor introducing Mr. Corbin and that by the last week's post have both been receiv<sup>d</sup>. The former did not get to Princeton before Mr. C. had left it, nor did I get to this place before he was so near leaving it that I had no opportunity of manifesting my respect for your recommendations otherwise than by verbal civilities to him. Yesterday's post brought me no letter from you. In answer to your comment in the preceding one on the reception of a Minister from the (Economical Republic to which we are allied, it will suffice to inform you, that in pursuance of a commission from him *six* elegant horses are provided for his coach, as was to have been one of the best houses in the most fashionable part of the City. Wherever Commerce prevails there will be an inequality of wealth, and wherever the latter does a simplicity of manners must decline.

Our foreign intelligence remains as at the date of my last. I forget whether I mentioned to you that our Ministers unanimously express surprise at the doubt started in America as to the epoch which terminated hostilities on our Coast. They affirm that one month from the date of the instrument was meant & suppose that that exposition will not be contested. Pray can your researches inform me 1<sup>st</sup>., Whether prizes made by & from parties not subject to the power before whose maritime courts they are carried, are *provisionally* or *finally* tried?—2<sup>d</sup>. How far the rules established by the Sovereign of the Captor & those by the Sovereign of the Courts prevail in such trials? 3<sup>dly</sup>, What difference is made in cases where both the parties concerned in the capture are subject to the same power and where they are subject to different powers?

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup> Oct<sup>r</sup> 13th, 1783.

Mad. Mss.

My Dear Sir,—

I returned yesterday in order to be with M<sup>f</sup> Jones before his departure and make some little arrangement with him of a private nature. The past week has been spent by Congress in deliberating on 1. their permanent seat; 2. their temporary one. The competition for the former lay between the falls of the Potowmack and those of the Delaware. We hoped at first from the *apparent* views of the Eastern Delegates that they would have given a preference to Potowmack. In the event they joined with Pen<sup>a</sup> & the intermediate States in favor of the Delaware the consequence of which is that the vicinity of its Falls is to become the future seat of the fœderal Gov<sup>t</sup>. unless a conversion of some of the Eastern States can be effected. The next point was the abode of Cong<sup>s</sup> untill their permanent seat could receive them. The expediency of removing from Princeton in order to the more convenient transaction of the affairs of the U. S. and accommodation of Cong<sup>s</sup>, was first determined on, Mass<sup>ts</sup>, Con<sup>t</sup>, & R. I. alone being opposed to it. Trenton was next proposed, on which Question the votes were divided by the River Delaware. Philad<sup>a</sup> came next in order. Besides its convenient position in relation to the Permanent seat & superior temporary accommodations for the public business and for Cong<sup>s</sup>, arguments in its favor were drawn from the tendency of passing by these accommodations to others inferior in themselves & more distant from the permant seat, to denote a resentment unworthy of a Sovereign authority ag<sup>st</sup> a part of its Constituents which had fully expiated any offence which they might have committed; and at the same time to convert their penitential and affectionate temper into the bitterest hatred. To enforce this idea some of the proceedings of Cong<sup>s</sup> expressive of resentment ag<sup>st</sup> Philad<sup>a</sup> were made use of. Great stress was also laid on the tendency of removing to any small or distant place, to prevent or delay business which the honor & interest of the U. S. require s<sup>d</sup> be despatched as soon as possible. On the other side objections were drawn from those sources which have produced dislikes to Philad<sup>a</sup>, and w<sup>ch</sup> will be easily conjectured by you. On the question N. Y, P<sup>a</sup>, Delaware, Virg<sup>a</sup>, & N. Carolina were ay; Mass<sup>ts</sup>, Con<sup>t</sup>, R. I., N. Jersey, no; and Maryland & S. Carolina, divided. If either of the divided States had been in the affirmative it was the purpose of N. Jersey to add a seventh vote in favor of Philad<sup>a</sup>. The division of S. Carolina was owing to the absence of Mr. Rutledge & Mr. Izard both of whom would have voted for Phil<sup>a</sup>. The State was represented by two members only. The division of Maryland represented by M<sup>f</sup> Carroll & M<sup>f</sup> M<sup>c</sup>Henry was occasioned by the negative of the latter, whose zeal for Annapolis determined him to sacrifice every consideration to an experiment in its favor, before he would accede to the vote for Philad<sup>a</sup>. The aversion of the Eastern States was the ground of his coalition with them. The arguments in favor of Annapolis consisted of objections ag<sup>st</sup> Philad<sup>a</sup>. Those ag<sup>st</sup> it were chiefly the same which had been urged in favor of Philad<sup>a</sup>. On the question the States were Mass<sup>ts</sup>, Con<sup>t</sup>, R. I., Delaware, Maryland & N. C., ay, N. Y., N. J. P<sup>a</sup> Virg<sup>a</sup>, no. S. C. divided. Virg<sup>a</sup> was

represented by Mr. Lee Mr. Mercer & Mr. M. The first was in the affirmative. Mr. Jones & Mr. Bland were in Philad<sup>a</sup>. The vote of the latter w<sup>d</sup> have been in favor of Annapolis of the former in favor of Philad<sup>a</sup>. The opinion of Mr. L & Mr. B in fav<sup>r</sup> of Annapolis resulted from a dislike to Philad<sup>a</sup>, & the idea that the views of V<sup>a</sup> would be promoted by it. That of their colleagues from a belief that the reasons drawn in fav<sup>r</sup> of Philad<sup>a</sup>, from National considerations req<sup>d</sup>. a concession of local views, and even that a recision of the permanent vote for Trenton in favor of George Town, the object of V<sup>a</sup>, would be promoted by placing the Eastern States in Philad<sup>a</sup>. They also supposed that the concurrence of the Eastern States in a temporary vote for Annapolis to take effect some weeks hence, was little to be confided in, since the arrival of a colleague to the Delegate from N. Hampshire would with the accession of Pen<sup>a</sup>, who w<sup>d</sup> prefer Trenton to Annapolis & be moreover stimulated by resentment, would make up seven States to reverse the removal to Annapolis. Add to the whole that experience has verified the opinion that in any small place Cong<sup>s</sup> are too dependent on courtesy & favor to be exempt either in their purses or their sensibility from degrading impositions. Upon the whole it is most probable that Philad<sup>a</sup> will be [the] abode of Cong<sup>s</sup> during the Winter. I must refer to M<sup>r</sup> Jones for explanations on all these points, he will be in Richmond early in the Session. For myself I have engaged to return to Princeton to attend some interesting points before Cong<sup>s</sup>. Having not yet settled my arrangements for the Winter I must for the present be silent as to my [torn out] situation. Mr. Van Berkel arrived a few days [torn out]. Cong<sup>s</sup> are in a charming situation to receive him, being in an obscure village undetermined where they will spend the Winter, and without a Minister of F. A. After the rec<sup>t</sup> of this you will stop your correspondence, and probably not hear further from me. I set off tomorrow morning at 3 oClock in the Flying Machine for Princeton, and it is now advancing towards the hour of sleep. In haste adieu My dear friend and be assured that I am Y<sup>rs</sup> Sincerely.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange Decem<sup>r</sup> 10<sup>th</sup>. 1783.

Mad. Mss.

Dear Sir,—

My journey from Annapolis was so retarded by rains and their effect on the water courses that I did not complete it till the ninth day after I left you. I took 1 Col. Mason in my way & had an evening's conversation with him. I found him much less opposed to the general impost than I expected. Indeed he disclaimed all opposition to the measure itself but had taken up a vague apprehension that if adopted at this crisis it might embarrass the defence of our trade ag<sup>st</sup> British machinations, he seemed upon the whole to acquiesce in the territorial cession, but dwelt much on the expediency of the guaranty. On the article of a convention for revising our form of Government he was sound and ripe and I think would not decline a participation in the work. His heterodoxy lay chiefly in being too little impressed with either the necessity or the proper means of preserving the confederacy.

The situation of the commerce of this country as far as I can learn is even more deplorable than I had conceived. It cannot pay less to Philad<sup>a</sup>. & Baltimore if one may judge from a comparison of prices here & in Europe, than 30 or 40 Per C<sup>t</sup>. on all the exports & imports, a tribute which if paid into the treasury of the State would yield a surplus above all its wants. If the Assembly should take any steps towards its emancipation you will no doubt be apprized of them as well as their other proceedings from Richmond.

I am not yet settled in the course of law reading with which I have tasked myself and find it will be impossible to guard it against frequent interruptions. I deputed one of my brothers to Monticello with the draught on your library, but Capt. Key was down at Richmond. As soon as he returns I propose to send again. My Trunk with Buffon &c. has come safe to Fred<sup>g</sup>. so that I shall be well furnished with materials for collateral reading. In conversing on this author's Theory of central heat I recollect that we touched upon as the best means for trying its validity, 1 the comparative distances from the earths center of the summits of the highest mountains and their bases or the level of the sea. Does not the oblate figure of the earth present a much more extensive and perhaps adequate field for experiments? According to the calculations of Martin grounded on the data of Manpertius &c.

The Equatorial diameter of the Earth is 7942.2 Eng. Miles  
The polar diam: 7852.4 E.M.  
difference between eq: & pol. diameter 89.8. E.M.

The difference then of the semidiameters is 44.9, E. miles, that is image of the mean semidiameter calling this difference in round numbers 45 miles, and disregarding the small variations produced by the elliptical form of the Earth, the radii will be

shortened  $\frac{1}{2}$  of a mile by each degree from the equator to the poles. It would seem therefore that the difference of distance from the center at the Equator & at the highest latitude that may [be] visited must be sufficient to produce a discoverable difference in the degrees of any heat emitted equally in every direction from the center: and the experiment might be sufficiently diversified to guard against illusion from any difference which might be supposed in the intermediate density of different parts of the Earth. The distance even between the Equator & the polar circle produces a difference of no less than 33 $\frac{1}{2}$  miles i.e. of the mean distance from the center; so that if the curiosity of two sets of French Philosophers employed in ascertaining the figure of the earth, had been directed to this question, a very little additional trouble & expence might perhaps have finally solved it. Nay the extent of the U.S. computing from the 31° of lat: to the 45° only makes a difference of 7 miles in the distance from the center of the Earth; a greater difference I suppose than is afforded by the highest mountains or the deepest mines or both put together.

On my delivering you the draught on M<sup>r</sup>. Ambler I remember you put into my hands a note which I never looked into supposing it to relate to that circumstance. In examining my papers I perceive that I have lost it and mention it to put you on your guard in case the note s<sup>d</sup>. fall into bad hands & be capable of being abused. Present my respects to M<sup>r</sup>. Mercer & the other gentlemen of the Delegation & be assured that I am y<sup>r</sup>s sincerely

You will be so good as to give the inclosed a safe conveyance to Mrs. House.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Orange, March 10<sup>th</sup>, 1784.

Mad. Mss.

My Dear Friend,—

Your favor of the 27<sup>th</sup>. Jany. was safely delivered to me about a fortnight ago, and was rec<sup>d</sup>. with the greater pleasure, as it promises a continuance of your friendly attention. I am sorry that my situation enables me to stipulate no other return than sincere & thankful acknowledgments.—On my arrival here which happened early in Dec<sup>r</sup>. I entered as soon as the necessary attentions to my friends admitted, on the course of reading which I have long meditated. Co: Litt: in consequence & a few others from the same shelf have been my chief society during the Winter. My progress, which in so short a period could not have been great under the most favorable circumstances, has been much retarded by the want of some important books, and still more by that of some living oracle for occasional consultation. But what will be most noxious to my project, I am to incur the interruptions w<sup>ch</sup>. will result from attendance in the Legislature, if the suffrage of my County should destine me for that service, which I am made to expect will be the case. Among the circumstances which reconcile me to this destination, you need not be assured that the opportunity of being in your neighborhood has its full influence.

I have perused with both pleasure and edification your observations on the demand made by the Executive of S. C. of a citizen of this State. <sup>1</sup> If I were to hazard an opinion after yours, it would be that the respect due to the chief magistracy of a confederate State, enforced as it is by the articles of Union, requires an admission of the fact as it has been represented. If the representation be judged incomplete or ambiguous, explanations may certainly be called for, and if on a final view of the charge, Virginia should hold it to be not a *casus fœderis*, she will be at liberty to withhold her citizen, (at least upon that ground,) as S. C. will be to appeal to the Tribunal provided for all controversies among the States. Should the Law of S. C. happen to vary from the British Law, the most difficult point of discussion I apprehend will be, whether the terms “Treason &c.” are to be referred to those determinate offences so denominated in the latter code, or to all those to which the policy of the several States may annex the same titles and penalties. Much may be urged I think both in favor of and ag<sup>st</sup>. each of these expositions. The two first of those terms coupled with “breach of the peace” are used in the 5 Art: of the Confederation, but in a way that does not clear the ambiguity. The truth perhaps in this as in many other instances, is, that if the compilers of the text had severally declared their meanings, these would have been as diverse as the comments which will be made upon it.

Waving the doctrine of the confederation, my present view of the subject would admit few exceptions to the propriety of surrendering fugitive offenders. My reasons are these. 1. By the express terms of the Union the citizens of every State are naturalized



within all the others, and being entitled to the same privileges, may with the more justice be subjected to the same penalties. This circumstance materially distinguishes the citizens of the U. S. from the subjects of other nations not so incorporated. 2. The analogy of the laws throughout the States, and particularly the uniformity of trial by Juries of the vicinage, seem to obviate the capital objections ag<sup>st</sup>. removal to the State where the offence is charged. In the instance of contiguous States a removal of the party accused from one to the other must often be a less grievance, than what happens within the same State when the place of residence & the place where the offence is laid are at distant extremities. The transportation to G. B. seems to have been reprobated on very different grounds: it would have deprived the accused of the privilege of trial by jury *of the vicinage* as well as of the use of his witnesses, and have exposed him to trial in a place where he was not even alledged to have ever made himself obnoxious to it; not to mention the danger of unfairness arising from the circumstances which produced the regulation. 3. Unless citizens of one State transgressing within the pale of another be given up to be punished by the latter, they cannot be punished at all; and it seems to be a common interest of the States that a few hours or at most a few days should not be sufficient to gain a sanctuary for the authors of the numerous offences below “high misdemesnors.” In a word, experience will shew if I mistake not that the relative situation of the U. S. calls for a “Droit Public” much more minute than that comprized in the fœderal articles, and which presupposes much greater mutual confidence and amity among the societies which are to obey it, than the law which has grown out of the transactions & intercourse of jealous & hostile nations.

Present my respectful compliments to your amiable lady & accept the sincerest wishes for your joint happiness of

Your Aff<sup>C</sup>. Friend & Ob<sup>T</sup>. Serv<sup>T</sup>..

P. S. By my brother who is charged with this I send Chastellaux’s work, de la Felicité public which you may perhaps find leisure to run through before May—also a notable work of one of the Representatives of the U. S. in Europe.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange, March 16, 1784.

Mad. Mss.

Dear Sir,—

Your favour of the 20. ult. came duly to hand a few days ago. I cannot apprehend that any difficulties can ensue in Europe from the involuntary & immaterial delay of the ratification of the peace, or if there should that any imputations can be devised which will not be repelled by the collective force of the reasons in the intended protest; some of which singly taken are unanswerable. As you no doubt had recourse to authorities which I have no opportunity of consulting, I probably err in supposing the right of the Sovereign to reject the act of his plenipotentiary to be more circumscribed than you lay it down. I recollect well that an implied condition is annexed by the usage of nations to a Plenipotentiary Coission, but should not have extended the implication beyond cases where some palpable & material default in the Minister could be alledged by the Sovereign. Waving some such plea, the language both of the Coission and of reason seems to fix on the latter as clear an engagement to fulfil his *promise* to ratify a treaty, as to fulfil the *promises* of a treaty which he has ratified. In both cases one would pronounce the obligation equally personal to the Sovereign, and a failure on his part without some absolving circumstance equally a breach of faith. The project of affixing the Seal of the U. S. by 7 States to an act *which had been just admitted to require nine*, must have stood self-condemned; and tho' it might have produced a temporary deception abroad, must have been immediately detected at home, and have finally dishonored the fœderal counsels everywhere. The competency of 7 States to a Treaty of Peace has often been a subject of debate in Congress and has sometimes been admitted into their practice, at least so far as to issue fresh instructions. The reasoning employed in defence of the doctrine has been “that the cases which require 9 States, being exceptions to the general authority of 7 States ought to be taken strictly; that in the enumeration of the powers of Congress in the first clause of art: 9 of the Confederation, the power of entering into treaties and alliances is contradistinguished from that of determining on peace & war & even separated by the intervening power of sending & receiving ambassadors; that the excepting clause therefore in which ‘Treaties & alliances’ ought to be taken in the same confined sense, and in which the power of deterring on peace is omitted, cannot be extended by construction to the latter power; that under such a construction 5 States might continue a war which it required nine to commence, though where the object of the war has been obtained, a continuance must in every view be equipollent to a commencement of it; and that the very means provided for preserving a state of peace might thus become the means of preventing its restoration.” The answer to these arguments has been that the construction of the fœderal articles which they maintain is a nicety which reason disclaims, and that if it be dangerous on one side to leave it in the breast of 5 States to protract a war, it is equally necessary on the other to restrain 7 States from saddling the Union with any stipulations which they may please to interweave with a Treaty of peace. I was once led by this question to search the files

of Cong<sup>s</sup>. for such lights as the history of the Confederation might furnish, and on a review now of my papers I find the evidence from that source to consist of the following circumstances: In Doct<sup>r</sup>. Franklin's "Sketch of Articles of Confederation" laid before Cong<sup>s</sup>. on 21 day of July 1775, no number beyond a majority is required in any cases. In the plan reported to Congress by the Committee appointed 11. June 1776, the general enumeration of the powers of Cong<sup>s</sup>. in art. 18. is expressed in a similar manner with the first clause in the present 9<sup>th</sup>. art., as are the exceptions in a subsequent clause of the 18 art. of the report, with the excepting clause as it now stands: and yet in the margin of the Report and I believe in the same hand writing, there is a "Qu.: If so large a majority is necessary in concluding a Treaty of peace." There are sundry other marginal queries in the report from the same pen. Hence it would seem that notwithstanding the preceding discrimination between the powers of "determining on peace" and "entering into Treaties," the latter was meant by the Com<sup>e</sup>. to comprise the former. The next form in which the articles appear, is a printed copy of the Report as it had been previously amended, with sundry amendments, erasures, & notes on the printed copy itself in the hand of M<sup>r</sup>. Thomson. In the printed text of this paper art. 14 the phraseology which defines the general powers of Congress is the same with that in art. 18 of the manuscript report. In the subsequent clause requiring nine States, the text as printed ran thus: "The United States in Cong<sup>s</sup>. assembled shall never engage in a war nor grant letters of marque & reprisal in time of peace, nor enter into any Treaties or alliances except for peace," the words *except for peace* being erased, but sufficiently legible through the erasure. The fair inference from this passage seems to be 1. that without those words 9 States were held to be required for concluding peace. 2. that an attempt had been made to render 7 States competent to such an act, which attempt must have succeeded either on a preceding discussion in Congress or in a Com<sup>e</sup>. of the whole, or a special com<sup>e</sup>. 3. that on fuller deliberation the power of making Treaties of peace was meant to be left on the same footing with that of making all other Treaties. The remaining papers on the files have no reference to this question. Another question which several times during my service in Cong<sup>s</sup>. exercised their deliberations was whether 7 States could revoke a Commission for a Treaty issued by nine States, at any time before the faith of the Confederacy should be pledged under it. In the instance of a proposition in 1781 to revoke a Commission which had been granted under peculiar circumstances in 1779 to Adams 1 to form *a treaty of commerce with G. B.*, the competency of 7 States was resolved on (by 7 States indeed) and a revocation took place accordingly. It was however effected with much difficulty, and some members of the minority even contested the validity of the proceeding. My own opinion then was and still is that the proceeding was equally valid & expedient. The circumstances which had given birth to the coission had given place to others totally different; not a single step had been taken under the commission which could affect the honour or faith of the U. S. and it surely can never be said that either the letter or spirit of the Confederation, requires the same majority to decline as to engage in foreign treaties. The safest method of guarding ag<sup>st</sup>. the execution of those great powers after the circumstances which dictated them have changed, is to limit their duration, trusting to renewals as they expire, if the original reasons continue. My experience of the uncertainty of getting an affirmative vote even of 7 States had determined me before I left Congress, always to contend for such limitations.

I thought the sense of the term “appropriation” had been settled by the latter practice of Cong<sup>s</sup>. to be the same as you take it to be. I always understood that to be the true, the parliamentary and the only rational sense. If no distinction be admitted between the “appropriation of money to general uses” and “expenditures in detail” the Secretary of Cong<sup>s</sup>. could not buy quills or wafers without a vote of nine States entered on record, and the Secretary to the Co of the States could not do it at all. In short unless one vote of appropriation can extend to a *class* of objects, there must be a physical impossibility of providing for them; & the extent & generality of such classes can only be determined by discretion & conveniency. It is observable that in the specification of the powers which require 9 States, the single technical word “appropriate” is retained. In the general recital which precedes, the word “apply” as well as “appropriate” is used.—You were not mistaken in supposing I had in conversation restrained the authority of the fœderal Court to territorial disputes, but I was egregiously so in the opinion I had formed. Whence I got it I am utterly at a loss to account. It could not be from the Confederation itself, for words could not be more explicit. I detected the error a few days ago in consulting the articles on another subject, & had noted it for my next letter to you.—I am not sure that I comprehend your idea of a cession of the territory beyond the Kenhaway and on this side of the Ohio. As all the *soil* of value has been granted out to individuals a cession in that view would be improper, and a cession of the *jurisdiction* to Cong<sup>s</sup>. can be proper only where the Country is vacant of settlers. I presume your meaning therefore to be no more than a separation of that country from this and an incorporation of it into y<sup>e</sup>. Union; a work to which all three must be parties. I have no reason to believe there will be any repugnance on the part of Virg<sup>a</sup>.—The effort of Pen<sup>a</sup>. for the Western commerce does credit to her public councils. The commercial genius of this State is too much in its infancy I fear to rival the example. Were this less the case, the confusion of its affairs must stifle all enterprize. I shall be better able however to judge of the practicability of your hint when I know more of them.—The declension of George Town does not surprise me tho’ it gives me regret. If the competition should lie between Trenton & Philad<sup>a</sup>. & depend on the vote of *New York*<sup>1</sup> it is not difficult to foresee into which scale it will be thrown, nor the probable effect of such decision on our Southern hopes.—I have long regarded the council as a grave of useful talents, as well as objectionable in point of expence, yet I see not how such a reform as you suggest can be brought about. The Constitution, tho’ readily overleaped by the Legislature on the spur of an occasion, would probably be made a bar to such an innovation. It directs that 8 members be kept up, and requires the sanction of 4 to almost every act of the Governor. Is it not to be feared too, that these little meliorations of the Government may turn the edge of some of the arguments which ought to be laid to its root? I grow every day more & more solicitous to see this essential work begun. Every days delay settles the Gov<sup>t</sup>. deeper into the habits of the people, and strengthens the prop which their acquiescence gives it. My field of observation is too small to warrant any conjecture of the public disposition towards the measure; but all with whom I converse lend a ready ear to it. Much will depend on the politics of Mr. Henry, w<sup>ch</sup>. are wholly unknown to me. Should they be adverse, and G. Mason not in the Assembly hazardous as delay is, the experiment must be put off to a more auspicious conjuncture.

The charter granted in 1732 to Lord Baltimore makes, if I mistake not, the *Southern shore* of the Potowmac, the boundary of Maryland on that side. The constitution of Virginia cedes to that State “all the territories contained within its charter with all the rights of property, *jurisdiction and Government and all other rights whatsoever*, which might at any time have been claimed by Virginia, excepting *only the free navigation & use of the Rivers Potowmac and Pohomoque, &c.*”<sup>1</sup> Is it not to be apprehended that this language will be construed into an entire relinquishment of the Jurisdiction of these rivers, and will not such a construction be fatal to our port regulations on that side, & otherwise highly inconvenient? I was told on my journey along the Potowmac of several flagrant evasions which had been practiced with impunity & success, by foreign vessels which had loaded at Alexandria. The jurisdiction of half the rivers ought to have been expressly reserved. The terms of the surrender are the more extraordinary, as the patents of the N. neck place the whole river potowmac within the Government of Virginia; so that we were armed with a title both of prior & posterior date, to that of Maryland. What will be the best course to repair the error?—to extend our laws upon the River, making Maryland the plaintiff if she chooses to contest their authority—to state the case to her at once and propose a settlement by negotiation—or to propose a mutual appointment of Coissioners for the general purpose of preserving a harmony and efficacy in the regulations on both sides? The last mode squares best with my present ideas. It can give no irritation to Maryl<sup>d</sup>.; it can weaken no plea of Virg<sup>a</sup>.; it will give Maryland an opportunity of stirring the question if she chooses, and will not be fruitless if Maryland should admit our jurisdiction. If I see the subject in its true light no time should be lost in fixing the interest of Virginia. The good humour into which the cession of the back lands must have put Maryland, forms an apt crisis for any negotiations which may be necessary. You will be able probably to look into her charter & her laws, and to collect the leading sentiments relative to the matter.

The winter has been so severe that I have never renewed my call on the library of Monticello, and the time is now drawing so near when I may pass for a while into a different scene, that I shall await at least the return to my studies. Mr. L. Grymes told me a few days ago that a few of your Books which had been borrowed by Mr. W. Maury, and ordered by him to be sent to his brother’s, the clergyman, on their way to Monticello, were still at the place which Mr. M. removed from. I desired Mr. Grymes to send them to me instead of the Parson, supposing, as the distance is less, the books will probably be sooner out of danger from accidents, and that a conveyance from hence will not be less convenient. I calculated also on the use of such of them as may fall within my plan. I lately got home the Trunk which contained my Buffon, but have barely entered upon him. My time begins already to be much less my own than during the winter blockade. I must leave to your discretion the occasional purchase of rare and valuable books, disregarding the risk of duplicates, you know tolerably well the objects of my curiosity. I will only particularize my wish of whatever may throw light on the general constitution & droit public of the several confederacies which have existed. I observe in Boinaud’s catalogue several pieces on the Duch, the German, & the Helvetic. The operations of our own must render all such lights of consequence. Books on the Law of N. & N. fall within a similar remark. The tracts of Bynkershoek, which you mention I must trouble you to get for me & in french if to be had rather than in latin. Should the body of his works come nearly as cheap as these select

publications, perhaps it may [be] worth considering whether the whole would not be preferable. Is not Wolfius also worth having? I recollect to have seen at Pritchard's a copy of Hawkin's abridge<sup>t</sup>. of Co: Litt: I would willingly take it if it be still there & you have an opportunity. A copy of Deane's letters which were printed in New York & which I failed to get before I left Phil<sup>a</sup>. I should also be glad of. I use this freedom in confidence that you will be equally free in consulting your own conveniency whenever I encroach upon it. I hope you will do so particularly in the request I have to add. One of my parents would be considerably gratified with a pair of good Spectacles which are not to be got here. The particular readiness of Dudley to serve you inclines me to think that an order from you would be well executed. Will you therefore be so good as to get from him one of his best pebble & double jointed pair, for the age of fifty-five or thereabouts, with a good case; and forward them by the first safe conveyance to me in Orange or at Richmond as the case may be. If I had thought of this matter before M<sup>r</sup>. Maury set out, I might have lessened your trouble. It is not material whether I be repayed at the bank of Philad<sup>a</sup>. or the Treas<sup>y</sup>. of Virginia, but I beg it may be at neither till you are made secure by public remittances. It will be necessary at any rate for £20 or 30 to be left in your hands or in the bank for little expenditures which your kindness is likely to bring upon you.

The Executive of S. Carolina, as I am informed by the Attorney have demanded of Virginia the surrender of a citizen of Virg<sup>a</sup> charged on the affidavit of Jonas Beard Esq<sup>r</sup>. whom the Executive of S. C. represent to be a "Justice of the peace, a member of the Legislature, and a valuable, good man," as follows: that "three days before the 25<sup>th</sup>. day of Oct<sup>r</sup>. 1783 he (Mr. Beard) was violently assaulted by G. H. during the sitting of the Court of General Sessions, without any provocation thereto given, who beat him (Mr. B.) with his fist & switch over the face head and mouth, from which beating he was obliged to keep his room until the said 25<sup>th</sup>. day of Oct<sup>r</sup>. 1783, and call in the assistance of a physician." Such is the case as collected by Mr. Randolph from the letter of the Executive of S. C. The questions which arise upon it are 1. whether it be a charge of high misdemeanour within the meaning of the 4 art: of Confederation. 2. whether in expounding the terms high misdemeanour, the law of S. Carolina, or the British law as in force in the U. S. before the Revolution ought to be the standard. 3. if it be not a casus fœderis what the law of nations exacts of Virginia? 4. if the law of nations contains no adequate provision for such occurrences, whether the intimacy of the Union among the States, the relative position of some, and the common interest of all of them in guarding against impunity for offences which can be punished only by the jurisdiction within which they are committed, do not call for some supplemental regulations on this subject? M<sup>r</sup>. R. thinks Virginia not bound to surrender the fugitive untill she be convinced of the facts, by more substantial information, & of its amounting to a high misdemeanour, by inspection of the law of S. C. which & not the British law ought to be the criterion. His reasons are too long to be rehearsed.

I know not my dear sir what to reply to the affectionate invitation which closes your letter. 1 I subscribe to the justness of your general reflections I feel the attractions of the particular situation you point out to me. I cannot altogether renounce the prospect: still less can I as yet embrace it. It is very far from being improbable that a few years more may prepare me for giving such a destiny to my future life; in which case the same or some equally convenient spot may be commanded by a little augmentation of

price. But wherever my final lot may fix me be assured that I shall ever remain, with the sincerest affection & esteem,

Y<sup>R</sup>. Friend And Servant.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange April 25th 1784.

Mad. Mss.

Dear Sir,—

Your favor of the 16<sup>th</sup>. of March came to hand a few days <sup>2</sup>before *Mazzei* called on me. His *plan* was to have *proceeded* hence directly to *Annapolis*. My conversation led him to premise a visit to *Mr. Henry*, from whence he proposed to repair to *Richmond*, and close his affairs with the *Executive*. Contrary to my expectation he returned hither on thursday last, proposing to continue his circuit through *Gloucester*, *York*, and *Williamsburg*, recommended by *Mr. Henry*, for obtaining from the former members of the *Council* certain facts relating to his appointment, of which the vouchers have been lost. This delay, with the expectation of your adjournment, will probably prevent his visit to *Congress*. Your letter gave me the first information both of his views towards a *Consulate* and of his enmity towards *Franklin*. The first was not betrayed to me by any conversation either before or after I made known to him the determination of *Congress* to confine such appointments to natives of *America*. As to the second he was unreserved alledging at the same time that the exquisite cunning of the old fox has so enveloped his iniquity, that its reality cannot be proved by those who are thoroughly satisfied of it. It is evident, from several circumstances stated by himself that his enmity has been embittered if not wholly occasioned by incidents of a personal nature. *Mr. Adams* is the only public man whom he thinks favourably of, or seems to have associated with, a circumstance which their mutual characters may perhaps account for. Notwithstanding these sentiments towards *Franklin* & *Adams* his hatred of *England* remains unabated, & does not exceed his partiality to *France*, which with many other considerations which need not be pointed out, persuade me that however dreadful an actual visit from him might be to you in a personal view, it would not produce the public mischiefs you apprehend from it. By his interview with *Mr. Henry*, I learn that the present politics of the latter comprehend very friendly views towards the confederacy, a wish tempered with much caution for an amendment of our constitution, a patronage of the payment of *British debts*, and of a scheme of general assessment.

The want of both a Thermometer & Baro<sup>r</sup>. had determined me to defer a meteorological diary till I could procure these instruments. Since the rec<sup>t</sup>. of your letter I have attended to the other columns.

I hope the letter which had not reached you at the date of your last, did not altogether miscarry. On the 16 of March I wrote you fully on sundry points. Among others I suggested to your attention the case of the *Potowmac*, having in my eye the river below the head of navigation. It will be well I think to sound the ideas of *Maryland* also, as to the upper parts of the *N. branch* of it. The policy of *Baltimore* will probably thwart as far as possible, the opening of it; & without a very favorable construction of



the *right of Virginia*, and even the privilege of using the *Maryland Bank*, it would seem that the *necessary works could not be* accomplished.

Will it not be good policy to suspend further Treaties of Commerce, till measures shall have taken place in America which may correct the idea in Europe of impotency in the fœderal Gov<sup>t</sup>. in matters of Commerce? Has Virginia been seconded by any other State in her proposition for arming Congress with power to frustrate the unfriendly regulations of G. B. with regard to her W. India islands? It is reported here that the late change of her ministers has revived the former liberality which seemed to prevail on that subject. Is the Impost gaining or losing ground among the States? Do any considerable payments come into the Contin<sup>l</sup>. Treasury? Does the settlement of the public acc<sup>ts</sup>. make any comfortable progress? Has any resolution been taken by Congress touching the old Cont<sup>l</sup>. currency? Has Maryland foreborne to take any steps in favour of George Town? Can you tell me whether any question in the Court of Appeals, has yet determined whether the war ceased on our coast on the 3d of March or the 3d of April? The books which I was told were still at the place left by M<sup>r</sup>. W. Maury, had been sent away at [the] time Mr. L. Grymes informed of them.

M<sup>r</sup>. Mazzei tells me that a subterraneous city has been discovered in Siberia, which appears to have been once populous & magnificent. Among other curiosities it contains an equestrian Statue around the neck of which was a golden chain 200 feet in length, so exquisitely wrought that Buffon inferred from a specimen of 6 feet sent him by the Empress of Russia, that no artist in Paris could equal the workmanship. Mr. Mazzei saw the specimen in the hands of Buffon & heard him give this opinion of it. He heard read at the same time a letter from the Empress to Buffon in which she desired the present to be considered as a tribute to the man to whom Nat: Hist: was so much indebted. Mons<sup>r</sup>. Faujas de S<sup>t</sup>. Fond thought the city was between 72 & 74° N. L. the son of Buffon between 62 & 64° M<sup>r</sup>. M. being on the point of departure had no opportunity of ascertaining the fact. If you should have had no better account of the discovery this will not be unacceptable to you & will lead you to obtain one.

I propose to set off for Richmond towards the end of this week. The election in this County was on Thursday last. My colleague is M<sup>r</sup>. Charles Porter

I Am, &C.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richmond May 13, 1784.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

The Spectacles herewith inclosed came to my hands yesterday with information that the p<sup>r</sup>. first sent were forwarded by mistake. It will however give my mother a double chance of suiting herself. I wish the p<sup>r</sup>. which may not be preferred to be sent down to me by the earliest opportunity unless they should suit yourself & you choose to keep them, as I am desired by the maker to return them in case they sh<sup>d</sup>. not be wanted. We did not make a House till Wednesday & of course are but just beginning the business of the Session. M<sup>r</sup>. Jefferson has been app<sup>d</sup>. an associate with D<sup>r</sup>. F. & M<sup>r</sup>. Adams in forming coercial Treaties and will proceed immediately to Europe. He takes the place of M<sup>r</sup>. Jay who is returning to America & who is to be the Secretary of F. affairs if he will accept the office. I do not find that S. Jones is as yet here, & I suspend the sale of the Tob<sup>o</sup>. with a hope of its further rise. 38/. I believe may now be got, but 40/. is generally expected. I am your

Dutiful Son

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Richmond, May 15, 1784.

Mad. Mss.

Dear Sir,—

Your favor of the 7<sup>th</sup>. inst. with another p<sup>r</sup>. of spectacles inclosed came safe to hand on thursday last. I shall have the person for whose use they were intended take choice of the most suitable & will return the other p<sup>r</sup>. to M<sup>r</sup>. Dudley by the first conveyance, unless I meet with a purchaser which I do not expect. The arrangement which is to carry you to Europe has been made known to me by Mr. Short who tells me he means to accompany or follow you. With the many reasons which make this event agreeable, I cannot but mix some regret that your aid towards a revisal of our State Constitution will be removed. I hope however for your licence to make use of the ideas you were so good as to confide to me, so far as they may be necessary to forward the object. Whether any experiment will be made this session is uncertain. Several members with whom I have casually conversed give me more encouragem<sup>t</sup>. than I had indulged. As Col: Mason remains in private life, the expediency of starting the idea will depend much on the part to be expected from R. H. L. & P. H. The former is not yet come to this place, nor can I determine any thing as to his politics on this point. The latter arrived yesterday, & from a short conversation I find him strenuous for invigorating the federal Gov<sup>t</sup> though without any precise plan, but have got no explanations from him as to our internal Gov<sup>t</sup>. The general train of his thoughts seemed to suggest favorable expectations. We did not make a house till Wednesday last, & have done nothing yet but arrange y<sup>e</sup> committees & receive petitions. The former Speaker was re-elected without opposition. If you will either before or after your leaving America point out the channel of communication with you in Europe, I will take the pleasure of supplying you from time [to time] with our internal transactions, as far as they may deserve your attention, & expect that you will command every other service during y<sup>r</sup> absence which it may be in my power to render. Wishing you every success & happiness, I am, D<sup>r</sup> sir,

Your Affec<sup>Te</sup>. Friend

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richmond June 5<sup>th</sup>. 1784.

Mad. Mss.

Hon<sup>D</sup> Sir,—

I have disposed of the tobacco entrusted to me for 40/ per c<sup>t</sup>. but receive in hand no more than will be delivered by M<sup>r</sup>. Craig. The residue will be paid before I leave this place. I inclose a draught on S. J. from Col. Harvey, for £200 for which I have credited M<sup>r</sup>. Anderson on his bond. M<sup>r</sup>. Anderson could not pay the balance now, but expects to do it shortly. The draught & the remittance, will I hope with such addition as you will be able to make, redeem your bond out of the hands of M<sup>r</sup>. Jones. I have applied to Gen<sup>l</sup>. Wood for Maj<sup>r</sup>. Hite's warrant. He promises to get it if possible, before M<sup>r</sup>. Craig sets out. If he does it will be forwarded. I have laid Maj<sup>r</sup>. Lee's case before the House, and it has been referred to the committee of propositions. The mass of business before this Committee & my avocations from it to other Committees have delayed it hitherto. Having but a moment to write this I must refer to M<sup>r</sup>. Craig for the news of the session. The House of Delegates have agreed to postpone the June tax till Jan<sup>y</sup>.. It is not improbable that the Senate may require ½ to be collected at an earlier period. M<sup>r</sup>. Winslow will probably be glad to be apprized of these circumstances. Remember me affect<sup>y</sup>. to the family & accept of the dutiful respects of your son.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richmond June 24, 84.

Mad. Mss.

Hond Sir,—

Your letter by Capt. Cowherd with that of my brother's have been just put into my hand. I shall leave to him the sale of the Tob<sup>o</sup> belonging to Capt. Conway & Ambrose; not being at leisure myself to do it before he proposes to set out. I think it will be well to accept of M<sup>r</sup>. Lawson's offer of the Madeira. I shall do the best I can towards satisfying the Treasury on acc<sup>t</sup>. of M<sup>r</sup>. Winslow. Maj<sup>r</sup>. Lee's warrant has been ordered by the assembly, but M<sup>r</sup>. Harvey being a little puzzled by the peculiarity of the case, could not make it out immediately on my first application, & I have not time now to repeat it. I hope the delay will not be inconvenient to Maj<sup>r</sup> Lee. Much time has been lately spent by the assembly in abortive efforts for amendment of the constitution,<sup>1</sup> and fulfilling the Treaty of peace in the article of British debts.<sup>1</sup> The residue of the business will not be completed till next week. If my brother W. is at leisure as before, I beg him to bring down the chair for me to be here by Wednesday next.

I Am Your Dutiful Son.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Richmond, July 3d, 1784.

Mad. Mss.

Dear Sir,—

The Assembly adjourned the day before yesterday. I have been obliged to remain here since on private business for my Countrymen with the Auditor's and other departments. I had allotted towards the close of the Session to undertake a narration for you of the proceedings, but the hurry on which I did not sufficiently calculate, rendered it impossible, and I now find myself so abridged in time that I cannot fulfil my intentions. It will however be the less material, as Mr. Short by whom this goes, will be possessed of almost every thing I could say. I inclose you a list of the acts passed excepting a few which had not received the last Solemnity when the list went to press. Among the latter is an Act under which 1 per Ct. of the land tax will be collected this fall and will be for Congress. This with the 1½ per Ct. added to the impost on trade, will be all that Congress will obtain on their last requisition for this year. It will be much short of what they need, & of what might be expected from the declarations with which we introduced the business of the Session. These declarations will be seen in the Journal, copy of which I take for granted will be carried by Mr. Short. Another act not on the list lays duties on law proceedings, on alienations of land, on probats of Wills, administration & some other transactions which pass through official hands. This tax may be considered as the basis of a stamp-tax; it will probably yield £15 or 20,000 at present, which is set apart for the foreign Creditors of this State.

We made a warm struggle for the establishm<sup>t</sup>. of Norfolk & Alexandria as our only ports; but were obliged to add York, Tappahannock & Bermuda hundred, in order to gain any thing & to restrain to these ports foreigners only. The footing on which British debts are put will appear from the Journal noting only that a law is now in force which forbids suits for them. The minority in the Senate have protested on the subject. Having not seen the protest I must refer to Mr. Short who will no doubt charge himself with it.

A trial was made for a Convention, but in a form not the most lucky. The adverse temper of the House & particularly of Mr. Henry had determined me to be silent on the subject. But a Petition from Augusta having among other things touched on a Reform of the Gov<sup>t</sup>. and R. H. L. arriving with favorable sentiments, we thought it might not be amiss to stir the matter. Mr. Stuart from Augusta accordingly proposed to the Coittee of propositions the Resolutions reported to the House as per Journal. Unluckily R. H. L. was obliged by sickness to leave us the day before the question came on in Coittee of the whole, and Mr. Henry shewed a more violent opposition than we expected. The consequence was that after two days Debate the Report was negatived, and the majority not content with stopping the measure for the present availed themselves of their strength to put a supposed bar on the Journal against a

future possibility of carrying it. The members for a Convention with full powers, was not considerable for number, but included most of the young men of education & talents. A great many would have concurred in a Convention for specified amendments, but they were not disposed to be active even for such a qualified plan.

Several Petitions came forward in behalf of a gen<sup>l</sup> Assessm<sup>t</sup> which was reported by the Com<sup>e</sup> of Religion to be reasonable. 1 The friends of the measure did not chuse to try their strength in the House. The Episcopal Clergy introduced a notable project for reestablishing their independence of the laity. The foundation of it was that the whole body should be legally incorporated, invested with the present property of the Church, made capable of acquiring indefinitely—empowered to make canons & bye-laws not contrary to the laws of the land, and incumbents when once chosen by vestries, to be immovable otherwise than by sentence of the Convocation. Extraordinary as such a project was, it was preserved from a dishonorable death by the talents of Mr. Henry. It lies over for another Session.

The public lands at Richmond not wanted for public use are ordered to be sold & the money, aided by subscriptions, to be applied to the erection of buildings on the Hill as formerly planned. This fixes the Gov<sup>t</sup>, which was near being made as vagrant as that of the U. S., by a coalition between the friends of Williamsb<sup>g</sup> & Stanton. The point was carried by a small majority only.

The lands about Williamsb<sup>g</sup> are given to the University, and are worth, Mr. Tazewell thinks £10,000 to it. For the encouragement of Mr. Maury's School, licence is granted for a lottery to raise not more than £2000.

The revisal is ordered to be printed. A frivolous œconomy restrained the n<sup>o</sup>. of copies to 500. I shall secure the n<sup>o</sup> you want & forward them by the first opportunity. The three Revisors' labour was recollected on this occasion, and £500 voted for each. I have taken out your warrant in five parts, that it may be the more easily converted to use. It is to be paid out of the first unappropriated money in the Treasury, which renders its value very precarious unless the Treasurer s<sup>d</sup> be willing to endorse it "receivable-in-taxes," which he is not obliged to do. I shall await your orders as to the disposition of it.

An effort was made for Paine & the prospect once flattering. But a sudden opposition was brewed up which put a negative on every form which could be given to the proposed remuneration. Mr. Short will give you particulars.

Col: Mason the Attorney Mr. Henderson & myself are to negotiate with Maryland if she will app<sup>t</sup> Comiss<sup>rs</sup> to establish regulations for the Potowmac. 1

Since the receipt of yours of May 8, I have made diligent enquiry concerning the several schools most likely to answer for the education of your Nephews. 1 My information has determined me finally to prefer that of Mr. W. Maury as least exceptionable. I have accordingly recommended it to M<sup>rs</sup>. Carr, & on receiving her answer shall write to M<sup>r</sup>. Maury pointing out your wishes as to the course of study proper for Master Carr. I have not yet made up any opinion as to the disposition of

your younger nephew but shall continue my enquiries till I can do so. I find a greater deficiency of proper schools than I could have supposed, low as my expectations were on the subject. All that I can assure [you] of is that I shall pursue your wishes with equal pleasure & faithfulness.

Your hint for appropriating the slave tax to Congress fell in precisely with the opinion I had formed and suggested to those who are most attentive to our finances. The existing appropriation of half of it however to the Military debt was deemed a bar to such a measure. I wished for it because the slave holders are Tob<sup>o</sup> makers, and will generally have hard money w<sup>ch</sup> alone will serve for Congress. Nothing can exceed the confusion which reigns throughout our Revenue department. We attempted but in vain to ascertain the amount of our debts, and of our resources, as a basis for something like a system. Perhaps by the next Session the information may be prepared. This confusion indeed runs through all our public affairs, and must continue as long as the present mode of legislating continues. If we cannot amend the constitution, we must at least call in the aid of accurate penmen for extending Resolutions into bills, which at present are drawn in [a] manner that must soon bring our laws and our Legislature into contempt among all orders of Citizens.

I have communicated your request from Philad<sup>a</sup>. May 25, to Mr. Lane. He writes by Mr. Short & tells me he is possessed of the observations which he promised you. I found no opportunity of broaching a scheme for opening the navigation of the Potowmac under the auspices of Gen<sup>l</sup> Washington, or of providing for such occurrences as the case of Marbois. With the aid of y<sup>e</sup> Attorney perhaps something may be done on the latter point next Session.

Adieu My Dear Friend.



[\[Back to Table of Contents\]](#)

## TO GENERAL WASHINGTON.

Orange Aug<sup>st</sup> 12, 1784.

Wash. Mss.

Dear Sir,—

I had the honor of receiving your favor of the 12<sup>th</sup>. of June during my attendance on the Legislature, and of answering it a few days, before I left Richmond. Since my return home I have been informed that the gentleman into whose hands the answer was put has mislaid or lost it, and that I cannot rely on its ever finding its way to you. I have therefore to repeat, Sir, that the sanction which your judgment gave to the propriety of rewarding the literary services of M<sup>r</sup>. Payne,1 led to an attempt in the House of Delegates for that purpose. The proposition first made was, that he should be invested with a moiety of a tract of public land known by the name of the Secretary's lying on the Eastern Shore. The kind reception given to this proposition induced some gentlemen to urge that the whole tract containing about 500 acres might be included in the donation, as more becoming the dignity of the State, and not exceeding the merits of the object. The proposition thus enlarged passed through two readings without apprehension on the part of its friends.—On the third, a sudden attack grounded on considerations of economy and suggestions unfavourable to M<sup>r</sup>. Payne threw the Bill out of the house. The next idea proposed was that the land in question should be sold and £2000 of the proceeds allotted to M<sup>r</sup>. Payne to be laid out in the purchase of a farm if he should think fit. This was lost by a single vote. Whether a succeeding Session may resume the matter, and view it in a different light, is not for me to say. Should exertions of genius which have been everywhere admired, and in America unanimously acknowledged, not save the author from indigence & distress, the loss of national character will hardly be balanced by the savings at the Treasury.

With the highest respect &c.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange Aug 20, 1784.

Mad. Mss.

Dear Sir,—

Your favor of the 1<sup>st</sup>. July written on the eve of your embarkation from Boston was safely delivered by your servant Bob about the 20<sup>th</sup>. of the same month. Along with it I rec<sup>d</sup>. the pamphlet on the W. India trade, and a copy of Deane's letters. My last was written from Richmond on the adjournment of the Gen<sup>l</sup>. Assembly & put into the hands of Mr. Short. It contained a cursory view of legislative proceedings, referring to the bearer for a more circumstantial one. Since the adjournment I have been so little abroad that I am unable to say with certainty how far those proceedings harmonize with the vox populi. The opinion of some who have better means of information is that a large majority of the people either from a sense of private justice or of national faith, dislike the footing on which British debts are placed. The proceedings relative to an amendment of the State Constitution seem to interest the public much less than a friend to the scheme would wish. The act which produces most agitation and discussion is that which restrains foreign trade to enumerated ports. Those who meditate a renewal of the old plan of British Monopoly & diffusive credit, or whose mercantile arrangements might be disturbed by the innovation, with those whose local situations give them, or are thought to give them an advantage in large vessels coming up the rivers to their usual stations, are busy in decoying the people into a belief that trade ought in all cases to be left to regulate itself, that to confine it to particular ports is to renounce the boon with which Nature has favored our country, and if one sett of men are to be importers & exporters, another set to be carriers between the mouths & heads of the rivers & a third retailers, trade, as it must pass through so many hands all taking a profit, must in the end come dearer to the people than if the simple plan should be continued which unites these several branches in the same heads. These & other objections, tho' unsound, are not altogether unpalatable, and being propagated with more zeal and pains by those who have a particular interest to serve than proper answers are by those who regard the general interest only, make it very probable that the measure may be rescinded before it is to take effect. Should it escape such a fate, it will be owing to a few striking and undeniable facts, namely, that goods are much dearer in Virginia, than in the States where trade is drawn to a general mart, that even goods brought from Philad<sup>a</sup>. and Baltimore to Winchester & other W. & S. W. parts of Virginia are retailed cheaper than those imported directly from Europe are sold on tide water; that generous as the present price of our Tob<sup>o</sup>. appears, the same article has currently sold 15 or 20 per C<sup>t</sup>. at least higher in Philad<sup>a</sup>. where being as far from the ultimate market it cannot be intrinsically worth more; that scarce a single vessel from any part of Europe, other than the British Dominions, comes into our ports, whilst vessels from so many other parts of Europe, resort to other ports of America, almost all of them too in pursuit of the Staple of Virginia. The exemption of our own citizens from the restriction is another circumstance that helps to parry attacks on the policy of it. The warmest friends to the law were averse to this discrimination which

not only departs from its principle, but gives it an illiberal aspect to foreigners, but it was a necessary concession to prevailing sentiments. The like discrimination between our own citizens & those of other States contrary to the fœderal articles is an erratum which was omitted to be rectified, but will no doubt be so. Notwithstanding the languor of our direct trade with Europe, this Country has indirectly tasted some of the fruits of Independence. The price of our last crop of Tob<sup>o</sup>. has been on James River from 36/ to 42/6 per C<sup>t</sup>. & has brought more specie into the Country than it ever before contained at one time. The price of hemp however has been reduced as much by the peace as that of Tob<sup>o</sup>. has been raised, being sold I am told as low as 20/ per C<sup>t</sup>. beyond the mountains. Our crops of wheat have been rather scanty, owing partly to the rigors of the winter, partly to an insect,<sup>1</sup> which in many places has destroyed whole fields of that grain. The same insect has since the harvest fallen upon the Corn with considerable damage; but without some very unusual disaster to that article the crop will be exuberant, & will afford plentiful supplies for the W. India Islands if their European Masters will no longer deny themselves the benefit of such a trade with us. The crop of the Tobacco now on the ground will if the weather continues favorable be tolerably good, though much shortened on the whole by the want of early seasons for transplanting & an uncommon number of the insects which prey upon it in its different stages. It will be politic I think for the people here to push the culture of this article whilst the price keeps up, it becoming more apparent every day that the richness of soil & fitness of climate on the Western waters will in a few years, both reduce the price & engross the culture of it. This event begins to be generally foreseen & increases the demand greatly for land on the Ohio. What think you of a guinea an acre being already the price for choice tracts with sure titles?

Nothing can delay such a revolution with regard to our staple, but an impolitic & perverse attempt in Spain to shut the mouth of the Mississippi against the inhabitants above. I say *delay*, because she can no more finally stop the current of trade down the river than she can that of the river itself. The importance of this matter is in almost every mouth. I am frequently asked what progress has been made towards a treaty with Spain & what may be expected from her liberality on this point, the *querists all counting on an early ability in the western settlements to apply to other motives if necessary.*<sup>1</sup> My answers have both from ignorance & prudence been evasive. I have not thought fit however to cherish unfavorable impressions, being more & more led by revolving the subject, to conclude that Spain will never be so mad as to persist in her present ideas. For want of better matter for correspondence, I will state the grounds on which I build my expectations.

First. *1Apt as the policy of nations is to disregard justice and the general rights of mankind I deem it no small advantage that these considerations are in our favour. They must be felt in some degree by the most corrupt councils on a question whether the interest of millions shall be sacrificed to views concerning a distant and paltry settlement; they are every day acquiring weight from the progress of philosophy and civilization and they must operate on those nations of Europe who have given us a title to their friendly offices or who may wish to gain a title to ours.*

Secondly. May not something be hoped from the *respect which Spain may feel for consistency of character on an appeal to the doctrine maintained by herself in the*

year 1609, touching the *scheld*, or at least from the *use which may be made of that fact by the powers disposed to favor our views.*

Thirdly. The *interest of Spain at least ought to claim her attention.* (1) A free trade down the Mississippi would *make new Orleans one of the most flourishing emporiums in the world* and deriving its *happiness* from the *benevolence of Spain* would *feel a firm loyalty to her government.* At present it is an *expensive establishment settled chiefly by French, who hate the government which oppresses them, who already covet a trade with the upper country, will become every day more sensible of the rigor which denies it to them and will join in any attempt which may be made against their master.* (2) A *generous policy on the part of Spain towards the U. S.* will be the *cement of friendship & lasting peace with them.* A *contrary one will produce immediate heart burnings and sow the seeds of inevitable hostility.* The *U. S. are already a power not to be despised by Spain the time cannot be distant when, in spite of all precautions the safety of her possessions in this quarter of the globe must depend more on our peaceableness than her own power.* (3) In another view it is *against the interest of Spain to throw obstacles in the way of our Western settlements.* The part *she took during the late war shews that she apprehended less from the power growing up in her neighborhood in a state of independence than as an instrument in the hands of Great Britain.* If in this *she calculated on the impotence of the U. S. when dismembered from the British empire she saw but little way into futurity; if on the pacific temper of republics unjust irritations on her part will soon prove to her that these have like passions with other governments.—her permanent security seems to lie in the complexity of our federal government and the diversity of interests among the members of it which render offensive measures improbable in council and difficult in execution.* If *such be the case when thirteen States compose the system ought she not to wish to see the number enlarged to three and twenty? A source of temporary security to her is our want of naval strength; ought she not, then, to favor those emigrations to the Western land which, as long as they continue will leave no supernumerary hands for the sea.*

Fourthly. Should none of *these circumstances affect her councils she cannot surely so far disregard the usage of nations as to contend that her possessions at the mouth of the Mississippi justify a total denial of the use of it to the inhabitants above when possessions much less disproportionate at the mouth of other rivers have been admitted only as a title to a moderate toll.* The case of the *Rhine the Maese & the Scheld, as of Elbe and Oder* are if I mistake not in point here. How far *other rivers may afford parallel cases I cannot say.* That of the *Mississippi is probably the strongest in the world.*

Fifthly. Must not the general *interest of Europe* in all cases *influence the determinations of any particular nation in Europe* and does not that *interest in the present case clearly lie on our side.* (1) All the *principal powers* have, in a *general view more to gain than to lose by denying a right of those who hold the mouths of rivers to intercept a communication with those above.* *France Gr Brit and Sweden* have no opportunity of *exerting such a right, and must wish a free passage for their merchandize in every country* *Spain herself has no such opportunity and has besides three of her principal rivers one of them the seat of her metropolis running thro'*

*Portugal. Russia can have nothing to lose by denying this pretension and is bound to do so in favor of her great rivers the Neiper, the Niester and the Don which mouth in the black sea, and of the passage thro' the Dardanelles which she extorted from the Turks. The Emperor in common with the inland States of Germany and moreover by his possessions on the Maese and the Scheld, has a similar interest. The possessions of the King of Prussia on the Rhine, the Elbe, and the Oder, are pledges for his orthodoxy. The U. P<sup>s</sup>. hold it is true, the mouths of the Maese the Rhine and the Scheld but a general freedom of trade is so much their policy and they now carry on so much of it through the channel of rivers flowing thro' different dominions that their weight can hardly be thrown into the wrong scale. The only powers that can have an interest in opposing the American doctrine are the Ottoman which has already given up the point to Russia, Denmark which is suffered to retain the entrance of the Baltic Portugal whose principal rivers head in Spain, Venice which holds the mouth of the Po; and Dantzick which commands that of the Vistula if it is yet to be considered as a sovereign City. The prevailing disposition of Europe on this point once frustrated an attempt of Denmark to exact a toll at the mouth of the Elbe by means of a fort on the holstein side, which commands it. The fact is mentioned in Salmon's gazetteer, under the head of Cluestadt. I have no opportunity of ascertaining the circumstances of the case, or of discovering like cases. (2) In a more important view, the settlement of the Western country which will much depend on the free use of the Mississippi, will be beneficial to all nations who either directly or indirectly trade with the U. S. By a free expansion of our people the establishment of internal manufactures will not only be long delayed but the consumption of foreign manufactures long continue increasing; and at the same time, all the productions of the American soil required by Europe in return for her manufactures, will proportionably increase. The vacant land of the United States lying on the waters of the Mississippi is perhaps equal in extent to the land actually settled. If no check be given to emigrations from the latter to the former, they will probably keep pace at least with the increase of our people, till the population of both becomes nearly equal. For twenty or twenty-five years we shall consequently have as few internal manufactures in proportion to our numbers as at present and at the end of that period our imported manufactures will be doubled. It may be observed too, that as the market for these manufactures will first increase, and the provision for supplying it will follow the price of supplies will naturally rise in favor of those who manufacture them. On the other hand as the demand for the tobacco indigo rice corn &c produced by America for exportation will neither precede nor keep pace with their increase the price must naturally sink in favor also of those who consume them. Reverse the case by supposing the use of the Mississippi denied to us and the consequence is that many of our supernumerary hands who in the former case would be husbandmen on the waters of the Mississippi, will on the latter supposition be manufacturers on those of the Atlantic and even those who may not be discouraged from seating the vacant lands will be obliged by the want of vent for the produce of the soil and of the means of purchasing foreign manufactures to manufacture in a great measure for themselves. Should Spain yield the point of the navigation of the Mississippi, but at the same time refuse us the use of her shores, the benefit will be ideal only. I have conversed with several persons who have a practical knowledge of the subject, all of whom assure me that not only the right of fastening to the Spanish shore, but that of holding an entrepot in our own, or of using New Orleans as a free port, is essential to a trade thro' that channel. It has been said that*

*sea vessels can get up as high as latitude thirty-two to meet the river craft, but it will be with so much difficulty and disadvantage as to amount to a prohibition. The idea has also been suggested of large magazines constructed for floating; but if this expedient were otherwise admissible the hurricanes which in that quarter frequently demolish edifices on land forbid the least confidence in those which would have no foundation but water. Some territorial privileges therefore seem to be as indispensable to the use of the river as this is to the prosperity of the western country. A place called "The Englishman's turn," on the island of about six leagues below the town of New O., is I am told the fittest for our purpose, & that the lower side of the peninsula is the best. Batonrouge is also mentioned as a convenient station and point coupé as the highest to which vessels can ascend with tolerable ease. Information however of this from men who judge from a general and superficial view only can never be received as accurate. If Spain be sincerely disposed to gratify us, I hope she will be sensible it cannot be done effectually without allowing a previous survey and deliberate choice. Should it be impossible to obtain from her a portion of ground by other means, would it be unadvisable to attempt it by purchase. The price demanded could not well exceed the benefit to be obtained, and a reimbursement of the public advance might easily be provided for by the sale to individuals, and the conditions which might be annexed to their tenures. Such a spot could not fail in a little time to equal in value the same extent in London or Amsterdam. The most intelligent of those with whom I have conversed think that on whatever footing our trade may be allowed very judicious provision will be necessary for a fair adjustment of disputes between the Spaniards and the Americans disputes which must be not only noxious to trade but tend to embroil the two nations. Perhaps a joint tribunal, under some modification or other might answer the purpose. There is a precedent I see for such an establishment in the twenty-first article of the treaty of Munster in 1648, between Spain and the U. N. I am informed that, sometime after New O. passed into the hands of Spain her Governor forbid all British vessels navigating under the treaty of Paris to fasten to the shore and caused such as did so to be cut loose. In consequence of this practice a British frigate went up near the town fastened to the shore and set out guards to fire on any who might attempt to cut her loose. The Governor after trying in vain to remove the frigate by menaces acquiesced after which British vessels indiscriminately used the shore and even the residence of British Merchants in the town of New O., trading clandestinely with the Spaniards as well as openly with their own people, [was] winked at. The treaty of 1763 stipulated to British subjects as well as I recollect no more than the right of navigating the river and if that of using was admitted under that stipulation, the latter right must have been admitted to be included in the former.*

When you were about leaving America as a Coiss<sup>r</sup> for peace you intimated to me that a report was in circulation of *your being a party to jobs for Kentucky lands* and authorized me to contradict the report. I have some reason to believe that the credit of *your name has been made use of by some who are making purchases or locations in that quarter.* If they have done *it without sanction* it may not be amiss to *renew my authority.*<sup>1</sup>

In consequence of my letter to Mrs. Carr I have been called on by your elder Nephew, who is well satisfied with the choice made of Williamsb<sup>g</sup> for his future studies. I have

furnished him with letters to my acquaintance there & with a draught on your Steward for £12. He will be down by the opening of Mr. Maury's school at the close of the vacation, which lasts from the beginning of Aug<sup>st</sup> to the end of Sept<sup>r</sup>. I have the greater hopes that the preference of this School will turn out a proper one, as it has rec<sup>d</sup>. the approbation of the literary gentlemen of Williamsb<sup>g</sup> & will be periodically examined by Mr. Wythe & others. Your younger Nephew is with Maj<sup>r</sup> Callis, who will keep [school?] some time longer, I am at a loss as yet where to fix him, but will guard as much as possible ag<sup>st</sup> any idle interval. I am, very affect<sup>ly</sup>, dear Sir, y friend and serv<sup>t</sup>,

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Philad<sup>a</sup>. Sep<sup>r</sup> 6, 1784.

Mad. Mss.

Hon<sup>'</sup>D Sir,—

I arrived at this place the night before last only, having declined starting from Fredg. at the time I proposed when I parted with you, & having staid at Baltimore one day, at the latter place I fell in with the Marquis & had his company thus far. He is proceeding Northw<sup>d</sup>. as far as Boston from whence he goes to the Moran Treaty at Fort Stanwix and from thence returns to Virg<sup>a</sup>. about the same time that I must be there. He presses me much to fall into his plan, and I am not sure that I shall decline it. It will carry me farther than I had proposed, but I shall be rewarded by the pleasure of his company and the further opportunity of gratifying my curiosity. I have nothing to add at present but that I am your affec son



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>. Sep<sup>r</sup> 7th, 1784.

Mad. Mss.

Dear Sir,—

Some business, the need of exercise after a very sedentary period, and the view of extending my ramble into the Eastern States which I have long had a curiosity to see have brought me to this place. The letter herewith enclosed was written before I left Virginia, & brought with me for the sake of a conveyance hence. Since the date of it I have learned that Mr Short who was to be the bearer of the letter to which it refers has not yet left Richmond. The causes of his delay are unknown to me. At Baltimore I fell in with the Marquis de la Fayette returning from a visit to Mount Vernon. Wherever he passes he receives the most flattering tokens of sincere affection from all ranks. He did not propose to have left Virginia so soon but Gen<sup>l</sup> Washington was about setting out on a trip to the Ohio, and co<sup>d</sup> not then accompany him on some visits as he wished to do. The present plan of the Marquis is to proceed immediately to New York, thence by Rhode Island to Boston, thence thro' Albany to Fort Stanwix, where a treaty with the Indians is to be held the latter end of this month, thence to Virginia so as to meet the Legislature at Richmond. I have some thoughts of making this tour with him, but suspend my final resolution till I get to N. Y. whither I shall follow him in a day or two.

*The relation in 1 which the Marquis stands to France and America has induced me to enter into a free conversañ with him on the subject of the Mississippi. I have endeavored emphatically to impress on him that the ideas of America and of Spain irreconcilably clash that unless the mediation of France be effectually exerted, an actual rupture is near at hand that in such an event the connection between France and Spain will give the enemies of the former in America the fairest opportunity of involving her in our resentm<sup>ts</sup> against the latter, and of introducing Great Brit. as a party with us as against both that America cannot possibly be diverted from her object, and therefore France is bound to set every engine at work to divert Spain from hers; and that France has besides a great interest in a trade with the western country thro' the Mississippi. I thought it not amiss also to suggest to him some of the considerations which seem to appeal to the produce of Spain. He admitted the force of everything I said told me he would write in the most [favorable] terms to the Count de Vergennes by the packet which will probably carry this and let me see his letter at N. York before he sends it. He thinks that Spain is bent on excluding us from the Mississippi and mentioned several anecdotes which happened while he was at Madrid in proof of it.*

The Committee of the States have dispersed. Several of the Eastern members hav<sup>g</sup> by quitting it reduced the number below a quorum, the impotent remnant thought it needless to keep together. It is not probable they will be reassembled before Nov<sup>r</sup>, so

that there will be an entire interregnum of the fœderal Government for some time, against the intention of Cong<sup>s</sup> I apprehend, as well as against every rule of decorum.

*The Marquis this moment stepped into my room & seeing my cyphers before me dropped some questions which obliged me in order to avoid reserve to let him know that I was writing to you. I said nothing on the subject but he will probably infer from our conversat<sup>n</sup> that the Mississippi is most in my thoughts.*

Mrs. House charges me with a thousand compliments & kind wishes for you and Miss Patsy. We hear nothing of Mrs. Trist since her arrival at the Falls of the Ohio, on her way to N. Orleans. There is no doubt that she proceeded down the river thence, unapprized of her loss. When & how she will be able to get back since the Spaniards have shut all their ports ag<sup>st</sup> the U. S., is uncertain & gives much anxiety to her friends. Browze has a windfall from his grand mother of £1000 sterling. Present my regards to Miss Patsy and to Mr. Short if he should be with you, and accept yourself Dear Sir, the sincerest affection of your friend & servant.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

N. York, Oct<sup>r</sup> 11, 1784.

Dear Sir,—

My last dated from this place on the 14[15] ult: informed you of my projected trip to Fort Schuyler. I am this moment arrived so far on my return to Virginia. My past delay requires so much hurry now that I can only drop a few lines for the packet which is to sail on the 15th inst. The Marquis & myself were overtaken at Albany by Mr. de Marbois, on the same errand with ourselves. We reached Fort S. on the 29, & on the next day paid a visit to the Oneida Nation 18 miles distant. The Coiss<sup>ts</sup> did not get up till the saturday following. We found a small portion only of the six nations assembled; nor was the number much increased when we quitted the scene of business. Acc<sup>ts</sup> however had come of deputies from more distant tribes being on the way. The Marquis was rec<sup>d</sup> by the Indians with equal proofs of attachment as have been shewn him elsewhere in America. This personal attachment with their supposed predilection for his nation, and the reports propogated among them that the Alliance between F. & U. S. was transient only, led him with the sanction of the Comiss<sup>ts</sup> to deliver a Speech to the Indian Chiefs coinciding with the object of the Treaty. The answers were very favorable in their general tenor. Copies of both will be sent to Mons. de Vergennes & the [n] M. de Castries by Mr. Marbois & be within the reach of your curiosity. The originals were so much appropriated to this use during my stay with the Marquis that I had no opportunity of providing copies for you. What the upshot of the Treaty will be is uncertain. The possession of the posts of Niagara &c by the British is a very inauspicious circumstance. Another is that we are not likely to make a figure otherwise that will impress a high idea of our power or opulence. These obstacles will be rendered much more embarrassing by the instructions to the Coiss<sup>ts</sup> which I am told leave no space for negociation or concession, & will consequently oblige them in case of refusal in the Indians to yield the ultimate hopes of Congress to break up the Treaty. But what will be the consequence of such an emergency? Can they grant a peace without cessions of territory—or if they do must not some other price hereafter purchase them. A Truce has never I believe been introduced with the Savages nor do I suppose that any provision has been made by Congress for such a contingency. The perseverance of the British in retaining the posts 1 produces various conjectures. Some suppose it is meant to enforce a fulfilment of the Treaty of peace on our part. This interpretation is said to have been thrown out on the other side. Others that it is a salve for the wound given the Savages who are made to believe the posts will not be given up till good terms shall be granted them by Congress. Others that it is the effect merely of omission by the B. Gov<sup>t</sup> to send orders. Others that it is meant to fix the fur trade in the B. channel & it is even said that the Gov<sup>t</sup> of Canada has a personal interest in securing a monopoly of at least the crop of this Season. I am informed by a person just from Michilimackinac that this will be greater than it has been for several seasons past, or perhaps any preceding season, & that no part of it is allowed by the British Commanders to be brought thro' the U. S. From the same

quarter I learn that the posts have been lately well provisioned for the winter, & that reliefs if not reinforcements of the garrisons will take place. Col: Monroe had passed Oswego when last heard of & was likely to execute his plan. If I have time & opportunity I will write again from Philad<sup>a</sup>. for which I set out immediately; if not from Richmond. The Marq<sup>s</sup> proceeded from Albany to Boston from whence he will go via R. Island, to Virg<sup>a</sup>., and be at the Assembly. Thence he returns into the N. States to embark for Europe.

I Am Y<sup>Rs</sup> Affec<sup>Ly</sup>.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philada. Octr. 17 1784.

Mad. Mss.

Dear Sir,—

On my arrival here I found that Mr. Short had passed through on his way to N. York & was there at the date of my last. I regret much that I missed the pleasure of seeing him. The inclosed was put into my hands by Mrs. House, who recd<sup>d</sup>. it after he left Philad<sup>a</sup>. My two last, neither of which were in cypher, were written as will be all future ones in the same situation, in expectation of their being read by postmasters. I am well assured that this is the *fate of all letters at least to and from public persons not only in France but all the other Countries of Europe*. Having now the *use of my cypher I can write without restraint*. In my last I gave you a sketch of what passed at Fort Schuyler during my stay there, mentioning in particular that the *Marquis had made a speech to the Indians with the sanction of the Commiss<sup>rs</sup>. Wolcott, Lee, Butler.* 1 The question will probably occur how *a foreigner and a private one, could appear on the theatre of a public treaty between the U. S. & the Indian nations and how the Commissioners could lend a sanction to it*. Instead of offering an *opinion of the measure* I will state the *manner in which it was brought about*. It seems that most of the *Indian tribes particularly those of the Iroquois retain a strong predilection for the French and most of the latter an enthusiastic idea of the Marquis*. This idea has resulted from *his being a Frenchman the figure he has made during the war and the arrival of several important events which he foretold to them soon after he came to this country*. Before he went to fort Schuyler it had been suggested, either in *compliment or sincerity* that his *presence & influence* might be of *material service to the treaty*. At albany the same thing had been said to him by general Wolcot. On his arrival at Fort S. Mr. Kirkland recommended an exertion of *his influence as of essential consequ<sup>ce</sup>. to the treaty*, painting in the strongest colours the *attachment of the Indians to his person, which seemed indeed to be verified by their caresses and the artifices employed by the British partizans to frustrate the objects of the treaty among which was a pretext that the alliance between the U. S. and France was insincere and transitory and consequently the respect of the Indians for the latter ought to be no motive for their respecting the former*. Upon these *circumstances the M. grounded a written message to the Commissrs. before they got up intimating his disposition to render the U. S. any service his small influence over the Indians might put in his power and desiring to know what the Commissioners would chuse him to say*. The answer in Mr. Lee's hand consisted of *polite acknowledgments and information that the Commissrs. would be happy in affording him an opportunity of saying whatever he might wish forbearing to advise or suggest w<sup>t</sup>. it would be best for him to say. the M. perceived the caution but imputed it to Lee alone*. As his stay was to be very short it was necessary for him to take *provisional measures before the arrival of the Commissrs and particularly for calling in the Oneida Chiefs who were at their town*. It fell to my lot to be consulted in his dilemma. My advice was that he should invite the chief in such a way as would give him an opportunity of addressing them publicly, if

on a *personal interview with the Commissioners* it should be judged expedient; or of *satisfying their expectations with a friendly entertainment in return for the civilities his visit to their town had met with.* This *advice was approved;* but the *Indians brought with them such ideas of his importance as no private reception would probably have been equal to.* When the *Commissioners arrived the M. consulted them in person.* They were *reserved, he was embarrassed.* Finally they *changed their plan and concurred explicitly in his making a Speech in form.* He accordingly *prepared one communicated it to the Commrs. and publicly pronounced it the Commrs. premising such an one as was thought proper to introduce his.* The *answer of the sachems, as well as the circumstances of the audience denoted the highest reverence for the orator.* The chief of the *Oneidas said that the word which he had spoken to them early in the war had prevented them from being misled to the wrong side of it.* During this *scene and even during the whole stay of the M. he was the only conspicuous figure.* The *Commissioners were eclipsed.* All of them *probably felt it.* Lee *complained to me of the immoderate stress laid on the influence of the M., and evidently promoted his departure.* The *M. was not insensible of it, but consoled himself with the service which he thought the Indian Speech would witness that he had rendered to the U. S.* I am persuaded that the *transaction is also pleasing to him in another view as it will form a bright column in the Gazettes of Europe.* As it is *blended with the proceed<sup>gs</sup>. of the Comm<sup>rs</sup>., it will probably not be published in America very soon.* The time I have lately *passed with the M. has given me a pretty thorough insight into his character.* With great *natural frankness of temper he unites much address and very considerable talents.* In his *politics he says his three hobby-horses are the alliance between France and the U. S., the union of the latter and the manumission of the slaves.* The two former are the *dearer to him, as they are connected with his personal glory.* The last *does him real honor, as it is a proof of his humanity.* In a word, I take *him to be as amiable a man as can be imagined and as sincere an American as any Frenchman can be; one whose past services gratitude obliges us to acknowledge and whose future friendship prudence requires us to cultivate.*

The Committee of the States have never reassembled. The case of Longchamps has been left both by the Legislature & Executive of this State to its Judiciary course. He is sentenced to a fine of 100 Crowns, to 2 years' imprisonment, and Security for good behaviour for 7 years. On teusday morning I set off for Richmond, where I ought to be tomorrow, but some delays have put it out of my power. The ramble I have taken has rather inflamed than extinguished my curiosity to see the Northern and N. W. Country. If circumstances be favorable I may probably resume it next Summer. Present my compliments to Miss Patsy, for whom as well as yourself Mrs. House charges me with hers. She has lately rec<sup>d</sup>. a letter from poor Mrs. Trist, every syllable of which is the language of affection itself. She had arrived safe at the habitation of her dec<sup>d</sup>. Husband, but will not be able to leave that Country till the Spring at the nearest. The only happiness she says she is capable of there, is to receive proofs that her friends have not forgotten her. I do not learn what is likely to be the amount of the effects left by Mr. T. former accounts varied from 6 to 10,000 dollars.

I Am My Dear Sir, Y<sup>Rs</sup> Very Affect.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Mad. Mss.

Richmond, Nov.—, 1784.

Dear Sir,—

Your favor without date was brought by thursday's post. It inclosed a Cypher for which I thank you & which I shall make use of as occasion may require, though from the nature of our respective situations, its chief value will be derived from your use of it. Ge<sup>l</sup> Washington arrived here on sunday last, and the Marquis on thursday. The latter came from Boston in a French frigate. They have both been addressed & entertained in the best manner that circumstances would admit. These attentions and the balloting for public offices have consumed the greatest part of the past week. Mr. Jones is put into the place of Mr. Short, Mr. Roane and Mr. M. Selden are to go into those of Mr. M. Smith & Col. Christian who are the victims to that part of the Constitution which directs a triennial purgation of the Council. The vote is not to take effect till the Spring, but was made now in consequence of the discontinuance of the Spring Session. The rejected Candidates were Col. Bland, Cy<sup>s</sup> Griffin, G. Webb, W. C. Nicholas, Mr. Breckenridge, Col. Carrington. The latter was within one vote of Mr. Selden, Col. B. Mr. N., & Mr. B., had as nearly as I recollect between 20 & 30 votes, Mr. G. & Mr. W. very few. Mr. H. Innes late Judge of the Kentucky Court is to succeed W[alker] D[aniel], late Attorney General in that District. His competitor was Mr. Stewart who was about 15 votes behind.

I Am D<sup>R</sup> Sir Y<sup>Rs</sup> Sincerely.

[\[Back to Table of Contents\]](#)

## NOTES OF SPEECH AGAINST ASSESSMENTS FOR SUPPORT OF RELIGION. NOVEMBER — 1784.

Mad. Mss.

I. Rel. not within purview of civil authority.<sup>1</sup>

Tendency of estab<sup>g</sup> Xnty—1. to project of Uniformity. 2. to penal laws for support<sup>g</sup> it.

Progress of Gen. Asses<sup>t</sup> proves this tendency.

Difference between estab<sup>g</sup>. and tolerating error.

“True question—not Is Rel. necess<sup>y</sup>,—but

II. are Relig<sup>s</sup>. Esta<sup>bts</sup> neces<sup>y</sup>. for Religion? No.

1. propensity of man to Religion.

2. Experience shews Relig. corrupted by Estab<sup>ts</sup>.

3. Downfall of States mentioned by Mr. H.—happened where there was estab<sup>t</sup>

4. Experience gives no model of Gen<sup>l</sup> Ass<sup>t</sup>

5. Case of Pa. explained—not solitary. N. J. See const. of it. R. I. N. Y. D. factions greater in S. C.

6. Case of primitive Xnty.

of Reformation.

of Dissenters formerly.

7. Progress of Religious liberty.

III. Policy—

1. promote emigrations from State.

2. prevent immig. into it, as *asylum*.

IV. Necessity of Estab<sup>t</sup> inferred from state of co<sup>y</sup>.

True causes of disease.

1. war } common to other States & produce same compl<sup>ts</sup> in N. E.

2. bad laws }



3. pretext from taxes.
4. state of administration of Justice.
5. transition from old to new plan.
6. policy and hopes of friends to G. Ass<sup>t</sup>

True remedies not Estab<sup>t</sup>—but, being out of war,

1. laws to cherish virtue.
2. administration of justice.
3. personal example—associations for R.
4. By present vote, cut off hope of G. ass<sup>t</sup>
5. Education of youth.

V. Probable defects of Bill,

1. limited.
2. in particular.
3. What is Xnty? Courts of law to Judge.
4. What edition: Hebrew, Septuagint, or Vulgate? What copy what translation?
5. What books canonical, what apocryphal? the papists holding to be the former what protestants the latter, the Lutherans the latter what the protestants & papists ye former.
6. In what light are they to be viewed, as dictated every letter by inspiration, or the essential parts only? Or the matter in general not the words?
7. What sense the true one for if some doctrines be essential to Xnty those who reject these, whatever name they take are no Xn Society?
8. Is it Trinitarianism, Arianism, Socinianism? Is it salvation by faith or works also, by free grace or by will, &c., &c.
9. What clue is to guide [a] Judge thro' this labyrinth when ye question comes before them whether any particular society is a Xn society?
10. Ends in what is orthodoxy, what heresy.

Dishonors christianity.

panegyric on it, on our side.

Decl. Rights.”

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Nov<sup>r</sup> 14th, 1784.

Mad. Mss.

Dear Sir,1 —

\* \* \* The Indians begin to be unquiet we hear both on the N. W. & S. E. sides of the Ohio. The Spaniards are charged with spurring on the latter. As means of obviating the dangers, the H. of D. have resolved to authorize the Executive to Suspend the surveying of land within the unpurchased limits, & to instruct the Delegation to urge in Cong<sup>s</sup>. Treaties with the Southern Indians and negotiations with Spain touching the Mississip<sup>i</sup>. They also propose to set on foot surveys of Potowmac & James Rivers from their falls to their sources. But their principal attention has been & is still occupied with a scheme proposed for a Gen<sup>l</sup> Ass<sup>t</sup>; 47 have carried it ag<sup>st</sup> 32.1 In its present form it excludes all but Xn Sects. The Presbyterian Clergy have remonstrated ag<sup>st</sup> any narrow principles, but indirectly favor a more comprehensive establish<sup>t</sup>. I think the bottom will be enlarged & that a trial will be made of the practicability of the project. The Successor to Mr. H[arrison] is not yet appointed or nominated. It is in the option of Mr. H[enry], and I fancy he will not decline the service. There will be three vacancies in the Council, for which no nominations have been made. Mr. C. Griffith will probably be named, & Mr. W. Nicholas. Mr. Roane is also spoken of.

I Am, D<sup>R</sup> Sir, Y<sup>Rs</sup> Sincerely.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Nov<sup>r</sup> 27, 1784.

Mad. Mss.

Dear Sir,—

Your favor of the 15th inst: came to hand by thursday's post. Mine by the last post acknowledged your preceding one. The umbrage given to the Com<sup>sts</sup>. of the U. S. by the negociations of N. Y. with the Indians was not altogether unknown to me, though I am less acquainted with the circumstances of it than your letter supposes. The Idea which I at present have of the affair leads me to say that as far as N. Y. may claim a right of treating with Indians for the purchase of lands within her limits, she has the confederation on her side; as far as she may have exerted that right in contravention of the Gen<sup>l</sup> Treaty, or even unconfidentially with the Com<sup>sts</sup> of Cong<sup>s</sup>, she has violated both duty & decorum. The fœderal articles give Cong<sup>s</sup> the exclusive right of *managing all affairs* with the Indians *not members* of any State, under a proviso, that the *Legislative authority* of the State within its own limits be not violated. By Indians not members of a State, must be meant those, I conceive who do not live within the body of the Society, or whose Persons or property form no objects of its laws. In the case of Indians of this description the only restraint on Congress is imposed by the *Legislative authority* of the State.

If this proviso be taken in its full latitude, it must destroy the authority of Congress altogether, since no act of Cong<sup>s</sup>. within the limits of a State can be conceived which will not in some way or other encroach upon the authority [of the] State. In order then to give some meaning to both parts of the sentence as a known rule of interpretation requires, we must restrain this proviso to some particular view of the parties. What was this view? My answer is that it was to save to the States their right of preemption of lands from the Indians. My reasons are. 1. That this was the principal right formerly exerted by the Colonies with regard to the Indians. 2. that it was a right asserted by the laws as well as the proceedings of all of them, and therefore being most familiar, w<sup>d</sup> be most likely to be in contemplation of the parties. 3. that being of most consequence to the States individually, and least inconsistent with the general powers of Congress, it was most likely to be made a ground of Compromise. 4. it has been always said that the proviso came from the Virg<sup>a</sup> Delegates, who w<sup>d</sup> naturally be most vigilant over the territorial rights of their Constituents. But whatever may be the true boundary between the authority of Cong<sup>s</sup> & that of N. Y., or however indiscreet the latter may have been I join entirely with you in thinking that temperance on the part of the former will be the wisest policy. I concur with you equally with regard to the ignominious secession at Annapolis. As Cong<sup>s</sup> are too impotent to punish such offences, the task must finally be left to the States and experience has shewn in the case of Howel that the interposition of Cong<sup>s</sup>. ag<sup>st</sup> an offender instead of promoting his chastisement, may give him a significancy w<sup>ch</sup>. he otherwise w<sup>d</sup> never arrive at and may induce a State to patronize an act which of their own accord they would have punished. I am sorry to find the affair of Mr. de Marb—s. taking so serious a face. As

the insult was committed within the jurisdiction of Pen<sup>a</sup>, I think you are right in supposing the offender could not be transferred to another jurisdiction for punishment. The proper questions therefore are 1. whether the existing law was fully put in force ag<sup>st</sup> him by P<sup>a</sup>? 2. whether due provision has been made by that State ag<sup>st</sup> like contingencies? Nothing seems to be more difficult under our new Governments than to impress on the attention of our Legislatures a due sense of those duties which spring from our relations to foreign nations. Several of us have been labouring much of late in the G. Assembly here to provide for a case with which we are every day threaten'd by the eagerness of our disorderly Citizens for Spanish plunder & Spanish blood. It has been proposed to authorize Cong<sup>s</sup> Whenever satisfactory proof shall be given to them by a foreign power of such a crime being committed by our Citizens within its jurisdiction as by the law of Nations call for a surrender of the Offender, & the foreign power shall actually make the demand, that the Executive may at the instance of Cong<sup>s</sup> apprehend & deliver up the offender. That there are offences of that class is clearly stated by Vattel in particular, & that the business ought to pass through Cong<sup>s</sup>. is equally clear. The proposition was a few days ago rejected in Co<sup>ittee</sup> of the whole. To-day on the report of the Com<sup>e</sup> it has been agreed to by a small majority. This is the most material question that has agitated us during the week past. The Bill for a Religious Asses<sup>t</sup> has not been yet brought in. Mr. Henry the father of the scheme is gone up to his Seat for his family & will no more sit in the H. of Delegates a circumstance very inauspicious to his offspring. An attempt will be made for circuit Courts, & Mr. Jones has it in contemplation to try whether any change has taken place in the sentiments of the H. of D. on the subject of the Treaty. He will write to you by this post & I refer to him for what I may have omitted.

With sincere regard & esteem I am D<sup>r</sup> Sir

Y<sup>R</sup> Friend & Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Rich<sup>d</sup>. Nov<sup>r</sup> 27, 1784.

Mad. Mss.

Hon<sup>D</sup> Sir,—

Having a moment's time to drop you a line I inform you that the Bill for confirming surveys ag<sup>st</sup> subsequent entries has been negatived by a large majority, rather on the principle that it was unnecessary & retrospective, than that it was unjust in itself. On the contrary all the principal gentlemen were of opinion that it was just, but already provided for by the law. Mr. Innes the late Judge of the Kentucky Court, in particular told me he thought such surveys could not be overset. You will have heard of the vote in favor of the Gen<sup>l</sup>. Assess<sup>t</sup>. The bill is not yet brought in & I question whether it will, or if so whether it will pass. This day a vote passed without a dissent for Circuit Courts. What opposition may be made to its passage I know not. I have not yet found time to do your business at the Land Office. I expected before this to have seen my brother A. & Maj<sup>r</sup>. Moore. I have been a little indisposed for a few days with a bad cold which still continues, otherwise I am well. M<sup>r</sup>. Joseph will tell you the price of Tob<sup>o</sup>. I think it will rise.

With regards to the family

I Am D<sup>R</sup> Sir Your Affec<sup>Te</sup> Son.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richmond, Dec<sup>r</sup>. 3, 1784.

Mad. Mss.

Hon<sup>d</sup> Sir,—

My last informed you that a vote had passed in favor of Circuit Courts. A bill has since been brought in and will shortly be considered. The difficulty of suiting it to every palate, & the many latent objections of a selfish & private nature which will shelter themselves under some plausible objections of a public nature to which every innovation is liable render the event extremely uncertain. In the Course of this week The H. of D. have agreed to pay the British debts by annual portions for 7 years disallowing interest between the 19<sup>th</sup>. of Ap<sup>l</sup>. 1775 & 3<sup>d</sup>. of March 1783, the period of hostilities. It is not unlikely that the same observations above made on the Circuit Court bill may be applicable to this case. The bill for Gen<sup>l</sup>. Ass<sup>t</sup>. was brought in yesterday. Its fate is equally uncertain. I inclose a copy of Treaty at Fort Stanwix which I rec<sup>d</sup>. by yesterdays post. The Commiss<sup>rs</sup>. were proceeding to Fort Pitt to hold another Treaty: No Cong<sup>s</sup>. had been formed on the 20<sup>th</sup>. of Nov<sup>r</sup>. nor much prospect of a speedy one. The British hold the N. Western Post yet & assign in justification the breach of Peace in Virg<sup>a</sup>. & N. York. I am much better than at ye date of my last & with affec<sup>e</sup>. respect to family remain

Y<sup>R</sup> Dutiful Son.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Mad. Mss.

Richmond, Dec<sup>r</sup>. 4. 1784.

Dear Sir,—

On Saturday last a proposition was agreed to for establishing Circuit Courts throughout this Commonwealth, and yesterday a bill for that purpose was reported. On wednesday next it will undergo a discussion of the Com<sup>e</sup> of the Whole. The circumstances under which it has passed thus far seem to promise a favorable issue, but the dangers which it is yet to go thro' are formidable. They proceed from latent & interested objections which have on several former occasions proved fatal to similar attempts. The plan is pretty analogous to the Nisi prius establishm<sup>t</sup>. in England. On Tuesday sundry propositions were made by Mr. Jones in favor of the 4 art: of the Treaty of peace. They passed by a large majority with blanks as to the length of time to be given for the payment of the principal and for disallowing the interest. The former was filled up with seven years, in preference to 10, 8, 6, & 5 which were contended for on different sides. The latter with the period between Ap<sup>l</sup> 19, 1775, & March 3, 1783, in preference to the period between the first date & May 1784, the date of the exchange of Ratifications. The bill will probably pass but not I fear without some improper ingredients, & particularly some conditions relative to the N. W. Posts, or the Negroes which lye without our province. The bill for the Religious Ass<sup>t</sup>. was reported yesterday and will be taken up in a Com<sup>e</sup>. of the whole next week. Its friends are much disheartened at the loss of Mr. Henry. Its fate is I think very uncertain. Another Act of the H. of D. during the pres<sup>t</sup>. week is a direction to the Executive to carry into effect the vote of a Bust to the Marquis de la fayette, to be presented to the City of Paris, & to cause another to be procured to be set up in this Country. These resolutions are so contrived as to hide as much as possible the circumstance in the original vote of the bust being to be presented to the Marquis himself. I find by a Letter from G<sup>l</sup> Washington that he was on the 28<sup>th</sup> Ult: just setting out to accompany the Marquis to Annapolis & thence to Baltimore. The latter may therefore soon be expected at Trenton. He has been much caressed here as well as everywhere else in his Tour, and I make no doubt he will leave Cong<sup>s</sup>. with equal reason to be pleased with his visit. I meant to have sent you a copy of the Resolutions touching the Busts, but have been disappointed in getting one. They were offered by Mr. Jones & agreed to unanimously, as they no doubt will also be in the Senate. Wishing you all happiness, I am

D<sup>R</sup>. Sir

Yrs. Sincerely



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Dec<sup>r</sup>. 24th, 1784.

Mad. Mss.

Dear Sir,—

Your favor of the 14th instant came to hand on thursday. A proposition was made a few days ago for this State to empower Cong<sup>s</sup>. to carry into effect the imposts as soon as 12 States should make themselves parties to it. It was rejected on the following grounds 1. that it would present a disagreeable aspect of our affairs to Foreign nations. 2. that it might lead to other combinations of lesser numbers of the States. 3. that it would render R.I. an inlet for clandestine trade. 4. that it would sour her temper still further at a crisis when her concurrence in some general & radical amendment of the Confederation may be invited by Congress. 5. that the chance is almost infinitely ag<sup>st</sup>. a Union of 12 States on such new ground, and consequently the experiment would be only a fresh display of the jarring policy of the States, and afford a fresh triumph & irritation to R. Island. The Act empowering Cong<sup>s</sup>. to surrender Citizens of this State to the Sovereign demanding them for certain crimes committed within his jurisdiction has passed. Congress are to Judge whether the crimes be such as according to the Law of nations warrant such demand, as well as whether the fact be duly proven. Concurrent provision is made for punishing such offences by our own laws in case no such demand be made to or be not admitted by Cong<sup>s</sup>., and legal proof can be had. The latter law extends to offences ag<sup>st</sup>. the Indians. As these tribes do not observe the law of Nations it was supposed neither necessary nor proper to give up Citizens to them. The Act is not suspended on the concurrence of any other State, it being judged favorable to the interest of this tho' no other should follow the example, and a fit branch of the fœderal prerogative. The Bill for Assize Courts has passed the Senate without any material amendment, is enrolled, and waits only to be examined by the Co<sup>itte</sup> & signed by the Speakers. The Gen<sup>l</sup>. Assess<sup>t</sup>. on the question for engrossing it, was yesterday carried by 44 ag<sup>st</sup>. 42. Today its third reading was put off till Nov<sup>r</sup>. next, by 45 ag<sup>st</sup>. 37 or thereabouts, and it is to be printed for consideration of the people. Much business is still on the table but we shall probably rise about New Years day. I am, D<sup>r</sup>. Sir with sincere regard Y<sup>r</sup>. friend & serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO RICHARD HENRY LEE.

Mad. Mss.

### Extract From A Letter From J. M. To Rich<sup>D</sup>. H. Lee, Dec<sup>R</sup>. 25, 1784.

In the course of the last week a proposition was made to empower Congress to collect the Impost within this State (Virginia) as soon as 12 States sh<sup>d</sup>. unite in the scheme. The argum<sup>ts</sup>. which prevailed ag<sup>st</sup>. it were the unfavorable aspect it w<sup>d</sup>. present to foreigners, the tendency of the example to inferior combinations—the field it w<sup>d</sup>. open for contraband trade—its probable effect on the temper of R. Isl<sup>d</sup>. which might thwart other necessary measures of requiring the unanimity of the States—the improbability of the union of 12 States on this new ground, a failure of which w<sup>d</sup>. increase the appearance of discord in their policy; and give fresh triumph & irritation to Rh. Is<sup>d</sup>.

I have not yet found leisure to scan the project of a Continental Convention with so close an eye as to have made up any observations worthy of being mentioned to you. In general I hold it for a maxim that the Union of the States is essential to their safety ag<sup>st</sup>. foreign danger, & internal contention; and that the perpetuity and efficacy of the present system cannot be confided in. The question therefore is, in what mode, & at what moment the experiment for supplying the defects ought to be made. The answer to this question can not be given without a knowledge greater than I possess of the temper & views of the different States. Virginia seems I think to have excellent dispositions towards the confederacy, but her assent or dissent to such a proposition w<sup>d</sup> probably depend on the chance of its having no opponent capable of rousing the prejudices & jealousies of the Assembly ag<sup>st</sup>. innovations, particularly such as will derogate from their own power & importance. Should a view of the other States present no objections ag<sup>st</sup>. the experiment, individually I w<sup>d</sup>. wish none to be presupposed here.

[\[Back to Table of Contents\]](#)

## RESOLUTIONS TOUCHING THE NAVIGATION AND JURISDICTION OF THE POTOMAC.

December 28<sup>th</sup> 1784.

Mad. Mss.

Resolved that the Commissioners or any two of them appointed on the 28<sup>th</sup>. day of June last to concert with commissioners on the part of Maryland, regulations touching the navigation and jurisdiction of the Potowmac, be further authorized with the said commissioners in representing to the State of Pennsylvania, that it is in contemplation of the two States to promote the clearing and extending the navigation of Potowmac from tide-water upwards as far as the same may be found practicable; to open a convenient road from the head of such navigation to the waters running into the Ohio; and to render these waters navigable as far as may be necessary and proper: that said work will require great expense which may not be repaid, unless a free use be secured to the said States & their citizens, of the waters of the Ohio and its branches, so far as the same lie within the limits of Pennsylvania: that as essential advantages will accrue from such works to a considerable portion of the said State, it is thought reasonable that the Legislature thereof should by some previous act engage that for the encouragement of the said works all articles of produce or merchandize which may be conveyed to or from either of the said two states, through either of the said rivers within the limits of Pennsylvania, to or from any place without the said limits, shall pass throughout free from all duties or tolls whatsoever, other than such tolls as may be established and be necessary for reimbursing expenses incurred by the State or its Citizens in clearing, or for defraying the expense of preserving the navigation of the said rivers: and that no articles imported into the State of Pennsylvania through the channel or channels or any part thereof to be opened as aforesaid and vended or used within the said State, shall be subject to any duties or imposts other than such articles would be subject to if imported into the said State thro' any other channel whatsoever: and it is further resolved that in case a joint representation in behalf of this State and of Maryland shall be rendered by circumstances unattainable, the said Commissis or any two of them may of themselves make such representations on the subject as will in such event become proper; and that in either event they report their proceedings to the next General assembly.

Resolved that a copy of the above Resolutions be transmitted forthwith by the Executive to the State of Maryland.[1](#)

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Richmond, Jan<sup>y</sup>. 9<sup>th</sup>, 1785.

Mad. Mss.

Dear Sir,—

My last was dated in Philad<sup>a</sup>., Oct<sup>f</sup>. 17. I reached this place on the 14<sup>th</sup>. day after that fixed for the meeting of the Assembly and was in time for the commencement of business. Yesterday put an end to the tedious Session. According to my promise I subjoin a brief review of its most material proceedings.

This act was carried through the House of Delegates against much secret repugnance, but without any direct and open opposition. It luckily happened that the latent opposition wanted both a mouth and a head. 1Mr. Henry had been previously *elected Governor* and was *gone for his family*. From *his conversation since I surmise that his presence might have been fatal*. The Act is formed precisely on the English pattern, and is nearly a transcript from the bill originally penned in 1776 by Mr. Pendleton except that writs sent blank from the Cl<sup>k</sup>. of Gen<sup>l</sup>. C<sup>t</sup>. are to issue in the district, but ret<sup>d</sup>. to G<sup>l</sup>. C<sup>t</sup>. In the Senate it became a consideration whether the Assize Courts ought not to be turned into so many Courts of independent and complete jurisdiction, and admitting an appeal only to the Court of Appeals. If the fear of endangering the bill had not checked the experiment, such a proposition would probably have been sent down to the House of Delegates, where it would have been better relished by many than the Assize plan. The objections made to the latter were that as it required the issues to be made up and the judgments to be awarded in the General Court it was but a partial relief to suitors, and might render the service of double setts of Lawyers necessary. The friends of the plan thought these inconveniences as far as they were real, outweighed by the superior wisdom & uniformity of decisions incident to the plan; not to mention the difference in the frequency of appeals incident to the different plans. In order to leave as few handles as possible for cavil the bill omitted all the little regulations which would follow of course, and will therefore need a supplement. To give time for this provision as well as by way of collecting the mind of the public, the commencement of the law is made posterior to the next Session of Assembly. The places fixed for the Assize Courts are Northumberland Court House, Williamsb<sup>g</sup>., Accomack C<sup>t</sup>. House, Suffolk, Richmond, Petersburg, Brunswick C<sup>t</sup>. House, King & Queen C<sup>t</sup>. House, Prince Edw<sup>d</sup>. C<sup>t</sup>. H., Bedford C<sup>t</sup> H., Montgomery & Washington C<sup>t</sup> H<sup>s</sup> alternately, Staunton, Charlottesville, Fredericksb<sup>g</sup>, Dumfries, Winchester, and Monongalia C<sup>t</sup> H. Besides the judicial advantages hoped from this innovation, we consider it as a means of reconciling to our Gov<sup>t</sup>. the discontented extremities of the State.

An Act for the  
establisht. of Courts  
of Assize.

The subject of clearing these great rivers was brought forward early in the Session under the auspices of General Washington, who had written an interesting private letter on it to Gov<sup>t</sup>.

An Act for opening  
and extending the

Harrison which the latter communicated to the Gen<sup>l</sup>. Assembly. The conversation of the Gen<sup>l</sup>. during a visit paid to Richmond in the course of the Session, still further impressed the magnitude of the object on sundry members. Shortly after his departure, a joint memorial from a number of Citizens of V<sup>a</sup> & Maryland, interested in the Potowmac, was presented to the Assembly, stating the practicability and importance of the work, & praying for an act of incorporation, and grant of perpetual toll to the Undertakers of it. A bill had been prepared at the same meeting which produced the Memorial, and was transmitted to Richmond at the same time. A like memorial & bill went to Annapolis where the Legislature of Maryland were sitting. The Assembly here lent a ready ear to the project, but a difficulty arose from the height of the tolls proposed, the danger of destroying the uniformity essential in the proceedings of the two States, by altering them,—and the scarcity of time for negotiating with Maryland a bill satisfactory to both States. Short as the time was however, the attempt was decided on, and the negotiation committed to Gen<sup>l</sup>. Washington himself. Gen<sup>l</sup>. Gates who happened to be in the way and Col. Blackburn were associated with him. The latter did not act, the two former pushed immediately to Annapolis, where the sickness of Gen<sup>l</sup>. Gates threw the whole agency on Gen<sup>l</sup>. Washington. By his exertions in concert with Committees of the two branches of the Legislature, an amendment of the plan was digested in a few days, passed thro' both houses in one day with nine dissenting voices only, and despatched for Richmond, where it arrived just in time for the close of the Session. A corresponding Act was immediately introduced, and passed without opposition. The scheme declares that the subscribers shall be an incorporated body, that there shall be 500 Shares, amounting to about 220,000 dollars, of which the States of V<sup>a</sup> & Mary<sup>d</sup> are each to take 50 shares, that the tolls shall be collected in three portions, at the three principal falls, and with the works vest as real estate in the members of the Company, and that the works shall be begun within one year, and finished within ten years, under the penalty of entire forfeiture.

navigation of Potowmac river.

An Act for opening and extending the navigation of James river.

Previous to the receipt of the Act from Annapolis a bill on a different plan had been brought in and proceeded on for clearing James River. It proposed that subscriptions should be taken by Trustees and under their management solemnly appropriated to the object in view, that they should be regarded as a loan to the State, should bear an interest of 10 per c<sup>t</sup>., and should entitle the subscriber to the double of the principal remaining undischarged at the end of a moderate period; and that the tolls to be collected should stand inviolably pledged for both principal & interest. It was thought better for the public to present this exuberant harvest to the subscribers than to grant them a perpetuity in the tolls. In the case of the Potowmac which depended on another authority as well as our own, we were less at liberty to consider what w<sup>d</sup> be best in itself. Exuberant however as the harvest appeared, it was pronounced by good judges an inadequate bait for subscriptions even from those otherwise interested in the work, and on the arrival and acceptance of the Potowmac plan, it was found advisable to pass a similar one in favor of James River. The circumstantial variations in the latter are 1. the sum to be aimed at in the first instance is 100,000 Dollars only. 2. the shares which are the same in number with those of Potowmac, are reduced to 200 doll<sup>rs</sup> each and the number of public shares raised to 100. 3. the tolls are reduced to ½ of the

aggregate of the Potowmac tolls. 4. in case the falls at this place where alone tolls are to be paid, shall be first opened, the Company are permitted to receive the tolls immediately, and continue to do so till the lapse of ten years, within which the whole river is to be made navigable. 5. a right of pre-emption is reserved to the public on all transfers of shares. These acts are very lengthy, and having passed in all the precipitancy which marks the concluding stages of a Session, abound I fear with inaccuracies.

In addition to these acts joint resolutions have passed the Legislatures of Mary<sup>d</sup> & V<sup>a</sup> for clearing a road from the head of the Potowmac navigation to Cheat river or if necessary to Monongalia, & 3333? Dollars are voted for the work by each State. Pennsylv<sup>a</sup> is also to be applied to by the Governors of the two States for leave to clear a road thro' her jurisdiction if it should be found necessary, from Potowmac to Yohogania; to which the Assembly here have added a proposition to unite with Maryland in representing to Pen<sup>a</sup> the advantages which will accrue to a part of her citizens from opening the proposed communication with the Sea, and the reasonableness of her securing to those who are to be at the expence, the use of her waters, as a thoroughfare to & from the Country beyond her limits, free from all imposts & restrictions whatever, and as a channel of trade with her citizens free from greater imposts than may be levied on any other channel of importation. This Resolution did not pass till it was too late to refer it to Gen<sup>l</sup> Washington's negotiations with Maryland. It now makes a part of the task allotted to the Coiss<sup>rs</sup> who are to settle with Mary<sup>d</sup> the jurisdiction & navigation of Potowmac below tide water. By another Resolution of this State, persons are to be forthwith app<sup>d</sup> by the Executive to survey the upper parts of Ja<sup>s</sup> river, the country thro' which a road must pass to the navigable waters of New River, and these waters down to the Ohio. I am told by a member of the Assembly, who seems to be well acquainted both with the intermediate ground and with the Western waters in question, that a road of 25 or 30 miles in length will link these waters with J<sup>s</sup> river, and will strike a branch of the former which yields a fine navigation, and falls into the main stream of the Kenhawa below the only obstructions lying in this river down to the Ohio. If these be facts James River will have a great superiority over Potowmac, the road from which to Cheat river is indeed computed by Gen<sup>l</sup> Washington at 20 miles only, but he thinks the expence of making the latter navigable will require a continuation of the road to Monongalia, which will lengthen it to 40 miles. The road to Yohogania is computed by the Gen<sup>l</sup> at 30 miles.

By another resolution, Coiss<sup>rs</sup>. are to be app<sup>d</sup>. to survey the ground for a canal between the waters of Elizabeth river and those of N. Carolina, and in case the best course for such a canal shall require the concurrence of that State, to concert a joint plan and report the same to the next Session of Assembly. Besides the trade which will flow thro' this channel from North Carolina to Norfolk the large district of Virginia watered by the Roanoak will be doubled in its value by it.

The Treasurer is by this act directed to subscribe 50 shares in the Potowmac & 100 shares in the James River Companies which shall vest in Gen<sup>l</sup>. Washington & his heirs. This mode of adding some substantial to the many honorary rewards bestowed on him

An Act vesting in G. Washington a certain interest in the Companies for



was deemed least injurious to his delicacy, as well as least dangerous as a precedent. It was substituted in place of a direct pension urged on the House by the indiscreet zeal of some of his friends. Though it will not be an equivalent succour in all respects it will save the General from subscriptions which would have oppressed his finances; and if the schemes be executed within the period fixed, may yield a revenue for some years before the term of his [sic]. At all events it will demonstrate the grateful wishes of his Country and will promote the object which he has so much at heart. The earnestness with which he espouses the undertaking is hardly to be described, and shews that a mind like his, capable of great views & which has long been occupied with them, cannot bear a vacancy; and surely he could not have chosen an occupation more worthy of succeeding to that of establishing the political rights of his Country, than the patronage of works for the extensive & lasting improvement of its natural advantages; works which will double the value of half the lands within the Commonwealth, will extend its commerce, link with its interests those of the Western States, and lessen the emigration of its Citizens by enhancing the profitableness of situations which they now desert in search of better.

opening James & Potowmac rivers.

Our successive postponements had thrown the whole tax of 1784 on the year 1785. The remission therefore still leaves three halves to be collected. The plentiful crops on hand both of corn & tob<sup>o</sup>, and the price of the latter which is vibrating on this river between 36/. & 40/. seem to enable the Country to bear the burden. A few more plentiful years with steadiness in our Councils will put our credit on a decent footing. The payments from this State to the Continental treasury between Ap<sup>l</sup>., 83, and Nov<sup>r</sup>., 84, amount to £123,202 11s. 1½, V<sup>a</sup>. Curr<sup>y</sup>. The printed report herewith inclosed will give you a rude idea of our finances.

An Act to discharge the people of this Commonwealth from one half of the tax for the year 1775 [85].

J. Rumsey by a memorial to the last Session represented that he had invented a mechanism, by which a boat might be worked with little labour at the rate of from 25 to 40 miles a day, against a stream running at the rate of 10 miles an hour, and prayed that the disclosure of his invention might be purchased by the public. The apparent extravagance of his pretensions brought a ridicule upon them, and nothing was done. In the recess of the Assembly, he exemplified his machinery to General Washington and a few other gentlemen, who gave a certificate of the reality & importance of the invention, which opened the ears of the Assembly to a second memorial. The Act gives a monopoly for ten years, reserving a right to abolish it at any time by paying £10,000. The inventor is soliciting similar Acts from other States, and will not I suppose publish the secret till he either obtains or despairs of them.

An Act giving James Rumsey the exclusive privilege of constructing & navigating certain boats for a limited time.

This act authorises y<sup>e</sup> surrender of a Citizen to a foreign Sovereign within whose acknowledged jurisdiction the citizen shall commit a crime, of w<sup>ch</sup>. satisfactory proof shall be exhibited to Congress, and for which in the judgment of Congress the law of nations exacts such surrender. This measure

An act for punishing certain offences injurious to the tranquility of this Commonwealth.

was suggested by the danger of our being speedily embroiled with the nations contiguous to the U. States, particularly the Spaniards, by the licentious & predatory spirit of some of our Western people. In several instances gross outrages are said to have been already practiced. The measure was warmly patronized by Mr. Henry and most of the forensic members, and no less warmly opposed by the Speaker and some others. The opponents contended that such surrenders were unknown to the law of nations, and were interdicted by our declaration of Rights. Vattel however is express as to the case of Robbers, murderers and incendiaries. Grotius quotes various instances in which great offenders have been given up by their proper Sovereigns to be punished by the offended Sovereigns. Puffendorf only refers to Grotius. I have had no opportunity of consulting other authorities. With regard to the bill of rights, it was alleged to be no more or rather less violated by considering crimes committed ag<sup>st</sup>. other laws as not falling under the notice of our own, and sending our Citizens to be tried where the cause of trial arose, than to try them under our own laws without a jury of the vicinage, and without being confronted with their accusers or witnesses; as must be the case, if they be tried at all for such offences under our own laws. And to say that such offenders could neither be given up for punishment, nor be punished within their own Country, would amount to a licence for every aggression, and would sacrifice the peace of the whole community to the impunity of the worst members of it. The necessity of a qualified interpretation of the bill of rights was also inferred from the law of the Confederacy which requires the surrender of our Citizens to the laws of other States, in cases of treason, felony or other high misdemeanors. The Act provides however for a domestic trial in cases where a surrender may not be justified or insisted upon, and in cases of aggressions on the Indians.

This act declares the Ministers & vestries who are to be triennially chosen in each parish a body corporate, enables them to hold property not exceeding the value of £800 per annum, and gives sanction to a Convention which is to be composed of the Clergy and a lay deputy from each parish, and is to regulate the affairs of the Church. It was understood by the House of Delegates that the Convention was to consist of two laymen for each clergyman, and an amendment was received for that express purpose. It so happened that the insertion of the amendment did not produce that effect, and the mistake was never discovered till the bill had passed and was in print. Another circumstance still more singular is that the act is so construed as to deprive the Vestries of the uncontroled right of electing Clergymen, unless it be referred to them by the canons of the Convention, and that this usurpation actually escaped the eye both of the friends and adversaries of the measure, both parties taking the contrary for granted throughout the whole progress of it. The former as well as the latter appear now to be dissatisfied with what has been done, and will probably concur in a revision if not a repeal of the law. Independently of these oversights the law is in various points of view exceptionable. But the necessity of some sort of incorporation for the purpose of holding & managing the property of the Church could not well be denied, nor a more harmless modification of it now obtained. A negative of the bill too would have doubled the eagerness and the pretexts for a much greater evil, a general Assessment, which, there is good ground to believe was parried by this partial gratification of its warmest votaries. A Resolution for a legal provision for the “teachers of the Christian Religion” had early in the Session

An act for incorporating the Protestant Episcopal Church.



been proposed by Mr. Henry, and in spite of all the opposition that could be mustered, carried by 47 ag<sup>st</sup> 32 votes. Many Petitions from below the blue ridge had prayed for such a law; and though several from the presbyterian laity beyond it were in a contrary stile, the Clergy of that Sect favored it. The other Sects seemed to be passive. The Resolution lay some weeks before a bill was brought in, and the bill some weeks before it was called for, after the passage of the incorporating act it was taken up, and on the third reading, ordered by a small majority to be printed for consideration. The bill, in its present dress proposes a tax of blank per C<sup>t</sup>. on all taxable property for support of Teachers of the Christian Religion. Each person when he pays his tax is to name the society to which he dedicates it, and in case of refusal to do so, the tax is to be applied to the maintenance of a school in the County. As the bill stood for some time, the application in such cases was to be made by the Legislature to pious uses. In a committee of the whole it was determined by a majority of 7 or 8 that the word "X<sup>n</sup>." should be exchanged for the word "Religious." On the report to the House the *lpathetic zeal of the late Governor Harrison* gained a like majority for reinstating discrimination. Should the bill pass into a law in its present form it may & will be easily eluded. It is chiefly obnoxious on account of its dishonorable principle and dangerous tendency.

The subject of the British debts underwent a reconsideration on the motion of Mr. Jones. Though no answer had been rec<sup>d</sup>. from Congress to the Resolutions passed at the last Session, a material change had evidently taken place in the mind of the Assembly, proceeding in part from a more dispassionate view of the question, in part from the intervening exchange of the ratifications of the Treaty. *Mr. Henry was out of the way*. His previous conversation I have been told, *favored the reconsideration; the Speaker, the other champion at the last Session against the Treaty, was at least half a proseligh*. The proposition rejected interest during the period of blank and left the periods of payment blank. In this form it was rec<sup>d</sup>. with little opposition and by a very great majority. After much discussion & several nice divisions the first blank was filled up with the period between the 19 of Ap<sup>l</sup>., 1775, and the 3 of March 1783, the commencement and cessation of hostilities; and the second with seven annual payments. Whilst the bill was depending, some proceedings of the Glasgow merchants were submitted to the H. of D. in which they signified their readiness to receive their debts in four annual payments, with immediate security and summary recoveries at the successive periods and were silent as to the point of interest. Shortly after were presented memorials from the Merchants of this Town & Petersburg representing the advantage which a compliance with the Glasgow overtures would give the foreign over the domestic creditors. Very little attention seemed to be paid by the House to the overtures, tho', as the Treaty was not to be literally pursued, the shadow of assent from the other party was worthy of being attended to. In the Senate the bill met with a diversity of opinions. By a majority of one voice only an attempt to put all our domestic debts on the same footing with British debts was lost. Whether this was sincere or a side blow at the bill I am unable to say. An attempt was next made to put on the same footing all those who left this Country and joined the other side, or who remained within the British territories for one year at any time since the 19 Ap<sup>l</sup>., 1775, or who refused a tender of paper money before Jan<sup>y</sup>, 1779. These discriminations were almost unanimously disagreed to by the H. of D. The Senate insisted. The former proposed a conference. The Senate concurred. The Conference

produced a proposition from the H. of D. to which the Senate assented; but before the assent was notified an incident happened which has left the bill in a very singular situation. The delays attending this measure had spun it out to the day preceding the one prefixed for a final adjournment. Several of the members went over to Manchester in the evening, with an intention it is to be presumed of returning the next morning. The severity of the night rendered their passage back the next morning impossible. Without them there was no house. The impatience of the members was such as might be supposed. Some were for stigmatizing the absentees and adjourning. The rest were some for one thing, some for another. At length it was agreed to wait until the next day. The next day presented the same obstructions in the river. A canoe was sent over for enquiry by the Manchester party, but they did not chuse to venture themselves. The impatience increased, warm resolutions were agitated. They ended however in an agreement to wait one day more. On the morning of the third day the prospect remained the same. Patience could hold out no longer and an adjournment to the last day of March ensued. The question to be decided is whether a bill which has passed the House of Delegates, and been assented to by the Senate; but not sent down to the H. of D., nor enrolled, nor examined, nor signed by the two Speakers and consequently not of record, is or is not a law? A bill for the better regulation of the customs is in the same situation.

After the passage of the Bill for British debts through the H. of D. a bill was introduced for liquidating the depreciated payments into the Treasury, and making the debtors liable for the deficiency. A foresight of this consequential step had shewn itself in every stage of the first bill. It was opposed by 1 *Governor Harrison principally* and laid asleep by the refusal of interested members to vote on the question, and the want of a quorum without them.

Among the abortive measures may be mentioned also a proposition to authorise the collection of the impost by Congress as soon as the concurrence of twelve States should be obtained. Connecticut had set the example in this project. The proposition was made by the Speaker & supported by the late Governor. It was disagreed to by a very large majority on the following grounds 1 the appearance of a schism in the Confederacy which it would present to foreign eyes. 2. its tendency to combinations of smaller majorities of the States. 3. the channel it would open for smuggling; goods imported into Rhode Island in such case might not only be spread by land through the adjacent States, but if slipped into any neighbouring port might thence be carried duty-free to any part of the associated States. 4. the greater improbability of a union of twelve States on such new ground, than of the conversion of Rhode Island to the old one. 5 the want of harmony among the other States which would be betrayed by the miscarriage of such an experiment, and the fresh triumph & obstinacy which Rhode Island would derive from it.

The French vice Consul in this State has complained to the Assembly that the want of legal power over our Sheriffs, Goalers & prisons, both renders his decrees nugatory, and exposes his person to insults from dissatisfied litigants. The Assembly have taken no step whatever on the subject being at a loss to know what ought to be done, in compliance either with general usage or that of France in particular. I have often wondered that the proposed Convention between France and the U. S. for regulating

the consular functions has never been executed. The delay may prove unfriendly both to their mutual harmony & their commerce.

Mr. Henry was elected successor to Mr. Harrison without competition or opposition. The victims to the article requiring a triennial removal of two Counsellors were Merrywether Smith & General Christian. Young Mr. Roane and Mr. Miles Selden take their places. Mr. Short's place is filled by Mr. Joseph Jones.

Nothing has passed during the session concerning an amendment of the State Constitution. The friends of the undertaking seem to be multiplying rather than decreasing. Several Petitions from the Western side of the Blue ridge appeared in favor of it; as did some from the Western side of the Alleghany praying for a separate Government. The latter may be considered all of them as the children of A. C<sup>s</sup> ambition. The Assize Courts and the opening of our Rivers are the best answers to them.

The Revisal has but just issued from the press. It consists of near 100 folio pages in a small type. I shall send you six copies by the first opportunity. £500 was voted at the Spring Session to each of the Acting members of the Committee, but no fund having been provided for payment, no use could be made of the warrants. I drew yours however & carried them up to Orange, where they now lye. A vote of this Session has provided a fund which gives them immediate value. As soon as I get home I shall send the dead warrants to M<sup>r</sup>. Nich<sup>s</sup> Lewis, who may exchange them for others, and draw the money from the Treasury. Mr. Peter Carr is I hear now in Williamsburg, he did not get there so soon as I expected, but I have not heard the circumstances which delayed him. On the best enquiries I could make for a stand for his younger brother I could hear of none preferable to the Academy in Prince Edward, and accordingly recommended that in a letter to Mrs. Carr. I have rec'd no answer, but am told by Mr. Underwood her neighbour that he is at school with a very proper man who has lately opened a school very convenient to Mrs. Carr. If this is the case it will be improper to remove him.

I have not yet had the pleasure of a line from you since you left Boston, nor do I know when I shall next find a subject for another to you. As soon as I do you may be assured that you shall hear from me & that I am in the meantime with sincerest friendship

Yrs J. Madison Jr.

Present my respects to Miss Patsy & Mr. Short.

[\[Back to Table of Contents\]](#)

## TO MARQUIS DE LAFAYETTE.

Orange, March 20th, 1785.

Mad. Mss.

My Dear Sir,—

Your favour of the 15th, continued on the 17th of December came very slowly but finally safe to hand. The warm expressions of regard which it contains are extremely flattering to me; and the more so as they so entirely correspond with my own wishes for everything which may enter into your happiness.

You have not erred in supposing me out of the number of those who have relaxed their anxiety concerning the navigation of the Mississippi. If there be any who really look on the use of that river, as an object not to be sought or desired by the United States I cannot but think they frame their policy on both very narrow and very delusive foundations. It is true, if the States which are to be established on the waters of the Mississippi, were to be viewed in the same relation to the Atlantic States, as exists between the heterogeneous and hostile Societies of Europe, it might not appear strange that a distinction or even an opposition of interests should be set up. But is it true that they can be viewed in such a relation? Will the settlements which are beginning to take place on the branches of the Mississippi be so many distinct societies, or only an expansion of the same society? so many new bodies or merely the growth of the old one? Will they consist of a hostile or a foreign people, or will they not be bone of our bones and flesh of our flesh? Besides the confederal band, within which they will be comprehended, how much will the connection be strengthened by the ties of friendship, of marriage and consanguinity? ties which it may be remarked, will be even more numerous between the ultramontane and the Atlantic States than between any two of the latter. But viewing this subject through the medium least favorable to my ideas, it still presents to the U. States sufficient inducements to insist on the navigation of the Mississippi. Upon this navigation depends essentially the value of that vast field of territory which is to be sold for the benefit of the common Treasury; and upon the value of this territory when settled will depend the portion of the public burdens of which the old States will be relieved by the new. Add to this the stake which a considerable proportion of those who remain in the old States will acquire in the new by adventures in land either on their own immediate account or that of their descendants.

Nature has given the use of the Mississippi to those who may settle on its waters, as she gave to the United States their independence. The impolicy of Spain may retard the former as that of G. Britain did the latter. But as G. B. could not defeat the latter, neither will Spain the former. Nature seems on all sides to be reasserting those rights which have so long been trampled on by tyranny & bigotry. Philosophy & Commerce are the auxiliaries to whom she is indebted for her triumphs. Will it be presumptuous to say that those nations will shew most wisdom as well as acquire most glory, who instead of forcing her current into artificial channels, endeavour to ascertain its

tendency and to anticipate its effects. If the United States were to become parties to the occlusion of the Mississippi they would be guilty of treason against the very laws under which they obtained & hold their national existence.

The repugnance of Spain to an amicable regulation of the Use of the Mississippi, is the natural offspring of a System, which everybody but herself has long seen to be as destructive to her interest as it is dishonorable to her character. An extensive desert seems to have greater charms in her eye than a flourishing but limited empire, nay than an extensive flourishing empire. Humanity cannot suppress the wish that some of those gifts which she abuses were placed by just means in hands that would turn them to a wiser account. What a metamorphosis w<sup>d</sup> the liberal policy of France work in a little time on the Island of N. Orleans? It would to her be a fund of as much real wealth as Potosi has been of imaginary wealth to Spain. It would become the Grand Cairo of the new World.

The folly of Spain is not less displayed in the means she employs than in the ends she prefers. She is afraid of the growth and neighbourhood of the U. States, because it may endanger the tranquility of her American possessions; and to obviate this danger she proposes to shut up the Mississippi. If her prudence bore any proportion to her jealousy she would see, that if the experiment were to succeed, it would only double the power of the U. States to disturb her, at the same time that it provoked a disposition to exert it; she would see that the only offensive weapon which can render the U. States truly formidable to her is a navy, and that if she could keep their inhabitants from crossing the Appalachian ridge, she would only drive to the Sea most of those swarms which would otherwise direct their course to the Western Wilderness. She should reflect too that as it was impossible for her to destroy the power which she dreads, she ought only to consult the means of preventing a future exertion of it. What are those means? Two & two only. The first is a speedy concurrence in such a treaty with the U. S. as will produce a harmony, & remove all pretexts for interrupting it. The second, which would in fact result from the first, consists in favouring the extension of their settlements. As these become extended the members of the Confederacy must be multiplied, and along with them the Wills which are to direct the machine. And as the wills multiply, so will the chances against a dangerous union of them. We experience every day the difficulty of drawing thirteen States into the same plans. Let the number be doubled & so will the difficulty. In the multitude of our Counsellors, Spain may be told, lies her safety.

If the temper of Spain be unfriendly to the views of the U. States, they may certainly calculate on the favorable sentiments of the other powers of Europe, at least of all such of them as favored our Independence. The chief advantages expected in Europe from that event center in the revolution it was to produce in the commerce between the new & the old World. The commerce of the U. S. is advantageous to Europe in two respects, first by the unmanufactured produce which they export; secondly by the manufactured imports which they consume. Shut up the Mississippi and discourage the settlements on its waters, and what will be the consequence? First, a greater quantity of subsistence must be raised within the ancient settlements, the culture of tobacco indigo & other articles for exportation, be proportionably diminished, and their price proportionably raised on the European consumer. Secondly the hands

without land at home being discouraged from seeking it where alone it could be found, must be turned in a great degree to manufacturing, our imports proportionably diminished, and a proportional loss fall on the European Manufacturer. Establish the freedom of the Mississippi, and let our emigrations have free course, and how favorably for Europe will the consequence be reversed. First the culture of every article for exportation will be extended, and the price reduced in favor of her consumers. Secondly, Our people will increase without an increase of our Manufacturers, and in the same proportion will be increased the employment & profit of hers.

These consequences would affect France in common with the other commercial nations of Europe; but there are additional motives which promise the U. States her friendly wishes and offices. Not to dwell on the philanthropy which reigns in the heart of her Monarch and which has already adorned his head with a crown of laurels, he cannot be inattentive to the situation into which a controversy between his antient and new Allies would throw him, nor to the use which would be made of it by his watchful adversary. Will not all his councils then be employed to prevent this Controversy? will it not be seen that as the pretensions of the parties directly interfere, it can be prevented only by a dissuasive interposition on one side or the other, that on the side of the U. S. such an interposition must, from the nature of things be unavailing; or if their pretensions for a moment be lulled they w<sup>d</sup> but awake with fresh energy, and consequently that the mediating influence of France ought to be turned wholly on the side of Spain. The influence of the French Court over that of Spain is known to be great. In America it is supposed to be greater than perhaps it really is. The same may be said of the intimacy of the union between the two nations. If this influence should not be exerted, this intimacy may appear to be the cause. The United States consider Spain as the only favorite of their Ally of whom they have ground to be jealous, and whilst France continues to hold the first place in their affections they must at least be mortified at any appearance that the predilection may not be reciprocal.

The Mississippi has drawn me into such length that I fear you will have little patience left for anything else. I will spare it as much as possible. I hear nothing from Congress except that Mr. Jay has accepted his app<sup>t</sup>. and that no success<sup>f</sup>. has yet been chosen to D<sup>f</sup>. Franklyn. Our Legislature made a decent provision for remittances due for 1785 from Virginia to the Treas<sup>y</sup>. of the U. S. and very extensive provision for opening our inland navigation. \* \* \*1 Whether they passed an act for paying British debts or not they do not know themselves. Before the bill for that purpose had got through the last usual forms, the want of members broke up the House. It remains therefore in a situation which has no precedent, & without a precedent lawyers & legislators are as much at a loss as a mariner without his compass.

The subjects in which you interested yourself were all referred to the Executive with power to do what I hope they will do better than the Assembly. I understood before I left Richm<sup>d</sup>. that you w<sup>d</sup>. receive officially from the Gov<sup>t</sup>. a copy of the Resolutions which I sent you. I rec<sup>d</sup>. a letter a few days ago from Mr. Mercer, written in the bosom of wedlock at Mr. Sprigg's; another at the same time from Monroe, who was well at New York. I have nothing to say of myself but that I have exchanged

Richmond for Orange, as you will have seen by the above date; that I enjoy a satisfactory share of health; that I spend the chief of my time in reading, & the chief of my reading, on Law; that I shall hear with the greatest pleasure of your being far better employed; & that I am, with most affec<sup>t</sup>.

Y<sup>R</sup>. Obed<sup>T</sup>. Friend & Serv<sup>T</sup>.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange March 21, 1785.

Mad. Mss.

Dear Sir,—

Your favor of the 1<sup>st</sup>. of Feb<sup>y</sup>. did not come to hand till a day or two ago, having travelled on to Richmond, remained there during the absence of Mr. Jones & on his return, been sent to me by way of Fred<sup>g</sup>. Before I left Richmond I wrote you that the Assembly had adjourned and requested that your subsequent letters might be addressed to Orange, and if I do not forget to care of Mr Maury at Frederickb<sup>g</sup>. This letter ought to have reached you before the date of yours. I hope it has since got to hand. I also forwarded from Richmond to your care a letter for Mr. Jefferson which I hope has not miscarried. It contained a rehearsal of our last legislative politics & proceedings, which I find by his letters to me are a material object of his curiosity. I shall be glad to know by your next whether you have ever rec<sup>d</sup>. it, that in case of miscarriage I may endeavor to supply the loss.

I do not wonder at the paragraph which you have copied from Mr. Jay's letter to Congress. His feelings are such as every one must possess who is worthy of the station which he holds. If the Office of foreign Affairs be a proper one & properly filled, a reference of all foreign despatches to it in the first instance, is so obvious a course, that any other disposition of them by Congress seems to condemn their own establishment, to affront the Minister in office, and to put on him a label of caution ag<sup>st</sup> that respect & confidence of the Ministers of foreign powers, which are essential to his usefulness. I have always conceived the several ministerial departments of Congress, to be provisions for aiding their Counsels as well as executing their resolutions, & that consequently whilst they retain the right of rejecting the advice which may come from either of them, they ought not to renounce the opportunity of mak<sup>eg</sup>. use of it. The foreign department is I am sensible, in several respects the most difficult to be regulated, but I cannot think the question arising on Mr. Jay's letter is to be numbered among the difficulties. The practice of Congress during the administration of his predecessor was never fixed, & frequently improper, and I always suspected that his indifference to the place resulted in part at least from the mortifications to which this unsteadiness subjected him.

You will not be disappointed at the barrenness which is hence to mark the correspondence on my part. In the recess of the Legislature, few occurrences happen which can be interesting, and in my retired situation, few even of these fall within my knowledge. The situation of Mr. Jones will probably make his correspondence a more productive one. He has probably already mentioned to you the advances which Kentucky was said to be making towards an independent Gov<sup>t</sup>.. It is certain that a Convention has been held, which might have been set on foot with an eye to such an event; but I learn from an intelligent person lately from that district, that its deliberations turned altogether on the pressure of certain acts of the General



Assembly, & terminated in a vote of application for redress. He supposes however that the late extension of the tax on patents will give a successful handle to those who wish to accelerate a separation. This tax as it stood before was in the first class of their grievances.

You will I expect receive this from the hands of Mr. Burnley, a young gentleman of my neighborhood, who has passed with reputation through Mr. Wythe's School & has since taken out his forensic diploma. Your civilities to him will be well placed & will confer an obligation on me. If Col. Grayson has recovered from the gout which I hear arrested him in the moment of his intended departure, and is with you, be so kind as to make my best respects to him.

I Am Dear Sir With Sincere Regard & Esteem  
Your Obed<sup>T</sup> Friend & Servant,

[\[Back to Table of Contents\]](#)

JAMES MONROE

Mad. Mss.

Orange April 12 1785.

Dear Sir,—

I wrote you not long since by a young gentleman who proposed to go as far as N. Y. acknowledging the rec<sup>t</sup>. of your favor of Feb<sup>y</sup> 1<sup>st</sup>. I have since rec<sup>d</sup> that of March which I meant to have acknowledged through the same hands. But finding that ye delays which have hitherto kept back the bearer above referred to, are of uncertain continuance, & having no certain conveyance to Fred<sup>g</sup>. I embrace an opportunity of sending this to Richmond, whence it will be forwarded by Mr. Jones in the mail.

The appointment of Mr. A. to the Court of G. B. is a circumstance which does not contradict my expectations; nor can I say that it displeases me. Upon Geographical considerations N. E. will always have one of the principal appointm<sup>ts</sup>, and I know of no individual from that quarter, who possesses more of their confidence, or would possess more of that of the other States; nor do I think him so well fitted for any Court of equal rank, as that of London, I hope it has removed all obstacles to the establishment of Mr. Jefferson at the Court of France. Will not Congress soon take up the subject of Consular arrangements? I should suppose them at least of equal moment at present with some of ye higher appointm<sup>ts</sup> which are likely to occupy them. Our friend Mr. Maury is waiting with a very inconvenient suspension of his other plans, the event of the offer he has made of his services. 1 I find he considers Ireland as the Station next to be desired after that of England. He conceives & I believe very justly that the commercial intercourse between that Country & this will be very considerable, and merits our particular cultivation. I suppose from your silence on the subject, that the Western posts are still in the hands of G. B. Has the subject of the vacant lands to be disposed of, been revived? what other measures are on foot or in contemplation for paying off the public debts? What paym<sup>ts</sup> have been made of late into the public Treasury? It is said here that Mass<sup>ts</sup> is taking measures for urging R. I into the Impost, or rendering the Scheme practicable without her concurrence. Is it so? How many of the States have agreed to change the 8<sup>th</sup>. Art of ye Confederation? The Legislature of this State passed a law for complying with the provisional act of Cong<sup>s</sup> for executing that article as it now stands, the operation of which confirms the necessity of changing the article. The law requires as the Act of Cong<sup>s</sup> does among other things a list of the Houses. If ye list does not discriminate the several kinds of Houses, how can Cong<sup>s</sup>. collect from it ye value of the *improvements*, how do justice to all their constituents? And how can a discrimination be made in this country, where the variety is so infinite & so unsusceptible of description? If Cong<sup>s</sup> govern themselves by number alone, this Country will certainly appeal to a more accurate mode of carrying the present rule of the confederation into practice. The average value of the improvements in Virg<sup>a</sup> is not  $\frac{1}{4}$  perhaps not of that of ye improvements in Pen<sup>a</sup> or N. Eng<sup>d</sup>. Compare this difference with ye proportion between the value of Improvem<sup>ts</sup> & that of the Soil, & what an immense loss shall we

be taxed with? The number of buildings will not be a less unjust rule than the number of acres, for estimating the respective abilities of the States.

The only proceeding of the late Session of Assembly which makes a noise thro' the Country is that which relates to a Gen<sup>l</sup> Assessm<sup>t</sup>. The Episcopal people are generally for it, tho' I think the zeal of some of them has cooled. The laity of the other sects are equally unanimous on the other side. So are all the Clergy except the Presbyterian who seem as ready to set up an establishm<sup>t</sup> which is to take them in as they were to pull down that which shut them out. I do not know a more shameful contrast than might be found between their memorials on the latter & former occasion.

In one of your letters rec<sup>d</sup> before I left Richmond you expressed a wish for a better Cypher. Since my return to Orange I have been able to get one made out which will answer every purpose. I will either enclose it herewith or send it by the Gentleman who is already charged with a letter for you. I wish much to throw our correspondence into a more regular course. I would write regularly every week if I had a regular conveyance to Fred<sup>g</sup>. As it is I will write as often as I can find conveyances. The business of this neighborhood which used to go to Fredericksburg is in a great measure turned towards Richm<sup>d</sup>, which is too circuitous a channel. Opportunities in every direction however will be henceforward multiplied by the advance of the Season. If you are not afraid of too much loading the mail I could wish you to enclose in your letters the last N. Y. or Phil<sup>a</sup> paper.

I am D<sup>f</sup> Sir Y<sup>rs</sup> most sincerely.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Orange April 27 1785.

Mad. Mss.

Dear Sir,—

I have recd. your two favors of Nov<sup>r</sup> 11 & Dec<sup>r</sup> 8. Along with the former I recd. the two pamphlets on animal magnetism & the last aeronautic expedition, together with the phosphoretic matches. These articles were a great treat to my curiosity. As I had left Richm<sup>d</sup> before they were brought thither by Col. le Maire, I had no opportunity of attending myself to your wishes with regard to him; but I wrote immediately to Mr. Jones & desired him to watch over the necessities of le Maire. He wrote me for answer that the Executive tho' without regular proof of his claims were so well satisfied from circumstances of the justice of them, that they had voted him £150 for his relief till the Assembly could take the whole into consideration. This information has made me easy on the subject though I have not withdrawn from the hands of Mr. Jones the provisional resource. I thank you much for your attention to my literary wants. All the purchases you have made for me, are such as I should have made for myself with the same opportunities. You will oblige me by adding to them the Dictionary in 13 vol. 4<sup>o</sup> by Felice & others, also de Thou in French. If the utility of Moreri be not superseded by some better work I should be glad to have him too. I am afraid if I were to attempt a catalogue of my wants I should not only trouble you beyond measure, but exceed the limits which other considerations ought to prescribe to me. I cannot however abridge the Commission you were so kind as to take on yourself in a former letter, of procuring me from time to time such books as may be either "old & curious or new & useful." Under this description will fall those particularized in my former letters, to wit: treatises on the ancient or modern fœderal republics—on the law of Nations—and the history natural & political of the New World; to which I will add such of the Greek & Roman authors where they can be got very cheap, as are worth having and are not on the common list of School classics. Other books which particularly occur are the translation (French) of the Historians of the Roman Empire during its decline, by — Pascal's Provincial letters—Don Ulloa in the Original—Linnæus best edition Ordinances Marines—Collection of Tracts in french on the Oeconomics of different nations, I forget the full title. It is much referred to by Smith on the wealth of Nations. I am told a Mons<sup>r</sup> Amelot has lately published his travels into China, which if they have any merit must be very entertaining. Of Buffon I have his original work of 31 vol. 10 vol. of Supplem<sup>t</sup>, and 16 vol. on birds. I shall be glad of the continuation as it may from time to time be published. I am so pleased with the new invented lamp that I shall not grudge two guineas for one of them. I have seen a pocket compass of somewhat larger diameter than a watch & which may be carried in the same way. It has a spring for stopping the vibration of the needle when not in use. One of these would be very convenient in case of a ramble into the Western country. In my walks for exercise or amusements, objects frequently present themselves, which it might be matter of curiosity to inspect, but which it is difficult or impossible to approach. A portable Glass would

consequently be a source of many little gratifications. I have fancied that such an one might be fitted into a cane without making it too heavy. On the outside of the tube might be engraved a scale of inches &c. If such a project could be executed for a few Guineas, I should be willing to submit to the price; if not, the best substitute I suppose, will be a pocket telescope, composed of several tubes so constructed as to slide the lesser into the greater. I should feel great remorse at troubling you with so many requests, if your kind & repeated offers did not stifle it in some measure. Your proposal for my replacing here advances for me without regard to the exchange is liable to no objection except that it will probably be too unequal in my favour. I beg that you will enable me as much as you can to keep these little matters balanced. The papers from Le Grand were sent as soon as I got them to Mr. Jones with a request that he would make the use of them which you wished me to do.

Your remarks on the tax on transfers of land in a general view appear to me to be just but there were two circumstances which gave a peculiarity to the case in which our law adopted it. One was that the tax will fall much on those who are evading their quotas of other taxes by removing to Georgia & Kentucky; the other that as such transfers are more frequent among those who do not remove, in the Western than the Eastern part of the Country, it will fall heaviest where direct taxes are least collected. With regard to the tax in general on law proceedings, it cannot perhaps be justified if tried by the strict rule which proportions the quota of every man to his ability, time however will gradually in some measure equalize it, & if it be applied to ye support of the Judiciary establishment, as was the ultimate view of the periods of the tax, it seems to square very well with the Theory of taxation.

The people of Kentucky had lately a Convention which it was expected would be the mother of a separation. I am informed they proceeded no farther than to concert an Address to the Legislature on some points in which they think the laws bear unequally upon them, they will be ripe for that event at least as soon as their interest calls for it. There is no danger of a concert between them & the Counties West of the Alleghany which we mean to retain. If the latter embark in a scheme for independence it will be on their own bottom. They are more disunited in every respect from Kentucky than from Virginia.

I have not learnt with certainty whether Gen<sup>l</sup> Washington will accept or decline the shares voted him by the Assembly in the Companies for opening our rivers. If he does not chuse to take to himself any benefit from the donation, he has I think a fine opportunity at once of testifying his disinterested purposes, of shewing his respect for the Assembly, and of rendering a service to his Country. He may accept the gift so far as to apply it to the scheme of opening the rivers & may then appropriate the revenue which it is hereafter to produce to some patriotic establishment. I lately dropped a hint of this sort to one of his friends & was told that such an idea had been suggested to him. The private subscriptions for Potowmac I hear amount to £10,000 Sterling. I cannot discover that those for James River deserve mention, or that the undertaking is pushed with any spirit. If those who are most interested in it let slip the present opportunity, their folly will probably be severely punished for the want of such another. It is said the undertaking on the Susquehannah by Maryland goes on with great spirit & expectations. I have heard nothing of Rumsey or his boats since he went

into the Northern States. If his machinery for stemming ye current operates on the water alone, as is given out, may it not supply the great desideratum for perfecting the Balloons?

I understand that Chase & Jenifer on the part of Maryland, Mason & Henderson on the part of Virginia have had a meeting on the proposition of Virg<sup>a</sup> for settling the navigation & jurisdiction of Potowmac below the falls, & have agreed to report to the two Assemblies, the establishment of a concurrent jurisdiction on that river & Chesapeak. The most amicable spirit is said to have governed the negotiation.

The Bill for a Gen<sup>l</sup> Assess<sup>t</sup> has produced some fermentation below the Mountains & a violent one beyond them. The contest at the next Session on this question will be a warm & precarious one. The Port bill will also undergo a fiery trial. I wish the Assize Courts may not partake of the danger. The elections as far as they have come to my knowledge are likely to produce a great proportion of new Members. In Albemarle young Mr. Fry has turned out Mr. Carter. The late Governor Harrison I hear has been baffled in his own County, but meant to be a Candidate in Surry & in case of a rebuff there to throw another die for the borough of Norfolk. I do not know how he construes the doctrine of residence. *It is surmised that the machinations of tyler who fears a rivalry for the chair are at the bottom of his difficulties. Arth<sup>r</sup>. Lee is elected in prince William he is said to have paved the way by promises to upset the port bill which is obnoxious to dumfries and to prevent the removal of the Assize Court from this town to Alexandria.*

I recd. a letter from *the marquis fayette*, dated on the eve of his embarkation which has the following paragraph *I have much conferred with the General upon the Potowmac system many people think the navigation of the Mississippi is not an advantage but it may be the excess of a very good thing, viz the opening of your rivers. I fancy it has not changed your opinion but beg you will write me on the subject in the meanwhile I hope Congress will act coolly and prudently by Spain who is such a fool that allowances must be made. It is unlucky that he should have left America with such an idea as to the Mis?sippi. It may be of the worst consequ<sup>ce</sup> as it is not wholly imaginary the prospect of extending the commerce of the atlantic states to the western waters having given birth to it. I can not believe that many minds are tainted with so illiberal and short-sighted a policy. I have thought it not amiss to write the marquis according to the request of his letter and have stated to him the motives and obligations which must render the U. S. inflexible on the subject of the Miipi, the folly of Spain in contesting it and our expectations from the known influence of France over Spain and her friendly dispositions toward U.S. It is but justice to the marquis to observe that in all our conversations on the Missipi he expressed with every mark of sincerity a zeal for our claims and a pointed dislike to the national character and policy of Spain and that if his zeal should be found to abate I should construe it to be the effect of a supposed revolution in the sentiments of America.*

This would have been of somewhat earlier date but I postponed it that I might be able to include some information relative to your Nephews. My last informed you that your eldest was then with Mr. Maury. I was so assured by Mr. Underwood from his neighborhood, who I supposed could not be mistaken. I afterwards discovered that he

was so, but could get no precise information till within a few days. One of my brothers being called into that part of Country by business, I wrote to Mrs. Carr and got him to wait on her. The answer with which I have been favored imports that “her eldest son was taken last fall with a fever which with repeated relapses kept him extremely weak & low till about the first of Jan<sup>y</sup> from which time he was detained at home by delays in equipping him for Williamsb<sup>g</sup> till the 1st of April, when he set out with promises to make up his lost time—that her youngest son had also been detained at home by ill health till very lately, but that he would certainly go on to the academy as soon as a vacation on hand was over, that his time had not been entirely lost as his brother was capable of instructing him whenever his health would admit.” Mr. Maury’s School is said to be very flourishing. Mr. Wythe & the other gentlemen of the University have examined it from time to time & published their approbation of its management. I cannot speak with the same authority as to the Academy in Prince Edward. The information which I have rec<sup>d</sup> has been favorable to it. In the recommendation of these Seminaries I was much governed by the probable permanency of them; nothing being more ruinous to education than the frequent interruptions & change of masters & methods incident to the private schools of this Country.

Our winter has been full of vicissitudes, but on the whole far from being a severe one, the spring has been uncommonly cold & wet, and vegetation, of course, very backward; till within a few days during which it has been accelerated by very uncommon heat. A pocket Thermometer which stands on the second floor & the N. W. side of the House was on the 24 inst. at 4 O’Clock, at 77°, on the 25, at 78, on the 26, at 81½; to-day, 27, at 82, the Weather during this period has been fair & the wind S, the atmosphere thick N. W. Our Wheat in the ground is very unpromising throughout the Country. the price of that article on tide-water is about 6s. Corn sells in this part of the country at 10s. & under, below at 15s. and where the insect prevailed as high as 20s. It is said to have been raised by a demand for exportation. Tob<sup>o</sup> is selling on Rappahannock at 32s. & Richm<sup>d</sup> at 37s 6. It is generally expected that it will at least get up to 40s. Some of our peaches are killed & most of our Cherries. Our Apples are as yet safe. I can not say how it is with the fruit in other parts of the Country. The mischief to the Cherries &c was done on the night of the 20 when we had a severe black frost.

I can not take my leave of you without making my acknowledgem<sup>ts</sup> for the very friendly invitation contained in your last. If I should ever visit Europe I should wish to do it less stinted in time than your plan proposes. This crisis too would be particularly inconvenient as it would break in upon a course of reading which if I neglect now I shall probably never resume. I have some reason also to suspect that crossing the Sea would be unfriendly to a singular disease of my constitution. The other part of your invitation has the strongest bias of my mind on its side, but my situation is as yet too dependent on circumstances to permit my embracing it absolutely. It gives me great satisfaction to find that you are looking forward to the moment which is to restore you to your native Country, though considerations of a public nature check my wishes that such an event may be expedited. Present my best respects to Mr. Short & Miss Patsy, & accept of the affectionate regards of Dear Sir your sincere friend.

What has become of the subterraneous City discovered in Siberia?

Deaths. Thompson Mason Bartholomew Dandridge Ryland Randolph Joseph Reed of Philadel<sup>a</sup>.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange Ap<sup>l</sup> 28, 1785.

Mad. Mss.

Dear Sir,—

I have written several letters within a little time past which were sent to you partly by the post partly by Mr. Burnley, a young Gentleman of this County. In one of the letters I inclosed a cypher, w<sup>ch</sup> will serve all the purposes of our future correspondence. This covers a letter from Mr. Jefferson which you will be so good as to forw<sup>d</sup>. by the first packet or other equally eligible conveyance. Our Elections as far as I hear are likely to produce a great proportion of new members. In some counties they are influenced by the Bill for a Gen<sup>l</sup> Assess<sup>t</sup>. In Culpeper Mr. Pendleton a worthy man & acceptable in his general character to the people was laid aside in consequence of his vote for the Bill, in favor of an Adversary to it. The Delegates for Albemarle are your friend Mr. W. C. Nicholas & Mr. Fry. Mr. Carter stood a poll but fell into the rear. The late Gov<sup>r</sup> Harrison I am told has been baffled in his own County, meant to be a candidate for Surey & in case of a rebuff there to throw another die for the Borough of Norfolk. I do not know how he proposes to satisfy the doctrine of residence.

I hear frequent complaints of the disorders of our coin & the want of uniformity in the denominations of the States. Do not Congress think of a remedy for these evils? The regulation of weights & measure seem also to call for their attention. Every day will add to the difficulty of executing these works. If a mint be not established & a recoinage effected while the fœderal debts carry the money thro' the hands of Congress I question much whether their limited powers will ever be able to render this branch of their prerogative effectual. With regard to the regulation of weights & measures, w<sup>d</sup> it not be highly expedient as well as honorable to the fœderal administration, to pursue the hint which has been suggested by ingenious & philosophical men, to wit, that the standard of measure s<sup>d</sup> be first fixed by the length of a pendulum vibrating seconds at the Equator or any given latitude—& that the standard of weights s<sup>d</sup> be a Cubical piece of Gold or other homogeneous body, of dimensions fixed by the standard of measure. Such a scheme appears to be easily reducible to practice; & as it is founded on the division of time which is the same at all times & in all places & proceeds on other data which are equally so, it would not only secure a perpetual uniformity throughout the U. S. but might lead to Universal standards in these matters among nations. Next to the inconveniency of speaking different languages, is that of using different & arbitrary weights & measures.

I Am D<sup>R</sup> Sir Y<sup>R</sup> Affec<sup>E</sup> Friend.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Orange May 29 1785.

Mad. Mss.

Dear Sir,—

Your favor of May—came to hand a few days ago. It is fortunate that the variant ideas have been so easily accomodated touching the mode of surveying & selling the territorial fund. It will be equally so I think if you can dispossess the British of the Western posts before the land office is opened. On this event and the navigation of the Mississippi will much depend the fiscal importance of the back Country to the U. States. The amount of the proposed requisition will I fear startle those to whom it will be addressed. The use of certificates as a medium for discharging the interest of the home debt is a great evil, though I suppose a necessary one. The advantage it gives to Sharpers & Collectors, can scarcely be described, and what is more noxious, it provokes violations of public faith, more than the weight of the Burden itself. The 1,000,000 D<sup>rs</sup> to be paid in specie, and the greatest part of it to be sent abroad, will equally try the virtue of the States. If they do not flinch however they will have the satisfaction of coming out of the trial with more honour though with less money.

I have lately heard that the Kentucky Delegates will be instructed to propose to the next Session the separation of that Country from this, and its being handed over to Congress for admission into the Confederacy. If they pursue their object through this channel, they will not only accomplish it without difficulty, but set a useful example to other Western settlem<sup>ts</sup> which may chuse to be lopped off from other States. My information as to this matter is not authentic, but such as I am inclined to believe true. I hear also that a State is actually set up in the back Country of N. C. that it is organized, named, and has deputed representatives to Congress.

It gives me much pleasure to observe by 2 printed reports sent me by Col. Grayson that, in the latter Cong<sup>s</sup> had expunged a clause contained in the first for setting apart a district of land in each Township for supporting the Religion of the majority of inhabitants. How a regulation so unjust in itself, so foreign to the Authority of Cong<sup>s</sup>, so hurtful to the sale of the public land, and smelling so strongly of an antiquated Bigotry, could have received the countenance of a Cotee is truly matter of astonishment. In one view it might have been no disadvantage to this State in case the Gen<sup>l</sup> Assess<sup>t</sup> should take place, as it would have given a repellent quality to the new Country in the estimation of those whom our own encroachments on Religious Liberty would be calculated to banish to it. But the adversaries to the assess<sup>t</sup> begin to think the prospect here flattering to their wishes. The printed Bill has excited great discussion and is likely to prove the sense of the County to be in favor of the liberty now enjoyed. I have heard of several Counties where the late representatives have been laid aside for voting for the Bill, and not of a single one where the reverse has happened. The Presbyterian Clergy too who were in general friends to the scheme, are already in another tone, either compelled by the laity of that sect, or alarmed at the

probability of further interferences of the Legislature, if they once begin to dictate in matters of Religion.

I Am, D<sup>R</sup> Sir, Y<sup>Rs</sup> Affec<sup>L</sup>y.

The letter herewith inclosed is from Mrs. Carr sister of Mr. Jefferson.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Orange 21 June 1785.

Mad. Mss.

Dear Sir,—

Finding from a letter of Mr. Mazzei that you have never been furnished with a copy of the Bill for establishing the Christian Religion in this State, I now inclose one, regretting that I had taken it for granted that you must have been supplied thro' some other channel. A very warm opposition will be made to this innovation by the people of the middle and back Counties, particularly the latter. They do not scruple to declare it an alarming usurpation on their fundamental rights and that tho' the Gen<sup>l</sup> Assembly should give it the form, they will not give it the validity of a law. If there be any limitation to the power of the Legislature, particularly if this limitation is to be sought in our Declaration of Rights or Form of Government, I own the Bill appears to me to warrant this language of the people.

A gentleman of credit lately from Kentucky tells me that he fell in with two persons on the Ohio, who were going down the River in the character of Co<sup>issrs</sup> from Georgia, authorized to demand from the Spanish Gov<sup>t</sup> of N. Orleans, the posts within the limits of that State, and a settlement of the boundary in general between it and the Spanish possessions. The Gentleman did not see their commission, but entertains no doubt of their having one. He was informed that two others were joined in it who had taken a different route. Should there be no mistake in this case, you will no doubt be able to get a full account of the Embassy. I would willingly suppose that no State could be guilty either of so flagrant an outrage on the fœderal Constitution, or of so imprudent a mode of pursuing their claims against a foreign Nation.

I observe in a late Newspaper that the coercial discontents of Boston are spreading to New York and Philad<sup>a</sup>. Whether they will reach Virginia or not I am unable to say. If they should, they must proceed from a different interest; from that of the planters, not that of the Merchants. The present system here is as favorable to the latter as it is ruinous to the former. Our trade was never more compleatly monopolized by G. B., when it was under the direction of the British Parliament than it is at this moment. But as our Merchants are almost all connected with that country & that only, and as we have neither ships nor seamen of our own, nor likely to have any in the present course of things, no mercantile complaints are heard. The planters are dissatisfied, and with reason, but they enter little into the science of commerce, and rarely of themselves combine in defence of their interests. If any thing could rouse them to a proper view of their situation one might expect it from the contrast of the market here with that of other States. Our staple has of late been as low as a guinea per c<sup>t</sup>. on Rappahannock, and not above 32 or 33s. on James River. The current prices in Philad<sup>a</sup> during the same period have been 44s. of this currency for tobacco of the latter inspections and in like proportion for that of the former. The prices of imports of every kind in those two Markets furnish a contrast equally mortifying to us. I have not had the same

information from other States northward of us, but I have little doubt that it would teach us the same lesson. Our planters cannot suffer a loss of less than 50 per cent. on the staple of the Country, if to the direct loss in the price of the staple be added their indirect loss in the price of what they purchase with their staple. It is difficult notwithstanding to make them sensible of the utility of establishing a Philadelphia or a Baltimore among ourselves, as one indispensable step towards relief, and the difficulty is not a little increased by the pains taken by the Merchants to prevent such a reformation, and by the opposition arising from local views. I have been told that *Arthur Lee paved the way to his election in Prince William by promising that, among other things he would overturn the Port Bill*. Mr. Jefferson writes me that the Port Bill has been published in all the Gazettes in Europe, with the highest approbation everywhere except in G. B. It would indeed be as surprising if she should be in favor of it as it is that any among ourselves should be against it. I see no possibility of engaging other nations in a rivalry with her without some such regulation of our commerce.

I Am D<sup>R</sup> Sir Y<sup>Rs</sup> Affec<sup>L</sup>y

[\[Back to Table of Contents\]](#)

TO R. H. LEE.

Orange July 7th, 1785.

Mad. Mss.

Dear Sir,—

Your favor of the 30<sup>th</sup>. of May came to hand yesterday only, having lain some time in Fred<sup>s</sup> and finally came to Orange via Albemarle. I agree perfectly with you in thinking it the interest of this Country to embrace the first decent opportunity of parting with Kentucky, and to refuse with firmness to part with any more of our settlements beyond the Allegheny. <sup>1</sup> It seems necessary however that this first instance of a voluntary dismemberment of a State should be conducted in such a manner as to form a salutary precedent. As it is an event which will indirectly affect the whole Confederacy, Congress ought clearly to be made a party to it, either iediately, or by a proviso that the partition act shall not take effect, till the actual admission of the new State into the Union. No interval whatever should be suffered between the release of our hold on that Country and its taking on itself the obligations of a member of the federal body. Should it be made a separate State without this precaution, it might possibly be tempted to remain so, as well with regard to the U. S. as to Virginia, by two considerations: 1. the evasion of its share of the general debt. 2. the allurements which an exemption from taxes, would prove to the Citizens of States groaning under them. It is very possible that such a policy might in the end prove a disadvantageous one, but the charms of ambition and of present interest, too often prevail against the cool remonstrances of true policy. May we not also with justice require that a reasonable portion of the particular debt of Virg<sup>a</sup> should be assumed by that part of Virginia which is to set up for itself?

The arrival of Mr. Gardoqui will turn out I hope an auspicious step towards conciliating explanations & overtures with regard to the Mississippi. Besides the general motives for expediting an adjustment of this matter the prodigious effect of it on the sale of the back lands, makes it of peculiar importance. The same consideration presses for such arrangements with G. B. as will give us speedy possession of the Western posts. As to the commercial arrangements which we wish from her, I own my expectations are far from being sanguine. In fact what could she get from us by concessions which she is unwilling to make, which she does not now enjoy? I cannot speak with certainty as to all the States, but sure I am that the trade of this was never more compleatly monopolized by her when it was under the direction of her own laws than it is at this moment. Our present situation therefore precisely verifies the doctrine held out in Deanes' intercepted letters. The revolution has robbed us of our trade with the West Indies the only one which yielded us a favorable balance, without opening any other channels to compensate for it. What makes the British monopoly the more mortifying is the abuse which they make of it. Not only the private planters who have resumed the practice of shipping their own Tob<sup>o</sup>, but many of the Merchants particularly the natives of the Country who have no connections with G. B. have rec<sup>d</sup> acc<sup>ts</sup> of sales this season, which carry the most visible & shameful frauds in every

article. In every point of view indeed the trade of this Country is in a deplorable Condition. A comparison of current prices here with those in the Northern States, either at this time or at any time since the peace, will shew that the loss direct on our produce & indirect on our imports is not less than 50 per ct. Till very lately the price of our Staple has been down at 32 & 33s. on James River & 28s. on Rappahannock. During the same period the former was selling in Philad<sup>a</sup>, & I suppose in other Northern ports, at 44s. of this Currency, and the latter in proportion; tho' it cannot be denied that Tob<sup>o</sup> in the Northern ports is intrinsically worth less than it is here, being at the same distance from its ultimate market, & burdened with the freight from this to the other States. The price of merchandize here is at least as much above as that of Tob<sup>o</sup> is below the Northern standard.

We have had throughout the month of June & until this time, very hot and very wet weather. The effect of it on upland corn has been favorable but much the reverse on that of the flats. It has given full opportunity to the planters to pitch their crops of Tob<sup>o</sup>, but tho' many of them have repeated this operation several times the grasshoppers & other noxious insects have been so uncommonly troublesome that in many places the prospect is likely to be much abridged. Should this not be the case, the efforts of the Country must produce the greatest crop that has been seen since the peace. Our Wheat in this part of the Country is very indifferent. How it may be in others I cannot say, but believe the complaints are pretty general. With the highest esteem & regard I remain D<sup>f</sup>. Sir,

Your Ob<sup>T</sup>. & Very Humble Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Orange July 26, 1785.

Mad. Mss.

My Dear Friend,—

Your favour of the 17th inst: inclosing a letter from Mr. Jones and a copy of the ecclesiastical Journal, came safe to hand. If I do not dislike the contents of the latter, it is because they furnish as I conceive fresh and forcible arguments against the Gen<sup>l</sup> Assessment. It may be of little consequence, what tribunal is to judge of Clerical misdemeanors or how firmly the incumbent may be fastened on the parish, whilst the Vestry & people may hear & pay him or not as they like. But should a legal salary be annexed to the title, this phantom of power would be substantiated into a real monster of oppression. Indeed it appears to be so at present as far as the Glebes & donations extend. I had seen some parcels of these proceedings before I rec<sup>d</sup> your letter, and had remarked the sprinklings of liberality to which you allude. My conjectures, I believe, did not err as to the quarter from which they came.

The urgency of Gen<sup>l</sup> W. in the late negociation with Maryland makes it probable I think that he will feel some chagrin at the inattention to that with Penn<sup>a</sup>, which has a much nearer connection with his favorite object and was moreover suggested by himself. Shortly after the date of my last, I dropped a few lines to Col: Mason, reminding him that some report will be expected from the Commissioners by the Assembly, as well as of the real importance of the business. I have not yet rec<sup>d</sup> any answer; and begin to suspect that my letter may have miscarried. Your information leads me to doubt whether he has ever been furnished with a copy of the Resolution under which he is to proceed. I will write to him again and inclose one which Mr. Jones sent me.

I have a letter from the Marquis, but dated as far back as March. It was accompanied with a Copy of a French Memorial to the Emperor which seems to have stifled the War in its birth; and an Extract from a late work of Mr. Neckar which has made him the idol of one party in France and the execration of the other. To avoid the trouble of transcribing, I send them as they came to me. You can peruse & return them by my brother who is the bearer of this, or by any future opportunity. The M. says he is doing all he can to forward our claim to the Mississippi; that the French Ministry understand the matter & are well disposed; but that they are apprehensive “Spain knows not how to give up what she once has.”

I had heard of the strictures on the incorporating Act, but without being able to pick up any of the papers in which they are published. I have desired my brother to search them out if he can. Perhaps you can refer him to the proper press & numbers.

At the instance of Col. N-l-s<sup>1</sup> of A-b-le, I undertook the draught of the inclosed remonstrance ag<sup>st</sup>. the Gen<sup>l</sup> Ass<sup>t</sup>. Subscriptions to it are on foot I believe in sundry



Counties, and will be extended to others. My choice is that my name may not be associated with it. I am not sure that I know precisely your ideas on this subject; but were they more variant from mine than I take them to be I should not be restrained from a confidential communication.

I keep up my attention as far as I can command my time, to the course of reading which I have of late pursued & shall continue to do so. I am however far from being determined ever to make a professional use of it. My wish is if possible to provide a decent & independent subsistence, without encountering the difficulties which I foresee in that line. Another of my wishes is to depend as little as possible on the labour of slaves. The difficulty of reconciling these views, has brought into my thoughts several projects from which advantage seemed attainable. I have in concert with a friend here, one at present on the Anvil which we think cannot fail to yield a decent reward for our trouble. Should we persist in it, it will cost me a ride to Philad<sup>a</sup>, after which it will go on without my being ostensibly concerned. I forbear to particularize till I can do it ore tenus. Should I take this ride I may *possibly* continue it into the Eastern States; Col Monroe having given me an invitation to take a ramble of curiosity this fall, which I have half a mind to accept, and among otther routes named this. I recollect that you talked yourself of a trip last Spring as far as Lancaster. Have you laid it aside totally? Or will your domestic endearments forbid even the trip to Bath, from which I promised myself the happiness of taking you by the hand in Orange? Give my warmest respects to Mrs. R, and be assured that I remain, with sincere affection your friend.

Was the Royal assent ever given to the act of 1769, entitled “An Act to amend an Act entitled, an Act declaring the law concerning Ex<sup>tions</sup> & for relief of insolvent Debtors.”

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange Aug<sup>t</sup> 7<sup>th</sup>. 1785.

Mad. Mss.

Dear Sir,—

I received the day before yesterday your favour of the 26<sup>th</sup> July. I had previously rec<sup>d</sup> the Report on the proposed change of the 9<sup>th</sup>. art. of the Confederation, transmitted by Col: Grayson; and in my answer to him offered such ideas on the subject as then occurred. I still think the probability of success or failure ought to weigh much with Congress in every recommendation to the States; of which probability Congress, in whom information from every State centers can alone properly judge. Viewing in the abstract the question whether the power of regulating trade, to a certain degree at least, ought to be vested in Congress, it appears to me not to admit of a doubt, but that it should be decided in the affirmative. If it be necessary to regulate trade at all, it surely is necessary to lodge the power where trade can be regulated with effect; and experience has confirmed what reason foresaw, that it can never be so regulated by the States acting in their separate capacities. They can no more exercise this power separately than they could separately carry on war, or separately form treaties of alliance or commerce. The nature of the thing therefore proves the former power, no less than the latter, to be within the reason of the fœderal Constitution. Much indeed is it to be wished, as I conceive, that no regulations of trade, that is to say, no restrictions on imposts whatever, were necessary. A perfect freedom is the System which would be my choice. But before such a System will be eligible perhaps for the U. S. they must be out of debt; before it will be attainable, all other nations must concur in it. Whilst any one of these imposes on our Vessels seamen &c. in their ports, clogs from which they exempt their own, we must either retort the distinction, or renounce not merely a just profit, but our only defence against the danger which may most easily beset us. Are we not at this moment under this very alternative? The policy of G. B. (to say nothing of other nations) has shut against us the channels without which our trade with her must be a losing one; and she has consequently the triumph, as we have the chagrin, of seeing accomplished her prophetic threats, that our independence should forfeit commercial advantages for which it would not recompence us with any new channels of trade. What is to be done? Must we remain passive victims to foreign politics, or shall we exert the lawful means which our independence has put into our hands of extorting redress? The very question would be an affront to every Citizen who loves his Country. What, then, are these means? Retaliating regulations of trade only. How are these to be effectuated? only by harmony in the measures of the States. How is this harmony to be obtained? only by an acquiescence of all the States in the opinion of a reasonable majority. If Congress as they are now constituted, can not be trusted with the power of digesting and enforcing this opinion, let them be otherwise constituted: let their numbers be increased, let them be chosen oftener, and let their period of service be shortened; or if any better medium than Congress can be proposed by which the wills of the States may be concentered, let it be substituted; or lastly let no regulation of trade adopted by Congress be in force until it shall have

been ratified by a certain proportion of the States. But let us not sacrifice the end to the means: let us not rush on certain ruin in order to avoid a possible danger. I conceive it to be of great importance that the defects of the fœderal system should be amended, not only because such amendments will make it better answer the purpose for which it was instituted, but because I apprehend danger to its very existence from a continuance of defects which expose a part if not the whole of the empire to severe distress. The suffering part, even when the minor part, can not long respect a Government which is too feeble to protect their interests: But when the suffering part comes to be the major part, and they despair of seeing a protecting energy given to the General Government, from what motives is their allegiance to be any longer expected. Should G. B. persist in the machinations which distress us; and seven or eight of the States be hindered by the others from obtaining relief by fœderal means, I own, I tremble at the antifœderal expedients into which the former may be tempted.

As to the objection against entrusting Congress with a power over trade, drawn from the diversity of interests in the States, it may be answered, 1. that if this objection had been listened to, no confederation could have ever taken place among the States, 2. that if it ought now to be listened to, the power held by Congress of forming coercial treaties, by which 9 States may indirectly dispose of the Commerce of the residue, ought to be immediately revoked, 3 that the fact is that a case can scarcely be imagined in which it would be the interest of any  $2/3^{\text{ds}}$  of the States to oppress the remaining  $1/3^{\text{d}}$ . 4. that the true question is whether the commercial interests of the States do not meet in more points than they differ. To me it is clear that they do; and if they do there are so many more reasons for, than against, submitting the commercial interest of each State to the direction and care of the Majority. Put the West India trade alone, in which the interest of every State is involved, into the scale against all the inequalities which may result from any probable regulation by nine States, and who will say that the latter ought to preponderate? I have heard the different interest which the Eastern States have as Carriers pointed out as a ground of caution to the Southern States who have no bottoms of their own ag<sup>st</sup> their concurring hastily in retaliations on G. B. But will the present system of G. B. ever give the Southern States bottoms, and if they are not their own Carriers I s<sup>d</sup> suppose it no mark either of folly or incivility to give our custom to our brethren, rather than to those who have not yet entitled themselves to the name of friends.

In detailing these sentiments, I have nothing more in view than to prove the readiness with which I obey your requests. As far as they are just they must have been often suggested in the discussions of Congress on the subject. I can not even give them weight by saying that I have reason to believe they would be relished in the public Councils of this State. From the trials of which I have been a witness I augur that great difficulties will be encountered in every attempt to prevail on the Legislature to part with power. The thing itself is not only unpalatable, but the arguments which plead for it have not their full force on minds unaccustomed to consider the interests of the State as they are interwoven with those of the Confederacy much less as they may be affected by foreign politics, whilst those w<sup>ch</sup> plead ag<sup>st</sup> it are not only specious, but in their nature popular; and for that reason sure of finding patrons. Add to all this that the Mercantile interest which has taken the lead in rousing the public attention of other States, is in this so exclusively occupied in British Commerce that

what little weight they have will be most likely to fall into the opposite scale. The only circumstance which promises a favorable hearing to the meditated proposition of Cong<sup>s</sup> is that the power which it asks is to be exerted ag<sup>st</sup> G. B. and the proposition will consequently be seconded by the animosities which still prevail in a strong degree ag<sup>st</sup> her.

I Am, My Dear Sir Very Sincerely,  
Y<sup>R</sup>. Friend & Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange Aug. 20<sup>th</sup>. 1785.

Mad. Mss.

Dear Sir,—

Yours of the 18th of March never reached me till the 4th inst. It came by post from N. York, which it did not leave till the 21 of July. My last was dated in April, & went by Mr. Mazzei, who picked it up at N. York and promised to deliver it with his own hand.

The machinations of G. B. with regard to Commerce have produced much distress and noise in the Northern States, particularly in Boston, from whence the alarm has spread to New York & Phil<sup>a</sup>. Your correspondence with Cong<sup>s</sup> will no doubt have furnished you with full information on this head. I only know the general fact, and that the sufferers are everywhere calling for such augmentation of the power of Congress as may effect relief. How far the Southern States & Virginia in particular will join in this proposition cannot be foreseen. It is easy to foresee that the circumstances which in a confined view distinguish our situation from that of our brethren, will be laid hold of by the partizans of G. B, by those who are or affect to be jealous of Congress, and those who are interested in the present course of business, to give a wrong bias to our Councils. If anything should reconcile Virg<sup>a</sup> to the idea of giving Congress a power over her trade, it will be that this power is likely to annoy G. B. against whom the animosities of our Citizens are still strong. They seem to have less sensibility to their commercial interests; which they very little understand, and which the mercantile class here have not the same motives if they had the same capacity to lay open to the public, as that class have in the States North of us. The price of our Staple since the peace is another cause of inattention in the planters to the dark side of our commercial affairs. Should these or any other causes prevail in frustrating the scheme of the Eastern & Middle States of a general retaliation on G. B. I *1 tremble for the event. A majority of the States deprived of a regular remedy for their distresses by the want of a federal spirit in the minority must feel the strongest motives to some irregular experiments. The danger of such a crisis makes me surmise that the policy of G. B. results as much from the hope of effecting a breach in our Confederacy as of monopolizing our trade.*

Our internal trade is taking an arrangement from which I hope good consequences. Retail Stores are spread<sup>g</sup> all over the country, many of them carried on by native adventurers, some of them branched out from the principal Stores at the heads of navigation. The distribution of the business, however into the importing & the retail departments has not yet taken place. Should the port bill be established it will I think quickly add this amendment which indeed must in a little time follow of itself. It is the more to be wished for as it is the only radical cure for credit to the consumer which continues to be given to a degree which if not checked will turn the diffusive retail of merchandize into a nuisance. When the Shop keeper buys his goods of the

wholesale merchant, he must buy at so short a credit, that he can venture to give none at all.

You ask me to unriddle the *dissolution of the Comm<sup>ee</sup> of the States at Annapolis*. I am not sure that I am myself possessed fully of the causes *different members of Congress having differed in their accounts of the matter*. My conception of it is that *the abrupt departure of some of the Eastern delegates, which destroyed the quorum & which Dana is said to have been at the bottom of proceeded partly from irritations among the comm partly from dislike to the place of their session, and partly from an impatience to get home, which prevailed over their regard for their private characters, as well as for their public duty*.

Subsequent to the date of *mine in* which I gave my idea of *fayette* I had further opportunities of *penetrating his character*. Though *his foibles did not disappear* all the *favorable traits* presented themselves in a *stronger light on closer inspection*. He certainly possesses *talents which might figure in any line*. If *he is ambitious* it is rather of the *praise which virtue dedicates to merit* than of the *homage which fear renders to power* his *disposition is naturally warm & affectionate, and his attachment to the U. S. unquestionable*. Unless *I am grossly deceived*, you will find his *zeal sincere and useful*, whenever it can be *employed in behalf of the U. S. with [out] opposition to the essential interests of France*.

The opposition to the general assessment gains ground. At the *instance of some of its adversaries I drew up the remonstrance* herewith inclosed. It has been *sent thro' the medium of confidential persons in a number of the upper Counties*, and I am told will be pretty extensively signed. The presbyterian clergy, have at length espoused the side of the opposition, being moved either by *a fear of their laity or a jealousy of the episcopalians*. The mutual hatred of these sects has been much inflamed by the late Act incorporating the latter. *I am far from being sorry for it, as a coalition between them could alone endanger our religious rights, and a tendency to such an event had been suspected*. The fate of the Circuit Courts is uncertain. They are threatened with no small danger from the diversity of opinions entertained among the friends of some reform in that department. But the greatest danger is to be feared from those who mask a secret aversion to any reform under a zeal for such a one as they know will be rejected. The Potowmack Company are going on with very flattering prospects. Their subscriptions some time ago amounted to upwards of four-fifths of the whole sum. I have the pleasure also to find by an advertisement from the managers for James River that more than half the sum is subscribed for that undertaking, and that the subscribers are to meet shortly for the purpose of organizing themselves & going to work. I despair of seeing the Revisal taken up at the ensuing Session. The number of copies struck are so deficient (there being not above three for each County) and there has been such delay in distributing them (none of the Counties having rec<sup>d</sup> them till very lately & some probably not yet, tho' they were ready long ago,) that the principal end of their being printed has been frustrated. Our fields promise very short crops both of Corn & Tob<sup>o</sup>. The latter was much injured by the grass hopper & other insects; the former, somewhat by the bug in the Southern parts of the State, but both have suffered most from dry weather which prevails at present in this part of the Country, and has generally prevailed I understand in most other parts. It seems certain that no future

weather can make a great crop of either particularly of Tob<sup>o</sup>, so great a proportion of the hills being without plants in them & so many more with plants in them which must come to nothing. Notwithstanding this prospect, its price has fallen from 36s. to 32 & 30s. on James River & 28s. on Rappahannock. The scarcity of cash is one cause. 1*Harrison late Gov. was elected in Surry, whither he previously removed with his family a contest for the chair will no doubt ensue should he fail he will be for Congress.* I have not yet rec<sup>d</sup> any of the books which you have been so kind as to pick up for me, but expect their arrival daily, as you were probably soon after the date of your last apprised that I was withdrawn from the nomination which led you to suspend the forwarding them. I am invited by Col: Monroe to an option of rambles this fall, one of which is into the Eastern States. I wish much to accept so favorable an opportunity of executing the plan from which I was diverted last fall; but cannot decide with certainty whether it will be practicable or not. I have in conjunction with a friend here a project of interest on the anvil, which will carry me at least as far as Phil<sup>a</sup> or New York where I shall be able to take my final resolution.

Adieu. Yrs Sincerely.

[\[Back to Table of Contents\]](#)

## TO CALEB WALLACE. 1

Orange, Aug<sup>t</sup> 23<sup>d</sup>, 1785.

Mad. Mss.

Dr Sir,—

Your favour of the 12th of July was safely delivered to me by Mr. Craig. I accept with pleasure your proposed exchange of Western for Eastern intelligence and though I am a stranger to parental ties can sufficiently conceive the happiness of which they are a source to congratulate you on your possession of two fine sons & a Daughter. I do not smile at the Idea of transplanting myself into your wilderness. Such a change of my abode is not indeed probable yet I have no Local partialities which can keep me from any place which promises the greatest real advantages, but if such a removal was not even possible I should nevertheless be ready to communicate as you desire my Ideas towards a constitution of Government for the State in embryo. I pass over the general policy of the measure which calls for such a provision. It has been unanimously embraced by those who being most interested in it must have best considered it, & will I dare say be with equal unanimity acceded to by the other party which is to be consulted. I will first offer some general remarks on the Subject, & then answer your several queries.

1. *The Legislative Department* ought by all means, as I think to include a Senate constituted on such principles as will give *wisdom* and *steadiness* to legislation. The want of these qualities is the grievance complained of in all our republics. The want of *fidelity* in the administration of power having been the grievance felt under most Governments, and by the American States themselves under the British Government, it was natural for them to give too exclusive an attention to this primary attribute. The Senate of Maryland with a few amendments is a good model. Trial has I am told verified the expectations from it. A Similar one made a part of our constitution as it was originally proposed but the inexperience & jealousy of our then Councils, rejected it in favor of our present Senate a worse could hardly have been substituted & yet, bad as it is, it is often a useful bit in the mouth of the house of Delegates. Not a single Session passes without instances of sudden resolutions by the latter of which they repent in time to intercede privately with the Senate for their Negative. For the other branch models enough may be found care ought however to be taken against its becoming too numerous, by fixing the number which it is never to exceed. The quorum, wages, and privileges of both branches ought also to be fixed. A majority seems to be the natural quorum. The wages of the members may be made payable for — years to come in the medium value of wheat for years preceding as the same shall from period to period be rated by a respectable Jury appointed for that purpose by the Supreme Court. The privileges of the members ought not in my opinion to extend beyond an exemption of their persons and equipage from arrests during the time of their actual service. If it were possible it would be well to define the extent of the Legislative power but the nature of it seems in many respects to be indefinite. It is very practicable however to enumerate the essential exceptions. The Constitution may



expressly restrain them from meddling with religion—from abolishing Juries—from taking away the Habeas corpus—from forcing a citizen to give evidence against himself—from controuling the press—from enacting retrospective laws at least in criminal cases, from abridging the right of suffrage, from taking private property for public use without paying its full Value from licensing the importation of Slaves, from infringing the confederation, &c &c.

As a further security against fluctuating & indigested laws the Constitution of New York has provided a Council of Revision. I approve much of such an institution & believe it is considered by the most intelligent citizens of that State as a valuable safeguard both to public interests & to private rights. Another provision has been suggested for preserving System in Legislative proceedings which to some may appear still better. It is that a standing committee composed of a few select & skilful individuals should be appointed to prepare bills on all subjects which they may judge proper to be submitted to the Legislature at their meetings & to draw bills for them during their Sessions. As an antidote both to the jealousy & danger of their acquiring an improper influence they might be made incapable of holding any other Office Legislative, Executive, or Judiciary. I like this Suggestion so much that I have had thoughts of proposing it to our Assembly, who give almost as many proofs as they pass laws of their need of some such Assistance.

2 *The Executive Department.* Though it claims the 2<sup>d</sup> place is not in my estimation entitled to it by its importance all the great powers which are properly executive being transferred to the fœderal Government. I have made up no final opinion whether the first Magistrate should be chosen by the Legislature or the people at large or whether the power should be vested in one man assisted by a council or in a council of which the President shall be only primus inter pares. There are examples of each in the U. States and probably advantages & disadvantages attending each. It is material I think that the number of members should be small & that their Salaries should be either unalterable by the Legislature or alterable only in such manner as will not affect any individual in place. Our Executive is the worst part of a bad Constitution. The Members of it are dependent on the Legislature not only for their wages but for their reputation and therefore are not likely to withstand usurpations of that branch; they are besides too numerous and expensive, their organization vague & perplexed & to crown the absurdity some of the members may without any new appointment continue in Office for life contrary to one of the Articles of the Declaration of Rights.

3<sup>d</sup> *The Judiciary Department* merits every care Its efficacy is Demonstrated in G. Brittain where it maintains private Right against all the corruptions of the two other departments & gives a reputation to the whole Government which it is not in itself entitled to. The main points to be attended to are 1. that the Judges should hold their places during good behavior 2. that their Salaries should be either fixed like the wages of the Representatives or not be alterable so as to affect the Individuals in office. 3 that their Salaries be liberal. The first point is obvious; without the second the independence aimed at by the first will be ideal only; without the 3<sup>d</sup> the bar will be superior to the bench which destroys all security for a Systematick administration of Justice. after securing these essential points, I should think it unadvisable to descend so far into detail as to bar any future Modification of this department which

experience may recommend. An enumeration of the Principal courts with Power to the Legislature to Institute inferior Courts may suffice. The Admiralty business can never be extensive in your situation and may be referred to one of the other Courts. With regard to a Court of Chancery as distinct from a Court of Law, the reasons of Lord Bacon on the affirmative side outweigh in my Judgment those of Lord Kaimes on the other side. Yet I should think it best to leave this important question to be decided by future lights without tying the hands of the Legislature one way or the other. I consider our county courts as on a bad footing and would never myself consent to copy them into another constitution.

All the States seem to have seen the necessity of providing for Impeachments but none of them to have hit on an unexceptionable Tribunal. In some the trial is referred to the Senate in others to the Executive, in others to the Judiciary department it has been suggested that a tribunal composed of members from each Department would be better than either and I entirely concur in that opinion. I proceed next to your queries.

1. "Whether is a representation according to numbers, or property, or in a joint proportion to both, the most Safe? or is a representation by counties preferable to a more equitable mode that will be difficult to adjust?" Under this question may be considered 1. the right of Suffrage. 2 the mode of suffrage. 3 the Plan of representation. As to the 1. I think the extent which ought to be given to this right a matter of great delicacy and of critical importance. To restrain it to the land holders will in time exclude too great a proportion of citizens; to extend it to all citizens without regard to property, or even to all who possess a pittance may throw too much power into hands which will either abuse it themselves or sell it to the rich who will abuse it. I have thought it might be a good middle course to narrow this right in the choice of the least popular, & to enlarge it in that of the more popular branch of the Legislature. There is an example of this Distinction in N. Carolina if in none of the other States. How it operates or is relished by the people I cannot say. It would not be surprising if in the outset at least it should offend the sense of equality which reigns in a free Country. In a general view I see no reason why the rights of property which chiefly bears the burden of Government & is so much an object of Legislation should not be respected as well as personal rights in the choice of Rulers. It must be owned indeed that property will give influence to the holder though it should give him no legal privileges and will in general be safe on that as well as on other Accounts especially if the business of legislation be guarded with the provisions hinted at 2 As to the mode of suffrage I lean strongly to that of the ballot, notwithstanding the objections which lie against it. It appears to me to be the only radical cure for those arts of Electioneering which poison the very fountain of Liberty. The States in which the Ballot has been the Standing mode are the only instances in which elections are tolerably chaste and those arts in disgrace. If it should be thought improper to fix this mode by the constitution I should think it at least necessary to avoid any constitutional bar to a future adoption of it.<sup>1</sup> 3 By the Plan of representation I mean 1. the classing of the Electors 2 the proportioning of the representatives to each class. The first cannot be otherwise done than by geographical description as by Counties. The second may easily be done in the first instance either by comprising within each county an equal number of electors; or by proportioning the number of representatives of each county to its number of electors. The difficulty arises from the

disproportionate increase of electors in different Counties. There seem to be two methods only by which the representation can be equalized from time to time. The 1<sup>st</sup> is to change the bounds of the counties; the 2<sup>d</sup>. to change the number of representatives allotted to them respectively, as the former would not only be most troublesome & expensive but would involve a variety of other adjustments the latter method is evidently the best. Examples of a Constitutional provision for it exists in several of the States. In some it is to be executed periodically in others, pro re nata. The latter seems most accurate and very practicable I have already intimated the propriety of fixing the number of representatives, which ought never to be exceeded I should suppose 150 or even 100, might safely be made the ne plus ultra for Kentucky.

2. "Which is to be preferred an Annual, Triennial, or Septennial Succession to Offices or frequent elections without limitations in choice or that officers when chosen should continue quamdiu se bene gesserint?" The rule ought no doubt to be different in the different Departments of power. For one part of the Legislature Annual Elections will I suppose be held indispensably though some of the ablest Statesmen & soundest Republicans in the U. States are in favor of triennial. The great Danger in departing from annual elections in this case lies in the want of some other natural term to limit the departure. For the other branch 4 or 5 years may be the period. For neither branch does it seem necessary or proper to prohibit an indefinite re-eligibility. With regard to the Executive if the elections be frequent & particularly if made as to any member of it by the people at large a re-eligibility cannot I think be objected to, if they be unfrequent, a temporary or perpetual incapacitation according to the degree of unfrequency at least in the case of the first Magistrate may not be amiss. As to the Judiciary department enough has been said & as to the Subordinate officers civil & Military nothing need be said more than that a regulation of their appointments may under a few restrictions be safely trusted to the Legislature.

3. "How far may the same person with propriety be employed in the different departments of Government in an infant country where the counsel of every individual may be needed?" Temporary deviations from fundamental principles are always more or less dangerous. When the first pretext fails, those who become interested in prolonging the evil will rarely be at a loss for other pretexts. The first precedent too familiarises the people to the irregularity, lessens their veneration for those fundamental principles, & makes them a more easy prey to ambition & self Interest. Hence it is that abuses of every kind when once established have been so often found to perpetuate themselves. In this caution I refer chiefly to an improper mixture of the three great Departments within the State. A Delegation to Congress is I conceive compatible with either.

4. "Should there be a periodical review of the Constitution?" Nothing appears more eligible in theory nor has sufficient trial perhaps been yet made to condemn it in practice. Pennsylvania has alone adopted the expedient. Her citizens are much divided on the subject of their Constitution in general & probably on this part of it in particular. I am inclined to think though am far from being certain, that it is not a favorite part even with those who are fondest of their Constitution. another plan has been thought of which might perhaps Succeed better and would at the same time be a safeguard to the equilibrium of the constituent Departments of Government. This is

that a Majority of any two of the three departments should have authority to call a plenipotentiary convention whenever they may think their constitutional powers have been Violated by the other Department or that any material part of the Constitution needs amendment. In your situation I should think it both imprudent & indecent not to leave a door open for at least one revision of your first Establishment, imprudent because you have neither the same resources for supporting nor the same lights for framing a good establishment now as you will have 15 or 20 Years hence, indecent because an handful of early settlers ought not to preclude a populous Country from a choice of the Government under which they & their posterity are to live. Should your first Constitution be made thus temporary the objections against an intermediate union of offices will be proportionably lessened. Should a revision of it not be made thus necessary & certain there will be little probability of its being ever revised. Faulty as our Constitution is as well with regard to the Authority which formed it as to the manner in which it is formed the Issue of an experiment has taught us the difficulty of amending it: & although the issue might have proceeded from the unseasonableness of the time yet it may be questioned whether at any future time the greater depth to which it will have stricken its roots will not counterbalance any more auspicious circumstances for overturning it.

5 & 6 “Or will it be better unalterably to fix some leading Principles in Government and make it consistant for the Legislature to introduce such changes in lesser matters as may become expedient? can censors be provided that will impartially point out deficiencies in the Constitution & the Violations that may happen.”

Answers on these points may be gathered from what has been already said.

I have been led to offer my sentiments in this loose form rather than to attempt a delineation of such a Plan of government as would please myself not only by my Ignorance of many local circumstances & opinions which must be consulted in such a work but also by the want of sufficient time for it. At the receipt of your letter I had other employment and what I now write is in the midst of preparations for a Journey of business which will carry me as far as Philadelphia at least & on which I shall set out in a day or two.

I am sorry that it is not in my power to give you some satisfactory information concerning the Mississippi. A Minister from Spain has been with Congress for some time & is authorised as I understand to treat on whatever subjects may concern the two nations. If any explanations or propositions have passed between him & the Minister of Congress, they are as yet in the list of Cabinet Secrets. as soon as any such shall be made Public & come to my knowledge, I shall take the first opportunity of transmitting them. Wishing you & your family all happiness,

I Am, D<sup>R</sup> Sir,  
Your Friend & Servant.

The Constitutions of the several States were printed in a small Volume a year or two ago by order of Cong<sup>S</sup> a perusal of them need not be recommended to you. Having but

a single copy I cannot supply you It is not improbable that you may be already possessed of one. The revisal of our laws by Jefferson, Wythe & Pendleton beside their Value in improving the legal code may suggest something worthy of being attended to in framing a Constitution.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup> Oct<sup>r</sup> 3d, 1785.

Mad. Mss.

Dear Sir,—

In pursuance of the plan intimated in my last I came to this city about three weeks ago, from which I continued my trip to New York. I returned last night and in a day or two shall start for Virginia. Col. Monroe had left Philad<sup>a</sup>. a few days before I reached it, on his way to a treaty to be held with the Indians about the end of this month on the Wabash. If a visit to the Eastern States had been his choice, short as the time would have proved, I should have made an effort to attend him. As it is I must postpone that gratification, with a purpose however of embracing it on the first convenient opportunity. Your favour of the 11 May by Mons<sup>r</sup>. Doradour inclosing your Cypher arrived in Virg<sup>a</sup>. after I left it, and was sent after me to this place. Your notes which accompanied it, remained behind, and consequently I can only now say on that subject, that I shall obey your request on my return, which my call to Richmond will give me an early opportunity of doing. During my stay at New York I had several conversations with the Virg<sup>a</sup>. Delegates, but with few others, on the affairs of the confederacy. I find with much regret that these are as yet little redeemed from the confusion which has so long mortified the friends to our national honor and prosperity. Congress have kept the Vessel from sinking, but it has been by standing constantly at the pump, not by stopping the leaks which have endangered her. All their efforts for the latter purpose have been frustrated by the selfishness or perverseness of some part or other of their constituents. The desiderata most strongly urged by our past experience & our present situation are 1. a final discrimination between such of the unauthorised expences of the States as ought to be added to the common debt, and such as ought not. 2. a constitutional apportionment of the common debt, either by a valuation of the land, or a change of the article w<sup>ch</sup> requires it. 3. a recognition by the States of the authority of Congress to enforce payment of their respective quotas. 4. a grant to Congress of an adequate power over trade. It is evident to me that the first object will never be effected in Congress, because it requires in those who are to decide it the spirit of impartial judges, whilst the spirit of those who compose Congress is rather that of advocates for the respective interests of their constituents. If this business were referred to a Commission filled by a member chosen by Congress out of each State, and sworn to impartiality, I should have hopes of seeing an end of it. The 2<sup>d</sup> object affords less ground of hope. The execution of the 8<sup>th</sup> art of Confederation is generally held impracticable, and R. Island, if no other State, has put its veto on the proposed alteration of it. Until the 3<sup>d</sup>. object can be obtained the Requisitions of Congress will continue to be mere calls for voluntary contributions, which every State will be tempted to evade, by the uniform experience that those States have come off best which have done so most. The present plan of federal Government reverses the first principle of all Government. It punishes not the evil-doers, but those that do well. It may be considered I think as a fortunate circumstance for the U. S. that the use of coercion, or such provision as would render

the use of it unnecessary, might be made at little expence and perfect safety. A single frigate under the orders of Congress could make it the interest of any one of the Atlantic States to pay its just Quota. With regard to such of the Ultramontane States as depend on the trade of the Mississippi, as small a force would have the same effect; whilst the residue trading thro' the Atlantic States might be wrought upon by means more indirect indeed but perhaps sufficiently effectual.

The fate of the 4<sup>th</sup> object is still suspended. The Recoendations of Cong<sup>s</sup>. on this subject past before your departure, have been positively complied with by few of the States I believe; but I do not learn that they have been rejected by any. A proposition has been agitated in Congress, and will I am told be revived, asking from the States a general & permanent authority to regulate trade, with a proviso that it shall in no case be exercised without the assent of *eleven* States in Congress. The Middle States favor the measure, the Eastern are zealous for it, the Southern are divided. 1of the *Virginia delegation* the *president* 2is an inflexible adversary, *Grayson unfriendly* and *Monroe & Hardy warm on the opposite side*. If the proposition should pass Cong<sup>s</sup>. its fate will depend much on the reception it may find in Virg<sup>a</sup>. and this will depend much on the part which may be taken by a few members of the Legislature. The prospect of its being levelled ag<sup>st</sup> G. Britain will be most likely to give it popularity. In this suspence of a general provision for our commercial interests, the more suffering States are seeking relief from partial efforts which are less likely to obtain it than to drive their trade into other channels, and to kindle heart-burnings on all sides. Massachusetts made the beginning, Penn<sup>a</sup> has followed with a catalogue of duties on foreign goods & tonnage, which could scarcely be enforced against the smuggler, if N. Jersey, Delaware, & Maryland were to co-operate with her. The avowed object of these duties is to encourage domestic manufactures, and prevent the exportation of coin to pay for foreign. The Legislature had previously repealed the incorporation of the bank, as the cause of the latter & a great many other evils. S. Carolina I am told is deliberating on the distresses of her commerce and will probably concur in some general plan; with a proviso, no doubt against any restraint from importing slaves, of which they have received from Africa since the peace about twelve thousand. She is also deliberating on the emission of paper money, & it is expected she will legalize a suspension of Judicial proceedings which has been already effected by popular combinations. The pretext for these measures is the want of specie occasioned by the unfavorable balance of trade. Your introduction of Mr. T. Franklin has been presented to me. The arrival of his Grandfather has produced an emulation among the different parties here in doing homage to his character. He will be unanimously chosen president of the State and will either restore to it an unexpected quiet or lose his own. It appears from his answer to some applications that he will not decline the appointment. On my journey I called at Mount Vernon & had the pleasure of finding the Gen<sup>l</sup>. in perfect health. He had just returned from a trip up the Potowmac. He grows more & more sanguine as he examines further into the practicability of opening its navigation. The subscriptions are compleated within a few shares, and the work is already begun at some of the lesser obstructions. It is overlooked by Rhumsey, the inventor of the boats which I have in former letters mentioned to you: He has not yet disclosed his secret. He had of late nearly finished a boat of proper size, w<sup>ch</sup>. he meant to have exhibited, but the house which contained it & materials for others was consumed by fire. He assured the Gen<sup>l</sup>. that the enlargement of his machinery did not

lessen the prospect of utility afforded by the miniature experiments. The Gen<sup>l</sup>. declines the shares voted him by the Assembly, but does not mean to withdraw the money from the object which it is to aid, and will even appropriate the future tolls I believe to some useful public establishment if any such can be devised that will both please himself & be likely to please the State. This is accompanied by a letter from our amiable friend Mrs. Trist to Miss Patsy. She got back safe to her friends in Aug<sup>st</sup>. & is as well as she has generally been, but her cheerfulness seems to be rendered less uniform than it once was by the scenes of adversity through which fortune has led her. Mrs. House is well & charges me not to omit her respectful & affect<sup>e</sup> compliments to you.

I Remain D<sup>R</sup> Sir, Y<sup>Rs</sup> &C



[\[Back to Table of Contents\]](#)

## MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS.<sup>1</sup>

To The Honorable The General Assembly  
Of  
The Commonwealth Of Virginia.  
A Memorial And Remonstrance.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled “A Bill establishing a provision for Teachers of the Christian Religion,” and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, “that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence.”<sup>1</sup> The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man’s right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably

maintained; but more especially, that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of [the] noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If “all men are by nature equally free and independent,”<sup>1</sup> all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an “*equal* title to the free exercise of Religion according to the dictates of conscience.”<sup>2</sup> Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to men, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be intrusted with the care of public worship? Ought their Religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet pre-eminencies over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form,

from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs, that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed that “Christian forbearance,<sup>1</sup> love and charity,” which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of levelling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defence, against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the Government, on its general authority.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens:

and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." But the representation must be made equal, before the voice either of the Representatives or of the Counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation of Government,"<sup>1</sup> it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independant and hereditary assembly: or we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re]dound to their own praise, and may establish more firmly the liberties, the prosperity, and the Happiness of the Commonwealth.

[\[Back to Table of Contents\]](#)

## TO GENERAL WASHINGTON.

Richmond Nov<sup>r</sup> 11, 1785.

Wash. Mss.

Dear Sir,—

I rec<sup>d</sup>. your favor of the 29<sup>th</sup>. Ult: on thursday. That by Col. Lee had been previously delivered. Your letter for the Assembly was laid before them yesterday. I have reason to believe that it was received with every sentiment which could correspond with yours. Nothing passed from which any conjecture could be formed as to the objects which would be most pleasing for the appropriation of the fund. The disposition is I am persuaded much stronger to acquiesce in your choice whatever it may be than to lead or anticipate it; and I see no inconveniency in your taking time for a choice that will please yourself. The letter was referred to a committee which will no doubt make such a report as will give effect to your wishes.

Our Session commenced very inauspiciously with a contest for the chair, which was followed by a rigid scrutiny into Mr. Harrison's election in his county. He gained the chair by a majority of 6 votes and retained his seat by a majority of still fewer. His residence was the point on which the latter question turned. Doct Lee's election was questioned on a similar point, and was also established; but it was held to be vacated by his acceptance of a lucrative post under the United States. The House have engaged with some alacrity in the consideration of the Revised Code prepared by Mr. Jefferson Mr. Pendleton & Mr. Wythe. The present temper promises an adoption of it in substance. The greatest danger arises from its length compared with the patience of the members. If it is persisted in it must exclude several matters which are of moment, but I hope only for the present Assembly. The pulse of the H. of D. was felt on thursday with regard to a general manumission, by a petition presented on that subject. It was rejected without dissent, but not without an avowed patronage of its principle by sundry respectable members. A motion was made to throw it under the table, which was treated with as much indignation on one side as the petition itself was on the other. There are several petitions before the House against any step towards freeing the Slaves, and even praying for a repeal of the law which licences particular manumissions. The Merchants of several of our Towns have made representations on the distress of our commerce, which have raised the question whether relief shall be attempted by a reference to Cong<sup>s</sup>, or by measures within our own compass. On a pretty full discussion it was determined by a large majority that the power over trade ought to be vested in Congress, under certain qualifications. If the qualifications suggested & no others should be annexed, I think they will not be subversive of the principle tho' they will, no doubt, lessen its utility. The Speaker, Mr. M. Smith & Mr. Braxton, are the champions against Congress. Mr. Thurston & Mr. White have since come in, and I fancy I may set down both as auxiliaries. They are, however not a little puzzled by the difficulty of substituting any practicable regulations within ourselves. Mr. Braxton proposed two that did not much aid his side of the question: the 1. was that all British vessels from the W. Indies should be

excluded from our ports; the 2. that no Merchant should carry on trade here until he s<sup>d</sup> have been a resident — years. Unless some plan free from objection can be devised for this State, its patrons will be reduced clearly to the dilemma of acceding to a general one, or leaving our trade under all its present embarrassments. There was some little skirmishing on the ground of public faith, which leads me to hope that its friends have less to fear than was surmised. The Assize & Port Bills have not yet been awakened. The Senate will make a House to-day for the first time.

With the greatest respect & regard I have the honor to be D<sup>r</sup> Sir

Y<sup>R</sup> Obed<sup>T</sup> & Very Le Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Rich<sup>d</sup>. Nov<sup>r</sup>. 18, 1785.

Mad. Mss.

Hon<sup>D</sup> Sir,—

I rec<sup>d</sup> y<sup>rs</sup> by Capt. Barbour who I hope will enquire as to Turpin in the land office. I wish you rather to confide such business to friends coming here who can be relied on than to refer it to me. I am so little master of my time and the office is removed so far out of the way that I cannot be relied on. I will endeavor to get the Journals for you soon. The price of Tob<sup>o</sup> forbids the sale of your Hhd. The Assembly have made some progress in the Revisal, and I hope will go thro' it. Public cred<sup>t</sup> seems to have more friends and paper money more adversaries than I had expected.—Delegates to Cong<sup>s</sup> for 1786. R. H. Lee, W<sup>m</sup>. Grayson J<sup>s</sup>. Monroe, H. Lee Jr. Edw<sup>d</sup>. Carrington Councilor Carter Bratton.

Y<sup>R</sup> Aff<sup>E</sup> Son

J. Madison Jr.



[\[Back to Table of Contents\]](#)

## Notes For Speech In The Virginia House Of Delegates November, 1785.[1](#)

### COMMERCIAL REGULATIONS.

Mad. Mss.

Gen<sup>l</sup>. reg<sup>l</sup>. necessary whether the object be to

1. counteract foreign plans
2. encourage ships & seamen
3. — — ——— manufactures
4. Revenue
5. frugality. [articles of luxury most easily run from State to State]
6. Embargo's in war—case of Delaware in late war.[1](#)

necessary to prevent contention am<sup>g</sup> States.

1. Case of French provinces, Neckar says 23,000 patrols employd. ag<sup>st</sup> internal contraband.[2](#)
2. Case of Mass<sup>ts</sup>. & Con<sup>t</sup>.
3. Case of N. Y. & N. J.
4. P<sup>a</sup> & Delaware
5. V<sup>a</sup>. & Mary<sup>d</sup>. late regulation
6. Irish propositions

necessary to Justice & true Policy

1. Con<sup>t</sup> & N Hamp:
2. N. J.
3. N. C.
4. Western Country.

Necessary as a system convenient & intelligible to foreigners trading to U. S.  
Necessary as within reason of federal constitution, the regulation of trade being as imposãble by states as peace, war, amb<sup>ts</sup> &c.

Treaties of coerce ineffectual without it

Safe with reg<sup>d</sup> to the liberties of the States.

1. Cong<sup>s</sup> may be trusted with trade as well as war &c
2. power of Treaties involve the danger if any—
3. Controul of States over Cong<sup>s</sup>.
4. example of amphyctionic league, acean do. Switzerl<sup>d</sup>., Holland, Germany.
5. peculiar situation of U. S. increase the repellant power of the States. Essential to preserve fed<sup>l</sup> Constitution.

1. declension of fed<sup>l</sup> Gov<sup>t</sup>.
2. inadequacy to end, must lead states to substitute some other policy no institution remaining long when it ceases to be useful, &c.
3. policy of G. B. to weaken union.

Consequences of dissolution of confederacy. 1. Appeal to sword in every petty squabble. 2. Standing armies beginning with weak & jealous states. 3. perpetual taxes. 4. sport of foreign politics. 5, 6. blast glory of Revolution.

[\[Back to Table of Contents\]](#)

## TO GENERAL WASHINGTON.

Richmond Dec<sup>r</sup> 9, 1785.

Wash. Mss.

Dear Sir,—

Your favor of the 30 Nov<sup>r</sup>. was received a few days ago. This would have followed much earlier the one which yours acknowledges had I not wished it to contain some final information relative to the commercial propositions. The discussion of them has consumed much time and though the absolute necessity of some such general system prevailed over all the efforts of its adversaries in the first instance, the stratagem of limiting its duration to a short term has ultimately disappointed our hopes. I think it better to trust to further experience and even distress, for an adequate remedy, than to try a temporary measure which may stand in the way of a permanent one, and confirm that transatlantic policy which is founded on our supposed distrust of Congress and of one another. Those whose opposition in this case did not spring from illiberal animosities towards the Northern States, seem to have been frightened on one side at the idea of a perpetual and irrevocable grant of power, and on the other flattered with a hope that a temporary grant might be renewed from time to time, if its utility should be confirmed by the experiment. But we have already granted perpetual and irrevocable powers of a more extensive nature than those now proposed and for reasons not stronger than the reasons which urge the latter. And as to the hope of renewal it is the most visionary one that perhaps ever deluded men of sense. Nothing but the peculiarity of our circumstances could ever have produced those sacrifices of sovereignty on which the federal Government now rests. If they had been temporary, and the expiration of the term required a renewal at this crisis, pressing as the crisis is, and recent as is our experience of the value of the confederacy, sure I am that it would be impossible to revive it. What room have we then to hope that the expiration of temporary grants of commercial powers would always find a unanimous disposition in the States to follow their own example. It ought to be remembered too that besides the caprice, jealousy, and diversity of situations, which will be certain obstacles in our way, the policy of foreign nations may hereafter imitate that of the Macedonian Prince who effected his purposes against the Grecian confederacy by gaining over a few of the leading men in the smaller members of it. Add to the whole, that the difficulty now found in obtaining a unanimous concurrence of the States in any measure whatever must continually increase with every increase of their number, and perhaps in a greater ratio, as the Ultramontane States may either have or suppose they have a less similitude of interests to the Atlantic States than these have to one another.—The propositions however have not yet received the final vote of the House, having lain on the table for some time as a report from the Com<sup>e</sup> of the whole. The question was suspended in order to consider a proposition which had for its object a meeting of Politico-commercial Coissrs from all the States for the purpose of digesting and reporting the requisite augmentation of the power of Congress over trade. What the event will be cannot be foreseen. The friends of the original propositions are I am told rather increasing, but I despair of a majority, in any event for a longer term than 25

years for their duration. The other scheme will have fewer enemies and may perhaps be carried. It seems naturally to grow out of the proposed appointment of Cosrs for Virg<sup>a</sup>. & Mary<sup>d</sup>. concerted at Mount Vernon, for keeping up harmony in the commercial regulations of the two States. Mary<sup>d</sup> has ratified the report, but has invited into the plan Delaware & Pen<sup>a</sup>, who will naturally pay the same compliment to their neighbours &c. &c. Besides the general propositions on the subject of trade, it has been proposed that some intermediate measures should be taken by ourselves, and a sort of navigation Act will I am apprehensive be attempted. It is backed by the mercantile interest of most of our towns except Alexandria, which alone seems to have liberality or light on the subject. It was refused even to suspend the measure on the concurrence of Mary<sup>d</sup>. or N. Carolina. This folly however cannot one would think brave the ruin which it threatens to our Merch<sup>ts</sup>, as well as people at large, when a final vote comes to be given.

We have got thro' a great part of the revisal, and might by this time have been at the end of it had the time wasted in disputing whether it could be finished at this Session been spent in forwarding the work. As it is we must content ourselves with passing a few more of the important bills, leaving the residue for our Successors of the next year. As none of the bills passed are to be in force till Jan<sup>y</sup>., 1787, and the residue unpassed will probably be least disputable in their nature, this expedient, though little eligible, is not inadmissible. Our public credit has had a severe attack and a narrow escape. As a compromise it has been necessary to set forward the half tax till March; and the whole tax of Sep<sup>r</sup> next till Nov<sup>r</sup>. ensuing. The latter postponement was meant to give the planters more time to deal with the Merch<sup>t</sup>. in the sale of their Tob<sup>o</sup>., and is made a permanent regulation. The Assize bill is now depending. It has many enemies and its fate is precarious. My hopes however prevail over my apprehensions. The fate of the Port bill is more precarious. The failure of an interview between our Cossrs and Comssrs on the part of N. Carolina has embarrassed the projected Canal between the waters of the two States. If N. C. were entirely well disposed the passing an Act suspended on & referred to her legislature would be sufficient, and this course must I suppose be tried, though previous negotiation would have promised more certain success.—Kentucky has made a formal application for independence. Her memorial has been considered and the terms of separation fixed by a Com<sup>e</sup>. of the whole. The substance of them is that all private rights & interests derived from the laws of Virginia shall be secured that the unlocated lands shall be applied to the objects to which the laws of V<sup>a</sup>. have appropriated them—that nonresidents shall be subjected to no higher taxes than residents—that the Ohio shall be a co<sup>m</sup>on highway for Citizens of the U. S. and the jurisdiction of Kentucky & Virg<sup>a</sup>., as far as the remaining territory of the latter will lie thereon, be concurrent only with the new States on the opposite Shore—that the proposed State shall take its due share of our State debts—and that the separation shall not take place unless these terms shall be approved by a Convention to be held to decide the question, nor until Cong<sup>s</sup> shall assent thereto, and fix the terms of their admission into the Union. The limits of the proposed State are to be the same with the present limits of the district. The apparent coolness of the Representatives of Kentucky as to a separation since these terms have been defined indicates that they had some views which will not be favored by them. They disliked much to be hung up on the will of Congress.

I Am D<sup>R</sup>. Sir With The Highest Esteem And  
Unfeigned Regard Y<sup>R</sup>. Obed<sup>T</sup>. & Hbl<sup>E</sup>. Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Rich<sup>d</sup>, Dec<sup>r</sup> 9, 1785.

Mad. Mss.

Dear Sir,—

Supposing that you will be at New York by the time this reaches it I drop a few lines for the post of to-day. M<sup>r</sup>. Jones tells me he informed you that a substitute had been brought forward to the commercial propositions which you left on the carpet. The subject has not since been called up. If any change has taken place in the mind of the House, it has not been unfavorable to the idea of confiding to Congress a power over trade. I am far from thinking however that a perpetual power can be made palatable at this time. It is more probable that the other idea of a Convention of Commiss<sup>rs</sup>. from the States for deliberating on the state of commerce and the degree of power which ought to be lodged in Congress, will be attempted. Should it fail in the House, it is possible that a revival of the printed propositions with an extension of their term to twentyfive years, will be thought on by those who contend that something of a general nature ought to be done. My own opinion is unaltered. The propositions for a State effort have passed and a bill is ordered in, but the passage of the bill will be a work of difficulty & uncertainty; many having acquiesced in the preliminary stages who will strenuously oppose the measure in its last stages. No decisive vote has been yet taken on the Assize bill. I conceive it to be in some danger, but that the chance is in its favour. The case of the British debts will be introduced in a day or two. We have got through more than half of the Revisal. The Criminal bill has been assailed on all sides. M<sup>r</sup>. Mercer has proclaimed unceasing hostility against it. Some alterations have been made & others probably will be made, but I think the main principle of it will finally triumph over all opposition. I had hoped that this Session w<sup>d</sup> have finished the code, but a vote ag<sup>st</sup>. postponing the further consideration of it till the next, was carried by so small a Majority that I perceive it will be necessary to contend for nothing more than a few of the more important bills leaving the residue of them for another year. My proposed amendment to the report on the Memorial of Kentucky, was agreed to in a Coittee of the whole without alteration, and with very few dissents. It lies on the table for the ratification of the House. The members from that district have become extremely cold on the subject of an immediate separation. The half tax is postponed till March & the Sept<sup>r</sup>. tax till Nov<sup>r</sup>. next. Not a word has passed in the House as to a paper emission. I wish to hear from you on your arrival at N. Y. and to receive in particular whatever you may be at liberty to disclose with regard to the Treaty of peace, &c with G. B. M<sup>r</sup>. Jones wishes you to accept this as on his acc<sup>t</sup>. as well as mine. he sent C. Griffins order on the bank by the last post and hopes you rec<sup>d</sup>. it at Fred<sup>g</sup>. Col. Grayson will no doubt have left you. I have omitted for some time writing to him on a supposition that I should be too late.

I Am D<sup>R</sup>. Sir  
Y<sup>Rs</sup>. Affe<sup>Ly</sup>.

[\[Back to Table of Contents\]](#)

## TO AMBROSE MADISON.1

Richmond, Dec<sup>r</sup>. 15, 1785.

D<sup>R</sup>. Bro<sup>R</sup>.,—

I wrote to my father a day or two ago by Col: Burnley to which I refer. The principal step since taken by the H. of Delegates has been the rejection of a bill on which the assize scheme depended. The majority consisted of 63 ag<sup>st</sup>. 49. Yesterday the vote of the Speaker decided in the affirmative a resolution to repeal the act which permits masters to free their slaves.2 I hope the bill which must follow on the subject may be less successful. Many who concurred in the Resolution will probably be content finally with some amendment of the law in favor of creditors. Should it prove otherwise this retrograde step with regard to an emancipation will not only dishonor us extremely but hasten the event which is dreaded by stimulating the efforts of the friends to it. The residue of the Revisal from No. 65 will be put off, except the Religious Bill and a few others. Leave was given yesterday for a bill in favor of British Creditors, but not without proofs that it will be opposed in every stage of its progress thro' the House. The price of Tob<sup>o</sup>. is not much, if at all changed. . . .

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Dec<sup>r</sup>. 17, 1785.

Mad. Mss.

Dear Sir,—

Since my last by the preceding post the fate of the assize laws has been determined by a negative in the H. of Delegates on the Bill on which its execution depended. The majority consisted of 63 ag<sup>st</sup> 49. A reform of the County Courts is the substitute proposed by the adversaries of the Assize, and if it can be put into any rational shape will be received by the other side as auxiliary to the Assize plan which may be resumed at another Session. It is surmised that the Senate will not part with this plan in any event, and as the law passed at the last Session, unless repealed or suspended, stops the proceedings of the Gen<sup>l</sup>. Court after the 1<sup>st</sup>. day of Jan<sup>y</sup>. A bill must be sent to the Senate which will give them an opportunity of proposing some amendment which may revive the question at the present Session. Our progress in the Revisal has been stopped by the waste of time produced by the inveterate and prolix opposition of its adversaries, & the approach of Christmas. The Bill proportioning crimes & punishments was the one at which we stuck after wading thro' the most difficult parts of it. A few subsequent bills however were excepted from the postponement. Among these was the Bill for establishing Religious freedom, which has got thro' the H. of Delegates without alteration, though not without warm opposition. Mr. Mercer & Mr. Corbin were the principal Combatants against it. Mr. Jones is well. With sincerity, I am

Y<sup>R</sup>. Aff<sup>C</sup> Friend.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Dec<sup>r</sup> 24, 1785.

Mad. Mss.

Dear Sir,—

The proceedings of the Assembly since my last, dated this day week have related 1. to the Bill for establishing Religious freedom in the Revisal. 2. a Bill concerning British debts. 3. a Bill concerning the Proprietary interest in the Northern Neck. 4. for reforming the County Courts. The first employed the H. of Delegates several days; The preamble being the principal subject of contention. It at length passed without alteration. The Senate I am told have exchanged after equal altercation, the preamble of the revisal for the last clause in the Declaration of Rights; an exchange w<sup>h</sup>. was proposed in the H. of D. and negatived by a considerable majority. I do not learn that they have made or will make any other alteration. The Bill for the payment of British debts is nearly a transcript of that which went thro' the two Houses last year, except that it leaves the periods of instalment blank, and gives the Creditor an opportunity of taking immediate execution for the whole debt, if the debtor refuses to give security for complying with the instalments. The Bill was near being put off to the next Session on the second reading. A majority were for it, but having got inadvertently into a hobble, from the manner in which the question was put, the result was that Monday next should be appointed for its consideration. The arrival & sentiments of Col: Grayson will be favorable to some provision on the subject. A clause is annexed to the Bill, authorising the Executive to suspend its operation, in case Cong<sup>s</sup>. shall signify the policy of so doing. The general cry is that the Treaty ought not to be executed here until the posts are surrendered, and an attempt will be made to suspend the operation of the Bill on that event or at least on the event of a positive declaration from Cong<sup>s</sup>. that it ought to be put in force. The last mode will probably be fixed on, notwithstanding its departure from the regular course of proceeding, and the embarrassment in which it may place Congress.

The bill for reforming the County Courts proposes to select five Justices, who are to sit quarterly, be paid scantily, and to possess the Civil Jurisdiction of the County Courts, and the Criminal jurisdiction of the Gen<sup>l</sup>. Court under certain restrictions. It is meant as a substitute for the Assize system, to all the objections against which it is liable, without possessing its advantages. It is uncertain whether it will pass at all or what form it will finally take. I am inclined to think it will be thrown out. The Bill relating to the N. Neck passed the H. of D. yesterday. It removes the records into the Land office here, assimilates locations of surplus land to the general plan, and abolishes the Quitrent. It was suggested that the latter point was of a judiciary nature, that it involved questions of fact, of law, and of the Treaty of peace, and that the Representatives of the late proprietor ought at least to be previously heard according to the request of their Agent. Very little attention was paid to these considerations, and the bill passed *almost* unanimously. With sincere affection

# I Am Your Friend & Serv<sup>T</sup>

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Richmond Dec<sup>r</sup>. 24. 1785.

Mad. Mss.

My last informed you of the miscarriage of the Assize scheme. It has been followed with an attempt to reform the County Courts, which will probably end in the appointment of four months in which the Courts shall be confined to Docket business & compelled to dispatch it. A Bill is depending for the payment of British debts, nearly on the model of that which fell thro' last year. It is extremely grating and will be rejected unless the prospect of an accomodation with G. B. on the subject of the posts & the negroes, or the apprehensions of being saddled with worse terms by delay, should overcome the disinclination. The port bill has not been yet taken up. It will be severely attacked. We have a variety of orders of the day which will consume time, and other bills are to be brought in. Of course the end of the Session is remote, unless impatience should produce the same effect as a conclusion of the business. The petition of the little fork has been justly rejected, by a general vote. I have not yet disposed of your Tob<sup>o</sup>. The price has not latterly exceeded I believe four dollars, and I am told to day that 20/1, is talked of. I have never yet had it in my power to make the enquiries at the land office, or to get out your patents. Capt. Barbour tells me he has been there and could not get the information relative to Turpin without a knowledge of some dates which you have not mentioned to him or to me. If you have any unliquidated claims ag<sup>st</sup>. the U. S. that can be settled by the Comiss<sup>s</sup>. before the 1<sup>st</sup>. day of Jan<sup>y</sup> or loan office certificates issued from the Con<sup>t</sup>. officer here the interest up to Dec<sup>r</sup>. 1782 will be paid at the Treas<sup>y</sup> in specie. Let this circumstance be known if you please, tho' I suppose it will be too late. It may be of the less consequence, as such warrants for interest will in future be receivable in taxes. The Quitrents for the Northern Neck are abolished by a bill which is gone up to the Senate. The Bill for establishing Religious freedom passed the H. of Delegates as it stands in the Revised Code. The Senate have disagreed to the preamble and substituted the last Article of the Declaration of Rights. Which house is to recede, is uncertain. Both are much attached to their respective ideas. Capt. Barbour tells me Payne has engaged his brother J<sup>s</sup>. B. to pay the money due to you. I wish you could let Maj<sup>t</sup>. Moore have about £ 18 of it, the amount of his interest on the certificate obtained from Dunscomb by M<sup>t</sup>. Hubbard Taylor, & left with me. Let me know whether such an arrangement will be practicable. Be kind eno' also to let Capt. Walker & my brother F. know that I am called on for their balances to the Steward of Hampden Sidney by a man here who has an order on me for them. present my regards to the family and believe me to be your Affec<sup>n</sup>. son—

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richmond Dec<sup>r</sup>. 27, 1785.

Mad. Mss.

Hon<sup>D</sup> Sir,—

M<sup>r</sup>. J<sup>s</sup>. Davis has just handed your favor of the 24. inst. It is too late to revise the proceedings relative to the Trustees of Beverley. The Act authorizes the Cossrs who are to settle your accounts to make a reasonable allowance for your trouble. I cannot get a copy of the act without paying the £10. Capt. P. Barbour will inform you of Dean's answer to his application. He carried a letter from me giving you an acct. of the latest proceedings of the Assembly. Nothing of consequence has been done since. It is uncertain when we shall rise. If an opportunity should offer, I shall be glad of the fresh butter at all events.

I am with best regards to ye family y<sup>r</sup> aff<sup>t</sup> son.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Richmond Dec<sup>r</sup>. 30, 1785.

Mad. Mss.

Dear Sir,—

The past week has been rendered important by nothing but some discussions on the subject of British debts. The bill brought in varied from that which miscarried last year 1. by adding provision in favor of the Creditors for *securing* payment at the dates of the instalments 2. by annexing a clause empowering the Executive to suspend the operation of the Act in case Congress should notify their wish to that effect. Great difficulty was found in drawing the House into Comite on the subject. It was at length effected on Wednesday. The changes made in the Bill by the Committee are 1. striking out the clause saving the Creditors from the act of limitation which makes the whole a scene of Mockery—2. striking out the provision for securities—3. Converting the clause authorizing Cong<sup>s</sup>. to direct a suspension of the Act into a clause suspending it, until Cong<sup>s</sup>. should notify to the Executive that G. B. had complied with the Treaty on her part, *or that they were satisfied with the steps taken by her for evacuating the posts, paying for Negroes and for a full compliance with the Treaty*. The sentence underlined was proposed as an amendment to the amendment and admitted by a very small majority only. 4. exonerating the public from responsibility for the payments into the Treasury by British debtors beyond the real value of the liquidated paper. Since these proceedings of the Committee of the whole, the subject has slept on the table, no one having called for the report. Being convinced myself that nothing can be now done that will not extremely dishonor us, and embarrass Cong<sup>s</sup>., my wish is that the report may not be called for at all.

In the course of the debates no pains were spared to disparage the Treaty by insinuations ag<sup>st</sup>. Cong<sup>s</sup>., the Eastern States, and the negociators of the Treaty, particularly J. Adams. These insinuations & artifices explain perhaps one of the motives from which the augmeion of the fœderal powers & respectability has been opposed. The Reform of the County Courts has dwindled into directions for going thro' the docket quarterly, under the same penalties as now oblige them to do their business monthly. The experiment has demonstrated the impracticability of rendering these courts fit instruments of Justice; and if it had preceded the Assize Question would I think have ensured its success. Some wish to renew this question in a varied form, or at least under a varied title; but the Session is too near its period for such an attempt. When it will end I know not. The business depending w<sup>d</sup>. employ the House till March. A system of navigation and commercial regulations for this State alone is before us and comprises matter for a month's debate. The Compact with Mary<sup>d</sup>. has been ratified. 1 It was proposed to submit it to Cong<sup>s</sup>. for their sanction, as being within the word *Treaty* used in the Confederation. This was opp<sup>d</sup>. It was then attempted to transmit it to our Delegates to be by them simply laid before Cong<sup>s</sup>. Even this was negatived by a large Majority. I can add no more without risking the opportunity by the post except that I remain Y<sup>r</sup> affe<sup>c</sup>. friend

[\[Back to Table of Contents\]](#)

## CHURCH ESTABLISHMENT.

Mad. Mss.

### TO THE HOLE THE SPEAKER & GENTLEMEN THE GENERAL ASSEMBLY OF VIRGINIA. (1786.)1

We the subscribers members of the protestant episcopal Church claim the attention of your honourable Body to our objections to the law passed at the last Session of Assembly for incorporating the protestant Episcopal church; and we remonstrate against the said law—

Because the law admits the power of the Legislative Body to interfere in matters of Religion which we think is not included in their jurisdiction.

Because the law was passed on the petition of some of the Clergy of the Protestant Episcopal Church without any application from the other members of that Church on whom the law is to operate, and we conceive it to be highly improper that the Legislature should regard as the sense of the whole Church the opinion of a few interested members who were in most instances originally imposed on the people without their consent & who were not authorized by even the smallest part of this community to make such a proposition.

Because the law constitutes the Clergy members of a convention who are to legislate for the laity contrary to their fundamental right of chusing their own Legislators.

Because by that law the most obnoxious & unworthy Clergyman cannot be removed from a parish except by the determination of a body, one half of whom the people have no confidence in & who will always have the same interest with the minister whose conduct they are to judge of.

Because—by that law power is given to the convention to regulate matters of faith & the obsequious vestries are to engage to change their opinions as often as the convention shall alter theirs.

Because a system so absurd and servile will drive the members of the Episcopal Church over to the Sects where there will be more consistency & liberty.

We therefore hope that the wisdom & impartiality of the present assembly will incline them to repeal a law so pregnant with mischief & injustice.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Richmond, Jan. 22d, 1786.

Mad. Mss.

Dear Sir,—

My last dated Nov<sup>r</sup> 15th, from this place answered yours of May 11th, on the subject of your printed notes. [1](#) I have since had opportunities of consulting other friends on the plan you propose, who concur in the result of the consultations which I transmitted you. Mr. Wythe's idea seems to be generally approved, that the copies destined for the University should be dealt out by the discretion of the Professors, rather than indiscriminately and at once put into the hands of the students, which, other objections apart, would at once exhaust the Stock. A vessel from Havre de Grace brought me a few days ago two Trunks of Books, but without letter or catalogue attending them. I have forwarded them to Orange without examining much into the contents, lest I should miss a conveyance which is very precarious at this season, and be deprived of the amusement they promise me for the residue of the winter.

Our Assembly last night closed a Session of 97 days, during the whole of which except the first seven, I have shared in the confinement. It opened with a very warm struggle for the chair between M<sup>r</sup> Harrison & M<sup>r</sup> Tyler which ended in the victory of the former by a majority of 6 votes. This victory was shortly afterwards nearly frustrated by an impeachment of his election in the County of Surry. Having failed in his native County of Charles City, he abdicated his residence there, removed into the County of Surry where he had an estate, took every step which the interval would admit, to constitute himself an inhabitant, and was in consequence elected a representative. A charge of non-residence was nevertheless brought against him, decided ag<sup>st</sup>. him in the com<sup>tee</sup> of privileges by the casting vote of the Chairman, and reversed in the House by a very small majority. The election of Doc<sup>r</sup> Lee was attacked on two grounds. 1<sup>st</sup>, of non-residence, 2<sup>dly</sup>, of holding a lucrative office under Cong<sup>s</sup>, on the 1<sup>st</sup> he was acquitted, on the 2<sup>d</sup>, expelled, by a large majority. The revised Code was brought forward pretty early in the Session. It was first referred to Com<sup>e</sup> of C<sup>ts</sup> of Justice, to report such of the bills as were not of a temporary nature, and on their report coitted to com<sup>tee</sup> of the whole. Some difficulties were raised as to the proper mode of proceeding, and some opposition made to the work itself. These however being surmounted, and three days in each week appropriated to the task, we went on slowly but successfully, till we arrived at the bill concerning crimes and punishments. Here the adversaries of the Code exerted their whole force, which being abetted by the impatience of its friends in an advanced stage of the Session, so far prevailed that the farther prosecution of the work was postponed till the next Session. The operation of the bills passed is suspended until the beginning of 1787 so that if the Code s<sup>d</sup> be resumed by the next Assembly and finished early in the Session, the whole system may commence at once. I found it more popular in the Assembly than I had formed any idea of, and though it was considered by paragraphs and carried through all the

customary forms, it might have been finished at one Session with great ease, if the time spent on motions to put it off and other dilatory artifices had been employed on its merits. The *adversaries* were the *Speaker, Thruston, and Mercer*, who *came late in the Session into a vacancy left by the death of Col. Brent, of Stafford, and contributed principally to the mischief.*<sup>1</sup> The titles in the enclosed list will point out to you such of the bills as were adopted from the Revisal. The alterations which they underwent are too numerous to be specified, but have not materially vitiated the work. The bills passed over were either temporary ones, such as being not essential as parts of the system may be adopted at any time and were likely to impede it at this, or such as have been rendered unnecessary by Acts passed since the epoch at which the revisal was prepared. After the completion of the work at this Session was despaired of it was proposed and decided that a few of the bills following the bill concerning crimes and punishments should be taken up as of peculiar importance. The only one of these which was pursued into an Act is the Bill concerning Religious freedom. The steps taken throughout the Country to defeat the Gen<sup>l</sup> Assessment had produced all the effect that could have been wished. The table was loaded with petitions and remonstrances from all parts against the interposition of the Legislature in matters of Religion. A general convention of the Presbyterian church prayed expressly that the bill in the Revisal might be passed into a law, as the best safeguard short of a Constitutional one, for their religious rights. The bill was carried thro' the H. of Delegates, without alteration. The Senate objected to the preamble, and sent down a proposed substitution of the 16<sup>th</sup> art: of the Declaration of Rights. The H. of D. disagreed. The Senate insisted, and asked a Conference. Their objections were frivolous indeed. In order to remove them as they were understood by the Managers of the H. of D. The preamble was sent up again from the H. of D. with one or two verbal alterations. As an amendment to these the Senate sent down a few others, which as they did not affect the substance though they somewhat defaced the composition, it was thought better to agree to than to run further risks, especially as it was getting late in the Session and the House growing thin. The enacting clauses past without a single alteration, and I flatter myself have in this country extinguished forever the ambitious hope of making laws for the human mind.

## Acts Not Included In The Revisal.

This was brought forward by Col: Henry Lee Jr., and passed without opposition. It recites his merits towards this Country, and constitutes him a Citizen of it.

For the naturalization of the Marquis de la fayette.

The donation presented to Gen<sup>l</sup> W embarrassed him much, on one side, he disliked the appearance of slighting the bounty of his Country and of an ostentatious disinterestedness, on the other, an acceptance of reward in any shape was irreconcilable with the law he had imposed on himself. His answer to the Assembly declined in the most affectionate terms the emolument allotted to himself, but intimated his willingness to accept it so far as to dedicate it to some public and patriotic use. This Act recites the original act & his answer, and appropriates the future revenue from the shares to such public objects as he shall appoint. *He has been pleased to ask my ideas with regard to the most proper objects. I*

To amend the act vesting in Gen<sup>l</sup> Washington certain shares in the River Companies.



*suggest, in general only, a partition of the fund between some institution which would please the philosophical world, and some other which may be of a popular cast. If your knowledge of the several institutions in France or elsewhere should suggest models or hints, I could wish for your ideas on the case, which no less concern the good of the Commonwealth than the character of its most illustrious citizen.*

Some of the malefactors consigned by the Executive to labour, brought the legality of such pardons before the late Court of Appeals who adjudged them to be void. This Act gives the Executive a power in such cases for one year. It passed before the bill in the revision on this subject was taken up, and was urged against the necessity of passing it at this Session. The expiration of this act at the next Session will become an argument on the other side.

An act empowering the Governor & Council to grant conditional pardons in certain cases.

This Act empowers the Executive to confine or send away suspicious aliens, on notice from Cong<sup>s</sup> that their sovereigns have declared or commenced hostilities ag<sup>st</sup> the U. S., or that ye latter have declared War such sovereigns. It was occasioned by the arrival of two or three Algerines here, who, having no apparent object, were suspected of an unfriendly one. The Executive caused them to be brought before them, but found themselves unarmed with power to proceed. These adventurers have since gone off.

An act giving powers to the Governor and Council in certain cases.

Abolishes the quitrent, and removes the papers to the Register's office.

Act for safe keeping land papers of the Northern Neck.

Requires them to clear their dockets quarterly. It amounts to nothing and is chiefly the result of efforts to render Courts of Assize unnecessary.

Act for reforming County Courts.

The latter act passed at the last Session required sundry supplemental regulations to fit it for operation, an attempt to provide these which involved the merits of the innovation drew forth the united exertions of its adversaries.

On the question on the supplemental bill they prevailed by 63 votes ag<sup>st</sup> 49. The best that could be done in this situation was to suspend instead of repealing the original act, which will give another chance to our successors for introducing the proposed reform. The various interests opposed to it, will never be conquered without considerable difficulty.

Act to suspend the operation of the Act establishing Courts of Assize.

The necessity of harmony in the coercial regulations of the States has been rendered every day more apparent. The local efforts to counteract the policy of G. B., instead of succeeding, have in every instance recoiled more or less on the States which ventured on the trial. Notwithstanding these lessons, the Merch<sup>ts</sup> of this State, except those of Alexandria and a few of the more intelligent individuals elsewhere, were so far carried away by their jealousies of the Northern Marine as to wish for a

Resolution proposing a general meeting of com from the States to consider and recoend a foederal plan for regulating coerce, and appointg as Com from V<sup>a</sup>, E<sup>d</sup> Randolph, J<sup>s</sup>

navigation Act confined to this State alone. In opposition to those narrow ideas the printed proposition herewith inclosed was made. As printed, it went into a Comm<sup>e</sup> of the whole. The alterations of the pen shew the state in which it came out. Its object was to give Cong<sup>s</sup> such direct power only as would not alarm, but to limit that of the States in such manner as w<sup>d</sup> indirectly require a conformity of the plans of Cong<sup>s</sup>. The renunciation of the right of laying duties on imports from other States, would amount to a prohibition of duties on imports from foreign Countries, unless similar duties existed in other States. This idea was favored by the discord produced between several States by rival and adverse regulations. The evil had proceeded so far between Connecticut and Mass<sup>ts</sup> that the former laid heavier duties on imports from the latter than from G. B., of which the latter sent a letter of complaint to the Executive here and I suppose to the other Executives. Without some such self-denying compact it will, I conceive be impossible to preserve harmony among the contiguous States. In the Com<sup>ittee</sup> of the whole the proposition was combated at first on its general merits. This ground was however soon changed for that of its perpetual duration, which was reduced first to 25 years, then to 13 years. *Its adversaries were the Speaker, Thruston, and Corbin; they were bitter and illiberal against Congress & the Northern States beyond example Thruston considered it as problematical, whether it would not be better to encourage the British than the Eastern marine Braxton and Smith were in the same sentiments, but absent at this crisis of the question.* The limitation of the plan to 13 years so far destroyed its value in the judgment of its friends that they chose rather, to do nothing than to adopt it in that form. The report accordingly remained on the table uncalled for to the end of the Session. And on the last day the resolution above quoted was substituted. It had been proposed by Mr. Tyler immediately after the miscarriage of the printed proposition, but was left on the table till it was found that Several propositions for regulating our trade without regard to other States produced nothing. In this extremity The resolution was generally acceded to, not with the *opposition of Corbin & Smith.* The Com<sup>ssrs</sup> first named were the Attorney, D<sup>r</sup> Jones, and myself. In the House of D., Tucker and Smith were added, and in the Senate, Mason, Ross, and Ronald. The last does not undertake.

Madison, Jr., Walter Jones, S<sup>t</sup> G. Tucker, M. Smith, G. Mason, & David Ross, who are to councinate the proposal & suggest time & place of meeting.

The port bill was attacked and nearly defeated, an amendatory bill was passed with difficulty thro' the H. of D., and rejected in the Senate. The original one will take effect before the next Session, but will probably be repealed then. It would have been repealed at this, if its adversaries had known their strength in time and exerted it with Judgment.

A Bill was brought in for paying British debts but was rendered so inadequate to its object by alterations inserted by a Coitte of the whole that the patrons of it thought it best to let it sleep.

Several petitions (from Methodists chiefly) appeared in favor of a gradual abolition of slavery, and several from another quarter for a repeal of the law which licences private manumissions. The former were not thrown under the table, but were treated with all the indignity short of it. A proposition for bringing in a Bill conformably to

the latter, was decided in the affirmative by the casting voice of the Speaker; but the bill was thrown out on the first reading by a considerable majority.

A considerable itch for paper money discovered itself, though no overt attempt was made. The partisans of the measure, among whom Mr. M. S<sup>1</sup> may be considered as the most zealous, *flatter themselves*, and *I fear upon too good ground, that it will be among the measures of the next session*. The unfavorable balance of trade and the substitution of facilities in the taxes *will have dismissed the little specie remaining among us* and strengthened the common *argument for a paper medium*.

This tax was to have been collected in Sep<sup>r</sup> last, and had been in part actually collected in specie. Notwithstanding this and the distress of public credit, an effort was made to remit the tax altogether. *The party was headed by Braxton, who was courting an appointment into the council*. On the question for a third reading, the affirmative was carried by 52 ag<sup>st</sup>. 42. On the final question, a vigorous effort on the negative side with a reinforcement of a few new members, threw the bill out. The victory however was not obtained, without subscribing to a postponement instead of remission, and the admission of facilities instead of Specie. The postponement too extends not only to the tax which was under collection, and which will not now come in till May, but to the tax of Sep<sup>r</sup> next which will not now be in the Treasury till the beginning of next year. The wisdom of seven Sessions will be unable to repair the mischiefs of this single act.

Act for postponing the tax of the present year and admitting facilities in payment.

This was prayed for by a memorial from a Convention held in Kentucky, and passed without opposition. It contains stipulations in favor of territorial rights held under the laws of Vir<sup>a</sup>, and suspends the actual separation on the decision of a Convention authorized to meet for that purpose, and on the assent of Congress. The boundary of the proposed State is to remain the same as the present boundary of the district.

Act concerning the erection of Kentucky into an independent State.

At the last Session of 1784 and act passed displacing all the militia officers, and providing for the appointm<sup>t</sup> of experienced men. In most counties it was carried into execution, and generally much to the advantage of ye militia. In consequence of a few petitions ag<sup>st</sup>. the law as a breach of the Constitution, this act reverses all the proceedings under it, and reinstates the old officers.

Act to amend the Militia law.

From the peculiar situation of that district the Escheat law was not originally extended to it. Its extension at this time was occasioned by a bill brought in by Mr. Mercer for seizing and selling the deeded land of the late lord Fairfax on the ground of its being devised to aliens, leaving them at liberty indeed to assert their pretensions before the Court of Appeals. As the bill however stated the law & the fact, and excluded the ordinary inquest, in the face of pretensions set up even by a Citizen, (Martin,) to whom it is said the reversion is given by the will, it was opposed as exerting at least a Legislative interference in and improper influence

Act to extend the operation of the Escheat law to the Northern Neck.

on the Judiciary question. It was proposed to substitute the present act as an amendm<sup>t</sup> to the bill in a Committee of the whole which was disagreed to. The bill being of a popular cast went thro' the H. of D. by a great majority. In the Senate it was rejected by a greater one, if not unanimously. The extension of the escheat law was, in consequence, taken up and passed.

to wit, attempts to dismember the State without the consent of the Legislature. It is pointed ag<sup>st</sup> the faction headed by A. C[ampbell], in the County of Washington.

“Act for punishing certain offences.”

Complies with the requisition of Cong<sup>s</sup> for the present year, to wit 1786. It directs 512,000 dollars, the quota of this State, to be paid before May next the time fixed by Congress, *altho' it is known that the postponement of the taxes renders the payment of a shilling impossible.* Our payments last year *gained us a little reputation.* Our conduct *this must stamp us with ignominy.*

Act for amending the appropriating Act.

Reduces that of the Govr<sup>r</sup>. from £1,000 to £800, & the others some at a greater and some at a less proportion.

Act for regulating the Salaries of the Civil list.

Meant chiefly to affect vacant land in the Northern Neck, erroneously conceived to be in great quantity and of great value. The price is fixed at £25 per Hundred acres, at which not an acre will be sold.

Act for disposing of waste lands on Eastern waters.

Amounting in the whole to 5 s. per ton.

An act imposing add<sup>l</sup> tonnage on British vessels.

Nothing has been yet done with N. C. towards opening a Canal thro the Dismal. The powers given to Com on our part are renewed, and some negociation will be brought about if possible. A certain interest in that State is suspected of being disinclined to promote the object, notwithstanding its manifest importance to the community at large. On Potowmack they have been at work some time. On this river they have about eighty hands ready to break ground, and have engaged a man to plan for them. I fear there is a want of skill for the undertaking that threatens a waste of labour and a discouragement to the enterprize. I do not learn that any measures have been taken to procure from Europe the aid which ought to be purchased at any price, and which might I should suppose be purchased at a moderate one.

I had an opportunity a few days ago of knowing that M<sup>ts</sup> Carr and her family, as well as your little daughter, were well. I am apprehensive that some impediments still detain your younger nephew from his destination. Peter has been in Williamsburg, and I am told by Mr. Maury that his progress is satisfactory. He has read, under him, Horace, some of Cicero's Orations, Greek testament, Æsop's fables in Greek, ten books of Homer's Iliad, & is now beginning Xenophon, Juvenal, & Livy. He has also given some attention to French.

I have paid le Maire ten guineas. He will set out in about three weeks I am told for France. Mr. Jones has promised to collect & forward by him all such papers as are in print and will explain the situation of our affairs to you. Among these will be the most important acts of the Session, & the Journal as far as it will be printed.

M<sup>r</sup> W<sup>m</sup>. Hays in sinking a well on the declivity of the Hill above the proposed seat of the Capitol and nearly in a line from the Capitol to Belvidere, found about seventy feet below the surface, several large bones, apparently belong to a fish not less than the Shark, and what is more singular, several fragments of potter's ware in the stile of the Indians. Before he reached these curiosities he passed thro' about fifty feet of soft blue clay. I have not seen the articles, having but just heard of them, & been too closely engaged; but have my information from the most unexceptionable witnesses who have. I am told by Gen<sup>l</sup> Russel of Washington County, that in sinking a Salt well in that County he fell in with the hip bone of the incognitum, the socket of which was about 8 inches diameter. It was very soft in the subterraneous State, but seemed to undergo a petrefaction on being exposed to the air.

Adieu. Affec<sup>ly</sup>.

*Promotions.*—Edward Carrington & H. Lee, Jr., added to R. H. Lee, J<sup>s</sup>. Monroe, and W<sup>m</sup> Grayson, in the delegation to Congress.

Carter Braxton to the Council.

J<sup>no</sup>. Tyler to court of admiralty, in room of B. Waller, res<sup>d</sup>.

*prices current.*—Tob<sup>o</sup>, 23s. on James River, and properly elsewhere.

Wheat, 5s to 6s. per Bushel.

Corn, 18s to 20s. per Barrel.

Pork 28s to 30s pr Ct.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richmond, Jany. 22<sup>d</sup>., 1786.

Mad. Mss.

Dear Sir,—

Your favors of the 19<sup>th</sup>. Dec<sup>r</sup> and 7<sup>th</sup> Jany came both to hand by yesterdays mail. The Assembly adjourned last night after a Session of 97 days. If its importance were to be measured by a list of the laws which it has produced, all preceding Legislative merit would be eclipsed, the number in this instance amounting to 114 or 115. If we recur to the proper criterion no Session has perhaps afforded less ground for applause. Not a single member seems to be pleased with a review of what has passed. I was too hasty in informing you that an amendment of the Port bill had passed. I was led into the error by the mistake of some who told me it had passed the Senate when it had only been agreed to in a Coittee of the Senate. Instead of passing it they sent down a repeal of the old port bill by way of amendment. This was disagreed to by the H. of D. as indirectly originating. The Senate adhered & the bill was lost. An attempt was then made by the adversaries of the port measure to suspend its operation till the end of the next Session. This also was negatived so that the old bill is left as it stood without alteration. Defective as it is particularly in putting citizens of other States on the footing of foreigners, and destitute as it is of proper concomitant provisions, it was judged best to hold it fast and trust to a succeeding Assembly for amendments. The navigation System for the State after having been prepared at great length by M<sup>r</sup>. G. Baker was procrastinated in a very singular manner, and finally died away of itself, without anything being done, except a short act passed yesterday in great hurry imposing a tonnage of 5s. on the vessels of foreigners not having treated with the U. S. This failure of local measures in the coercial line, instead of reviving the original propositions for a general plan, revived that of M<sup>r</sup>. Tyler for the appointment of Cosrs to meet Cosrs from other States on the subject of general regulations. It went through by a very great majority, being opposed only by M<sup>r</sup>. M. Smith and Mr. Corbin. The expedient is no doubt liable to objections and will probably miscarry. I think however it is better than nothing, and as a recommendation of additional powers to Congress is within the purview of the Coission it may possibly lead to better consequences than at first occur. The Cosrs first named were the attorney, Doct<sup>r</sup> W. Jones of the Senate and myself. The importunity of Mr. Page procured the addition of S<sup>t</sup>. George Tucker who is sensible, fœderal, and skilled in coerce, to whom was added on the motion of I know not whom M<sup>r</sup> M. Smith, who is at least exceptionable in the second quality having made unceasing war during the Session ag<sup>st</sup> the idea of bracing the federal system. In the Senate a further addition was made of Col. Mason Mr. D. Ross and Mr. Ronald. The name of the latter was struck out at his desire. The others stand. It is not unlikely that this multitude of associates will stifle the thing in its birth. By some it was probably meant to do so. I am glad to find that Virginia has merit where you are and should be more so if I saw greater reason for it. The bill which is considered at N. Y. as a compliance with the requisitions of Cong<sup>s</sup>, is more so in appearance than reality. It will bring no specie into the Treas<sup>y</sup> and but little Continental paper. Another

act has since passed which professes to comply more regularly with the demand of Cong<sup>s</sup>. but this will fail as to *specie* and as to *punctuality*. It will probably procure the indents called for, and fulfils the views of Cong<sup>s</sup>. in making those of other States receivable into our Treas<sup>y</sup>. Among the acts passed since my last I must not omit an economical revision of the Civil list. The saving will amount to 5 or 6000 pounds. The Gov<sup>r</sup> was reduced by the H. of D. to £800, to which the Senate objected. Which receded I really forget. The Council to £2000, the Attorney to £200, Register from £1,100 to £800, Auditors & Solicitor from £4 to 300, Speaker of H. of D. to 40s. per day including daily pay as a member & of Senate to 20s, &c.; Delegates to Cong<sup>s</sup> to 6 dollars per day. The act however is not to commence till November next. I mentioned in my last the propriety of addressing your future letters to Orange.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Virg<sup>a</sup>Orange, March 18<sup>th</sup>, 1786.

Mad. Mss.

Dear Sir,—

Your two favours of the 1 & 20 Sep<sup>r</sup>, under the same cover by M<sup>r</sup>. Fitzhugh did not come to hand till the 24<sup>th</sup> ult; and of course till it was too late for any Legislative interposition with regard to the Capitol. I have written to the Attorney on the subject. A letter which I have from him dated prior to his receipt of mine takes notice of the plan you had promised and makes no doubt that it will arrive in time for the purpose of the Commissioners. I do not gather from his expressions however that he was aware of the change which will become necessary in the foundation already laid; a change which will not be submitted to without reluctance for two reasons. 1. the appearance of caprice to which it may expose the Commissioners. 2. which is the material one, the danger of retarding the work till the next Session of Assembly can interpose a vote for its suspension, and possibly for a removal to Williamsburg. This danger is not altogether imaginary. Not a Session has passed since I became a member without one or other or both of these attempts. At the late Session a suspension was moved by the Williamsburg Interest, which was within a few votes of being agreed to. It is a great object therefore with the Richmond Interest to get the building so far advanced before the fall as to put an end to such experiments. The circumstances which will weigh in the other scale, and which it is to be hoped will preponderate, are, the fear of being reproached with sacrificing public considerations to a local policy, and a hope that the substitution of a more economical plan, may better reconcile the Assembly to a prosecution of the Undertaking.

Since I have been at home I have had leisure to review the literary cargo for which I am so much indebted to your friendship. The collection is perfectly to my mind. I must trouble you only to get two little mistakes rectified. The number of Vol. in the Encyclopedie corresponds with your list, but a duplicate has been packed up of Tom. 1<sup>ere</sup>. partie of Histoire Naturelle, Quadrupedes, premiere livraison, and there is left out the 2<sup>d</sup> part of the same Tom. which as appears by the Avis to the 1<sup>st</sup> livraison makes the 1<sup>st</sup> Tome of Histoire des oiseaux, as well as by the Histoire des oiseaux sent, which begins with Tom. II 1<sup>re</sup> partie, and with the letter F from the Avis to the sixth livraison I infer that the vol. omitted made part of the 5<sup>me</sup> livraison. The duplicate vol. seems to have been a good deal handled and possibly belongs to your own sett. Shall I keep it in my hands, or send it back? The other mistake is an omission of the 4th vol. of D'Albon sur l'interêt de plusieurs nations, &c. The binding of the three vol<sup>s</sup> which are come is distinguished from that of most of the other books by the circumstance of the figure on the back numbering the vol<sup>s</sup> being on a black instead of a red ground. The author's name above is on a red ground. I mention these circumstances that the binder may supply the omitted volume in proper uniform. I annex a state of our account balanced. I had an opportunity a few days after your letters were rec<sup>d</sup>. of remitting the balance to the hands of M<sup>rs</sup>. Carr with a request that



it might be made use of as you direct to prevent a loss of time to her sons from occasional disappointments in the stated funds. I have not yet heard from the M<sup>F</sup>. Fitzhughs on the subject of your advance to them. The advance to Le Maire had been made a considerable time before I received your countermanding instructions. I have no copying press, but must postpone that conveniency to other wants which will absorb my little resources. I am fully apprized of the value of this machine and mean to get one when I can better afford it, and may have more use for it. I am led to think it w<sup>d</sup> be a very economical acquisition to all our public offices which are obliged to furnish copies of papers belonging to them.

A Quorum of the deputies appointed by the Assembly for a commercial convention had a meeting at Richmond shortly after I left it, and the Attorney tells me, it has been agreed to propose Annapolis, for the place, and the first monday in Sep<sup>F</sup> for the time of holding the Convention. It was thought prudent to avoid the neighborhood of Congress, and the large Coercial towns, in order to disarm the adversaries to the object, of insinuations of influence from either of these quarters. I have not heard what opinion is entertained of this project at New York, nor what reception it has found in any of the States. If it should come to nothing, it will, I fear confirm G. B. and all the world in the belief that we are not to be respected, nor apprehended as a nation in matters of commerce. The States are every day giving proofs that separate regulations are more likely to set them by the ears, than to attain the common object. When Mass<sup>ts</sup> set on foot a retaliation of the policy of G. B. Connecticut declared her ports free. N. Jersey served N. York in the same way. And Delaware I am told has lately followed the example, in opposition to the commercial plans of Penn<sup>a</sup>. A miscarriage of this attempt to unite the States in some effectual plan, will have another effect of a serious nature. It will dissipate every prospect of drawing a steady revenue from our imposts either directly into the federal treasury, or indirectly thro' the treasuries of the Commercial States, and of consequence the former must depend for supplies solely on annual requisitions, and the latter on direct taxes drawn from the property of the Country. That these dependencies are in an alarming degree fallacious is put by experience out of all question. The payments from the States under the calls of Congress have in no year borne any proportion to the public wants. During the last year, that is from Nov<sup>F</sup>, 1784, to Nov<sup>F</sup> 1785, the aggregate payments, as stated to the late Assembly fell short of 400,000 doll<sup>ts</sup>, a sum neither equal to the interest due on the foreign debts, nor even to the current expences of the federal Government. The greatest part of this sum too went from Virg<sup>a</sup>, which will not supply a single shilling the present year. Another unhappy effect of a continuance of the present anarchy of our commerces will be a continuance of the unfavorable balance on it, which by draining us of our metals furnishes pretexts for the pernicious substitution of paper money, for indulgences to debtors, for postponements of taxes. In fact most of our political evils may be traced up to our commercial ones, as most of our moral may to our political. The lessons which the mercantile interests of Europe have received from late experience will probably check their propensity to credit us beyond our resources, and so far the evil of an unfavorable balance will correct itself. But the Merchants of G. B. if no others will continue to credit us at least as far as our remittances can be strained, and that is far enough to perpetuate our difficulties unless the luxurious propensity of our own people can be otherwise checked. This view of our situation presents the proposed Convention as a remedial experiment which ought

to command every assent; but if it be a just view it is one which assuredly will not be taken by all even of those whose intentions are good. I consider the event therefore as extremely uncertain, or rather, considering that the States must first agree to the proposition for sending deputies, that these must agree in a plan to be sent back to the States, and that these again must agree unanimously in a ratification of it. I almost despair of success. It is necessary however that something should be tried & if this be not the best possible expedient, it is the best that could possibly be carried thro' the Legislature here. And if the present crisis cannot effect unanimity, from what future concurrence of circumstances is it to be expected? Two considerations particularly remonstrate against delay. One is the danger of having the same *game played on our Confederacy* by which *Philip managed that of the Grecians*. I saw eno' during the late Assembly of the *influence of the desperate circumstances of individuals on their public conduct to admonish me of the possibility of finding in the council of some one of the States fit instruments of foreign machinations*. The other consideration is the probability of an early *increase of the confederated States, which more than proportionally impede measures which require unanimity, as the new members, may bring sentiments and interests less congenial with those of the Atlantic States than those of the latter are one with another*.

The price of our staple is down at 22s. at Richmond. One argument for putting off the taxes was that it would relieve the planters from the necessity of selling, & would enable them to make a better bargain with the purchasers. The price has notwithstanding been falling ever since. How far the event may have proceeded from a change in the Market of Europe I know not. That it has in part proceeded from the practice of remitting and postponing the taxes may I think be fairly deduced. The scarcity of money must of necessity sink the price of every article, and the relaxation in collecting the taxes, increases this scarcity by diverting the money from the public Treasury to the shops of Merchandize. In the former case it would return into circulation. In the latter it goes out of the Country to balance the increased consumption. A vigorous and steady collection of taxes would make the money necessary here and would therefore be a mean of keeping it here. In our situation it would have the salutary operation of a sumptuary law. The price of Indian Corn in this part of the Country which produced the best crops is not higher than 2 doll<sup>ts</sup>. per barr<sup>l</sup>. It would have been much higher but for the peculiar mildness of the winter. December and Jan<sup>y</sup> scarcely reminded us that it was winter. February, though temperate, was less unseasonable. Our deepest snow (about 7 inches) was in the present month. I observe the tops of the blue ridge still marked with its remains. My last was dated January 22, and contained a narrative of the proceedings of the Assembly. I shall write you again as soon as the subject & opportunity occur, remaining in the mean time

## Yr Affec<sup>T</sup>e Friend

Dr to T. J.	liv <sup>s</sup>	sols	Cred <sup>t</sup>		
1785 Sep <sup>r</sup> 1 To am <sup>t</sup> of books, &c	1164	—3	drs	liv <sup>s</sup>	sols
By balance Stated by T. J. 77?				407	—15
By advance to lemaire 10 Gun <sup>s</sup>				234	
			drs		
By d <sup>o</sup> for 6 Copies Revisal at 2½				81	
				722	—15
<u>*</u> By £25 V <sup>a</sup> C <sup>y</sup> remitted to Mrs C.				441	—8
				1164	—3

\* £25 I discover exceeds the sum extended a few livres which may be carried into the next Acc<sup>t</sup>. if it be thought worth while.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange 19<sup>th</sup> March 1786.

Mad. Mss.

Dear Sir,—

I am just favored with yours of the 11 & 16 of Feb<sup>y</sup>. A newspaper since the date of the latter has verified to me your inauguration into the mysteries of Wedlock, of which you dropped a previous hint in the former. 1 You will accept my sincerest congratulations on this event, with every wish for the happiness it promises. I join you cheerfully in the purchase from Taylor, as preferably to taking it wholly to myself. The only circumstance I regret is that the first payment will rest with you alone, if the conveyance should be accelerated. A few months will elapse inevitably before I shall be able to place on the spot my half of the sum but the day shall be shortened as much as possible. I accede also fully to your idea of extending the purchase in that quarter. Perhaps we may be able to go beyond the thousand acres you have taken into view. But ought we not to explore the ground before we venture too far? 2 proximity of situation is but presumptive evidence of the quality of soil. The value of land depends on a variety of little circumstances which can only be judged of from inspection, and a knowledge of which gives a seller an undue advantage over an uninformed buyer. Can we not about the last of May or June take a turn into that district, I am in a manner determined on it myself. It will separate you but for a moment from New York, and may give us lights of great consequence. I have a project in my head which if it hits your idea and can be effected may render such an excursion of decisive value to us. I reserve it for oral communication.

“The Question of policy,” you say, “is whether it will be better to correct the vices of the Confederation by recommendation gradually as it moves along, or by a Convention. If the latter should be determined on, the powers of the Virg<sup>a</sup> Com are inadequate.” If all on whom the correction of these vices depends were well informed and well disposed, the mode would be of little moment. But as we have both ignorance and iniquity to combat, we must defeat the designs of the latter by humouring the prejudices of the former. The efforts for bringing about a correction thro’ the medium of Congress have miscarried. Let a Convention then, be tried. If it succeeds in the first instance, it can be repeated as other defects force themselves on the public attention, and as the public mind becomes prepared for further remedies. The Assembly here would refer nothing to Congress. They would have revolted equally against a plenipotentiary commission to their deputies for the Convention. The option therefore lay between doing what was done and doing nothing. Whether a right choice was made time only can prove. I am not in general an advocate for temporizing or partial remedies. But a rigor in this respect, if pushed too far may hazard everything. If the present paroxysm of our affairs be totally neglected our case may become desperate. If anything comes of the Convention it will probably be of a permanent not a temporary nature, which I think will be a great point. The mind feels a peculiar complacency in seeing a good thing done when it is not subject to the

trouble & uncertainty of doing it over again. The commission is to be sure not filled to every man's mind. The History of it may be a subject of some future tête a tête. You will be kind enough to forward the letter to Mr Jefferson and to be assured that I am with the sincerest affection

Y<sup>R</sup>. Friend & Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MONORE.

Orange April 9<sup>th</sup>, 1786.

Mad. Mss.

Dear Sir,—

I am favoured with yours of the 18<sup>th</sup> of March. My last answered your preceding one relating to your territorial speculation. I hope it has been rec<sup>d</sup>. I forgot to intimate to you, though I presume it would have been superfluous, that it will be well in every purchase to ascertain by information as far as possible, the proportion of land which lies on the river and comes within the description of low grounds. The value of every tract depends much on this proportion. The contiguous upland is I believe generally of good soil, but there must be both degrees & exceptions to its quality. The low grounds are in a manner uniformly & universally good. The step taken by N. Jersey was certainly a rash one, and will furnish fresh pretexts to unwilling States for withhold<sup>g</sup> their contributions. 1 In one point of view however it furnishes a salutary lesson. Is it possible with such an example before our eyes of impotency in the federal system, to remain sceptical with regard to the necessity of infusing more energy into it? A Government cannot long stand which is obliged in the ordinary course of its administration to court a compliance with its *constitutional* acts, from a member not of the most powerful order, situated within the immediate verge of authority, and apprised of every circumstance which should remonstrate against disobedience. The question whether it be possible and worth while to preserve the Union of the States must be speedily decided some way or other. Those who are indifferent to its preservation would do well to look forward to the consequences of its extinction. The prospect to my eye is a gloomy one indeed. I am glad to hear that the opposition to the impost is likely to be overcome. It is an encouragement to persevere in good measures. I am afraid at the same time that like other auxiliary resources it will be overrated by the States, and slacken the regular efforts of taxation. It is also materially short of the power which Congress ought to have with regard to Trade. It leaves the door unshut ag<sup>st</sup> a commercial warfare among the States, our trade exposed to foreign machinations, and the distresses of an unfavorable balance very little checked. The experience of European Merch<sup>ts</sup> who have speculated in our trade will probably check in a great measure, our opportunities of consuming beyond our resources; but they will continue to credit us as far as our coin in addition to our productions will extend, and our experience here teaches us that our people will extend their consumption as far as credit can be obtained.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Orange May 12th, 1786.

Mad. Mss.

Dear Sir,—

My last was of March 18, since which I have been favored with yours of the 8 and 9th of Feb<sup>y</sup>. Bancroft's application in favour of Paridise inclosed in the latter shall be attended to as far as the case will admit; though I see not how any relief can be obtained. If Mr. P stands on the list of foreign creditors his agent here may probably convert his Securities into money without any very great loss, as they rest on good funds, and the principal is in a course of payment. If he stands on the domestic list as I presume he does, the interest only is provided for, and since the postponement of the taxes even that cannot be negotiated without a discount of 10 per C<sup>t</sup>, at least. The principal cannot be turned into cash without sinking  $\frac{3}{4}$  of its amount.

Your notes<sup>1</sup> having got into print in France will inevitably be translated back & published in that form, not only in England but in America, unless you give out the original. I think therefore you owe it not only to yourself, but to the place you occupy & the subjects you have handled, to take this precaution. To say nothing of the injury which will certainly result to the diction from a translation first into French & then back into English, the ideas themselves may possibly be so perverted as to lose their propriety. The books which you have been so good as to for<sup>d</sup> to me are so well assorted to my wishes that no suggestions are necessary as to your future purchases. A copy of the old edition of the Encyclopedia is desirable for ye reasons you mention, but as I should gratify my desire in this particular at the expense of something else which I can less dispense with, I must content myself with the new Edition for the present. The watch I bought in Philad<sup>a</sup>, though a pretty good one, is probably so far inferior to those of which you have a sample, that I cannot refuse your kind offer to procure me one of the same sort; and I am fancying to myself so many little gratifications from the pedometer that I cannot forego that addition. The inscription for the Statue is liable to Houdon's criticism, and is in every respect inferior to the substitute which you have copied into your letter.<sup>1</sup> I am apprehensive notwithstanding that no change can be effected. The Assembly will want some proper ground for resuming the matter. The devices for the other side of the pedestal are well chosen, and might I should suppose be applied without scruple as decorations of the artist. I counted myself on the addition of proper ornaments, and am persuaded that such a liberty could give offence nowhere. The execution of your hints with regard to the<sup>2</sup>*Marquis & Rochambeau* would be no less pleasing to me than to you. I think with you also *that the setting up the busts of our own worthies* would not be doing more *honour to them than to ourselves*. I foresee however the difficulty of overcoming the popular objection against every measure which involves expence, particularly where the importance of the measure will be felt by a few only; and an unsuccessful attempt would be worse than no attempt. I have heard nothing as to the Capitol. I mentioned

to you in my last that I had written to the Attorney on the subject. I shall have an opportunity shortly of touching on it again to him.

A great many changes have taken place in the late elections. The principal acquisitions are Col. G. Mason who I am told was pressed into the service at the instigation of Gen<sup>l</sup> Washington, Gen<sup>l</sup> Nelson, Mann Page. In Albemarle both the old ones declined the task. Their successors are George & J<sup>n<sup>o</sup></sup> Nicholas. Col. Carter was again an unsuccessful candidate. I have not heard how Mr. Harrison has shaped his course. It was expected that he would stand in a very awkward relation both to Charles City & to Surrey, and would probably succeed in neither. Monroe lost his election in King George by 6 votes. Mercer did his by the same number in Stafford. Neither of them were present, or they would no doubt have both been elected. Col. Bland is also to be among us. Among the many good things which may be expected from Col. Mason we may reckon perhaps an effort to review our Constitution. The loss of the Port bill will certainly be one condition on which we are to receive his valuable assistance. I am not without fears also concerning his federal ideas. The last time I saw him he seemed to have come about a good deal towards the policy of giving Cong<sup>s</sup> the management of Trade. But he has been led so far out of the right way, that a thorough return can scarcely be hoped for. On all the other great points, the Revised Code, the Assize bill, taxation, paper money, &c., his abilities will be inestimable. Most if not all the States except Maryl<sup>d</sup>, have appointed deputies for the proposed Convention at Annapolis. The refusal of Maryland to appoint proceeded as I am informed by Mr. Dan Carroll, from a mistaken notion, that the measure would derogate from the authority of Congress, and interfere with the Revenue system of April 1783, which they have lately recoended anew to the States. There is certainly no such interference, and instead of lessening the authority of Congress, the object of the Convention is to extend it over commerce. I have no doubt that on a reconsideration of the matter it will be viewed in a different light. The internal situation of this State is growing worse & worse. Our specie has vanished. The people are again plunged in debt to the Merchants, and these circumstances added to the fall of Tob<sup>o</sup> in Europe & a probable combination among its chief purchasers here, have reduced that article to 20s. The price of Corn is in many parts of the Country, at 20s. and upwards per barr<sup>l</sup>. In this part it is not more than 15s. Our Spring has been a cool & latterly a dry one, of course it is a backward one. The first day of april was the most remarkable ever experienced in this climate. It snowed & hailed the whole day in a storm from N. E., and the Therm<sup>f</sup> stood at 4 o'C. P. M. at 26<sup>o</sup>. If the snow had fallen in the usual way it would have been 8 or 10 inches deep at least, but consisting of small hard globules mixed with small hail, & lying on the ground so compact & firm as to bear a man, it was less than half of that depth. We hear from Kentucky that the inhabitants are still at variance with their savage neighbours. In a late skirmish several were lost on both sides. On that of the whites Col. W. Christian is mentioned. It is said the scheme of independence is growing unpopular since the Act of our Assembly has brought the question fully before them. Your Nephew, D Carr, has been some time at the Academy in Prince Edward. The President, Mr. Smith, speaks favorably of him.

With the sincerest affection, I remain, D<sup>f</sup> Sir your friend & servant.



P. S. I have taken measures for securing the Paccan nuts & the seed of the Sugar Tree. Are there no other things here which would be acceptable on a like account? You will withhold from me a real pleasure if you do not favor me with your commands freely. Perhaps some of our animal curiosities would enable you to gratify particular characters of merit. I can without difficulty get the skins of all our coon and of some of our rarer quadrupeds, and can have them stuffed if desired. It is possible, also, that I may be able to send some of them alive. I lately had on hand a female opossum with 7 young ones, which I intended to have reared for the purpose partly of experiments myself and partly of being able to forward some of them to you in case of an opportunity, and your desiring it. Unfortunately they have all died. But I find they can be got at any time almost in the Spring of the year, and if the season be too far advanced now, they may certainly be had earlier in the next Spring. I observe that in your notes you number the fallow & Roe-deer among the native quadrupeds of America. As Buffon had admitted the fact, it was whether true or erroneous, a good argument no doubt against him. But I am persuaded they are not natives of the new continent. Buffon mentions the Chevruil in particular as abounding in Louisiana. I have enquired of several credible persons who have traversed the Western woods extensively and quite down to New Orleans, all of whom affirm that no other than our common deer are any where seen. Nor can I find any written evidence to the contrary that deserves notice. You have I believe justly considered our Monax as the Marmotte of Europe. I have lately had an opportunity of examining a female one with some attention. Its weight, after it had lost a good deal of blood, was 5½ lbs. Its dimensions, shape, teeth, and structure within as far as I could judge corresponded in substance with the description given by D'Aubenton. In sundry minute circumstances a precise correspondence was also observable. The principal variations were 1, in the face, which was shorter in the Monax than in the proportions of the Marmotte, and was less arched about the root of the nose. 2, in the feet, each of the forefeet having a fifth nail, about 7 of an inch long growing out of the inward side of the heel, without any visible toe. From this particular it would seem to be the Marmotte of Poland, called the Bobac, rather than the Alpine Marmotte. 3, in the teats, which were 8 only. The marmotte in Buffon had 10. 4<sup>th</sup>, in several circumstances of its robe; particularly of that of the belly, which consisted of a short coarse thin hair, whereas this part of Buffon's marmotte was covered with a thicker fur than the back, &c. A very material circumstance in the comparison remains to be ascertained. The European Marmotte is in the class of those which are dormant during the winter. No person here of whom I have enquired can decide whether this be a quality of the Monax. I infer that it is of the dormant class not only from its similitude to the Marmotte in other respects, but from the sensible coldness of the Monax I examined, compared with the human body, altho the vital heat of quadrupeds is said in general to be greater than that of man. This inferiority of heat being a characteristic of animals which become torpid from cold, I should consider it as deciding the quality of y<sup>e</sup>. Monax in this respect, were it not that the subject of my examination, tho it remained alive several days in my hands was so crippled and apparently dying the whole time that its actual heat could not fairly be taken for the degree of its natural heat. If it had recovered I had intended to have made a trial with the Thermometer. I now propose to have if I can one of their habitations discovered during the summer, and to open it on some cold day next winter. This will fix the matter. There is another circumstance which belongs to a full comparison of the two animals. The Marmotte of Europe is said to be an inhabitant of the upper

region of mountains only. Whether our Monax be confined to mountainous situations or not I have not yet learnt. If it be not found as a permanent inhabitant of the level Country, it certainly descends occasionally into the plains which are in the neighborhood of mountains. I also compared a few days ago one of our moles (male) with the male one described in Buffon. It weighed 2<sup>oz</sup> 11 pen<sup>ts</sup>. Its length the end of its snout to the root of the tail was 5 inch 3 lines, English measure. That described in Buffon was not weighed I believe. Its length was 5 inch french measure. The external and internal correspondence seemed to be too exact for distinct species. There was a difference nevertheless in two circumstances, one of which is not unworthy of notice, and the other of material consequence in the comparison. The first difference was in the tail, that of the mole here being 10½ English lines only in the length, and naked, whereas that of Buffon's mole was 14 French lines in length and covered with hair. If the hair was included in the latter measure, the difference *in the length* ought scarcely to be noted. The second difference lay in the teeth. The mole in Buffon had 44. That which I examined had but 33. One of those on the left side of the upper Jaw, and next to the principal cutters, was so small as to be scarcely visible to the natural eye, and had no corresponding tooth on the opposite side. Supposing this defect of a corresponding tooth to be accidental, a difference of ten teeth still remains. If these circumstances should not be thought to invalidate the identity of species, the mole will stand as an exception to the Theory which supposes no animal to be common to the two Continents, which cannot bear the cold of the region where they join; since according to Buffon this species of mole is not found "dans les climats froids ou la terre est gelée pendant la plus grande partie de l'année," and it cannot be suspected of such a Journey during a short summer as would head the sea which separates the two Continents. I suspect that several of our quadrupeds which are not peculiar to the new Continent will be found to be exceptions to this Theory, if the mole should not. The Marmotte itself, is not an animal taken notice of very far to the North, and as it moves slowly, and is deprived of its locomotive powers altogether by cold cannot be supposed to have travelled the road which leads from the old to the New World. It is perhaps questionable whether any of the dormant animals, if any such be really coon to Europe & America, can have emigrated from one to the other. I have thought that the cuts of the Quadrupeds in Buffon, if arranged in frames, would make both an agreeable and instructive piece of wall furniture. What would be about the cost of them in such a form? I suppose they are not to be had coloured to the life, and would besides be too costly. What is the price of Buffon's birds, colored?

Your letter of 28 October has never come to hand.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange May 13<sup>th</sup>, 1786.

Mad. Mss.

Dear Sir,—

I was favored a few days ago with yours of the 28<sup>th</sup> ult. I am under great obligations for your kindness in the affair with Taylor. My late letters will have informed you of my wishes that you may fully partake of the bargain entered into already, as well as every future adventure in that quarter. The encouragement you give me to expect your company has in a manner determined me to encounter a journey as soon as I can conveniently make preparation for it. I am the rather induced to do it as I shall be the more able by that means to accelerate a repayment of your kind advances, having some little resources in Philad<sup>a</sup>. of w<sup>ch</sup>. I must avail myself for that purpose. My next will probably tell you when I shall be able to set out.

I think, with you, that it would have an odd appearance for two Conventions to be sitting at the same time, with powers in part concurrent. The reasons you give seem also to be valid against augmenting the powers of that which is to meet at Annapolis. I am not surprized therefore at the embarrassment of Congress in the present conjuncture. Will it not be best on the whole to suspend measures for a more thorough cure of our federal system, till the partial experiment shall have been made. If the spirit of the Conventioneers should be friendly to the Union, and their proceedings well conducted, their return into the Councils of their respective States will greatly facilitate any subsequent measures which may be set on foot by Congress, or by any of the States.

Great changes have taken place in the late elections. I regret much that we are not to have your aid. It will be greatly needed I am sure. Mercer it seems lost his election by the same number of votes as left you out. He was absent at the time or he would no doubt have been elected. Have you seen his pamphlet? You will have heard of the election of Col. Mason, Gen<sup>l</sup> Nelson, Mann Page, G. Nicholas, Jn<sup>o</sup> Nicholas, & Col. Bland. Col. Mason will be an inestimable acquisition on most of the great points. On the port bill he is to be equally dreaded. In fact I consider that measure as lost almost at any rate. There was a majority ag<sup>st</sup>. it last session if it had been skilfully made use of. To force the trade to Norfolk & Alexandria, without preparations for it at those places, will be considered as injurious. And so little ground is there for confidence in the stability of the Legislature that no preparations will ever be made in consequence of a preceding law. The transition must of necessity therefore be at any time abrupt and inconvenient. I am somewhat apprehensive, likewise, that Col. Mason may not be fully cured of his anti-federal prejudices.

We hear from Kentucky that the Savages continue to disquiet them. Col. W. Christian it is said lately lost his life in pursuing a few who had made an inroad on the

settlement. We are told too that the proposed separation is growing very unpopular among them.

I Am D<sup>R</sup>. Sir With Great Affection  
Yr Friend & Servt

Pray forward the herewith inclosed to Mr. J. I sent one for him about the last of March which I hope you rec<sup>d</sup> & put into the proper channel.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Orange June 4<sup>th</sup>, 1786.

Mad. Mss.

Dear Sir,—

At the date of my last I expected I should by this time have been on the journey which promises the pleasure of taking you by the hand in New York. Several circumstances have produced a delay in my setting out which I did not calculate upon, and which are like to continue it for eight or ten days to come. My journey will also be rendered tedious by the route which I shall pursue. I have some business which makes it expedient for me to take Winchester & Lancaster in my way, and some duties of consanguinity which will detain me some days in the neighborhood of the former. If I have an opportunity I will write you again before I set out and if I should not I will do it: immediately on my reaching Philad<sup>a</sup>. You will not write after the receipt of this.

I imagine you get from M<sup>r</sup>. Jones better information as to the back country as well as concerning our more immediate affairs than I can give you. The death of Christian seems to be confirmed. The disinclination of Kentucky to a separation is also repeated with strong circumstances of probability. Our staple continues low. The people have got in debt to the merch<sup>ts</sup>, who set their own price of course. There are perhaps other causes also besides the fall of the market in Europe which of itself does not explain the matter. One of them may be the scarcity of money which is really great. The advocates for paper money are making the most of this handle. I begin to fear exceedingly that no efforts will be sufficient to parry this evil. The election of Col. Mason is the main counterpoise for my hopes against the popular cry. Mann Page & Gen<sup>l</sup> Nelson will also I flatter myself be valuable fellow labourers. Our situation is truly embarrassing. It cannot perhaps be affirmed that there is gold & silver eno' in the Country to pay the next tax. What then is to be done? Is there any other alternative but to emit paper or to postpone the collection? These are ye questions which will be rung in our ears by the very men whose past measures have plunged us into our difficulties. But I will not plague you with our difficulties here. You have enough of them, I am sure where you are. Present my best respects to Col. Grayson & your other colleagues & believe me to be, your's affectionately.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange June 19<sup>th</sup> 1786.

Mad. Mss.

Dear Sir,—

Since my last which was of the 18<sup>th</sup>. of May I have rec<sup>d</sup> your very agreeable favor of the 28<sup>th</sup> of Octob<sup>r</sup> I began to fear it had miscarried. Your reflections on the idle poor of Europe, 1 form a valuable lesson to the Legislators of every Country, and particularly of a new one. I hope you will enable yourself before you return to America to compare with this description of people in France the condition of the indigent part of other communities in Europe where the like causes of wretchedness exist in a less degree. I have no doubt but that the misery of the lower classes will be found to abate wherever the Government assumes a freer aspect, & the laws favor a subdivision of property, yet I suspect that the difference will not fully account for the comparative comfort of the mass of people in the United States. Our limited population has probably as large a share in producing this effect as the political advantages which distinguish us. A certain degree of misery seems inseparable from a high degree of populousness. If the lands in Europe which are now dedicated to the amusement of the idle rich, were parcelled out among the idle poor, I readily conceive the happy revolution which would be experienced by a certain proportion of the latter. But still would there not remain a great proportion unrelieved? No problem in political oeconomy has appeared to me more puzzling than that which relates to the most proper distribution of the inhabitants of a country fully peopled. 1 Let the lands be shared among them ever so wisely, & let them be supplied with labourers ever so plentifully; as there must be a great surplus of subsistence, there will also remain a great surplus of inhabitants, a greater by far than will be employed in cloathing both themselves & those who feed them, and in administering to both, every other necessary & even comfort of life. What is to be done with this surplus? Hitherto we have seen them distributed into manufactures of superfluities, idle proprietors of productive lands, domestics, soldiers, merchants, mariners, and a few other less numerous classes. All these classes notwithstanding have been found insufficient to absorb the redundant members of a populous society; and yet a reduction of most of those classes enters into the very reform which appears so necessary & desirable. From a more equal partition of property, must result a greater simplicity of manners, consequently a less consumption of manufactured superfluities, and a less proportion of idle proprietors & domestics. From a juster Government must result less need of soldiers either for defence ag<sup>st</sup> dangers from without, or disturbances from within. The number of merchants must be inconsiderable under any modification of Society; and that of mariners will depend more on geographical position, than on the plan of legislation. But I forget that I am writing a letter not a dissertation.

Things have undergone little change here since my last. The scarcity of money the low price of Tob<sup>o</sup>. & the high price of bread continue to be the topics of complaint. The last evil is likely to be much increased by a sudden vicissitude in the prospects of

wheat. At the date of my last we were praying for rain. Shortly after we had a deluge of it. From the 19<sup>th</sup> of May to the 4<sup>th</sup> of June, we scarcely saw the sun, had almost incessant rains, and sometimes showers, or rather torrents that threatened to sweep away every thing. The planters pretty generally availed themselves of the Season for getting their Tobacco into the hills. But the farmers have nearly lost their crops of wheat. A great proportion of the heads in this part of the country are blasted, and in many parts it is said the fields will not be worth cutting. Our crops of apples also which in common with all other fruits seemed to be abundant appear to have suffered much from the wet. We are now again suffering from the opposite extreme. We have had no rain since the cessation of the long spell, that is since the 3<sup>d</sup> instant, and the earth is as dry and as hard as a brick.

In an answer from the attorney to a late letter, he says “that after great anxiety we have rec<sup>d</sup> the plan of a capitol from M<sup>r</sup> J. and with some difficulty the directors have assented to conform the bricks already laid to that model.”

I have a little itch to gain a smattering in chymistry. Will you be kind eno’ to pick up some good elementary treatise for me, with a good dictionary of moderate size, unless the chymical volume in the encyclopedie should be judged a competent provision. Morveau’s Elements I observe are quoted with great respect by Buffon. I wish also to get his two Boxes, called Le necessaire chimique. They are described in the Bibliotheque physico-economique for 1784. p. 134. where the maker in Paris is also referred to. I project this last indulgence on the supposition that the whole apparatus, including the contents of the Bottles will not cost more than a couple of Louis.

I observe that in your analysis of the Revisal p. 251 of your notes, a Bill is mentioned for consigning our roads to undertakers instead of the present vicious plan of repairing them. No such provision is comprized in the Road bill reported & printed. If it by any where in existence, I wish you could put me on the means of getting a sight of it. I conceive such a reform to be essential & that the Legislature would adopt it, if presented in a well digested form.

I lately sent you some particulars relating to our mole. 1 For want of something better to fill the remainder of my paper, I will now add the result of my examination two days ago of another of our minor quadrupeds, I mean, a Weasel. It was a female & came to my hands dead. Its colour corresponded with the description given by D’Aubenton of the Belette & Roselet or Hermine in its summer dress, excepting only that the belly &c. which in the European animal was white, was in ours of a lightish yellow, save only the part under the lower jaws which was white for about ½ an inch back from the under lip. The little brown spots near the corners of the mouth mentioned by D’Aubenton were peninsular. The tail was of the color of the back &c. all but the end which was black. The ears were extremely thin, had a fold or duplication on the lower part of the conque about 2 lines deep, and at the margin all around were covered with a very fine short hair or fur of the colour nearly of the back. The rest of the ear was in a manner naked, and of a lightish color. The forefeet were tipped & spotted with white. The hind feet were also tipped with white, and one of them a little spotted. It had five toes on each foot, the fifth on each being very short and at some distance from the end of the foot. Its smell was a sort of rankish musk,

but not so strong as to be very offensive. It had no visible teats. Its weight dimensions &c. compared with those of Buffon's Belette & Hermine were as follows.



	Weasel		Belette		Hermine	
	oz	pw <sup>t</sup> .	gn <sup>s</sup>	oz	oz	pw <sup>t</sup> .
Weight	2	17	13	2*	7	10 —
	Inch		lines	Inch lines	Inch	lines
Length from muzzle to root of tail	7		9	6 6	9	6
of the Trunk of the Tail	3		6	1 3	3	10
Height before	1		11	1 5	2	8
behind	2		6	1 6	3	10
distance from muzzle to lower corner of the eye			5	5		7
from upper corner of eye to the ear			4½	5		7
from one corner to the other of the eye			3	2¼		3½
length of the ear perpendicularly			4½	3		4
width of ear horizontally			4			
distance between the ears at bottom			10½	9 1		
Length of the neck	1		1½	11	1	4
circumference of neck	2		5	2	2	6
of body behind forelegs	2		10	2 3	3	4
before hindlegs	3		3	2 2	3	4
of head between eyes & ears	2		9	2 6	3	3
Length of foreleg from knee to heel			10½	9 1		2
from heel to the nails			9	7 1		1
of hindleg from knee to heel	1		4	11	1	10
Width of forefoot			3½	3		3½
of hindfoot			3½			
Length of nails of forefoot			2	2		3
of hindfoot			1½			
of hair on the body			3½	3		6
at end of tail			6½	short 1	3	
distance between anus and vulva			3			
Spleen, length of	1		3	11		
width of in middle			3½	4		
Kidneys, long			7½	5½		
wide			4½	4		
thick			3	3		
Heart, long			6½	4		
round	1		4½	1 3		
Tongue, long from end to the filêt			3½	2½		
wide			2¾	2		
			number	n <sup>o</sup> .		n <sup>o</sup> .

\* The belette of this weight was but 6 in. 5 lines in length.  
 The weight & measure of the Weasel are English those of the Belette & Roselet—french.

Teeth	34	34	34
Ribbs	14	14	14
Vertebræ of tail	14	14 or 15	19
Palate furrows of	6	6	6

\* The belette of this weight was but 6 in. 5 lines in length.

The weight & measure of the Weasel are English those of the Belette & Roselet—french.

The gall bladder was empty, the membrane of the Bladder very thin, and the two last furrows of the palate broken in the middle, in the Weasel as noted in the Belette, and the contrary not noted in the Hermine.

The spleen was of the same color on both sides in the Weasel. In the Hermine it was of a reddish brown as in the weasel, on one side, and of a very pale hue on the other. Nothing is said as to this circumstance in the description of the Belette.

The right kidney in the Weasel was advanced a little only before the left, as in the Belette, and not its whole length as in the Hermine.

The attempt to examine whether the number of false ribbs in the Weasel was 4 as in the Belette or 3 as in the Hermine, was frustrated.

On a review of the differential characters of the Belette and the Hermine, and a comparison of the weasel with both, it appears. 1. that the weasel stands between the two in point of size, but much less removed from the former than the latter, unless the individual here examined was much under the ordinary size. Its having no visible teats seems to be an indication that it was young. Another *probable* indication was the smallness of the hindmost teeth both in the upper & lower Jaws, those in the lower being not bigger than the head of a small pin; & those in the upper disproportionate to the contiguous tooth. 2. that it resembles the Hermine in the length of the trunk of the tail, and in the blackness of its end, — but the Belette in the number of vertebræ in the Trunk, and in the shortness of the hair at the end of the tail. 3. That it resembles the Hermine in the colour of its feet, and the Belette in that of the margin of the ears. 4. that it resembles the Belette & not the Hermine in the Relative position of the Kidneys. 5. that it differs from the Hermine in being an inhabitant of warm climates. Whether it resembles the Belette in not being an inhabitant of cold climates remains for enquiry. 6. that it differs from both in never becoming white during the winter, if this change be well founded with regard to the Belette. Buffon asserts that there are instances of it, but it may be questioned whether they were not mere albinos of the species.

The figure of the head of the Weasel when reduced to the naked bone resembled rather that of the Belette than that of the Hermine in the skeletons represented in Buffon. In its entire state it resembled most the head in the cut of the Hermine given by Buffon. Indeed the entire cut of the Hermine was a much stronger likeness of the weasel, than the cut of the Belette.

The result of the comparison seems to be that notwithstanding the blackness of the end of the tail & whiteness of the feet, which are regarded as characteristics of the Hermine contradistinguishing it from the belette, our weasel cannot be of the former species, and is nothing more than a variety of the latter. This conclusion is the stronger, as the manners of our weasel correspond more nearly with those of the Belette, than with those of the Hermine. And if it be a just conclusion, it may possibly make one exception to Buffon's position that no animal is common to the two continents that cannot bear the climate where they join; as it certainly contradicts his assertion that of the animals common to the two continents, those of the new are in every instance smaller than those of the old.—But he seems to have given up this point himself. Supplem<sup>t</sup>. tom. 8, p. 329. “L'imperfection de nature qu'el [M. P. l'auteur des recherches sur les Americains] reproche gratuitement a l'Amerique en general, ne doit porter que sur les animaux *de la partie meridionale* de ce continent, lesquels &c.”—

My next will probably be dated in Philad<sup>a</sup> or rather in N. York to which I am called by some business of a private nature in which I am concerned jointly with Col. Monroe. In the meantime I remain Y<sup>rs</sup> very affectionately

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Orange June 21<sup>st</sup>, 1786.

Mad. Mss.

Dear Sir,—

Your favor of the 31<sup>st</sup> ult. did not come to hand till two days ago. As I expect to see you in a short time, I will suspend the full communication of my ideas on the subject of it till I have that pleasure. I cannot however forbear in the mean time expressing my amazement that a thought should be entertained of surrendering the *Mississippi*, and of *guaranteeing* the *possessions of Spain in America*. In the first place has not Virg<sup>a</sup>., have not Cong<sup>s</sup> themselves, and the Ministers of Cong<sup>s</sup>., by their orders asserted the *right of those who live on the waters of the Mississippi touse it as the high road given by nature to the sea?* This being the case, have Cong<sup>s</sup> any more authority to say that the *Western citizens of Virg<sup>a</sup>.* shall not *pass through the capes of Mississippi* than to say that *her Eastern citizens* shall not *pass through the capes Henry & Charles*. It should be remembered that the United States are not now extricating themselves from *war, a crisis* which often knows no *law but that of necessity*. The measure in *question* would be a *voluntary barter* in time of *profound peace* of the *rights of one part of the empire to the interests of another part*. What would *Massachusetts* say to a proposition for *ceding to Britain her right of fishery as the price of some stipulations in favor of Tobacco*.

Again can there be a more short-sighted or dishonorable policy than to concur with Sp<sup>n</sup> in *frustrating* the benevolent views of nature to sell the *affections of our ultramontane brethren* to *depreciate* the *richest fund we possess* to *distrust an ally* whom we know to be *able to befriend us* and to have an interest in doing it against the only *nation whose enmity* we can dread, and at the same time to *court* by the most *precious sacrifices* the *alliance of a nation* whose impotency is notorious, who has *given no proof of regard for us* and the *genius of whose Government religion & manners* unfit them of all the *nations in christendom* for a coalition *with this country*. Can anything too, as you well observe, be more unequal than a stipulation which is to *open all our ports to her* and some only and *those the least valuable of hers to us*; and which places the commercial freedom of our *ports ag<sup>st</sup>* the *fettered* regulations of *those in Spain*. I always thought the stipulation with *france & Holl<sup>d</sup>* of the *privileges* of the *most favoured nation* as *unequal*, and only to be justified by the influence which the *treaties* could not fail to have on the *event of the war*. A stipulation putting *Spanish subjects* on the same footing *with our own citizens* is carrying the *evil still farther* without the same pretext for it; and is the more to be dreaded, as by making *her* the *most favored nation* it would let in the other *nations* with whom we are now *connected* to the same privileges, whenever they may find it their interest to make the same *compensation for them* whilst we have not a reciprocal right to force them into such an arrangement in case our interest should dictate it. A *guaranty* is if possible still more objectionable. If it be insidious we plunge ourselves into *infamy*. If sincere, into obligations the extent of which cannot easily be determined. In either case we get

farther into the labyrinth of *European politics* from which we ought religiously to keep ourselves as free as possible. And what is to be gained by such a rash step? Will any man in his senses pretend that our territory needs such a safeguard, or that if it were in danger, it is the arm of *Spain that is to save it*. Viewing the matter in this light I cannot but flatter myself, that if the attempt you apprehend should be made it will be rejected with becoming indignation. I am less sanguine as to the issue of the other matter contained in your letter.<sup>1</sup> I know the mutual prejudices which impede every overture towards a just & final settlement of claims & acc<sup>ts</sup>. I persist in the opinion that a proper & speedy adjustment is unattainable from any assembly constituted as Cong<sup>s</sup> is, and acting under the impulse which they must. I need not repeat to you the plan which has always appeared to me most likely to answer the purpose. In the mean time, it is mortifying to see the other States, or rather their Representatives, pursuing a course which will make the case more & more difficult, & putting arms into the hands of the Enemies to every Amendment of our federal system. God knows that they are formidable enough in this State without such an advantage. With it, their triumph will be certain & easy. But I have been led much farther already than I proposed, and will only that.

I am with the sincerest affection, your friend & serv<sup>t</sup>.

The inclosed Tickets belong to a very worthy friend who knows not how to obtain a small prize which they have drawn without giving you the trouble of applying for it. He is apprehensive that the door may be already shut ag<sup>st</sup> the demand. If it should not you will kind eno' to call on the proper office and get the proper certificate. There are but 2 of the Tickets I believe which are entitled to prizes, but as they cannot be distinguished here, it must be done by the Register in the office.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Aug: 12<sup>th</sup>, 1786.

Dear Sir,—

My last of the 19th of June intimated that my next would be from N. York or this place. I expected it would rather have been from the former which I left a few days ago, but my time was so taken up there with my friends and some business that I thought it best to postpone it till my return here. My ride through Virg<sup>a</sup>, Mary<sup>d</sup>, and Pen<sup>a</sup>, was in the midst of harvest. I found the crops of wheat in the upper parts of the two former considerably injured by the wet weather which my last described as so destructive in the lower parts of those States. The computed loss where I passed was about one third. The loss in the Rye was much greater. It was admitted however that the crops of both would have been unusually large but for this casualty. Throughout Pen<sup>a</sup> the wheat was unhurt, and the Rye very little affected. As I came by the way of Winchester & crossed the Potowmac at Harper's I had an opportunity of viewing the magnificent scene which nature here presents. I viewed it however under great disadvantages. The air was so thick that distant objects were not visible at all, and near ones not distinctly so. We ascended the mountain also at a wrong place, fatigued ourselves much in traversing it before we gained the right position, were threatened during the whole time with a thunder storm, and finally overtaken by it. Had the weather been favorable the prospect would have appeared to peculiar advantage, being enriched with the harvest in its full maturity, which filled every vale as far as the eye could reach. I had the additional pleasure here of seeing the progress of the works on the Potowmac. About 50 hands were employed at these falls or rather rapids, who seemed to have overcome the greatest difficulties. Their plan is to slope the fall by opening the bed of the river, in such a manner as to render a lock unnecessary, and, by means of ropes fastened to the rocks, to pull up & ease down the boats where the current is most rapid. At the principal falls 150 hands I was told were at work, and that the length of the canal will be reduced to less than a mile, and carried through a vale which does not require it to be deep. Locks will here be unavoidable. The undertakers are very sanguine. Some of them who are most so talk of having the entire work finished in three years. 1 I can give no particular account of the progress on James River, but am told it is very flattering. I am still less informed of what is doing in North Carolina towards a Canal between her & our waters. The undertaking on the Susquehannah is said to be in such forwardness as to leave no doubt of its success. A negotiation is set on foot between Pen<sup>a</sup>, Mary<sup>d</sup>, & Delaware, for a canal from the head of Chesapeak to the Delaware. Mary<sup>d</sup> as I understand heretofore opposed the undertaking, and Pen<sup>a</sup> means now to make her consent to it a condition on which the opening of the Susquehannah within the limits of Pen<sup>a</sup> will depend. Unless this is permitted the opening undertaken within the limits of Maryland will be of little account. It is lucky that both parties are so dependent on each other as to be thus mutually forced into measures of general utility. I am told that Pen<sup>a</sup> has complied with the joint request of Virg<sup>a</sup> and Maryland for a Road between the head of

Potowmac and the waters of the Ohio and the secure & free use of the latter through her jurisdiction. These fruits of the Revolution do great honour to it. I wish all our proceedings merited the same character. Unhappily there are but too many belonging to the opposite side of the acc<sup>t</sup>. At the head of these is to be put the general rage for paper money. Pen<sup>a</sup>. & N. Carolina took the lead in this folly. In the former the sum emitted was not considerable, the funds for sinking it were good, and it was not made a legal tender. It issued into circulation partly by way of loan to individuals on landed security, partly by way of payment to the public creditors. Its present depreciation is about 10 or 12 per c<sup>t</sup>. In N. Carolina the sums issued at different times has been of greater amount, and it has constantly been a tender. It issued partly in payments to military creditors and latterly, in purchases of Tob<sup>o</sup>. on public account. The Agent I am informed was authorised to give nearly the double of the current price, and as the paper was a tender, debtors ran to him with their Tob<sup>o</sup>., and the creditors paid the expence of the farce. The depreciation is said to be 25 or 30 per C<sup>t</sup>. in that State. S. Carolina was the next in order. Her emission was in the way of loans to individuals, and is not a legal tender. But land is there made a tender in case of suits which shuts the Courts of Justice, and is perhaps as great an evil. The friends of the emission say that it has not yet depreciated, but they admit that the price of commodities has risen, which is evidently the form in which depreciation will first shew itself. New Jersey has just issued £30,000 (dollars at 7s 6) in loans to her citizens. It is a legal tender. An addition of £100,000 is shortly to follow on the same principles. The terror of popular associations stifles as yet an overt discrimination between it & specie; but as this does not operate in Philad<sup>a</sup> & N. York where all the trade of N. J. is carried on, its depreciation has already commenced in those places & must soon communicate itself to N. J. New York is striking £200,000 (doll<sup>r</sup> at 8s.) on the plan of loans to her citizens. It is made a legal tender in case of suits only. As it is but just issuing from the press, its depreciation exists only in the foresight of those who reason without prejudice on the subject. In Rhode Island £100,000 (doll<sup>r</sup> at 6s.) has lately been issued in loans to individuals. It is not only made a tender, but severe penalties annexed to the least attempt direct or indirect to give a preference to specie. Precautions dictated by distrust in the rulers soon produced it in the people. Supplies were withheld from the Market, the Shops were shut, popular meetings ensued, and the State remains in a sort of convulsion.

The Legislature of Mass<sup>ts</sup>. at their last Session rejected a paper emission by a large majority. Connecticut & N. Hampshire also have as yet forborne, but symptoms of danger it is said begin to appear in the latter. The Senate of Mary<sup>d</sup> has hitherto been a bar to paper in that State. The clamor for it is now universal, and as the periodical election of the Senate happens at this crisis, and the whole body is unluckily by their Constitution to be chosen at once, it is probable that a paper emission will be the result. If, in spite of the zeal exerted ag<sup>st</sup> the old Senate a majority of them should be re-elected, it will require all their firmness to withstand the popular torrent. Of the affairs of Georg<sup>a</sup> I know as little as of those of Kamskatska. Whether Virg<sup>a</sup> is to remain exempt from the epidemic malady will depend on the ensuing Assembly. My hopes rest chiefly on the exertions of Col. Mason and the failure of the experiments elsewhere. That these must fail is morally certain; for besides the proofs of it already visible in some States, and the intrinsic defect of the paper in all, this fictitious money will rather feed than cure the spirit of extravagance which sends away the coin to pay



the unfavorable balance, and will therefore soon be carried to market to buy up coin for that purpose. From that moment depreciation is inevitable. The value of money consists in the uses it will serve. Specie will serve all the uses of paper, paper will not serve one of the essential uses of specie. The paper therefore will be less valuable than specie. Among the numerous ills with which this practice is pregnant, one I find is that it is producing the same warfare & retaliation among the States as were produced by the State regulations of commerce. Mass<sup>ts</sup> & Connecticut have passed laws enabling their Citizens who are debtors to Citizens of States having paper money, to pay their debts in the same manner as their Citizens who are creditors to Citizens of the latter States are liable to be paid their debts. The States which have appointed deputies to Annapolis are N. Hampshire, Mass<sup>ts</sup>, R. Island, N. Y., N. J., Pen<sup>a</sup>., Delaware, & Virg<sup>a</sup>. Connecticut declined not from a dislike to the object, but to the idea of a Convention, which it seems has been rendered obnoxious by some internal Conventions, which embarrassed the Legislative Authority. Mary<sup>d</sup>., or rather her Senate negatived an appointment because they supposed the measure might interfere with the plans or prerogatives of Cong<sup>s</sup>. N. Carolina has had no Legislative meeting since the proposition was communicated. S. Carolina supposed she had sufficiently signified her concurrence in a general regulation of trade by vesting the power in Congress for 15 years. Georgia — —. Many Gentlemen both within & without Cong<sup>s</sup>, wish to make this Meeting subservient to a plenipotentiary Convention for amending the Confederation. Tho' my wishes are in favor of such an event, yet I despair so much of its accomplishment at the present crisis that I do not extend my views beyond a commercial Reform. To speak the truth *I almost despair even of this.*<sup>1</sup> You will find the *cause in a measure* now before Congress of which you will receive the detail from Col. Monroe. I content myself with *hinting* that it is a *proposed treaty with Spain* one article of which *shuts up the Mississippi twenty-five or thirty years*, passing by the other *Southern States*, figure to yourself the effect of such a stipulation on the *Assembly of Virginia*, already *jealous of Northern politics* and which will be composed of about *thirty members* from the *Western waters*, of a majority of others attached to the *Western Country* from interests of their own, of their friend or their constituent, and of many others who though indifferent to *Mississippi*, will zealously play off the *disgust of its friends* against federal measures. Figure to yourself its effect on the *people at large* on the *western waters*, who are impatiently waiting for a favorable result to the negotiation with *Gardoqui*, & who will consider themselves as sold by their *Atlantic brethren*. Will it be an unnatural consequence if they consider themselves absolved from every federal tie and court some protection for their betrayed rights. This protection will appear more attainable from the maritime power of *Britain* than from any other quarter; and *Britain* will be more ready than any other nation to seize an opportunity of embroiling our affairs. What may be the motive with *Spain* to satisfy herself with a temporary occlusion of the *Mississippi* at the same time that she holds forth our claim to it as absolutely inadmissible is matter for conjecture only. The patrons of the measure in Congress contend that the Minister, who at present governs the *Spanish councils* means only to disembarass himself at the expence of the successors. I should rather suppose he means to work a total separation of interest and affection between western & eastern settlements and to foment the jealousy between the *Eastern & Southern States*. By the former the population of the *Western Country* it may be expected, will be checked and the *Mississippi* so far secured; and by both the general security of *Spanish America* be promoted. As far as I



can learn the *assent of nine States* in Congress will not at this time be *got to the projected treaty* but an *unsuccessful attempt* by six or seven will *favor the views of Spain* and *be fatal* I fear to an *augmentation of the federal authority* if not to the *little now existing*. My personal situation is rendered by this business particularly *mortifying*. Ever since I have been *out of Congress* I have been *inculcating* on our *Assembly* a *confidence* in the *equal attention of Congress* to the *rights and interests of every part of the republic* and on the *Western members* in particular, the necessity of making the Union *respectable by new powers to Congress* if they wished *Congress to negotiate with effect for the Mississippi*. I leave to Col. Monroe the giving you a particular account of the *Impost*. The Acts of Penn<sup>a</sup>, Delaware & N. York must be revised & amended in material points before it can be put in force, and even then the fetters put on the collection by some other States will make it a very awkward business. Your favor of 25<sup>th</sup>. of April from London found me here. My letter from Richm<sup>d</sup> at the close of the Assembly will have informed you of the situation in which British debts stand in Virg<sup>a</sup>. Unless Con<sup>s</sup> say something on the subject I do not think anything will be done by the next Session. The expectations of the British Merchants coincide with the information I had rec<sup>d</sup>, as your opinion of the steps proper to be taken by the Assembly do with those for which I have ineffectually contended. The merits of Mr. P[aradise] will ensure every attention from me to his claim as far as general principles will admit. I am afraid that these will insuperably bar his wishes. The Catalogues sent by Mr. Skipwith I do not expect to receive till I get back to Virg<sup>a</sup>. If you meet with “*Græcorum Respublicæ ab Ubbone Emmio descriptæ*,” Sugd. Batavorum, 1632, pray get it for me.

My trip to N. Y. was occasioned chiefly by a plan concerted between Col. Monroe<sup>1</sup> & myself for a purchase of land on the Mohawk. Both of us have visited that district and were equally charmed with it. The soil is perhaps scarcely inferior to that of Kentucky, it lies within the body of the Atlantic States & at a safe distance from every frontier, it is contiguous to a branch of Hudson’s River which is navigable with trifling portages which will be temporary, to tide-water, and is not more than ten 15 or 20 miles from populous settlements, where land sells at £8 to £10 per acre. In talking of this Country some time ago with *General Washington* he considered it in the same light with Monroe and myself, intimating that if he had money to spare and was disposed to deal in land, this is the very Spot which his fancy had selected of all the U. S. We have made a small purchase, and nothing *but the difficulty of raising a sufficient sum restrained us from making a large one*. In searching for the *means of overcoming this difficulty* one has occurred which we have agreed that *I should mention to you*, and which if you should think as we do is *recommended by the prospect of advantage to yourself as well as to us*. We mention it *freely because we trust that if it does not meet with your sanction — you will as freely tell us so*.<sup>1</sup> It is that the *aid of your credit in your private capacity be used for borrowing say four or five thousand louis more or less, on the obligation of Monroe and myself with your suretyship to be laid out by Monroe and myself for our triple emolument on interest not exceeding six p. cent to be paid annually and the principle within a term not less than eight or ten years*. To guard ag<sup>st</sup>. accidents a private instrument might be *executed among ourselves such writing specifying all necessary covenants*. We have not taken the resolution of *this plan without well examining the expediency of your becoming a party to it as well as the prospect of its succeeding*. There can certainly be

*no impropriety in your taking just means of bettering your fortune, nor can we discover in your doing this on the Mokawk more than on James River. For the prospect of gain by rise of the land beyond the interest of the money we calculate on the present difference of price between the settled & vacant land far beyond any possible difference in the real value. The former as has been noted sells for eight or ten pounds per acre. The latter distinguished only by its being a little higher up the River & its being uninhabited was bought by us for one dollar & a half and there is little doubt that by taking up a large quantity, still better bargains may be got. This comparative cheapness proceeds from causes which are accidental & temporary. The lands in question are chiefly in the hands of men who hold large quantities and who are either in debt or live in the city at an expence for which they have no other resource or are engaged in transactions that require money. The scarcity of specie which enters much into the cheapness is probably but temporary also. As it is the child of extravagance it will become the parent of economy, which will regain us our due share of the universal medium. The same vicissitude which can only be retarded by our short-lived substitutes of paper will be attended also by such a fall in the rate of exchange that money drawn by bills from Europe now and repaid a few years hence will probably save one years interest at least. I will only add that scarce an instance has happened in which purchases of new lands of good quality and in good situations have not well rewarded the adventurers. With these remarks which determine our judgments we submit to your better one the project to which they relate. Wishing you every possible happiness I remain D<sup>r</sup> Sir your affectionate friend & Serv<sup>t</sup>.*

M<sup>rs</sup>. House and M<sup>rs</sup>. Trist desire to be particularly remembered to yourself and Miss Patsy. I left with Col Monroe letters for you both from M<sup>rs</sup>. T. which will probably go by the same packet with this.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

Philadelphia, August 17th, 1786.

D<sup>R</sup> Sir,—

I have your favor of the 14th inst. The expedient of which you ask my opinion has received, as it deserved, all the consideration which the time and other circumstances would allow me to give. I think that, in the present state of things, such an arrangement would be beneficial, and even pleasing to those most concerned in it; and yet I doubt extremely the policy of your proposing it to Congress. [2](#) The objections which occur to me are: 1. That if the temper and views of Congress be such as you apprehend, it is morally certain they would not enter into the accommodation. Nothing, therefore, would be gained, and you would have to combat under the disadvantage of having forsaken your first ground. 2. If Congress should adopt your expedient as a ground of negotiation with Guardoqui, and the views of Spain be such as they must be apprehended to be, it is still more certain that it would be rejected on that side, especially under the flattering hopes which the spirit of concession in Congress must have raised. In this event, the patrons of the measure now before Congress would return to it with a greater eagerness and with fresh arguments, drawn from the impossibility of making better terms, and from the relaxation into which their opponents will have been betrayed. It is even possible that a foresight of this event might induce a politic concurrence in the experiment.

Your knowledge of all circumstances will make you a better judge of the solidity or fallacy of these reflections than I can be. I do not extend them because it would be superfluous, as well as because it might lead to details which could not prudently be committed to the mail without the guard of a cypher. Not foreseeing that any confidential communication on *paper* would happen between us during my absence from Virginia, I did not bring mine with me.

[\[Back to Table of Contents\]](#)

## TO AMBROSE MADISON.1

Annapolis, Sep<sup>t</sup>. 8<sup>th</sup>, 1786.

D<sup>R</sup> Bro<sup>R</sup>.,—

I came to this place a day or two ago, where I found two cosrs only. A few more have since come in, but the prospect of a sufficient n<sup>o</sup>. to make the meeting respectable is not flattering. I was sorry to find in Philad<sup>a</sup>. that the unpunctuality of some of the purchasers of the Tob<sup>o</sup>. had put it out of the power of M<sup>r</sup>. H. to supply me with all the money become due under the contracts. This unpunctuality owing partly to causes which are felt everywhere, partly to the abolition of the bank, has extended itself to men who have scarcely before afforded room for complaint. The disappointment reduced me to the dilemma of either not executing the commissions for the family & failing in some of my engagements particularly in N. Y. or of leaving you still longer to parry your creditors. Disagreeable as the latter option was I could not but consider it as the lesser inconvenience. M<sup>r</sup>. H. has promised to spare no efforts to get in the remaining payments as fast as possible, & to send or even bring them to Annapolis in case the session here should be prolonged till a sum worth while shall be collected. If the Session here should be so far shortened as to leave me time I propose to ride back to Philad<sup>a</sup>. & be the bearer of it from thence myself. I shall probably write again to you from this place. I do not write now to my father because I have nothing worth the postage. You will let him know that most of the Articles on his list will probably soon be at Fredg<sup>b</sup>. perhaps sooner than this reaches you. The West Ind<sup>a</sup>. articles were dear & for that reason some of them are abridged in quantity. The other articles were cheap in general, which led me to add several beyond my commission, being well assured that if not wanted they may be either disposed of or exchanged with advantage. . . .

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Annapolis, Sep<sup>r</sup> 11, 1786.

Mad. Mss.

Dear Sir,—

I have two letters from you not yet acknowledged, one of the 1<sup>st</sup>. the other of the 3<sup>d</sup>. inst: nothing could be more distressing than the issue of the business stated in the latter.1 If the affirmative vote of 7 States s<sup>d</sup>. be pursued it will add the insult of trick to the injury of the thing itself. Our prospect here makes no amends for what is done with you. Delaware N. J. & V<sup>a</sup>. alone are on the ground, two Commiss<sup>rs</sup> attend from N. Y. & one from P<sup>a</sup>. Unless the sudden attendance of a much more respectable number takes place it is proposed to break up the Meeting, with a recoendation of another time & place, & an *intimation* of the expediency of extending the plan to other defects of the Confederation. In case of a speedy dispersion I shall find it requisite to ride back as far as Philad<sup>a</sup>. before I proceed to Virg<sup>a</sup>. from which place, if not from this, I will let you know the upshot here. I have heard that Col. Grayson was stopped at Trenton by indisposition on his way to the Assembly of Pen<sup>a</sup>. I hope he is well again, & w<sup>d</sup> write to him but know not whither to address a letter to him.2

Adieu. Yrs Aff<sup>Y</sup>.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Philad<sup>a</sup>., Oct<sup>r</sup>. 5<sup>th</sup>., 1786.

Mad. Mss.

Dear Sir,—

I rec<sup>d</sup>. yesterday your favor of the 2<sup>d</sup>. inst: which makes the third for which my acknowledgments are due. The progression which a certain measure 1 seems to be making is an alarming proof of the predominance of temporary and partial interests over those just & extended maxims of policy, which have been so much boasted of among us and which alone can effectuate the durable prosperity of the Union. Should the measure triumph under the patronage of 9 States or even of the whole thirteen, I shall never be convinced that it is expedient, because I cannot conceive it to be just. There is no maxim in my opinion which is more liable to be misapplied, and which therefore more needs elucidation than the current one that the interest of the majority is the political standard of right and wrong. Taking the word “interest” as synonymous with “ultimate happiness,” in which sense it is qualified with every necessary moral ingredient, the proposition is no doubt true. But taking it in the popular sense, as referring to immediate augmentation of property and wealth, nothing can be more false. In the latter sense it would be the interest of the majority in every community to despoil & enslave the minority of individuals; and in a federal community to make a similar sacrifice of the minority of the component States. In fact it is only re-establishing under another name and a more specious form, force as the measure of right; and in this light the Western settlements will infallibly view it.

I have considered with attention the paragraph in your last which relates to the further offer of Taylor. It seems to be an inviting one & probably would turn out a good one, yet there are strong objections ag<sup>st</sup>. purchasing in the dark or on a vague knowledge of the situation. There would be hazard in the experiment if both parties were on a level, but there would perhaps be rashness in it where one of them proceeds on full information. Circumspection seems also more necessary in proportion to the indulgences proposed in the payments, as they suggest other motives for selling than mere pecuniary difficulties. These objections may indeed be lessened by taking information at second hand and by supposing the partial payment in hand as the ruling motive of the seller. But still they have considerable weight; and when added to two others are decisive with me ag<sup>st</sup>. an immediate contract. I draw the first of these from the numerous disappointments to which I find pecuniary matters in the present state of things are liable, and the mortifications which they involve. The second I draw from a reflection that if we should at the date of future payments have in our hands the means of discharging them, they will as ready money then command as good bargains as can now be made on credit. These remarks you will observe lye ag<sup>st</sup> further speculations at present. The expediency of them under favorable circumstances I view in as strong a light as ever I did, and am happy to find your attention kept up to the subject, and you are gathering information relative to it.

I fear I shall be obliged to accept of your very friendly procrastination of the repayment which ought long ago to have been made. The disappointments which have prevented it, contribute to my delay here at this time, and will together with a vicarious business which I have undertaken for a particular friend, probably spin it out a few days longer. If anything occurs before I set out or on the road I shall not fail to write. Col. Grayson is still here. For a week he has been nearly well. his symptoms of yesterday prove that he has remains of his disorder which require his attention.

Martin did not make his report from Milligan as to the lottery tickets. pray send me the information in your next. Compl<sup>ts</sup> to yr family Adieu

Seal & present the inclosed if you please.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richm<sup>d</sup>., Oct<sup>r</sup>. 30, 1786.

Mad. Mss.

Dear Sir,—

I drop you a few lines rather as a fulfilment of my promise than for the purpose of information, since they go by M<sup>r</sup>. Jones who is much better acquainted with the politics here than myself. I find with pleasure that the navigation of the Miss<sup>pl</sup>. will be defended by the Legislature with as much zeal as could be wished. 1 Indeed the only danger is that too much resentment may be indulged by many ag<sup>st</sup>. the federal councils. Paper money has not yet been tried even in any indirect mode that could bring forth the mind of the Legislature. Appearances on the subject however are rather flattering. Mr. H [enry] has declined a reappoint<sup>t</sup>. to the office he holds, and M<sup>r</sup>. Randolph 1 is in nomination for his successor, and will pretty certainly be elected. R. H. L [ee] has been talked of, but is not yet proposed. The app<sup>ts</sup>. to Cong<sup>s</sup>. are a subject of conversation & will be made as soon as a Senate is made. Mr. Jones will be included in the New Delegation. Your presence & communications on the point of the Miss are exceedingly wished for and would in several respects be extremely useful. If Mr. Jones does not return in a day or two come without him I beseech you. I am consulted frequently on matters concerning which I cannot or ought not to speak, and refer to you as the proper source of information as far as you may be at liberty. Hasten your trip I again beseech you. I hope Mrs. Monroe continues well. My sincerest respects wait on her. In haste

Adieu. Yrs.



[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Richmond Nov<sup>r</sup>. 1. 1786.

Mad. Mss.

Hon<sup>d</sup> Sir,—

J<sup>no</sup>. Tucker & Joe got down this forenoon, with articles sent. I shall execute your instructions as to the advertizements, and the Revised laws, if I can get at the latter time eno<sup>r</sup> in the morning. I will do the same as to the French Dict<sup>y</sup> for M<sup>r</sup> Taylor if I can effect it in time; if not I will make use of the first succeeding opportunity. I can give you no account of the Key of the Trunk. I suppose it must have been dropped or taken off & not replaced, for keys in such cases are usually fastened to the Trunks. I omitted in my letter from Fred<sup>s</sup>. to mention that I had directed 2 bolts of Oznabergs to be sent along with the other articles from Philad<sup>a</sup>. but as I did it on the like condition of price & quality being approved by M<sup>r</sup> H. it is uncertain whether any of the articles will come. I intended it merely as an experiment.

Paper money was the subject of discussion this day, and was voted by a majority of 84 vs 17, to be “unjust, impolitic, destructive of public & private confidence, and 1 of that virtue which is the basis of Republican Government.” Our Revenue matters have also been on the anvil, several changes in our taxes are proposed, and it is not unlikely that some will take place. Duties on imports will be urged as far as they can be guarded ag<sup>st</sup> smuggling by land, as well as by water. Gov<sup>r</sup> Henry declines a reappoint<sup>t</sup>, but does not come into the Assembly. The Attorney or R. H. Lee, probably the former, will supply his place. We learn that great commotions are prevailing in Mass<sup>ts</sup>. An appeal to the Sword is exceedingly dreaded. The discontented it is said are as numerous as the friends of Gov<sup>t</sup>. and more decided in their measures. Should they get uppermost, it is uncertain what may be the effect. They profess to aim only at a reform of their Constitution and of certain abuses in the public administration, but an abolition of debts public & private, and a new division of property are strongly suspected to be in contemplation. We also learn that a general combination of the Indians threatens the frontier of the U. S. Cong<sup>s</sup> are planning measures for warding off the blow, one of which is an augmentation of the federal troops to upwards of 2000 men. In addition to these ills, it is pretty certain that a formidable party in Cong<sup>s</sup> are bent on surrendering the Missis<sup>pi</sup>. to Spain for the sake of some commercial stipulations. The project has already excited much heat within that Assembly & if pursued will not fail to alienate the Western Country & confirm the animosity & jealousy already subsisting between the Atlantic States. I fear that, altho<sup>r</sup> it should be frustrated, the effects already produced will be a great bar to our amendment of the Confederacy which I consider as essential to its continuance. I have letters from Kentucky which inform me that the expedition ag<sup>st</sup> the Indians has prevented the meeting which was to decide the question of their Independence. It is probable the news relative to the surrender of the Miss<sup>pi</sup>. will lessen the disposition to separate. If the bacon left behind by J<sup>no</sup>. should not have been sent it need not be sent at all. Fresh

butter will from time to time, continue to be very acceptable. My best regards to my mother and the family.

Your Affec<sup>T</sup>. & Dutiful Son.

[\[Back to Table of Contents\]](#)

## SPEECH IN THE VIRGINIA HOUSE OF DELEGATES, NOVEMBER, 1786, AGAINST PAPER MONEY.1

Mad. Mss.

*Unequal to Specie.* 1. being redeble at future day and not bearing interest. 2. illustrated by [obliterated] of Bank notes—Stock in funds—paper of Spain issued during late war [see Neckar on finance]. Navy bills—tallies. 3. being of less *use* than specie which answers externally as well as internally—must be of *value* which depends on the use.

*Unjust.* 1. to creditors if a legal tender. 2 to debtors if not legal tender, by increasing difficulty of getting specie. This it does by increasing extravagance & unfavourable balance of trade—& by destroying that confidence between man & man, by which resources of one may be coanded by another. Illustrated 1 by raising denomination of coin 2. increasing alloy of d<sup>o</sup>. brass made as silver by the Romans according to Sallust.1 3 by changing weights & measures. 4. by case of creditors within who are debtors without the State.

*Unconstitutional* 1. Affects rights of property as much as taking away equal value in land; illustr<sup>d</sup>. by case of land p<sup>d</sup>. for down & to be convey<sup>d</sup>. in future, & of a law permitting conveyance to be satisfied by conveying a part only—or other land of inferior quality—2. affects property without trial by Jury.

Antifederal. Right of regulating coin given to Cong<sup>s</sup>. for two reasons. 1. for sake of uniformity. 2. to prevent fraud in States towards each other or foreigners. Both these reasons hold equally as to paper money.

Unnecessary. 1. produce of country will bring in specie, if not laid out in superfluities. 2. Of paper, if necessary, eno' already in Tob<sup>o</sup>. notes, & public securities—3. the true mode of giving value to these, and bringing in specie is to enforce Justice & taxes.

Pernicious. 1. by fostering luxury, extends instead of curing scarcity of specie—2. by disabling compliance with requisition of Cong<sup>s</sup>. 3. serving dissensions between States. 4. destroy<sup>g</sup>. confidence between individuals. 5. discouraging coerce—6 enrich<sup>g</sup>. collectors & sharpers—7. vitiating morals. 8. reversing end of Gov<sup>t</sup>. which is to reward best & punish worst. 9. conspiring with other States to disgrace Republican Gov<sup>ts</sup>. in the eyes of mankind.

Objection. paper money good before the War.

Answ<sup>r</sup>. 1. not true in N. Eng<sup>d</sup>. nor in V<sup>a</sup>. where exchange rose to 60 per c<sup>t</sup>. nor in Mary<sup>d</sup>. see Franklyn on paper money 2. confidence then not now. 3. principles of paper credit not then understood. Such w<sup>d</sup>. not then nor now succeed in Great Britain &c.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Richmond, Nov<sup>r</sup>. 1, 1786.

Wash. Mss.

Dear Sir,—

I have been here too short a time as yet to have collected fully the politics of the Session. In general appearances are favorable. On the question of a paper emission the measure was this day rejected in emphatic terms by a majority of 84 vs. 17. The Affair of the Mississippi is but imperfectly known. I find that its influence on the federal spirit will not be less than was apprehended. The Western members will not be long silent on the subject. I inculcate a hope that the views of Congress may yet be changed and that it would be rash to suffer the alarm to interfere with the policy of amending the Confederacy. The sense of the House has not yet been tried on the latter point. The Report from the Deputies to Annapolis lies on the Table, and I hope will be called for before the business of the Mississippi begins to ferment. Mr. Henry has signified his wish not to be reelected, but will not be in the Assembly. The Attorney & R. H. Lee are in nomination for his successor. The former will probably be appointed, in which case the contest for that vacancy will lie between Col. Innes & Mr. Marshal. The nominations for Cong<sup>s</sup>. are as usual numerous. There being no Senate yet it is uncertain when any of these appointments will take place.

With the sincerest affection & the highest esteem

I Am Dear Sir  
Y<sup>R</sup>. Obed<sup>T</sup>. & Humble Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Richm<sup>d</sup>., Nov<sup>r</sup> 8<sup>th</sup>., 1786.

Wash. Mss.

Dear Sir,—

I am just honoured with your favor of the 5<sup>th</sup>. inst: The intelligence from Gen<sup>l</sup>. Knox<sup>1</sup> is gloomy indeed, but is less so than the colours in which I had it thro' another channel. If the lessons which it inculcates should not work the proper impressions on the American public, it will be a proof that our case is desperate. Judging from the present temper and apparent views of our Assembly, I have some ground for leaning to the side of Hope. The vote against paper money has been followed by two others of great importance. By one of them petitions for applying a scale of depreciation to the Military certificates was *unanimously* rejected. By the other the expediency of complying with the Recommendation from Annapolis in favour of a general revision of the federal system was *unanimously* agreed to. A bill for the purpose is now depending and in a form which attests the most federal spirit. As no opposition has been yet made and it is ready for the third reading, I expect it will soon be before the public. It has been thought advisable to give this subject a very solemn dress, and all the weight that could be derived from a single State. This idea will be pursued in the selection of characters to represent Virg<sup>a</sup>. in the federal convention. You will infer our earnestness on this point from the liberty which will be used of placing your name at the head of them. How far this liberty may correspond with the ideas by which you ought to be governed will be best decided when it must ultimately be decided. In every event it will assist powerfully in marking the zeal of our Legislature, and its opinion of the magnitude of the occasion. Mr. Randolph has been elected successor to Mr. Henry. He had 73 votes, Col. Bland 28, & R. H. Lee 22. The delegation to Congress drops Col. H. Lee, a circumstance which gives much pain to those who attend to the mortification in which it involves a man of sensibility. I am yet to learn the ground of the extensive disapprobation which has shewn itself.

I am Dear Sir most respectfully & affect<sup>ly</sup>

Y<sup>R</sup> Obed<sup>T</sup>. & Hble Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO HENRY LEE. [1](#)

Mad. Mss.

*(Copy.)*

Richmond Nov. 9<sup>th</sup> 1786.

Dear Sir,—

The last mail went out at a time when I was so engaged that I could not drop a line to you—the task of first conveying to you the result of the elections for Congress here has therefore probably been performed by some of your other friends—The superiority which your reflection and firmness will maintain over the vicissitudes incident to public life, forbids any suggestions which may be calculated to abate a sensibility with regard to them—I will only assure you that the indelicacy of the situation in which your country has placed you is severely felt by those whose esteem you would most value.

The enclosed paper contains all the Legislative information worth giving you—Present my respectful compliments to M<sup>rs</sup>. Lee, and assure yourself of my sincerest wishes for your happiness—

Yrs Aff<sup>ly</sup>

Js. Madison J<sup>r</sup>.

To the

Hon<sup>ble</sup>. Henry Lee

New York

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richm<sup>d</sup>., Nov<sup>r</sup> 16, 1786.

Mad. Mss.

Hon<sup>D</sup>. Sir,—

Mr. Anderson in answer to your enquiries tells me that you shall have goods at 87½ per C<sup>t</sup>. and that he will take Tob<sup>o</sup>. for his brother if it be ready by the 10<sup>th</sup>. of next month.

The H. of Delegates have done little since my last, and what was then done is still ineffectual for want of a Senate. A proposition for stopping the receipt of indents was made, and met with so little countenance that it was withdrawn. They will continue to be receivable as far as the law now permits, and those who have them not would do well to provide them. A bill is depending which makes Tob<sup>o</sup>. receivable in lieu of the specie part of the current tax, according to its value at the different Warehouses. Whether it will pass or not is uncertain. I think it most probable that it will pass. Nothing has yet been done as to the certificate tax. I have sent Mr. R. Taylor his French Dict<sup>y</sup>. by Mr Pannel, its price was 4s. With best regards to the family I remain

Y<sup>R</sup>. Dutiful Son

I have a letter from Mr. J. Smith giving me the first information that J. W. & J. M. are not to return to the Academy, and asking for the balance. I hope my brother F. has taken steps for remitting his.

[\[Back to Table of Contents\]](#)

TO HENRY LEE.

Mad. Mss.

(*Copy*)

Richmond, Nov. 23<sup>d</sup> 1786.

Dear Sir,—

I have received your favor of the 11<sup>th</sup> Instant.—Having never felt an intermission of my regard for you I cannot be insensible either to the friendship which it speaks on your part or the failure of it, which it supposes on mine—That the latter sentiment should have resulted from a communication which could have no motive but one that ought to have prevented such a consequence, may well fill me with surprise—To the former, as well as to my own feelings, I owe an explanation which might perhaps be put into a more striking dress, if I were less unused to that mode of justifying my friendships—I observe in the first place, that I was not fully aware of the extent to which the event shewed that prejudices had been diffused against you—and that my intimations on that head were meant only to break the force of a disappointment which might fall upon you—This miscalculation of danger was also more natural as I had taken it for granted that one of the gentlemen elected would have been withheld or withdrawn from the nomination—2<sup>d</sup>. that my own nomination was not suffered to be a bar to any steps in your behalf, which the occasion seemed to call for, and propriety seemed to admit—That it was properly a bar to some steps which in other circumstances might have been taken will be felt by every man who shuns the imputation of arrogantly presuming on his own appointment—and still more arrogantly seeking to annex to it, that of others with whom he chuses to be associated—Whenever indeed an assent to my own nomination to office, shall proceed from no other motive but that of “supporting the temporary wishes of myself,” a possibility only of its interference with the consideration of private friendship, shall not fail to recall it—As long as I continue to be carried into public service by motives more consonant to my professions, a *presumption* at least of such an interference will be held a necessary apology to myself for yielding to that consideration—What share the affair of the Mississippi had in the prejudices raised against you I am not able to say exactly—As far as I could learn the subject was little talked of previous to the election, and I believe your opinions known to but few—As I perceive your suspicions strongly connect this cause with the injury you have sustained, I feel a satisfaction in declaring that in the instances which came within my knowledge, I made it a point to urge the fact that you had invariably obeyed your instructions—that any further instructions therefore might be safely confided to you, and that it would be cruel to sacrifice to possible dangers the feelings of a public servant, who was charged with no breach of duty whatever, and who in other respects had gained distinguished honor to himself and to his country—



In stating these facts I discharge a debt due to truth, to candour, and to the friendship which has subsisted between us—The full approbation which my own mind gives to the part taken by me, leaves nothing to be added, but a return of my wishes for your health and happiness—

Adieu, Sincerely Yrs

J<sup>s</sup> Madison Jr

Henry Lee Jun. Esq.

Alexandria

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Nov<sup>r</sup>. 24. 1786.

Mad. Mss.

Hon<sup>D</sup> Sir,—

The H. of D. have just past a bill making Tob<sup>o</sup>. receivable in the tax at the market price at the several Warehouses to be fixt by the Executive. There is a proviso that the highest price shall not exceed 28s. An equality of price throughout was contended for which I disapproved. 1. because I think it would have been unjust. 2. because the bill could not have been carried in that form. I was not anxious for its success in any form, but acquiesced in it as it stands as the people may consider it in the light of an easement, and as it may prevent some worse project in the Assembly. I have in my hands about 300 doll<sup>rs</sup>. in indents the property of a friend in Philad<sup>a</sup>. which may be applied to your taxes at the market value if you chuse to take them. A call of the House stops me.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Richm<sup>d</sup> Dec<sup>r</sup> 4, 1786.

Mad. Mss.

Dear Sir,—

Your last favor which was of the 25<sup>th</sup>. of April, has already been acknowledged. My last inclosing a letter from M<sup>ts</sup> Carr, was dated a few days ago only. It was put into the hands of Mos<sup>r</sup>. Chevalier who has gone to N. York, whither I shall forward this to his care. He is to embark in the packet which will sail on the 15<sup>th</sup>. inst: The recommendation from the meeting at Annapolis of a plenipotentiary Convention in Philad<sup>a</sup>. in May next has been well rece<sup>d</sup>. by the Assembly here. Indeed the evidence of dangerous defects in the confederation has at length proselyted the most obstinate adversaries to a reform. The unanimous sanction given by the Assembly to the inclosed compliance<sup>1</sup> with the Recommendation marks sufficiently the revolution of sentiment which the experience of one year has effected in this Country. The deputies are not yet appointed. It is expected that Gen<sup>l</sup> Washington, the present Gov<sup>r</sup>. E. Randolph, Esq<sup>r</sup>. & the late one M<sup>r</sup>. Henry, will be of the number.<sup>2</sup>

The project for bartering the Missipi to Spain was brought before the Assembly after the preceding measure had been adopted. The report of it having reached the ears of the Western Representatives, as many of them as were on the spot, backed by a number of the late officers, presented a memorial, full of consternation & complaint; in consequence of which some very pointed resolutions by way of instruction to the Delegates in Cong<sup>s</sup>. were *unanimously* entered into by the House of Delegates. They are now before the Senate who will no doubt be also unanimous in their Concurrence.

The question of paper money was among the first with which the Session opened. It was introduced by petitions from two Counties. The discussion was faintly supported by a few obscure patrons of the measure, and on the vote it was thrown out by 85 vs 17. A petition for paying off the public securities according to a scale of their current prices, was *unanimously* rejected.

The consideration of the Revised Code has been resumed & prosecuted pretty far towards its conclusion. I find however that it will be impossible as well as unsafe to give an ultimate fiat to the System at this session. The expedient I have in view is to provide for a supplemental revision by a comtee who shall accommodate the bills skipped over, and the subsequent laws, to such part of the code as has been adopted, suspending the operation of the latter for one year longer. Such a work is rendered indispensable by the alterations made in some of the bills in their passage, by the change of circumstances which call for corresponding changes in sundry bills which have been laid by, and by the incoherence between the whole code & the laws in force of posterior date to the code. This business has consumed a great deal of the time of two Sessions, and has given infinite trouble to some of us. We have never been without opponents who contest at least every innovation inch by inch. The bill

proportioning crimes & punishments on which we were wrecked last year, has after undergoing a number of alterations, got thro' a Committee of the whole; but it has not yet been reported to the House, where it will meet with the most vigorous attack. I think the chance is rather against its final passage in that branch of the Assembly, and if it should not miscarry there, it will have another gauntlet to run through the Senate.

The bill on the subject of Education which could not safely be brought into discussion at all last year, has undergone a pretty indulgent consideration this. In order to obviate the objection from the inability of the Country to bear the expence, it was proposed that it should be passed into a law, but its operation suspended for three or four years. Even in this form however there would be hazard in pushing it to a final question, and I begin to think it will be best to let it lie over for the supplemental Revisors, who may perhaps be able to put it into some shape that will lessen the objection of expence. I should have no hesitation at this policy if I saw a chance of getting a Committee equal to the work of completing the Revision. M<sup>r</sup>. Pendleton is too far gone to take any part in it. Mr. Wythe I suppose will not decline any duty which may be imposed on him, but it seems almost cruel to tax his patriotic zeal any farther. M<sup>r</sup>. Blair is the only remaining character in which full confidence could be placed.

The delay in the administration of Justice from the accumulation of business in the Gen<sup>l</sup> Court, and despair of obtaining a reform according to the Assize plan, have led me to give up this plan in favor of district Courts; which differ from the former in being clothed with all the powers of the Gen<sup>l</sup>. Court within their respective districts. The bill on the latter plan will be reported in a few days and will probably tho' not certainly be adopted.

The fruits of the impolitic measures taken at the last Session with regard to taxes are bitterly tasted now. Our Treasury is empty, no supplies have gone to the federal treasury, and our internal embarrassments torment us exceedingly. The present Assembly have good dispositions on the subject, but some time will elapse before any of their arrangements can be productive. In one instance only the general principles of finance have been departed from. The specie part of the tax under collection is made payable in Tob<sup>o</sup>. This indulgence to the people as it is called & considered was so warmly wished for out of doors, and so strenuously pressed within that it could not be rejected without danger of exciting some worse project of a popular cast. As Tob<sup>o</sup>. alone is made commutable, there is reason to hope the public treasury will suffer little if at all. It may possibly gain.

The Repeal of the port bill has not yet been attempted. Col. Mason has been waited for as the hero of the attack. As it is become uncertain whether he will be down at all, the question will probably be brought forward in a few days. The repeal were he present would be morally certain. Under the disadvantage of his absence it is more than probable. The question of British debts has also awaited his patronage. I am unable to say what the present temper is on that subject, nothing having passed that could make trial of it. The repeated disappointments I have sustained in efforts in favor of the Treaty make me extremely averse to take the lead in the business again.

The public appointments<sup>ts</sup> have been disposed of as follows: The contest for the chair lay between Col. Bland & M<sup>r</sup>. Prentis. The latter prevailed by a majority of near 20 votes. M<sup>r</sup>. Harrison the late Speaker lost his election in Surry which he represented last year; and since has been equally unsuccessful in his pristine County Charles City where he made a second experiment. In the choice of a Governor M<sup>r</sup>. E. Randolph had a considerable majority of the whole on the first ballot. His competitors were Col. Bland & R. H. Lee, each of whom had between 20 & 30 votes. The delegation to Cong<sup>s</sup>. contained under the first choice Grayson, Carrington, R. H. Lee, Mr. Jones & myself. Col. H. Lee of the last delegation was dropt. The causes were different I believe & not very accurately known to me. One of them is said to have been his supposed heterodoxy touching the Missip<sup>pi</sup>. M<sup>r</sup>. Jones has since declined his appointment<sup>t</sup>, & Col. Lee has been reinstated by an almost unanimous vote. A vacancy in the Council produced by the Resignation of Mr. Roane is filled by Mr. Bolling Starke. Cyrus Griffin was a candidate but was left considerably in the rear. The Attorney Generalship has been conferred on Col. Innes. M<sup>r</sup> Marshall had a handsome vote.

Our summer & fall have been wet beyond all imagination in some places, and much so everywhere. The crops of corn are in general plentiful. The price up the country will not exceed 8s or 10s. In this district it is scarcest & dearest, being already as high as 12s or 15s. The crop of Tob<sup>o</sup>. will fall short considerably it is calculated of the last year's. The highest & lowest prices in the Country of the new crop are 25s & 20s. A rise is confidently expected.

My next will be from N. Y. whither I shall set out as soon as the principal business of the Session is over. Till my arrival there I postpone communications relative to our national affairs, which I shall then be able to make on better grounds, as well as some circumstances relative to the affairs of this State, which the hurry of the present opportunity restrains me from entering into.

Adieu.

[\[Back to Table of Contents\]](#)

## TO GENERAL WASHINGTON.

Richmond, Dec<sup>r</sup> 7, 1786.

Mad. Mss.

Dear Sir,—

Notwithstanding the communications in your favor of the 18<sup>th</sup> Ult<sup>o</sup>, which has remained till now unacknowledged, it was the opinion of every judicious friend whom I consulted, that your name could not be spared from the Deputation to the Meeting in May at Philadelphia. It was supposed in the first place, that the peculiarity of the Mission, and its acknowledged pre-eminence over every other public object, may possibly reconcile your undertaking it, with the respect which is justly due, & which you wish to pay, to the late officers of the Army; and in the second place, that although you should find that or any other consideration an obstacle to your attendance on the service, the advantage of having your name in the front of the appointment, as a mark of the earnestness of Virg<sup>a</sup>, and an invitation to the most select characters from every part of the Confederacy, ought at all events to be made use of. In these sentiments I own I fully concurred, and flatter myself that they will at least apologize for my departure from those held out in your letter. I even flatter myself that they will merit a serious consideration with yourself, whether the difficulties which you enumerate ought not to give way to them.

The affair of the Mississippi which was brought before the Assembly in a long Memorial from the Western members and some of the Officers, has undergone a full consideration of both Houses. The Resolutions printed in the papers were agreed to unanimously in the House of Delegates. In the Senate, I am told, the language was objected to by some members, as too pointed. They certainly express in substance the decided sense of the country at this time on the subject, and were offered in the place of some which went much farther, and which were in other respects exceptionable. I am entirely convinced, from what I observe here, that unless the project of Congress (for ceding to Spain the Mississippi for 25 years) can be reversed, the hopes of carrying this State into a proper federal system will be demolished. Many of our most federal leading men are extremely soured with what has already passed. Mr. Henry, who has been hitherto the Champion of the federal cause has become a cold advocate, and in the event of an actual sacrifice of the Mississippi by Congress, will unquestionably go over to the opposite side. I have a letter from Col. Grayson of late date which tells me that nothing further has been done in Congress, and one from M<sup>r</sup> A. Clarke of New Jersey, which informs me that he expected every day, instructions from his Legislature for reversing the vote given by the Delegates of that State in favor of the project.

The temper of the Assembly at the beginning of the Session augured an escape from every measure this year not consonant to the proper principles of Legislation. I fear now that the conclusion will contradict the promising outset. In admitting Tobacco for a commutable, we perhaps swerved a little from the line in which we set out. I

acquiesced in the measure myself as a prudential compliance with the clamours within doors & without, and as a probable means of obviating more hurtful experiments. I find however now, that it either had no such tendency, or that schemes were in embryo which I was not aware of. A bill for establishing District Courts, has been clogged with a plan for installing all debts now due, so as to make them payable in three annual portions. What the fate of the experiment will be I know not. It seems pretty certain, that if it fails, the bill will fail with it. It is urged in support of the measure that it will be favorable to debtors and creditors both, and that, without it the bill for accelerating justice would ruin the former, and endanger the public repose. The objections are so numerous, and of such a nature, that I shall myself give up the bill rather than pay such a price for it.

With unfeigned affection, &c.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Richm<sup>d</sup> Dec<sup>r</sup> 17<sup>th</sup> 1786.

Mad. Mss.

Hond Sir,—

Yours by M<sup>r</sup>. Porter has been handed to me. I have not had an opp<sup>y</sup> of enquir<sup>g</sup> of M<sup>r</sup>. Anderson concerning the person who is to receive Tob<sup>o</sup>. for his brother. I mentioned before that the rate of indents here was about a dollar in the pound. Whether I can get the certificates for your taxes I cannot say, nor do I know the rate at which they pass. M<sup>r</sup> Jones has returned hither & declines his app<sup>t</sup>. to Cong<sup>s</sup>. Fresh butter will be very acceptable, the supply sent being already out. No other article of provisions is wanted, as we dine at a Tavern. I propose to go from Fred<sup>g</sup>. to N. York in the Stage, & shall consequently take no horses with me. When I shall set out I can not decide, but expect to leave this before Xmas sometime. The representation of the State in Cong<sup>s</sup>. during the winter will be so precarious that I shall be able to stay a day or two only in Orange. 1 I have other reasons also of a public nature for wishing to hasten my journey, and a private one arising from the probable increase of the cold in case of delay. Tell my brother Ambrose, I wish him to *sound* M<sup>r</sup>. Cowherd as to the possibility of his making a payment before the first of Jan<sup>y</sup> instead of the time fixed. I will abate a reasonable interest, and be obliged to him into the bargain. My affections to the family. Y<sup>r</sup>. dutiful son

J<sup>s</sup>. Madison Jr.

I wish my cloathes so far as they may require little amendm<sup>ts</sup> to be put in order before I get to Orange, that I may not be detained on that score.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Richm<sup>d</sup>, Dec<sup>r</sup> 21st, 1786.

Mad. Mss.

Dear Sir,—

Your favor of the 16<sup>th</sup>. inst: came to hand too late the evening before last to be then answered. The payment of the 100 d<sup>rs</sup>. here was perfectly convenient, and I have put that sum into the hands of M<sup>r</sup>. Jones to be applied to the use which you have directed. This payment added to the 100 d<sup>rs</sup> paid in Philad<sup>a</sup>. leaves still a balance of 137½ according to my memorand<sup>m</sup>. which is subject to your further orders. We hear nothing from any of the other States on the subject of the federal Convention. The ice seems to have intercepted totally the Northern communication for a considerable time past. The Assembly have been much occupied of late with the bill for district Courts. On the final question there was a majority of one ag<sup>st</sup>. it in fact, though on the count a mistake made the division equal & it fell to the Chair to decide who passed the bill. The real majority however were sensible of the mistake & refused to agree to the title, threatening a secession at the same time. The result was a compromise that the question s<sup>d</sup>. be decided anew the next morning, when the bill was lost in a full house by a single voice. It is now proposed to extend the Session of the Gen<sup>l</sup>. Court so as to accelerate the business depending there. We hear that Maryland is much agitated on the score of paper money the H. of Delegates having decided in favour of an emission. Adieu. Y<sup>rs</sup>. Aff<sup>y</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Richmond, Dec<sup>r</sup> 24, 1786.

Mad. Mss.

Dear Sir,—

Your favor of the 16th instant came to hand too late on thursday evening to be answered by the last mail. I have considered well the circumstances which it confidentially discloses, as well as those contained in your preceding favor. <sup>1</sup> The difficulties which they oppose to an acceptance of the appointment in which you are included can as little be denied, as they can fail to be regretted. But I still am inclined to think that the posture of our affairs, if it should continue, would prevent every criticism on the situation which the contemporary meetings would place you in; and that at least a door could be kept open for your acceptance hereafter, in case the gathering clouds became so dark & menacing as to supersede every consideration but that of our national existence & safety. A suspence of your ultimate determination would be nowise inconvenient in a public view, as the Executive are authorised to fill vacancies; and can fill them at any time; and, in any event, three out of seven deputies are authorized to represent the State. How far it may be admissible in another view, will depend perhaps in some measure on the chance of your finally undertaking the service; but principally on the correspondence which is now passing on the subject between yourself and the Governor.

Your observations on Tobacco as a commutable in the taxes are certainly just & unanswerable. My acquiescence in the measure was against every general principle which I have embraced, and was extorted by a fear that some greater evil under the name of relief to the people would be substituted. I am far from being sure however that I did right. The other evils contended for have indeed been as yet parried, but it is very questionable whether the concession in the affair of the Tob<sup>o</sup>. had much hand in it. The original object was paper money. Petitions for graduating certificates succeeded. Next came instalments. And lastly a project for making property a tender for debts at  $\frac{1}{2}$  of its value. All these have been happily got rid of by very large majorities. But the positive efforts in favor of Justice have been less successful. A plan for reforming the administration in this branch accommodated more to the general opinion than the Assize plan got as far as the third reading, and was then lost by a single vote. The Senate would have passed it readily, and would have even added amendments of the right complexion. I fear it will be some time before this necessary reform will again have a fair chance. Besides some other grounds of apprehension, it may well be supposed that the Bill which is to be printed for consideration of the public, will, instead of calling forth the sanction of the wise & virtuous, be a signal to interested men to redouble their efforts to get into the Legislature. The Revenue business is still unfinished. The present rage seems to be to draw all our income from trade. From the sample given of the temper of the House of Delegates on this subject, it is much to be feared that the duties will be augmented with so daring a hand, that we shall drive away our trade instead of making it tributary to our treasury. The only

hope that can be indulged is that of moderating the fury. The Port bill was defended against a repeal by about 70 votes against about 40. The revised code is not quite finished and must receive the last hand from a succeeding assembly. Several bills of consequence being rendered unfit to be passed in their present form by a change of circumstances since they were prepared, necessarily require revision. Others as the Education bill &c are thought to be adapted only to a further degree of wealth and population. Others, as the Execution bill which subjects lands to debts, do not find yet an adequate patronage. Several bills also, and particularly the bill relating to crimes & punishments, have been rejected, and require reconsideration from another assembly. This last bill after being purged of its objectionable peculiarities, was thrown out on the third reading by a single vote. It will little elevate your idea of our Senate to be told that they negatived the bill defining the privileges of ambassadors, on the principle, as I am told, that an alien ought not to be put on better ground than a citizen. British debts have not yet been mentioned, and probably will not, unless Congress say something on the matter before the adjournment.

With every sentiment of esteem &c &c.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Richmond, Jan<sup>y</sup> 9th, 1787.

Mad. Mss.

My Dear Sir,—

Your favor of the 9<sup>th</sup>. ult, has been so long on hand unanswered that I can not now acknowledge it without observing in the apology for the delay that I waited for some measures of which I wished to communicate the event. The district bill of which I formerly made mention, was finally thrown into a very curious situation, and lost by a single voice. I refer you for its history to Col. Pendleton, who was here at the time and is now with you. An attempt has been since made to render the General Court more efficient by lengthening its terms, and transferring the criminal business to the Judges of the Admiralty. As most of the little motives which co-operated with a dislike to Justice, in defeating the District Bill happened to be in favour of the subsequent attempt, it went through the House of Delegates by a large Majority. The Senate have disappointed the majority infinitely in putting a negative on it, as we just learn that they have done, by a single voice. An amendment of the County Courts has also been lost, through a disagreement of the two Houses on the subject. Our merit on the score of Justice has been entirely of the negative kind. It has been sufficient to reject violations of this cardinal virtue, but not to make any positive provisions in its behalf.

The revised code has not been so thoroughly passed as I hoped at the date of my last. The advance of the Session, the coldness of a great many, and the dislike of some to the subject, required that it should be pressed more gently than could be reconciled with a prosecution of the work to the end. I had long foreseen that a supplemental revision as well of some of the articles of the Code, as of the laws passed since it was digested, would become necessary, and had settled a plan for the purpose with myself. This plan was to suspend the laws adopted from the code, until the supplement could be prepared, and then to put the whole in force at once. Several circumstances satisfied me of late that if the work was put within the reach of the next assembly, there would be danger not only of its being left in a mutilated state, but of its being lost altogether. The observations in your favor above acknowledged, encouraged me to propose that the parts of the code adopted should take effect without waiting for the last hand to it. This idea has been pursued, and the bills passed at the last Session are to coence as then determined, those passed at the present being suspended until July next. I would myself have preferred a suspension of the former also till July, for the sake of a more thorough promulgation, and of a contemporary introduction of the laws many of which are connected together; but the Senate thought otherwise, and in a ticklish stage of the Session, the friends of the code in the H. of D. joined me in opinion that it would be well to create no unnecessary delays or disagreements. I have strong apprehensions that the work may never be systematically perfected for the reasons which you deduce from our form of Government. Should a disposition however continue in the Legislature as favorable as it has been in some stages of the business, I think a succession of revisions, each growing shorter than the preceding,

might ultimately bring a completion within the compass of a single Session. At all events, the invaluable acquisition of important bills prepared at leisure by skilful hands, is so sensibly impressed on thinking people by the crudeness and tedious discussion of such as are generally introduced, that the expence of a continued revision will be thought by all such to be judiciously laid out for this purpose alone. The great objection which I personally feel arises from the necessity we are under of imposing the weight of these projects on those whose past services have so justly purchased an exemption from future labours. In your case the additional consideration of ill health, became almost an affair of Conscience, and I have been no otherwise able to stifle the remorse of having nominated you along with M<sup>r</sup> Wythe and M<sup>r</sup>. Blair for reviewing the subject left unfinished, than by reflecting that your colleagues will feel every disposition to abridge your share of the burden, and in case of such an increase of your infirmity as to oblige you to renounce all share, that they are authorised to appoint to, I will not say to *fill*, the vacancy. I flatter myself that you will be at least able to assist in general consultations on the subject, and to adjust the bills unpassed to the changes which have taken place since they were prepared. On the most unfortunate suppositions my intentions will be sure to find in your benevolence a pardon for my error.

The Senate have saved our commerce from a dreadful blow which it would have sustained from a bill passed in the H. of D. imposing enormous duties, without waiting for the concurrence of the other States or even of Maryland. There is a rage at present for high duties, partly for the purpose of revenue, partly of forcing manufactures, which it is difficult to resist. It seems to be forgotten in the first case that in the arithmetic of the customs as Dean Swift observes 2 & 2 do not make four; and in the second that manufactures will come of themselves when we are ripe for them. A prevailing argument among others on the subject is that we ought not to be dependent on foreign nations for useful articles, as the event of a war may cut off all external supplies. This argument certainly loses its force when it is considered that in case of a war hereafter, we should stand on a very different ground from what we lately did. Neutral Nations, whose rights are becoming every day more & more extensive, would not now suffer themselves to be shut out from our ports, nor would the hostile Nation presume to attempt it. As far as relates to implements of war which are contraband, the argument for our fabrication of them is certainly good.

Our latest information from the Eastw<sup>d</sup>. has not removed our apprehensions of ominous events in that quarter. It is pretty certain that the seditious party has become formidable in the Gov<sup>t</sup>. and that they have opened a cunication with the viceroy of Canada. I am not enough acquainted with the proceedings of Congress to judge of some of the points, which you advert to. The regulations of their land office have appeared to me nearly in the light in which they do to you. I expect to set out in a few days for N. York, when I shall revive my claim to a correspondence which formerly gave me so much pleasure and which will enable me perhaps to answer your queries. The end of my paper will excuse an abrupt but affect<sup>e</sup> Adieu.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Feb<sup>y</sup> 15th, 1787.

Mad. Mss.

Dear Sir,

My last was from Richmond, of the 4<sup>th</sup>. of December, and contained a sketch of our legislative proceedings prior to that date. The principal proceedings of subsequent date relate as nearly as I can recollect 1<sup>st</sup>, to a rejection of the Bill on crimes & punishments, which after being altered so as to remove most of the objections as was thought, was lost by a single vote. The rage ag<sup>st</sup> Horse stealers had a great influence on the fate of the bill. Our old bloody code is by this event fully restored, the prerogative of conditional pardon having been taken from the Executive by a judgm<sup>t</sup>., of the Court of Appeals, and the temporary law granting it to them having expired and been left unrevived. I am not without hope that the rejected bill will find a more favorable disposition in the next Assembly. 2<sup>dly</sup>. To the bill for diffusing knowledge, it went through two readings by a small majority and was not pushed to a third one. The necessity of a systematic provision on the subject was admitted on all hands. The objections ag<sup>st</sup> that particular provision were 1. the expence, w<sup>ch</sup> was alledged to exceed the ability of the people 2. the difficulty of executing it in the present sparse settlement of the Country. 3. the inequality of the districts as contended by the Western members. The last objection is of little weight and might have been easily removed if it had been urged in an early stage of the discussion. The bill now rests on the same footing with the other unpassed bills in the Revisal. 3<sup>dly</sup>. To the Revisal at large. It was found impossible to get thro' the system of the late Session, for several reasons. 1. the changes which have taken place since its complement, in our affairs and our laws; particularly those relating to our Courts, called for changes in some of the bills which could not be made with safety by the Legislature. 2. The pressure of other business which tho' of less importance in itself, yet was more interesting for the moment. 3. the alarm excited by an approach toward the Execution Bill, which subjects land to the payment of debts. This bill could not have been carried, was too important to be lost, and even too difficult to be amended without destroying its texture. 4. the danger of passing the Repealing Bill at the end of the Code, before the operation of the various amendments, &c., made by the Assembly could be leisurely examined by competent Judges. Under these circumstances it was thought best to hand over the residue of the work to our successors, and in order to have it made compleat, Mr. Pendleton, Mr. Wythe, & Blair, were app<sup>d</sup>. a Committee to amend the unpassed bills & also to prepare a supplemental revision of the laws which have been passed since the original work was executed. It became a critical question with the friends of the Revisal whether the parts of the Revisal actually passed sh<sup>d</sup> be suspended in the mean time, or left to take their operation. The first plan was strongly recommended by the advantage of giving effect to the system at once, and by the inconveniency arising from the latter of leaving the old laws to a constructive repeal only. The latter notwithstanding was preferred as putting the adopted bills out of the reach of a succeeding Assembly, which might possibly be unfriendly to the system

altogether. There was good reason to suspect Mr. *Henry* who will certainly be *then a member*. By suffering the bills which have passed to take effect in the mean time it will be extremely difficult to get rid of them. 4<sup>thly</sup>. Religion. The Act incorporating the protestant Episcopal Church excited the most pointed opposition from the other Sects. They even pushed their attacks ag<sup>st</sup>. the reservation of the Glebes &c., to the church exclusively. The latter circumstance involved the Legislature in some embarrassment. The result was a repeal of the Act, with a saving of the property. 5<sup>th</sup>. The district Courts. After a great struggle they were lost in the House of Delegates by a single voice. 6<sup>thly</sup>. taxes; the attempts to reduce former taxes were baffled, and sundry new taxes added, on lawyers, of their fees, on Clks of Courts, ¼ of do., on doct<sup>rs</sup>. a small tax, a tax on houses in towns so as to level their burden with that of real estate in the country, very heavy taxes on riding carriages, &c. Besides these an additional duty of 2 per C<sup>t</sup>. ad valorem on all merchandizes imported in vessels of nations not in treaty with the U. S. an add<sup>l</sup>. duty of 4<sup>d</sup>. on every gallon of wine except French wines and of 2<sup>d</sup>. on every gallon of distilled Spirits except French brandies which are made duty free. The exceptions in favor of France were the effect of the sentiments & regulations communicated to you by M<sup>r</sup>. Calonne. A printed copy of the communication was rec<sup>d</sup>. the last day of the session in a newspaper from N. York, and made a warm impression on the Assembly. Some of the taxes are liable to objections, and were much complained of. With the additional duties on trade they will considerably enhance our revenue. I should have mentioned a duty of 6<sup>s</sup>. per Hh<sup>d</sup>. on Tob<sup>o</sup>. for complying with a special requisition of Cong<sup>s</sup>. for supporting the corps of men raised for the public security. 7<sup>th</sup>. the Mississippi. At the date of my last the House of Delegates only had entered into Resolutions ag<sup>st</sup>. a surrender of the right of navigating it. The Senate shortly after concurred. The States South of Virg<sup>a</sup>. still adhere as far as I can learn to the same ideas as have governed Virginia. N. Jersey one of the States in Congress which was on the opposite side has now instructed her Delegates ag<sup>st</sup>. surrendering to Spain the navigation of the River even for a limited time. And Pen<sup>a</sup> it is expected will do the same. I am told that Mr. *Jay* has *not ventured to proceed in his project* and I suppose will *not now do it*. 8<sup>th</sup>. the Convention for amending the federal Constitution. At the date of my last Virg<sup>a</sup>. had passed an Act for appointing deputies. The deputation consists of Gen<sup>l</sup>. Washington M<sup>r</sup>. Henry, late Gov<sup>r</sup>, M<sup>r</sup>. Randolph present Gov<sup>r</sup>. M<sup>r</sup>. Blair M<sup>r</sup>. Wythe Col. Mason & J<sup>s</sup>. M. N. Carol<sup>a</sup> has also made an app<sup>t</sup>., including her present & late Gov<sup>r</sup>. S. C. it is expected by her delegates in Cong<sup>s</sup>., will not fail to follow these examples. Maryland has determined I just hear to app<sup>t</sup>. but has not yet agreed on her deputies. Delaware, Penn<sup>a</sup>., & N. J<sup>y</sup>., have made respectable appointm<sup>ts</sup>. N. York has not yet decided on the point. Her Assembly has just rejected the impost which has an unpropitious aspect. It is not clear however that she may not yet accede to the other measure. Connecticut has a great aversion to Conventions, and is otherwise habitually disinclined to abridge her State prerogatives. Her concurrence nevertheless is not despaired of. Mass<sup>ts</sup>. it is said will concur, though hitherto not well inclined. N. Hampshire will probably do as she does. Rhode Island can be relied on for nothing that is good. On all great points she must sooner or later bend to Mass<sup>ts</sup>. and Connecticut.

Having but just come to this place I do not undertake to give you any general view of American affairs, or of the particular State of things in Mass<sup>ts</sup>. The omission is

probably of little consequence as information of this sort must fall within your correspondence with the office of foreign affairs. I shall not however plead this consideration in a future letter, when I hope to be more able to write fully.

M<sup>r</sup>. Fitzhugh has paid into my hands for your use £58-6-8 Virg<sup>a</sup>. Currency in discharge of 1000 livres advanced to him in France. He was anxious to have settled it according to the actual exchange instead of the legal one of 33? on the British standard, and even proposed the addition of Interest. I did not hesitate to conclude that I should fulfill your intentions by rejecting both. I have sent to Mrs Carr £25 for the use of your nephews as you directed. The balance is in my hands subject to your orders tho' I shall venture to apply it in the same way if I sh<sup>d</sup>. be apprised of its being necessary to prevent interruption to the studies of the Young gentlemen. My last informed you of the progress &c. of Master Peter. I have since rec<sup>d</sup> from the presd<sup>t</sup>. of Hampden Sydeny a letter containing the following paragraph "Dabney Carr is a boy of very promising genius & very diligent application. He conducts himself with a good deal of prudence, & I hope will answer the expectations of his friends. I was afraid at first that he was dull or indolent from his appearance, but I find myself agreeably disappointed. His principal study at present is the Latin language, but he is also obliged to pay some attention to his native tongue.

I Remain D<sup>R</sup>. Sir Y<sup>R</sup> Affec<sup>Te</sup>. Friend



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York Feby 21, 1787.

Wash. Mss.

Dear Sir,—

Some little time before my arrival here a quorum of the States was made up and Gen<sup>l</sup> Sinclair put in the Chair. We have at present nine States on the ground, but shall lose South Carolina to-day. Other States are daily expected. What business of moment may be done by the present or a fuller meeting is uncertain. 1. The objects now depending and most immediately in prospect are 1. The Treaty of peace. The Secretary of foreign Affairs has very ably reported a view of the infractions on both sides, his exposition of the contested articles, and the steps proper to be taken by Congress. I find what I was not before apprized of that more than one infraction on our part, preceded even the violation on the other side in the instance of the Negroes. Some of the reasoning on the subject of the debts would be rather grating to Virginia. A full compliance with the Treaty according to judicial constructions, and as a ground for insisting on a reciprocal compliance, is the proposition in which the Report terminates. 2. a Recommendation of the proposed Convention in May. Cong<sup>s</sup>. have been much divided and embarrassed on the question whether their taking an interest in the measure would impede or promote it. On one side it has been urged that some of the backward States have scruples ag<sup>st</sup>. acceding to it without some constitutional sanction; on the other that other States will consider any interference of Cong<sup>s</sup>. as proceeding from the same views which have hitherto excited their jealousies. A vote of the Legislature here entered into yesterday will give some relief in the case. They have instructed their delegates in Cong<sup>s</sup>. to move for the recoendation in question. The vote was carried by a majority of one only in the Senate, and there is room to suspect that the minority were actuated by a dislike to the substance rather than by any objections ag<sup>st</sup>. the form of the business. A large Majority in the other branch a few days ago put a definitive veto on the Impost. It would seem as if the politics of this State are directed by individual interests and plans, which might be incommoded by the controul of an efficient federal Government. The four States North of it are still to make their decision on the subject of the Convention. I am told by one of the Mass<sup>st</sup>. delegates that the Legislature of that State which is now sitting, will certainly accede and appoint deputies if Cong<sup>s</sup>. declare their approbation of the measure. I have similar information that Connecticut will probably come in, though it is said that the interference of Congress will rather have a contrary tendency there. It is expected that S. Carolina will not fail to adopt the plan, and that Georgia is equally well disposed. All the intermediate States between the former and N. York have already appointed deputies, except Maryland which it is said means to do it, and has entered into some vote which declares as much. Nothing has yet been done by the New Cong<sup>s</sup>. with regard to the Mississippi. Our latest information from Mass<sup>ts</sup>. gives hopes that the meeting or as the Legislature there now style it, the Rebellion is nearly extinct. If the measures however on foot for *disarming* and *disfranchising* those concerned in it should be carried into effect, a new crisis may be brought on. I have not been here

long enough to gather the general sentiments of leading characters touching our affairs & prospects. I am inclined to hope that they will gradually be centered in the plan of a thorough reform of the existing system. Those who may lean towards a Monarchical Gov<sup>t</sup>, and who I suspect are swayed by very indigested ideas, will of course abandon an unattainable object whenever a prospect opens of rendering the Republican form competent to its purposes. Those who remain attached to the latter form must soon perceive that it cannot be preserved at all under any modification which does not redress the ills experienced from our present establishments. Virginia is the only State which has made any provision for the late moderate but essential requisition of Cong<sup>s</sup>., and her provision is a partial one only.

This would have been of earlier date, but I have waited for more interesting subjects for it. I shall do myself the pleasure of repeating the liberty of dropping you a few lines as often as proper occasions arise, on no other condition however than your waiving the trouble of regular answers or acknowledgements on your part.

With the greatest respect and Affection I am D<sup>r</sup>. Sir

Y<sup>R</sup>. Obed<sup>T</sup>. Friend & Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, Feb<sup>y</sup> 24, 1787.

Mad. Mss.

Dear Sir,—

If the contents of the Newspapers of this place find their way into the gazettes of Richmond you will have learnt that the expedition of Gen<sup>l</sup>. Lincoln against the insurgents has effectually dispersed the main body of them. It appears however that there are still some detachments which remain to be subdued, & that the Government of Mass<sup>ts</sup>. consider very strong precautions as necessary ag<sup>st</sup>. farther eruptions. The principal incendiaries have unluckily made off. By some it is said that they are gone to Canada; by others that they have taken shelter in Vermont, and by some that they are opening a communication with the upper parts of this State. The latter suggestion has probably some color, as the Governor here has thought proper to offer rewards for them after the example of Gov<sup>r</sup> Bowdoin. We have no interesting information from Europe.

The only step of moment taken by Cong<sup>s</sup>., since my arrival has been a recommendation of the proposed meeting in May for revising the federal articles. Some of the States, considering this measure as an extra-constitutional one, had scruples ag<sup>st</sup>. concurring in it without some regular sanction. By others it was thought best that Cong<sup>s</sup>. should remain neutral in the business, as the best antidote for the jealousy of an ambitious desire in them to get more power into their hands. This suspense was at length removed by an instruction from this State to its delegates to urge a Recommendatory Resolution in Congress which accordingly passed a few days ago. <sup>1</sup> Notwithstanding this instruction from N. York, there is room to suspect her disposition not to be very federal, a large majority of her House of delegates having very lately entered into a definite refusal of the impost, and the instruction itself having passed in the Senate by a casting vote only. In consequence of the sanction given by Cong<sup>s</sup>., Mass<sup>ts</sup>. it is said will send deputies to the Convention, and her example will have great weight with the other N. England States. The States from N. C<sup>a</sup>. to N. Jersey inclusive have made their appointments, except Mary<sup>d</sup>., who has as yet only determined that she will make them. The gentlemen here from S. C<sup>a</sup>. & Georgia, expect that those States will follow the general example. Upon the whole therefore it seems probable that a meeting will take place, and that it will be a pretty full one. What the issue of it will be is among the other arcana of futurity and nearly as inscrutable as any of them. In general I find men of reflection much less sanguine as to the new than despondent as to the present System. Indeed the Present System neither has nor deserves advocates; and if some very strong props are not applied, will quickly tumble to the ground. No money is paid into the public Treasury; no respect is paid to the federal authority. Not a single State complies with the requisitions; several pass them over in silence, and some positively reject them. The payments ever since the peace have been decreasing, and of late fall short even of the pittance necessary for the Civil list of the Confederacy. It is not possible that a government can last long

under these circumstances. If the approaching convention should not agree on some remedy, I am persuaded that some very different arrangement will ensue. The late turbulent scenes in Mass<sup>ts</sup>. & infamous ones in Rhode Island, have done inexpressible injury to the republican character in that part of the U. States; and a propensity towards Monarchy is said to have been produced by it in some leading minds.<sup>1</sup> The bulk of the people will probably prefer the lesser evil of a partition of the Union into three more practicable and energetic Governments. The latter idea I find after long confinement to individual speculations & private circles, is beginning to shew itself in the Newspapers. But tho' it is a lesser evil, it is so great a one that I hope the danger of it will rouse all the real friends of the Revolution to exert themselves in favor of such an organization of the confederacy as will perpetuate the Union, and redeem the honor of the Republican name.

I shall follow this introductory letter with a few lines from time to time as a proper subject for them occurs. The only stipulation I expect on your part is that you will not consider them as claiming either answers or acknowledgements; and that you will believe me to be, with sincerest wishes for your health and every other happiness,

Y<sup>R</sup>. Affect<sup>E</sup>. Friend & Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York March 18<sup>th</sup>. 1787.

Wash. Mss.

Dear Sir,—

Recollecting to have heard you mention a plan formed by the Empress of Russia for a comparative view of the aborigines of the New Continent, and of the N. E. parts of the old, through the medium of their respective tongues, and that her wishes had been conveyed to you for your aid in obtaining the American vocabularies, I have availed myself of an opportunity offered by the kindness of M<sup>r</sup>. Hawkins, of taking a copy of such a sample of the Cherokee & Choctaw dialects as his late commission to treat with them enabled him to obtain, and do myself the honor now of inclosing it. I do not know how far the list of words made use of by M<sup>r</sup> Hawkins may correspond with the standard of the Empress, nor how far nations so remote as the Cherokees & Choctaws from the N. W. shores of America, may fall within the scheme of comparison. I presume however that a great proportion at least of the words will answer, and that the laudable curiosity which suggests investigations of this sort will be pleased with every enlargement of the field for indulging it. Not finding it convenient to retain a copy of the inclosed as I wished to do for myself, I must ask the favor of your amanuensis to perform that task for me.

The appointments for the Convention go on very successfully. Since the date of my last, Georgia, S. Carolina, N. York, Mass<sup>ts</sup>, & N. Hampshire have come into the measure. Georgia & N. Hampshire have constituted their Delegates in Cong<sup>s</sup>. their representatives in Convention. S. Carolina has appointed M<sup>r</sup>. J. Rutledge, Gen<sup>l</sup>. Pinkney, M<sup>r</sup>. Laurens, Major Butler and M<sup>r</sup>. Cha<sup>s</sup>. Pinkney, late member of Cong<sup>s</sup>., The deputies of Mass<sup>ts</sup>. are M<sup>r</sup>. Dana, M<sup>r</sup>. King, M<sup>r</sup>. Ghoram, M<sup>r</sup>. Gerry, M<sup>r</sup>. Strong. I am told that a Resolution of the Legislature of this State which originated with their Senate lays its deputies under the fetter of not departing from the 5<sup>th</sup>. of the present articles of Confederation. As this Resolution passed before the Recommendatory act of Congress was known, it is conjectured that it may be rescinded; but its having passed at all denotes a much great[er] prevalence of political jealousy in that quarter than had been imagined. The deputation of N. York consists of Col. Hamilton, Judge Yates, and a M<sup>r</sup>. Lansing. The two last are said to be pretty much linked to the anti federal party here, and are likely of course to be a clog on their colleague. It is not doubted now that Connecticut & R. Island will avoid the singularity of being unrepresented in the Convention.

The thinness of Cong<sup>s</sup> has been an obstacle to all the important business before them. At present there are nine States on the ground but this number, though adequate to every object when unanimous, makes a slow progress in business that requires seven States only. And I see little prospect of the number being increased.

By our latest and most authentic information from Mass<sup>ts</sup>, it would seem that a calm has been restored by the expedition of Gen<sup>l</sup>. Lincoln. The precautions taking by the State however betray a great distrust of its continuance. Besides their act disqualifying the malcontents from voting in the election of members for the Legislature &c. another has been passed for raising a corps of 1000 or 1500 men, and appropriating the choicest revenues of the Country to its support. It is said that at least half of the insurgents decline accepting the terms annexed to the amnesty, and that this defiance of the law ag<sup>st</sup> Treason, is countenanced not only by the impunity with which they shew themselves on public occasions, even with insolent badges of their character, but by marks of popular favor conferred on them in various instances in the election to loel offices.

A proposition has been introduced & discussed in the Legislature of this State for relinquishing its claim to Vermont, and urging the admission of it into the Confederacy. As far as I can learn difficulties will arise only in settling the form, the substance of the measures being not disliked by any of the parties. It is wished by those who are not interested in claims to lands within that district to guard ag<sup>st</sup>. any responsibility in the State for compensation. On the other side it will at least be insisted that they shall not be barred of the privilege of carrying their claims before a federal Court, in case Vermont shall become a party to the Union. I think it probable if she should not decline becoming such altogether, that she will make two conditions if not more: 1. that neither her boundaries nor the rights of her citizens shall be impeachable under the 9<sup>th</sup> art: of Confederation. 2. that no share of the public debt already contracted shall be allotted to her.

I have a letter from Col. Jn<sup>o</sup>. Campbel, 1 dated at Pittsburg, from w<sup>ch</sup>. I gather that the people of that quarter are thrown into great agitation by the reported intention of Cong<sup>s</sup>. concerning the Mississippi, and that measures are on foot, for uniting the minds of all the different settlements which have a common interest at stake. Should this policy take effect I think there is much ground to apprehend that the ambition of individuals will quickly mix itself with the first impulses of resentment and interest, that by degrees the people may be led to set up for themselves, that they will slide like Vermont insensibly into a communication and latent connection with their British Neighbours, and, in pursuance of the same example, make such a disposition of the Western territory as will entice into it most effectually emigrants from all parts of the Union. If these apprehensions be not imaginary they suggest many observations extremely interesting to Spain as well as to the United States.

I hear from Richmond with much concern that M<sup>r</sup>. Henry has positively declined his mission to Philad<sup>a</sup>. Besides the loss of his services on that theatre, there is danger I fear that this step has proceeded from a wish to leave his conduct unfettered on another theatre where the result of the Convention will receive its destiny from his omnipotence.

With every sentiment of esteem & affection I remain

Dear Sir, Your Obed<sup>T</sup>. And Very Hble Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON. 1

New York, March 19th [18th], 1787.

Dear Sir,—

My last was of the 11th of February, and went by the packet. This will go to England in the care of a French gentleman, who will consign it to the care of Mr. Adams.

The appointments for the Convention go on auspiciously. Since my last, Georgia, South Carolina, New York, Massachusetts, and New Hampshire, have come into the measure. The first and the last of these States have commissioned their delegates to Congress as their representatives in Convention. The deputation of Massachusetts consists of Mess<sup>rs</sup>. Gorham, Dana, King, Gerry, and Strong. That of New York, Mess<sup>rs</sup>. Hamilton, Yates, and Lansing. That of South Carolina, Mess<sup>rs</sup>. J. Rutledge, Laurens, Pinckney, (General,) Butler, and Charles Pinckney, lately member of Congress. The States which have not yet appointed are Rhode Island, Connecticut, and Maryland. The last has taken measures which prove her intention to appoint, and the two former it is not doubted will follow the example of their neighbours. I just learn from the Governor of Virginia that Mr. Henry has resigned his place in the deputation from that State, and that General Nelson is put into it by the Executive, who were authorised to fill vacancies. The Governor, Mr. Wythe, and Mr. Blair, will attend, and some hopes are entertained of Col. Mason's attendance. General Washington has prudently authorised no expectations of his attendance, but has not either precluded himself absolutely from stepping into the field if the crisis should demand it.

What may be the result of this political experiment cannot be foreseen. The difficulties which present themselves are, on one side, almost sufficient to dismay the most sanguine, whilst on the other side the most timid are compelled to encounter them by the mortal diseases of the existing Constitution. These diseases need not be pointed out to you, who so well understand them. Suffice it to say, that they are at present marked by symptoms which are truly alarming, which have tainted the faith of the most orthodox republicans, and which challenge from the votaries of liberty every concession in favor of stable Government not infringing fundamental principles, as the only security against an opposite extreme of our present situation.

I think myself that it will be expedient, in the first place, to lay the foundation of the new system in such a ratification by the people themselves of the several States as will render it clearly paramount to their Legislative authorities. 2<sup>dly</sup>. Over and above the positive power of regulating trade and sundry other matters in which uniformity is proper, to arm the federal head with a negative *in all cases whatsoever* on the local Legislatures. Without this defensive power, experience and reflection have satisfied me that, however ample the federal powers may be made, or however clearly their boundaries may be delineated on paper, they will be easily and continually baffled by

the Legislative sovereignties of the States. The effects of this provision would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other; and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interest of the majority. In order to render the exercise of such a negative prerogative convenient, an emanation of it must be vested in some set of men within the several States, so far as to enable them to give a temporary sanction to laws of immediate necessity. 3<sup>dly</sup>. To change the principle of Representation in the federal system. Whilst the execution of the acts of Congress depends on the several Legislatures, the equality of votes does not destroy the inequality of importance and influence in the States. But in case of such an augmentation of the federal power as will render it efficient without the intervention of the Legislatures, a vote in the general Councils from Delaware would be of equal value with one from Massachusetts or Virginia. This change, therefore, is just. I think, also, it will be practicable. A majority of the States conceive that they will be gainers by it. It is recommended to the Eastern States by the actual superiority of their populousness, and to the Southern by their expected superiority; and if a majority of the larger States concur, the fewer and smaller States must finally bend to them. This point being gained, many of the objections now urged in the leading States against renunciations of power will vanish. 4<sup>thly</sup>. To organize the federal powers in such a manner as not to blend together those which ought to be exercised by separate departments. The limited powers now vested in Congress are frequently mismanaged from the want of such a distribution of them. What would be the case under an enlargement not only of the powers, but the number of the federal Representatives? These are some of the leading ideas which have occurred to me, but which may appear to others as improper as they appear to me necessary.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

New York, March 19, 1787.

Dear Sir,—

Congress have continued so thin as to be incompetent to the dispatch of the more important business before them. We have at present nine States, and it is not improbable that something may now be done. The report of Mr. Jay on the mutual violations of the treaty of peace will be among the first subjects of deliberation. He favors the British claim of interest, but refers the question to the court. The amount of the report, which is an able one, is, that the treaty should be put in force as a law, and the exposition of it left, like that of other laws, to the ordinary tribunals.

The Spanish project sleeps. A perusal of the attempt of seven States to make a new treaty, by repealing an essential condition of the old, satisfied me that Mr. Jay's caution would revolt at so irregular a sanction. A late accidental conversation with Guardoqui proved to me that the negotiation is arrested. It may appear strange that a member of Congress should be indebted to a foreign Minister for such information, yet such is the footing on which the intemperance of party has put the matter, that it rests wholly with Mr. Jay how far he will communicate with Congress, as well as how far he will negotiate with Guardoqui. But although it appears that the intended sacrifice of the Mississippi will not be made, the consequences of the intention and the attempt are likely to be very serious. I have already made known to you the light in which the subject was taken up by Virginia. Mr. Henry's disgust exceeds all measure, and I am not singular in ascribing his refusal to attend the Convention to the policy of keeping himself free to combat or espouse the result of it according to the result of the Mississippi business, among other circumstances. North Carolina also has given pointed instructions to her Delegates; so has New Jersey. A proposition for the like purpose was a few days ago made in the Legislature of Pennsylvania, but went off without a decision on its merits. Her Delegates in Congress are equally divided on the subject. The tendency of this project to foment distrust among the Atlantic States, at a crisis when harmony and confidence ought to have been studiously cherished, has not been more verified than its predicted effect on the ultramontane settlements. I have credible information that the people living on the Western waters are already in great agitation, and are taking measures for uniting their consultations. The ambition of individuals will quickly mix itself with the original motives of resentment and interest. Communication will gradually take place with their British neighbours. They will be led to set up for themselves, to seize on the vacant lands, to entice emigrants by bounties and an exemption from Federal burthens, and in all respects play the part of Vermont on a large theatre. It is hinted to me that British partizans are already feeling the pulse of some of the Western settlements. Should these apprehensions not be imaginary, Spain may have equal reason with the United States to rue the unnatural attempt to shut the Mississippi. Guardoqui has been admonished of the danger, and, I believe, is not insensible to it,

though he affects to be otherwise, and talks as if the dependence of Britain on the commercial favors of his Court would induce her to play into the hands of Spain. The eye of France also cannot fail to watch over the western prospects. I learn from those who confer here with Otto and De la Forest, that they favor the opening of the Mississippi, disclaiming at the same time any authority to speak the sentiments of their Court. I find that the Virginia Delegates, during the Mississippi discussions last fall, entered into very confidential interviews with these gentlemen. In one of them the idea was communicated to Otto of opening the Mississippi for exports but not for imports, and of giving to France and Spain some exclusive privileges in the trade. He promised to transmit it to Vergennes, to obtain his sentiments on the whole matter, and to communicate them to the Delegates. Not long since Grayson called on him, and revived the subject. He assured Grayson that he had received no answer from France, and signified his wish that you might pump the Count de Vergennes, observing *that he would deny to you his having received any information from America*. I discover, through several channels, that it would be very grateful to the French politicians here to see our negotiations with Spain shifted into your hands, and carried on under the mediating auspices of their Court.

Van Berkel has remonstrated against the late acts of Virginia, giving privileges to French wines and brandies in French bottoms, contending that the Dutch are entitled by their treaty to equal exemptions with the most favored nation, without being subject to a compensation for them. Mr. Jay has reported against this construction, but considers the act of Virginia as violating the treaty;—first, as it appears to be gratuitous, not compensatory, on the face of it; secondly, because the States have no right to form tacit compacts with foreign nations. No decision of Congress has yet taken place on the subject.

The expedition of General Lincoln against the insurgents has effectually succeeded in dispersing them. Whether the calm which he has restored will be durable or not, is uncertain. From the precautions taking by the Government of Massachusetts, it would seem as if their apprehensions were not extinguished. Besides disarming and *disfranchising*, for a limited time, those who have been in arms, as a condition of their pardon, a military corps is to be raised to the amount of one thousand or fifteen hundred men, and to be stationed in the most suspected districts. It is said that, notwithstanding these specimens of the temper of the Government, a great proportion of the offenders choose rather to risk the consequences of their treason, than submit to the conditions annexed to the amnesty; that they not only appear openly on public occasions, but distinguish themselves by badges of their character; and that this insolence is in many instances countenanced by no less decisive marks of popular favor than elections to local offices of trust and authority.

A proposition is before the Legislature of this State, now sitting, for renouncing its pretensions to Vermont, and urging the admission of it into the Confederacy. The different parties are not agreed as to the form in which the renunciation should be made, but are likely to agree as to the substance. Should the offer be made, and should Vermont not reject it altogether, I think they will insist on two stipulations at least;—first, that their becoming parties to the Confederation shall not subject their boundaries, or the rights of their citizens, to be questioned under the ninth Article;

secondly, that they shall not be subject to any part of the public debts already contracted.

The Geographer and his assistants have returned surveys on the Federal lands to the amount of about eight hundred thousand acres, which it is supposed would sell pretty readily for public securities, and some of it, lying on the Ohio, even for specie. It will be difficult, however, to get proper steps taken by Congress, so many of the States having lands of their own at market. It is supposed that this consideration had some share in the zeal for shutting the Mississippi. New Jersey, and some others having no Western lands, which favored this measure, begin now to penetrate the secret.

A letter from the Governor of Virginia informs me, that the project of paper-money is beginning to recover from the blow given it at the last session of the Legislature. If Mr. Henry espouses it, of which there is little doubt, I think an emission will take place.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

New York, March 25, 1787.

Dear Sir,—

I have had the pleasure of your two favors of the first and seventh instant. The refusal of Mr. Henry to join in the task of revising the Confederation is ominous; and the more so, I fear, if he means to be governed by the event which you conjecture. There seems to be little hope, at present, of being able to quash the proceedings relative to the affair which is so obnoxious to him,2 though on the other hand, there is reason to believe that they will never reach the object at which they aimed.

Congress have not changed the day for meeting at Philadelphia as you imagine. The act of Virginia, I find, has done so in substituting second *day* for the second *Monday* in May, the time recommended from Annapolis.

I cannot suppose that Mr. Otto has equivocated in his explanation to the public touching the Floridas. Nothing of that subject has been mentioned here, as far as I know. Supposing the exchange in question to have really been intended, I do not see the inference to be unfavorable to France. Her views, as they occur to me, would most probably be to conciliate the Western people, in common with the Atlantic States, and to extend her commerce, by reversing the Spanish policy. I have always wished to see the Mississippi in the hands of France, or of any nation which would be more liberally disposed than the present holders of it.

Mr. Jay's report on the treaty of peace has at length been decided on. It resolves and declares, that the treaty, having been constitutionally formed, is the law of the land, and urges a repeal of all laws contravening it, as well to stop the complaints of their existing as legal impediments, as to avoid needless questions touching their validity. Mr. Jay is preparing a circular address to accompany the Resolutions, and the latter will not be forwarded till the former is ready.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

N. York April 1, 1787.

Mad. Mss.

Hon<sup>D</sup> Sir,—

I have received your favor of the 17<sup>th</sup>. Feb<sup>y</sup>. and have made enquiry as to the Andover Works, not indeed thro' the channel you suggested, but through one still more direct & authentic. I find that the works are not pursued with such alacrity at present as to promise the supply you wish, that it is uncertain whether it would be delivered at Philad<sup>a</sup> at all, and that the price is at present unfixed. I shall have an opportunity of seeing in Trenton on my way to the Convention, the man who is connected with these works and will collect any further information he may be able to give.

Congress has remained very thin ever since my arrival, and have done but little business of importance. The general attention is now directed towards the approaching Convention. All the States have appointed deputies to it except Connecticut, Maryland, and Rho. Island. The first, it is not doubted will appoint, and the second has already resolved on the expediency of the measure. Rho. Island alone has refused her concurrence. A majority of more than twenty in the Legislature of that State has refused to follow the general example. Being conscious of the wickedness of the measures they are pursuing they are afraid of everything that may become a controul on them. Notwithstanding this prospect of a very full and respectable meeting, no very sanguine expectations can well be indulged. The probable diversity of opinions and prejudices, and of supposed or real interests among the States, renders the issue totally uncertain. The existing embarrassments and mortal diseases of the Confederacy form the only ground of hope, that a spirit of concession on all sides may be produced by the general chaos, or at least partitions of the Union, which offers itself as the alternative.

N. Carolina and N Jersey have followed the example of Virginia in giving instructions in favor of the Missi. Penn<sup>a</sup>. has not done so as was expected, but she has appointed a Delegation which thinks differently from her last on the subject.

I am anxious to hear from my brother A. on the subject of the Tobacco. It will at furthest I hope arrive within the current month in Philad<sup>a</sup>. With affect<sup>e</sup> regards to my mother & the family

I Remain Y<sup>R</sup> Dutiful Son

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

New York, April 8, 1787.

Dear Sir,—

Your two favors of the twenty-second and twenty-seventh of March, have been received since my last. In a preceding one you ask, what tribunal is to take cognizance of Clark's offence? If our own laws will not reach it, I see no possibility of punishing it. But will it not come within the act of the last session concerning treasons and *other offences* committed without the commonwealth? I have had no opportunity yet of consulting Mr. Otto on the allegation of Oster touching the marriage of French subjects in America. What is the *conspicuous prosecution* which you suspect will shortly display a notable instance of perjury?

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure, as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virginia, had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas that have occurred, leaving explanations for our interview.

I think with you, that it will be well to retain as much as possible of the old Confederation, though I doubt whether it may not be best to work the valuable articles into the new system, instead of engrafting the latter on the former. I am also perfectly of your opinion, that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States, as that a partial adoption will be binding. Particular States may view different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratifications of both would go for nothing. I have not, however, examined this point thoroughly. In truth, my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken, which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is, I think, a change in the principle of representation. According to the present form of the Union, an equality of suffrage, if not just

towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

Let the national Government be armed with a positive and complete authority in all cases where uniform measures are necessary, as in trade, &c., &c. Let it also retain the powers which it now possesses.

Let it have a negative, in all cases whatsoever, on the Legislative acts of the States, as the King of Great Britain heretofore had. This I conceive to be essential and the least possible abridgement of the State sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the Federal assent would have been given to paper-money, &c., &c.

Let this national supremacy be extended also to the Judiciary department. If the Judges in the last resort depend on the States, and are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the National Government.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches. One of them to be chosen every — years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term, and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A national Executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

An article ought to be inserted expressly guaranteeing the tranquillity of the States against internal as well as external dangers.

To give the new system its proper energy, it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it myself to go no further than is essential, the objections drawn from this source are to be laid aside. I flatter myself, however, that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too

of most influence. The northern States will be reconciled to it by the *actual* superiority of their populousness; the Southern by their *expected* superiority on this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant will. It is also already seen by many, and must by degrees be seen by all, that, unless the Union be organized efficiently on republican principles, innovations of a much more objectionable form may be obtruded, or, in the most favorable event, the partition of the Empire, into rival and hostile confederacies will ensue.



[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

New York, April 15, 1787.

Dear Sir,—

Your favor of the fourth of April has been received since my last. The probability of General Washington's coming to Philadelphia is, in one point of view, flattering. Would it not, however, be well for him to postpone his actual attendance, until some judgment can be formed of the result of the meeting? It ought not to be wished by any of his friends that he should participate in any abortive undertaking. It may occur, perhaps, that the delay would deprive the Convention of his presiding auspices, and subject him, on his arrival, to a less conspicuous point of view than he ought on all occasions to stand in. Against this difficulty must be weighed the consideration above mentioned, to which may be added the opportunity which Pennsylvania, by the appointment of Doctor Franklin, has afforded of putting sufficient dignity into the Chair.

The effect of the interposition of Congress in favor of the treaty at this crisis, was foreseen by us.2 I would myself have preferred a little procrastination on the subject. But the manifest and undeniable propriety of the thing itself, with the chance that the Legislature here, which will adjourn in a little time until next winter, and which is one of the principal transgressors, may set an immediate example of reformation, overruled the argument for delay. The difficulties which, as you suggest, may be left behind by a mere repeal of all existing impediments, will be probably found of a very serious nature to British creditors. If no other advantage should be taken of them by the State, than the making the assent of the creditors to the plan of instalments, a condition of such further provisions as may not come within the treaty, I do not know that the existence of these difficulties ought to be matter of regret. In every view Congress seem to have taken the most proper course for maintaining the national character; and if any deviations in particular States should be required by peculiar circumstances, it will be better that they should be chargeable on such States than on the United States.

The Maryland Assembly met on the second instant, being convened by proclamation. The expected delay, therefore, in her appointments for the Convention, cannot be admitted among the considerations which are to decide the time of your setting out. I am sorry that punctuality on your part will oblige you to travel without the company of Mrs. Randolph. But the sacrifice seems to be the more necessary, as Virginia ought not only to be on the ground in due time, but to be prepared with some materials for the work of the Convention. In this view, I could wish that you might be able to reach Philadelphia some days before the second Monday in May.

This city has been thrown into no small agitation by a motion, made a few days ago, for a short adjournment of Congress, and the appointment of Philadelphia as the place

of its reassembling. No final question was taken, but some preliminary questions shewed that six States were in favor of it; Rhode Island, the seventh State, was at first in the affirmative, but one of its Delegates was overcome by the exertions made to convert him. As neither Maryland nor South Carolina was present, the vote is strong evidence of the precarious tenure by which New York enjoys her metropolitan advantages. The motives which led to this attempt were probably with some of a local nature. With others they certainly were of a general nature.

Mr. Jay was a few days ago instructed to communicate to Congress the State of the Spanish negotiation. An unwilling but silent assent was given by Massachusetts and Connecticut. The Report shews that Jay viewed the act of seven States as valid, and has even adjusted with Guardoqui an article for suspending our use of the Mississippi during the term of the treaty. A subsequent report, on a reference of Western information from Virginia and North Carolina denotes little confidence in the event of the negotiation, and considerable perplexity as to the steps proper to be taken by Congress. Wednesday is fixed for the consideration of these reports. We mean to propose that Jefferson be sent, under a special commission, to plead the cause of the Mississippi at Madrid.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York April 16 1787.

Wash. Mss.

Dear Sir,—

I have been honored with your letter of the 31 March, and find with much pleasure that your views of the reform which ought to be pursued by the Convention, give a sanction to those which I have entertained. Temporising applications will dishonor the Councils which propose them, and may foment the internal malignity of the disease, at the same time that they produce an ostensible palliation of it. Radical attempts although unsuccessful will at least justify the authors of them.

Having been lately led to revolve the subject which is to undergo the discussion of the Convention, and formed *some* outlines of a new system, I take the liberty of submitting them without apology to your eye.

Conceiving that an individual independence of the States is utterly irreconcilable with their aggregate sovereignty, and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities wherever they can be subordinately useful.

I would propose as the ground-work that a change be made in the principle of representation. According to the present form of the Union in which the intervention of the States is in all great cases necessary to effectuate the measures of Congress, an equality of suffrage, does not destroy the inequality of importance in the several members. No one will deny that Virginia and Mass<sup>ts</sup>. have more weight and influence both within & without Congress than Delaware or Rho. Island. Under a system which would operate in many essential points without the intervention of the State Legislatures, the case would be materially altered. A vote in the national Councils from Delaware, would then have the same effect and value as one from the largest State in the Union. I am ready to believe that such a change would not be attended with much difficulty. A majority of the States, and those of greatest influence, will regard it as favorable to them. To the Northern States it will be recommended by their present populousness; to the Southern by their expected advantage in this respect. The lesser States must in every event yield to the predominant will. But the consideration which particularly urges a change in the representation is that it will obviate the principal objections of the larger States to the necessary concessions of power.

I would propose next that in addition to the present federal powers, the national Government should be armed with positive and compleat authority in all cases which require uniformity; such as the regulation of trade, including the right of taxing both exports & imports, the fixing the terms and forms of naturalization, &c &c.

Over and above this positive power, a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded & defeated. The States will continue to invade the National jurisdiction, to violate treaties and the law of nations & to harass each other with rival and spiteful measures dictated by mistaken views of interest. Another happy effect of this prerogative would be its controul on the internal vicissitudes of State policy, and the aggressions of interested majorities on the rights of minorities and of individuals. The great desideratum which has not yet been found for Republican Governments seems to be some disinterested & dispassionate umpire in disputes between different passions & interests in the State. The majority who alone have the right of decision, have frequently an interest, real or supposed in abusing it. In Monarchies the sovereign is more neutral to the interests and views of different parties; but, unfortunately he too often forms interests of his own repugnant to those of the whole. Might not the national prerogative here suggested be found sufficiently disinterested for the decision of local questions of policy, whilst it would itself be sufficiently restrained from the pursuit of interests adverse to those of the whole Society. There has not been any moment since the peace at which the representatives of the Union would have given an assent to paper money or any other measure of a kindred nature.

The national supremacy ought also to be extended as I conceive to the Judiciary departments. If those who are to expound & apply the laws, are connected by their interests & their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local constitution, and that an appeal should lie to some National tribunals in all cases to which foreigners or inhabitants of other States may be parties. The admiralty jurisdiction seems to fall entirely within the purview of the national Government.

The National supremacy in the Executive departments is liable to some difficulty, unless the officers administering them could be made appointable by the supreme Government. The Militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence.

A Government composed of such extensive powers should be well organized and balanced. The legislative department might be divided into two branches; one of them chosen every NA years by the people at large, or by the Legislatures; the other to consist of fewer members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the laws might be most conveniently exercised by this branch. As a further check, a council of revision including the great ministerial officers might be superadded.

A National Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed.

An article should be inserted expressly guarantying the tranquillity of the States against internal as well as external dangers.

In like manner the right of coercion should be expressly declared. With the resources of Commerce in hand, the National administration might always find means of exerting it either by sea or land; But the difficulty & awkwardness of operating by force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the General and particular authorities, as to answer this purpose or perhaps some defined objects of taxation might be submitted along with commerce, to the general authority.

To give a new System its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the *existing Constitutions* of the States will be unavoidable.

The inclosed address to the States on the subject of the Treaty of peace has been agreed to by Congress, & forwarded to the several Executives. We foresee the irritation which it will excite in many of our Countrymen; but could not withhold our approbation of the measure. Both the resolutions and the address, passed without a dissenting voice.

Congress continue to be thin, and of course do little business of importance. The settlement of the public accounts,—the disposition of the public lands, and arrangements with Spain, are subjects which claim their particular attention. As a step towards the first, the treasury board are charged with the task of reporting a plan by which the final decision on the claims of the States will be handed over from Congress to a select sett of men bound by the oaths, and clothed with the powers of Chancellors. As to the Second article, Congress have it themselves under consideration. Between 6 & 700 thousand acres have been surveyed and are ready for sale. The mode of sale however will probably be a source of different opinions; as will the mode of disposing of the unsurveyed residue. The Eastern gentlemen remain attached to the scheme of townships. Many others are equally strenuous for indiscriminate locations. The States which have lands of their own for sale are *suspected* of not being hearty in bringing the federal lands to market. The business with Spain is becoming extremely delicate, and the information from the Western settlements truly alarming.

A motion was made some days ago for an adjournment of Congress for a short period, and an appointment of Philad<sup>a</sup>. for their reassembling. The eccentricity of this place as well with regard to E. and West as to N. & South has I find been for a considerable time a thorn in the minds of many of the Southern members. Suspicion too has charged some important votes on the weight thrown by the present position of

Congress into the Eastern Scale, and predicts that the Eastern members will never concur in any substantial provision or movement for a proper permanent seat for the National Government whilst they remain so much gratified in its temporary residence. These seem to have been the operative motives with those on one side who were not locally interested in the removal. On the other side the motives are obvious. Those of real weight were drawn from the apparent caprice with which Congress might be reproached, and particularly from the peculiarity of the existing moment. I own that I think so much regard due to these considerations, that notwithstanding the powerful ones on the other side, I should have assented with great repugnance to the motion, and would even have voted against it if any probability had existed that by waiting for a proper time, a proper measure might not be lost for a very long time. The plan which I sh<sup>d</sup>. have judged most eligible would have been to fix on the removal whenever a vote could be obtained but so as that it should not take effect until the commencement of the ensuing federal year. And if an immediate removal had been resolved on, I had intended to propose such a change in the plan. No final question was taken in the case. Some preliminary questions shewed that six States were in favor of the motion. Rhode Island the 7<sup>th</sup>. was at first on the same side, and Mr. Varnum, one of the delegates continues so. His colleague was overcome by the solicitations of his Eastern brethren. As neither Maryland nor South Carolina were on the floor, it seems pretty evident that N. York has a very precarious tenure of the advantages derived from the abode of Congress.

We understand that the discontents in Mass<sup>ts</sup>, which lately produced an appeal to the sword, are now producing a trial of strength in the field of electioneering. The Governor will be displaced. The Senate is said to be already of a popular complexion, and it is expected that the other branch will be still more so. Paper money it is surmised will be the engine to be played off ag<sup>ts</sup>. creditors both public and private. As the event of the elections however is not yet decided, this information must be too much blended with conjecture to be regarded as a matter of certainty.

I do not learn that the proposed Act relating to Vermont has yet gone through all the stages of legislation here; nor can I say whether it will finally pass or not. In truth, it having not been a subject of conversation for some time, I am unable to say what has been done or is likely to be done with it. With the sincerest affection & the highest esteem I have the honor to be, Dear Sir your devoted Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

New York, April 19, 1787.

Mad. Mss.

Dear Sir,—

No definite steps are yet taken for the transportation of your furniture. I fear we shall be obliged to make use of a conveyance to Norfolk as soon as one shall offer. I have examined the workmanship of the man in Chappel street. The face of it is certainly superior to that of your workman. Whether it may prove much so for substantial purposes, I do not undertake to say. Should M<sup>rs</sup>. Monroe not be pleased with the articles, I w<sup>d</sup>. recommend that you dispose of them, which may be done probably without loss, and send us a commission to replace them. I think we could please you both; and on terms not dearer than that of your purchase. We learn nothing yet of a remittance from S. Carolina.

The business of the Mississippi will I think come to a point in a few days. You shall know the result in due time.

A motion was lately made to remove shortly to Philad<sup>a</sup>. six States would have been for it. Rh. Island was so at first and would have been a seventh. One of the delegation was overpowered by exertions of his Eastern brethren. I need not rehearse to you the considerations which operated on both sides. Your conjectures will not mistake them. My own opinion is that there are strong objections ag<sup>st</sup>. the movement, objections which nothing would supersede but the difficulty of bringing the sense of the Union to an efficient vote in Congress, and the danger of losing altogether a proper measure by waiting for a proper time. A middle way would have been my choice; that is, to fix Philad<sup>a</sup>. for the meeting of the ensuing Cong<sup>s</sup>., & to remain here in the mean time. This would have given time for all preliminary arrangements, would have steered clear of the Convention, and, by selecting a natural period for the event, and transferring the operation of it to our successors in office, all insinuations of suddenness, and of personal views, would have been repelled.

I hear with great pleasure that you are to aid the deliberations of the next Assembly, and with much concern that paper money will probably be among the bad measures which you will have to battle. Wishing you success in this and all your other labours for the public and for yourself, I remain, with best

Respects To M<sup>rs</sup>. Monroe, Yours Affe<sup>ly</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York April 22 1787.

Mad. Mss.

My Dear Sir,—

The period since my last has afforded such scanty materials for a letter that I have postponed it, till I have now to thank you for yours of the 7<sup>th</sup>. inst: which came to hand two days ago. I always feel pleasure in hearing from you, but particularly when my concern for your doubtful health is relieved by such an evidence in its favor. At the same time I must repeat my wishes to forego this pleasure whenever it may interfere with the attention which you owe to your ease, your business, or your other friends.

I do not learn that any symptoms yet appear of a return of the insurgent spirit in Mass<sup>ts</sup>. On the contrary it is said that the malcontents are trying their strength in a more regular form. This is the crisis of their elections, and if they can muster sufficient numbers, their wicked measures are to be sheltered under the forms of the Constitution. How far their influence may predominate in the current appointments is uncertain, but it is pretty certain that a great change in the rulers of that State is taking place, and that a paper emission, if nothing worse, is strongly apprehended. Governor Bowdoin is already displaced in favor of M<sup>r</sup>. Hancock, whose acknowledged merits are not a little tainted by a dishonorable obsequiousness to popular follies. A great change has also taken place in the Senate, and a still greater is prognosticated in the other branch of the Legislature.

We are flattered with the prospect of a pretty full and very respectable meeting in next month. All the States have made appointments except Connecticut Maryland, & Rh. Island. The last has refused. Maryland will certainly concur. The temper of Connecticut is equivocal. The turn of her elections which are now going on, is said to be rather unpropitious. The absence of one or two States however will not materially affect the deliberations of the Convention. Disagreement in opinion among those present is much more likely to embarrass us. The nearer the crisis approaches, the more I tremble for the issue. The necessity of gaining the concurrence of the Convention in some system that will answer the purpose, the subsequent approbation of Congress, and the final sanction of the States, presents a series of chances, which would inspire despair in any case where the alternative was less formidable. The difficulty too is not a little increased by the necessity which will be produced by encroachments on the State Constitutions, of obtaining not merely the assent of the Legislatures, but the ratification of the people themselves. Indeed if such encroachments could be avoided, a higher sanction than the Legislative authority would be necessary to render the laws of the Confederacy paramount to the acts of its members.



I enclose a late Act of Congress, which will shew you the light in which they view and inculcate a compliance with the Treaty of peace. We were not unaware of the bitterness of the pill to many of our countrymen, but national considerations overruled that objection. An investigation of the subject had proved that the violations on our part were not only most numerous and important, but were of earliest date. And the assurances on the other part are explicit that a reparation of our wrongful measures shall be followed by an immediate and faithful execution of the Treaty by Great Britain.

Congress are at present deliberating on the most proper plan for disposing of y<sup>e</sup> Western lands, and providing a criminal and civil administration for the Western settlements beyond the Ohio. The latter subject involves great difficulties. On the former also opinions are various. Between 6 & 7,00,000 Acres have been surveyed in Townships & are to be sold as soon as they shall be duly advertised. The sale was at first to have been distributed throughout the States. This plan is now exchanged for the opposite extreme. The sale is to be made where Cong<sup>s</sup> sits. Unquestionably reference ought to have been had in fixing on the place, either to the Center of the Union or to the proximity of the premises. In providing for the unsurveyed lands, the difficulty arises from the Eastern attachm<sup>t</sup>. to townships & the Southern to indiscriminate locations. A Copper coinage was agreed on yesterday to the amount of upwards of two hundred thousand dollars, 15 per C<sup>t</sup>. is to be drawn into the federal Treasury from this operation.

Our affair with Spain is on a very delicate footing. It is not easy to say what precise steps would be most proper to be taken on our side, and extremely difficult to say what will be actually taken. Many circumstances threaten an Indian war, but the certainty of it is not established. A British officer was lately here from Canada, as has been propagated, but not on a mission to Congress. His business was unknown, if he had any that was important.

I am extremely concerned, though not much surprised at the danger of a paper emission in Virginia. If Mr. H. sh<sup>d</sup>. erect the standard he will certainly be joined by sufficient force to accomplish it. Remorse and shame are but too feeble restraints on interested individuals ag<sup>st</sup> unjust measures, and are rarely felt at all by interested multitudes.

Wishing You All Happiness I Remain Dear Sir  
Your Affect<sup>E</sup> Humble Servant

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

New York, April 23, 1787.

Dear Sir,—

Congress have agreed to Mr. Jay's report on the treaty of peace, and to an address which accompanies it. Copies of both will no doubt be sent you from his Department. The Legislature of this State, which was sitting at the time, and on whose account the acts of Congress were hurried through, has adjourned till January next, without deciding on them. This is an ominous example to the other States, and must weaken much the claim on Great Britain of an execution of the treaty on her part, as promised in case of proper steps being taken on ours. Virginia, we foresee, will be among the foremost in seizing pretexts for evading the injunctions of Congress. South Carolina is not less infected with the same spirit. The present deliberations of Congress turn on, first, the sale of the Western lands; secondly, the government of the Western settlements within the Federal domain; thirdly, the final settlement of the accounts between the Union and its members; fourthly, the treaty with Spain.

1. Between six and seven hundred thousand acres have been surveyed in townships, under the land ordinance, and are to be sold forthwith. The place where Congress sit is fixed for the sale. Its eccentricity, and remoteness from the premises, will, I apprehend, give disgust. On the most eligible plan of selling the unsurveyed residue, Congress are much divided; the Eastern States being strongly attached to that of townships, notwithstanding the expense incident to it; the Southern being equally biassed in favor of indiscriminate locations, notwithstanding the many objections against that mode. The dispute will probably terminate in some kind of compromise, if one can be hit upon.

2. The government of the settlements on the Illinois and Wabash is a subject very perplexing in itself, and rendered more so by our ignorance of many circumstances on which a right judgment depends. The inhabitants at those places claim protection against the savages, and some provision for both criminal and civil justice. It appears also that land-jobbers are among them, who are likely to multiply litigations among individuals, and, by collusive purchases of spurious titles, to defraud the United States.

3. The settlement of the public accounts has long been pursued in varied shapes, and with little prospect of success. The idea which has long been urged by some of us, seems now to be seriously embraced, of establishing a plenipotentiary tribunal for the final adjustment of the mutual claims, on the great and simple principle of equity. An ordinance for this purpose has been reported by the Treasury Board, and has made some progress through Congress. It is likely to be much retarded by the thinness of Congress, as indeed is almost every other matter of importance.

4. The Spanish negotiation is in a very ticklish situation. You have been already apprized of the vote of seven States last fall for ceding the Mississippi for a term of years. From sundry circumstances it was inferred that Jay was proceeding under this usurped authority. A late instruction to him to lay the state of the negotiation before Congress has discovered that he has adjusted with Guardoqui an article for suspending the use of the Mississippi by the citizens of the United States. The report, however, leaves it somewhat doubtful how far the United States are committed by this step, and a subsequent report of the Secretary on the seizure of Spanish property in the Western country, and on information of discontents touching the occlusion of the Mississippi, shews that the probable consequences of the measure perplex him extremely. It was nevertheless conceived by the instructed delegations to be their duty to press a revocation of the step taken, in some form which would least offend Spain, and least irritate the patrons of the vote of seven States. Accordingly a motion was made to the following effect—that the present state of the negotiation with Spain, and of the affairs of the United States, rendered it expedient that you should proceed, under a special commission, to Madrid, for the purpose of making such representations as might at once impress on that Court our friendly disposition and induce it to relax on the contested points; and that the proper communications and explanations should be made to Guardoqui relative to this change in the mode of conducting the negotiation. This motion was referred to Mr. Jay, whose report disapproves of it. In this state the matter lies. Eight States only being present, no effective vote is to be expected. It may, notwithstanding, be incumbent on us to try some question which will at least mark the paucity of States who abet the obnoxious project. Massachusetts and New York alone, of the present States, are under that description; and Connecticut and New Hampshire alone of the absent. Maryland and South Carolina have hitherto been on the right side. Their future conduct is somewhat problematical. The opinion of New Hampshire is only conjectured. The conversion of Rhode Island countenances a hope that she too may, in this instance, desert the New England standard.

The prospect of a full and respectable Convention grows stronger every day. Rhode Island alone has refused to send Deputies. Maryland has probably appointed by this time. Of Connecticut alone doubts are entertained. The anti-federal party in that State is numerous and persevering. It is said that the elections which are now going on are rather discouraging to the advocates of the Convention. Pennsylvania has added Dr. Franklin to her deputation. There is some ground to calculate on the attendance of General Washington. Our Governor, Mr. Wythe, Mr. Blair, and Col. Mason will pretty certainly attend. The last, I am informed, is renouncing his errors on the subject of the Confederation, and means to take an active part in the amendment of it. Mr. Henry pretty soon resigned the undertaking. General Nelson was put into his place, who has also declined. He was succeeded by Mr. R. H. Lee, who followed his example. Doctor M'Clurg has been since appointed, and as he was on the spot must have been previously consulted.

April, 1787.

Observations by J. M. (A copy taken by permission by Dan<sup>1</sup>.

mad. mss.

Carroll & sent to Ch<sup>s</sup> Carroll of Carrollton.)

Vices of the Political system of the U. States.

1. This evil has been so fully experienced both during the war and since the peace, results so naturally from the number and independent authority of the States and has been so uniformly exemplified in every similar Confederacy,

that it may be considered as not less radically and permanently inherent in than it is fatal to the object of the present system.

1. Failure of the States to comply with the Constitutional requisitions.

2. Examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and treaties of Georgia with the Indians. The unlicensed compacts between Virginia and Maryland, and between Pen<sup>a</sup>. & N. Jersey—the troops raised and to be kept up by Mass<sup>ts</sup>.

2. Encroachments by the States on the federal authority.

3. From the number of Legislatures, the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly not a year has passed without instances of them in some one or other of the States. The Treaty of Peace—the treaty with France—the treaty with Holland have each been violated. [See the complaints to Congress on these subjects.] The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects.

3. Violations of the law of nations and of treaties.

As yet foreign powers have not been rigorous in animadverting on us. This moderation, however cannot be mistaken for a permanent partiality to our faults, or a permanent security ag<sup>st</sup> those disputes with other nations, which being among the greatest of public calamities, it ought to be least in the power of any part of the community to bring on the whole.

4. These are alarming symptoms, and may be daily apprehended as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports—of Maryland in favor of vessels belonging to her *own citizens*—of N. York in favor of the same—

4. Trespasses of the States on the rights of each other.

Paper money, instalments of debts, occlusion of Courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the Citizens of every State aggregately taken stand more or less in the relation of Creditors or debtors, to the Citizens of every other State, Acts of the debtor State in favor of debtors, affect the Creditor State, in the same manner as they do its own citizens who are relatively creditors towards other citizens. This remark may be extended to foreign nations. If the exclusive regulation of the value and alloy of coin was properly delegated to the federal authority, the policy of it equally requires a controul on the States in the cases above mentioned. It must have been meant 1. to preserve uniformity in the circulating medium throughout the nation. 2. to prevent

those frauds on the citizens of other States, and the subjects of foreign powers, which might disturb the tranquillity at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the federal articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive and vexatious in themselves than they are destructive of the general harmony.

5. This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue, suffered from this cause? Instances of inferior moment are the want of uniformity in the laws concerning naturalization & literary property; of provision for national seminaries, for grants of incorporation for national purposes, for canals and other works of general utility, w<sup>ch</sup> may at present be defeated by the perverseness of particular States whose concurrence is necessary.

5. Want of concert in matters where common interest requires it.

6. The confederation is silent on this point and therefore by the second article the hands of the federal authority are tied. According to Republican Theory, Right and power being both vested in the majority, are held to be synonymous. According to fact and experience a minority may in an appeal to force, be an overmatch for the majority. 1. if the minority happen to include all such as possess the skill and habits of military life, & such as possess the great pecuniary resources, one-third only may conquer the remaining two-thirds. 2. one-third of those who participate in the choice of the rulers, may be rendered a majority by the accession of those whose poverty excludes them from a right of suffrage, and who for obvious reasons will be more likely to join the standard of sedition than that of the established Government. 3. where slavery exists the republican Theory becomes still more fallacious.

6. Want of Guaranty to the States of their Constitutions & laws against internal violence.

7. A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Conution. Under the form of such a constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between independent and Sovereign States. From what cause could so fatal an omission have happened in the articles of Confederation? from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals: a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors. The time which has since elapsed has had the double effect, of increasing the light and tempering the warmth, with which the arduous work may be revised. It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies, to the acts of the federal Government ought not to be calculated on. Even during the war, when external danger supplied in some degree the

7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.

defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union? In time of peace, we see already what is to be expected. How indeed could it be otherwise? In the first place, Every general act of the Union must necessarily bear unequally hard on some particular member or members of it, secondly the partiality of the members to their own interests and rights, a partiality which will be fostered by the courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence, thirdly a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes & pretexts which will never fail to render federal measures abortive. If the laws of the States were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution? Is the security or probability greater in favor of the acts of Cong<sup>s</sup>. which depending for their execution on the will of the State legislatures, w<sup>ch</sup> are tho' nominally authoritative, in fact recommendatory only?

8. In some of the States the Confederation is recognized by, and forms a part of the Constitution. In others however it has received no other sanction than that of the legislative authority. From this defect two evils result: 1. Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the latter [former] is of posterior date to the former, [latter] it will be at least questionable whether the latter [former] must not prevail; and as the question must be decided by the Tribunals of the State, they will be most likely to lean on the side of the State.

8. Want of ratification by the people of the articles of Confederation.

2. As far as the union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the Confederation by any of the parties to it, absolves the other parties from their respective Obligations, and gives them a right if they chuse to exert it, of dissolving the Union altogether.

9. In developing the evils which viciate the political system of the U S., it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a compleat remedy. Among the evils then of our situation may well be ranked the multiplicity of laws from which no State is exempt. As far as laws are necessary to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion which might be abused, their number is the price of liberty. As far as laws exceed this limit, they are a nuisance; a nuisance of the most pestilent kind. Try the Codes of the several States by this test, and what a luxuriancy of legislation do they present. The short period of independency has filled as many pages as the century which preceded it. Every year, almost every session, adds a new volume. This may be the effect in part, but it can only be in part, of the situation in which the revolution has placed us. A review of the several Codes will shew that every necessary and useful part of the

9. Multiplicity of laws in the several States.



least voluminous of them might be compressed into one tenth of the compass, and at the same time be rendered ten fold as perspicuous.

10. This evil is intimately connected with the former yet deserves a distinct notice, as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded, before any trial can have been made of their merits, and even before a knowledge of them can have reached the remoter districts within which they were to operate. In the regulations of trade this instability becomes a snare not only to our citizens, but to foreigners also.

10. mutability of the laws of the States.

11. If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself; but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such governments are the safest Guardians both of public Good and private rights. To what causes is this evil to be ascribed?

11. Injustice of the laws of the States.

These causes lie 1. in the Representative bodies. 2. in the people themselves.

1. Representative appointments are sought from 3 motives. 1. ambition. 2. personal interest. 3. public good. Unhappily the two first are proved by experience to be most prevalent. Hence the candidates who feel them, particularly, the second, are most industrious, and most successful in pursuing their object: and forming often a majority in the legislative Councils, with interested views, contrary to the interest and views of their constituents, join in a perfidious sacrifice of the latter to the former. A succeeding election it might be supposed, would displace the offenders, and repair the mischief. But how easily are base and selfish measures, masked by pretexts of public good and apparent expediency? How frequently will a repetition of the same arts and industry which succeeded in the first instance, again prevail on the unwary to misplace their confidence?

How frequently too will the honest but unenlightened representative be the dupe of a favorite leader, veiling his selfish views under the professions of public good, and varnishing his sophistical arguments with the glowing colours of popular eloquence?

2. A still more fatal if not more frequent cause, lies among the people themselves. All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors—rich or poor—husbandmen, merchants or manufacturers—members of different religious sects—followers of different political leaders—inhabitants of different districts—owners of different kinds of property &c &c. In republican Government the majority however composed, ultimately give the law. Whenever therefore an apparent interest or common passion unites a majority what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals? Three motives only 1. a prudent regard to their own good as involved in the general and permanent good of the community. This consideration although of decisive weight in itself, is found by experience to be too often unheeded. It is too often forgotten, by nations as well as by individuals, that honesty is the best policy. 2<sup>dly</sup>. respect for character. However strong this motive may be in individuals,

it is considered as very insufficient to restrain them from injustice. In a multitude its efficacy is diminished in proportion to the number which is to share the praise or the blame. Besides, as it has reference to public opinion, which within a particular Society, is the opinion of the majority, the standard is fixed by those whose conduct is to be measured by it. The public opinion without the Society will be little respected by the people at large of any Country. Individuals of extended views, and of national pride, may bring the public proceedings to this standard, but the example will never be followed by the multitude. Is it to be imagined that an ordinary citizen or even Assemblyman of R. Island in estimating the policy of paper money, ever considered or cared, in what light the measure would be viewed in France or Holland; or even in Mass<sup>ts</sup> or Connec<sup>t</sup>? It was a sufficient temptation to both that it was for their interest; it was a sufficient sanction to the latter that it was popular in the State; to the former, that it was so in the neighbourhood. 3<sup>dly</sup>. will Religion the only remaining motive be a sufficient restraint? It is not pretended to be such on men individually considered. Will its effect be greater on them considered in an aggregate view? quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction, separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state is not infallible, it may become a motive to oppression as well as a restraint from injustice. Place three individuals in a situation wherein the interest of each depends on the voice of the others; and give to two of them an interest opposed to the rights of the third? Will the latter be secure? The prudence of every man would shun the danger. The rules & forms of justice suppose & guard against it. Will two thousand in a like situation be less likely to encroach on the rights of one thousand? The contrary is witnessed by the notorious factions & oppressions which take place in corporate towns limited as the opportunities are, and in little republics when uncontrouled by apprehensions of external danger. If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number. The Society becomes broken into a greater variety of interests, of pursuits of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits.

The great desideratum in Government is such a modification of the sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society. In absolute Monarchies the prince is sufficiently, neutral towards his subjects, but frequently sacrifices their happiness to his ambition or his avarice. In small Republics, the sovereign will is sufficiently controuled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. As a



limited monarchy tempers the evils of an absolute one; so an extensive Republic meliorates the administration of a small Republic.

An auxiliary desideratum for the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the society the purest and noblest characters which it contains; such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.

[\[Back to Table of Contents\]](#)

## OF ANCIENT & MODERN CONFEDERACIES. 1

Mad. Mss.

Lycian Confederacy.

In this confederacy the number of votes allotted to each member was proportioned to its pecuniary contributions. The Judges and Town magistrates were elected by the general authority in like proportion.

See Montesquieu<sup>2</sup> who prefers this mode.

The name of a federal republic may be refused to Lycia which Montesquieu cites as an example in which the importance of the members determined the proportion of their votes in the general Councils. The Gryson<sup>3</sup> League is a juster example. Code de l'Hum<sup>4</sup> Confederation.

Lyciorum quoque ἀνομιᾶν celebrat Strabo: de quâ pauca libet heic subjungere. Fuere eorum urbes XXIII, distinctæ in classes tres pro modo virium. In primâ classe censebantur maximæ sex, in alterâ mediæ, numero nobis incerto, in tertiâ reliquæ omnes, quarum fortuna minima. Et singulæ quidem urbes hæ domi res suas curabant, magistratus suos, ordinemque civilem suum habebant: universæ tamen in unum coeuntes unam communem rempublicam constituebant, concilioque utebantur uno, velut, senatu majore. In eo de bello, de pace, de fœderibus, denique de rerum Lyciacarum summâ deliberabant et statuebant. Coibant vero in concilium hoc ex singulis urbibus missi cum potestate ferendi suffragii: utebanturque eâ in re jure æquissimo. Nam quælibet urbs primæ classis habebat jus suffragiorum trium, secundæ duorum, tertiæ unius. Eademque proportione tributa quoque conferebant, et munia alia obibant. Quemadmodum enim ratio ipsa dictat, et poscit æquitas, ut plura qui possident, et cæteris ditiores sunt, plura etiam in usus communes, et reipublicæ subsidia conferant, sic quoque eadem æquitatis regula postulat, ut in statuendo de re communi iidem illi plus aliis possint: præsertim cum eorundem magis intersit rempublicam esse salvam quam tenuiorum. Locum concilii hujus non habebant fixum & certum, sed, ex omnibus urbem deligebant, quæ videbatur pro tempore commodissima. Concilio coacto primum designabant Lyciarcham principem totius Reipublicæ, dein magistratus alios creabant partes reipublicæ administraturos demum judicia publica constituebant. Atque hæc omnia faciebant servatâ proportione eadem, ut nulla omnino urbs præteriretur munerumve aut honorum horum non fieret particeps. Et hoc jus illibatum mansit Lyciis ad id usque tempus, quo Romani assumpto Asiæ imperio magnâ ex parte sui arbitrii id fecerunt.—Ubbo Emmius de Republica Lyciorum in Asia. [Apud Grovonii Thes., iv, 597.]<sup>1</sup>

Amphyctionic Confederacy.

Instituted by Amphyction son of Deucalion King of Athens 1522 years Ant.: Christ.: Code De l'Humanité.

Seated first at Thermopylæ, then at Delphos, afterwards at these places alternately. It met half yearly to wit in the Spring & Fall, besides extraordinary occasions. Id. In the latter meetings, all such of the Greeks as happened to be at Delphos on a religious errand were admitted to deliberate, but not to vote. Encyclopedie. [1](#)

The number and names of the confederated Cities differently reported. The Union seems to have consisted originally of the Delphians and their neighbors only, and by degrees to have comprehended all Greece. 10, 11, 12, are the different numbers of original members mentioned by different Authors. Code de l'Humanité.

Each city sent two deputies one to attend particularly to Religious matters—the other to civil and criminal matters affecting individuals—both to decide on matters of a general nature. Id. Sometimes more than two were sent, but they had two votes only. Encyclop.

The Amphyctions took an oath mutually to defend and protect the united Cities—to inflict vengeance on those who should sacrilegiously despoil the temple of Delphos—to punish the violators of this oath—and never to divert the water courses of any of the Amphyctionic Cities either in peace or in war. Code de l'Hum. Æschines orat: vs. Ctesip.

The Amphyctionic Council was instituted by way of defence and terror ag<sup>st</sup> the Barbarians. Dict<sup>re</sup> de Treviux.

Foedral Authority.

The Amphyctions had full power to propose and resolve whatever they judged useful to Greece. Encycop Pol. Econ.

1. They judged in the last resort all differences between the Amphyctionic cities. Code de l'Hum.
2. mulcted the aggressors. Id.
3. employed whole force of Greece ag<sup>st</sup> such as refused to execute its decrees. Id. & Plutarch, *Cimon*.
4. guarded the immense Riches of the Temple of Delphos, and decided controversies between the inhabitants and those who came to consult the Oracle. Encyclop.
5. superintended the Pythian games. Code de l'Hum.
6. exercised right of admitting new members. See decree admitting Philip, in Demosthenes on Crown.
7. Appointed General of the federal troops with full powers to carry their decrees into execution. Ibid.
8. Declared & carried on war. Code de l'Human.

Strabo says that the Council of the Amphyctions was dissolved in the time of Augustus; but Pausanias, who lived in the time of Antoninus Pius says it remained entire then, and that the number of Amphyctions was thirty. Potter's Gre. Ant: Vol. 1, p. 90.[1](#)

The institution declined on the admission of Phil and in the time of the Roman Emperors, the functions of the Council were reduced to the administration & police of the Temple. This limited authority expired only with the Pagan Religion. Code de l'Human.

Vices of the Constitution.

It happened but too often that the Deputies of the strongest Cities awed and corrupted those of the weaker, and that Judgment went in favor of the most powerful party. Id. see also Plutarch's Themistocles.

Greece was the victim of Philip. If her Confederation had been stricter, & been persevered in, she would never have yielded to Macedon, and might have proved a Barrier to the vast projects of Rome. Code de l'Hum.

Philip had two votes in the Council. Rawleigh Hist: World, lib. 4, c. 1, Sec. 7.

The execution of the Amphyctionic powers was very different from the Theory. Id.—It did not restrain the parties from warring ag<sup>st</sup> each other. Athens & Sparta were members during their conflicts. Quer. whether Thucidides or Xenophon in their Histories ever allude to the Amphyctionic authority which ought to have kept the peace?

See Gillies' Hist. Greece, particularly Vol. II. p. 345.

Achæan Confederacy

In 124 olymp<sup>d</sup>. the Patrians & Dymæans joined first in this league. Polyb. lib. 2, c. 3.[1](#)

This League consisted at first of three small Cities. Aratus added Sicyon, and drew in many other Cities of Achaia & Peloponnesus. Of these he formed a Republic of a peculiar sort. Code de l'Human.

It consisted of twelve cities, and was produced by the necessity of such a defence ag<sup>st</sup> the Etolians. Encyclo. Pol. Œ. & Polyb. lib. 2.

The members enjoyed a perfect equality, each of them sending the number of deputies to the Senate. Id.

The Senate assembled in the Spring & Fall, and was also convened on extraordinary occasions by two Pretors charged with the administration during the recess, but who could execute nothing with<sup>t</sup> the consent of the Inspectors. Id.

Fœderal Authority

1. The Senate composed of the deputies made war & peace. D'Albon I page 270
2. Appointed a Captain General annually. Co. d'Hum.
3. Transferred the power of deciding to ten Citizens taken from the deputies, the rest retaining a right of consultation only. Id.
4. Sent and received Ambassadors. D'Albon. Ibid.
5. appointed a prime Minister. D'Albon. Ibid.
6. Contracted foreign Alliances. Code de l'Hum.
7. Confederated Cities in a manner forced to receive the same laws & customs weights & measures: Id. & Polyb. lib. 2 cap. 3, yet considered as having each their independent police & Magistrates. Encyclop. Pol. Econ.

8. Penes hoc concilium erat summum rerum arbitrium, ex cujus decreto bella suscipiebantur, & finiebantur, pax conveniebat, fœdera feriebantur & solvebantur, *leges fiebant ratæ aut irritæ*. Hujus etiam erat Magistratus toti Societati communes eligere, legationes decernere &c. Regebant concilium prætor præcipue, si præsens esset, et magistratus alii, quos Achæi *δημοῦργοι*? nuncupabant. Ubbo Emmius.

Hi numero X erant suffragiis legitimi concilii, quod verno tempore habebatur, electi ex universa societate prudentia præcipui, quorum concilio potissimum prætor ex lege utebatur. Horum potestas & dignitas maxima erat post ipsum Prætorem, quos idcirco Livius, Polybium sequens, summum Achæorum magistratum appellabat. Cum his igitur de negociis gravioribus in concilio agitandis Prætor præconsultabat, nec de iis, nisi in id pars major consentiret, licebat ad consilium referre. Id.

Ista vero imprimis memorabilis lex est, vinculum societatis Achaicæ maximè stringens, et concordiam muniens, quâ interdictum fuit, ne cui civitati Societatis hujus participi fas esset, seorsim ad externos ullos mittere legatos, non ad Romanos, non ad alios. Et hoc expressim inserta fuit pactis conventis Achæorum cum populo Romano. . . . Omnium autem laudatissima lex apud eos viguit &c., quâ vetitum, ne quis omnino, sive privatæ conditionis, seu magistratum gerens, ullam ob causam, quæcunque etiam sit, dona a Rege aliquo caperet. <sup>1</sup> Id.

Vices of the Constitution.

The defect of subjection in the members to the general authority ruined the whole Body. The Romans seduced the members from the League by representing that it violated their sovereignty. Code de l'Human.

After the death of Alexander, this Union was dissolved by various dissensions, raised chiefly thro' the acts of the Kings of Macedon. Every City was now engaged in a separate interest & no longer acted in concert. Polyb. lib 2, cap. 3. After in 142 Olymp<sup>d</sup>, they saw their error & began to think of returning to their former State. This was the time when Pyrrhus invaded Italy. Ibid.

## Helvetic Confederacy.

Commenced in 1308 by the temporary, and in 1315 by the perpetual Union of Uri, Switz & Underwald, for the defence of their liberties ag<sup>st</sup>. the invasions of the House of Austria. In 1315 the Confederacy included 8 Cantons, and 1513 the number of 13 was completed by the accession of Appenzel. Code de l'Hum.

The General Diet representing the United Cantons is composed of two deputies from each. Some of their allies as the Abbi S<sup>t</sup>. Gall &c., are allowed by long usage to attend by their deputies. Id.

All general Diets are held at such time & place as Zurich, which is first in rank & the depository of the common archives, shall name in a circular summons. But the occasion of annual conferences for the administration of their dependent bailages has fixed the same time, to wit the feast of St. John, for the General Diet. And the city of Frauenfeld in Turgovia is now the place of Meeting. Formerly it was the City of Baden. Id.

The Diet is opened by a Complimentary Address of the first Deputy of each Canton by turns, called the Helvetic salutation. It consists in a congratulatory review of circumstances & events favorable to their common interest—and exhortations to Union and patriotism.

The deputies of the first canton Zurich propose the matters to be discussed. Questions are decided by plurality of voices. In case of division, the Bailiff of Turgovia has the casting one. The Session of the Diet continues about a month. Id.

After the objects of universal concern are despatched, such of the deputies whose Constituents have no share in the dependent bailages, withdraw, and the Diet then becomes a representation of the Cantons to whom these bailages belong, and proceeds to the consideration of the business relating thereto. Id.

Extraordinary Diets for incidental business or giving audience to foreign ministers may be called at any time by any one of the Cantons or by any foreign minister who will defray the expense of meeting. Seldom a year without an extraordinary Diet. Stanyan's Switzerland.

There is an annual Diet of 12 Cantons by one deputy from each for the affairs of the Ultramontane bailages. Code de l'Human.

Particular Cantons also have their diets for their particular affairs, the time & place for whose meeting are settled by their particular Treaties.

All public affairs are now treated not in Gen<sup>l</sup> Diet, but in the particular Assemblies of Protestant & Catholic Cantons. D'Albon.

## Foederal Authority

The title of Republic and Sovereign State improperly given to this Confederacy, which has no concentrated authority the Diets being only a Congress of Delegates from some or all of the Cantons, and having no fixed objects that are national. Dictionnaire de Suisse.

The 13 Cantons do not make one Commonwealth like the United Provinces, but are so many independent Commonwealths in strict alliance. There is not so much as any common instrument by which they are all reciprocally bound together; The 3 primitive Cantons alone being each directly allied to the other twelve. The others in many instances are connected *indirectly* only, as allies of allies. In this mode any one Canton may draw in all the others to make a common cause in its defence. Stanyan.

The confederacy has no common Treasury—no common troops—no common Coin—no common Judicatory—nor any other common mark of sovereignty. Id.

The General Diet cannot terminate any interesting affair without special instructions, & powers, & the deputies accordingly take most matters proposed ad referendum. Code de l'Hum.

The Cantons individually exercise the right of sending & receiving ambassadors—making Treaties—coining money—proscribing the money of one another—prohibiting the importation and exportation of merchandise—furnishing troops to foreign States, and doing everything else which does not wound the liberty of any other Canton. Excepting a few cases specified in the Alliances and which directly concern the object of the league, no Canton is subject to the Resolutions of the plurality. Id.

The only establishment truly national is that of a federal army, as regulated in 1668, and which is no more than an eventual plan of defence adopted among so many allied States. Id.

1. The League consists in a perpetual defensive engagement against external attacks and internal troubles. It may be regarded as an axiom in the public Law of the confederacy, that the federal engagements are precedent to all other political engagements of the Cantons. Id.
2. Another axiom is that there are no particular or common possessions of the Cantons for the defence of which the others are not bound as Guarantees or auxiliaries of Guarantees. Id.
3. All disputes are to be submitted to Neutral Cantons, who may employ force if necessary in execution of their decrees. Id. Each party to choose 4 Judges who may in case of disagreement choose umpire, and these under oath of impartiality to pronounce definitive sentence, which all Cantons to enforce.—D'Albon. & Stan.
4. No Canton ought to form new alliances without the consent of the others [this was stipulated in consequence of an improper alliance in 1442 by Zurich with the House of Austria.] Id.

5. It is an essential Object of the league to preserve interior tranquillity by the reciprocal protection of the form of Governm<sup>t</sup> established in each Canton, so that each is armed with the force of the whole Corps for the suppression of rebellions & Revolts, and the History of Switzerland affords frequent instances of mutual succors for these purposes. Dict<sup>re</sup>. de Suisse.

6. The Cantons are bound not to give shelter to fugitives from Justice, in consequence of which each Canton can at this day banish malefactors from all the territories of the League. Id.

7. Tho' each Canton may prohibit the exportation & importation of merchandize, it must allow it to pass thro' from one neighboring Canton to another without any augmentation of the tolls. Code de l'Hum.

8. In claiming succors ag<sup>st</sup> foreign powers, the 8 Elder Cantons have a more extensive right than the 5 Junior ones. The former may demand them of one another without explaining the motives of the quarrel. The latter cannot intermeddle but as mediators or auxiliaries; nor can they commence hostilities without the sanction of the Confederates; and if cited by their adversaries, cannot refuse to accept the other Cantons for arbiters or Judges. Dict<sup>re</sup>. de Suisse.

9. In general each Canton is to pay its own forces without compensation from the whole or the succoured party. But in case a siege is to be formed for the benefit of a particular Canton, this is to defray the expence of it, and if for the common benefit, each is to pay its just proportion. D'Albon. On no pretext is a Canton to be forced to march its troops out of the limits of Switzerland. Stanyan.

10. Foreign Ministers from different Nations reside in different Cantons. Such of them as have letters of credence for the whole Confederacy address them to Zurich the chief Canton. The Ambassador of France, who has most to do with the Confederacy is complimented at his Quarters by deputies from the whole body.

#### Vices of the Constitution

1. disparity in size of Cantons

2. different principles of Governm<sup>t</sup>. in diff<sup>t</sup>. Cantons

3. intolerance in Religion

4. weakness of the Union. The coon bailages w<sup>ch</sup>. served as a cement, sometimes become occasions of quarrels. Dict<sup>re</sup>. de Suisse.

In a treaty in 1683 with Victor Amadœus of Savoy, it is stipulated that he shall interpose as Mediator in disputes between the Cantons, and if necessary use force ag<sup>st</sup> the party refusing to submit to the sentence. Dict<sup>re</sup>. de Suisse.—a striking proof of the want of authority in the whole over its parts.

Belgic Confederacy.



established in 1679 by the Treaty called the Union of Utrecht. Code de l'Humanité.

The provinces came into this Union slowly. Guelderland the smallest of them made many difficulties. Even some of the Cities & towns pretended to annex conditions to their acceding. Id.

When the Union was originally established a committee composed of deputies from each province was appointed to regulate affairs, and to convoke the provinces according to art. XIX of the Treaty. Out of this Committee grew the States General Id.—who strictly speaking are only the Representatives of the States General who amount to 800 members. Temple, p. 112.<sup>1</sup>

The number of Deputies to the States General from each province not limited, but have only a single voice. They amount commonly, all together to 40 or 50. They hold their seats, some for life, some for 6 3 & 1 years, & those of Groninguen & Overysse during pleasure. They are paid, but very moderately, by their respective constituents, and are amenable to their Tribunals only. Code de l'Hum. No military man is deputable to the States Gen<sup>l</sup> Id.

Ambass<sup>rs</sup>. of Republic have session & deliberation but no suffrage in States Gen<sup>l</sup>. Id. The grand pensioner of Holland as ordinary deputy from Holland, attends always in the States Gen<sup>l</sup>, & makes the propositions of that Province to States G<sup>l</sup>. Id.

They sit constantly at the Hague since 1593, and every day in the week except Saturday & Sunday. The States of Holland in granting this residence, reserve by way of protestation, the rights, the honors & prerogatives belonging to them as sovereigns of the Province; yielding the States Gen<sup>l</sup>. only a rank in certain public ceremonies. Id.

The eldest deputy from each province presides for a week by turns. The president receives letters &c. from the Ministers of the Republic at foreign Courts, and of foreign Ministers residing at the Hague, as well as of all petitions presented to the Assembly; all which he causes to be read by the Secretary. Id.

The Secretary besides correcting & recording the Resolutions prepares & despatches instructions to Ministers abroad—& letters to foreign powers. He assists also at conferences held with foreign Ministers & *there gives his voice*. He has a deputy when there is not a second Secretary. The Agent of the States Gen<sup>l</sup> is charged with the Archives and is also employed on occasions of receiving foreign Ministers or sending Messages to them. Id.

Federal Authority.

The avowed objects of the Treaty of Union. 1. to fortify the Union—2. to repel the common enemy. Id.

The Union is to be perpetual in the same manner as if the Confederates formed one province only, without prejudice however to the privileges & rights of each province & City. Id.

Differences between provinces & between Cities are to be settled by the ordinary Judges—by arbitration—by amicable agreement, without the interference of other provinces otherwise than by way of accommodation. The Stadtholder is to decide such differences in the last resort. Id.

No change to be made in the articles of Union, without unanimous consent of the parties & everything done contrary to them to be null & void. Id.

States General. 1. execute, without consulting their constituents, treaties & alliances already formed. Id.

2. take oaths from Generals & Govern<sup>rs</sup>, and appoint Field Deputies.

3. The collection of duties on imports & exports and the expedition of Safe Conducts are in their name & by their officers. Id.

4. they superintend & examine accounts of the E. India Company. Id.

5. inspect the Mint—appoint les Maitres de la Monnoye—fix la *taille* & la valeur of the Coin, having always regard to the regular rights of the provinces within their own Territories. Id.

6. Appoint a Treasurer General & Receiver General of the Quotas furnished by the Provinces. Id.

7. elect out of a double nomination, the fiscal & other officers within the departments of the admiralties, except that the High officers of the fleet are appointed by the Admiral General, to whom the maritime provinces have ceded this right. Id.—The Navy supported by duties on foreign trade, appropriated thereto by the maritime provinces, for the benefit of the whole Republic. Id.

8. They govern as sovereigns, the dependent territories, according to the several capitulations. Id.

9. they form Committees of their own body of a member from each deputation, for foreign affairs—finances marine—& other matters. At all these conferences the Grand Pensioner of Holland & the Secretary of the States Gen<sup>l</sup> attend and have a deciding voice. Id.

10. App<sup>t</sup> & receive Ambass<sup>rs</sup>—negociate w<sup>th</sup> foreign powers—deliberate on war—peace—alliances—the raising forces—care of fortifications—military affairs *to a certain degree*—the equipment of fleets—building of ships—directions concerning money. Id. But they can neither make peace—nor war—nor truces—nor treaties—nor raise troops—nor impose taxes, nor do other acts requiring unanimity without consulting & obtaining the sanction of the Provinces. Id. Coining money also requires unanimity & express sanction of provinces Temple. repealing an old law on same footing. Burrish. Batav illustrata. In points not enumerated in this article plurality of voices decides. Code de l'Hum.

11. composition & publication of edicts & proclamations relative both to the objects expressed in the articles of Union and to the measures taken for the common good, are in the name of the States, and altho' they are addressed to the States of the Provinces who announce them with their sanction, still it is in the name of the States Gen<sup>l</sup> that obedience is required of all the inhabitants of the provinces. Code de l'Hum.

The Provinces have reserved to themselves.

1. their sovereignty within their own limits in general. Code de l'Hum.
2. the right of coining money, as essential to Sovereignty, but agreed at the same time that the money which s<sup>d</sup> be current throughout the Republic s<sup>d</sup>. have the same intrinsic value: To give effect to which regulation a mint is established at the Hague under a chamber which has the inspection of all money struck either in name of States Gen<sup>l</sup> or particular provinces, as also of foreign coin. Id.—Coining money not in provinces or Cities, but in the generality of Union by common agreement. Temple.
3. Every province raises what money & by what means it pleases, and sends its quota to Receiver General Temple.

The quotas were not settled without great difficulty. Id.

4. the naming to Govern<sup>ts</sup> of Towns within themselves—keeping keys & giving word to Magistrates—a power over troops in all things not military—conferring Col<sup>s</sup> Commissions & inferior posts in such Regiments as are paid by the provinces respectively—taking oath of fidelity—concerning a revocation of all which the States Gen<sup>l</sup> are not permitted to deliberate. Id.

The Provinces are restricted.

1. from entering into any foreign Treaties without consent of the rest. Code de Hum.
2. from establishing imposts prejudicial to others without general consent. Id.
3. from charging their neighbours with higher duties than their own subjects. Id.

Council of State.—composed of deputies from the provinces in different proportions. 3 of them are for life, the rest generally for 3 years: they vote per capita. Temple.

They are subordinate to the States General, who frequently however consult with them. In matters of war which require secrecy they act of themselves. Military & fiscal matters are the objects of their administration. They vote.

They execute the resolutions of the States Gen<sup>l</sup>., propose requisitions of men & money & superintend the fortifications &c., & the affairs of revenues & Govern<sup>ts</sup>., of the conquered possessions. Temple.

Chamber of Accounts, was erected for the ease of the Council of State. It is subordinate to the States Gen<sup>l</sup>., is composed of two deputies from each province, who

are changed triennially. They examine and state all acc<sup>ts</sup> of the several Receivers—control and register orders of Council of State disposing of the finances. Id.

College of Admiralty established by the States Gen<sup>l</sup> 1597 is subdivided into five of w<sup>ch</sup>. three are in Holland—one in Zealand—one in Friezland, each composed of 7 deputies, 4 app<sup>d</sup>. by the province where the admiralty resides & 3 by the other provinces. The vice-Admiral presides in all of them when he is present. Temple.

They take final cognizance of all crimes & prizes at sea; — — — — of all frauds in customs provide quota of fleets resolved on by States Gen<sup>l</sup> app<sup>t</sup>. Capt<sup>s</sup> & superior officers of each squadron take final cognizance also of Civil matters within 600 florins—an appeal lying to States Gen<sup>l</sup> for matters beyond that sum. Code de l'Hum. & Temple.

The authority of States Gen<sup>l</sup>. in Admiralty Depart<sup>t</sup> is much limited by the influence & privileges of maritime provinces, & the jurisdiction herein is full of confusion & contradiction. Code de l'humanité.

Stadtholder who is now hereditary in his *political* capacity is authorized 1. to settle differences between provinces, provisionally till other methods can be agreed on, which having never been this prerogative may be deemed a permanent one. Code de l'Hum.

2. Assists at deliberations of States Gen<sup>l</sup> & their particular conferences, recommends & influences appointm<sup>t</sup> of Ambassadors. Id.

3. has seat & suffrage in Council of State. Id.

4. presiding in the provincial Courts of Justice where his name is prefixed to all public acts. Id.

5. supreme Curator of most of the Universities. Id.

6. As Stadtholder of the provinces has considerable rights partaking of the sovereignty, as appointing town magistrates on presentation made to him of a certain number. Executing provincial decrees &c. Id. & Mably, Etud. de l'hist.

7. gives audiences to Ambassadors & may have Agents with their Sovereigns for his private affairs. Mab. [Ibid](#)

8. exercises power of pardon. Temple.

In his *Military* capacity as Cap<sup>t</sup>. Gen<sup>l</sup>.

1. commands forces—directs marches—provides for garrisons—& in general regulates military affairs. Code de l'Hum.

2. disposes of all appointm<sup>ts</sup>, from Ensigns to Col<sup>s</sup>. The Council of State hav<sup>g</sup>. surrendered to him the appointm<sup>ts</sup> within their disposal Id. & the States Gen<sup>l</sup> app<sup>t</sup> the higher grades on his recoendation. Id.

3. disposes of the Gov<sup>ts</sup> &c. of the fortified towns tho' the coissions issue from the States Gen<sup>l</sup>. Id.

In his *Marine* capacity as Admiral General. 1. superintends & directs everything relative to naval forces & other affairs within Admiralty. Id.

2. presides in the Admiralties in person or by proxy. Id.

3. Appoints Lieu<sup>ts</sup>. Admirals & officers under them. Id.

4. establishes Councils of war, whose sentences are in the name of the States Gen<sup>l</sup> & his Highness and are not executed till he approves. Id.

The Stadtholder has a general & secret influence on the great machine which cannot be defined. Id.

His Revenue from appointm<sup>ts</sup>. amount to 300,000 florins, to which is to be added his extensive patrimonies. Id.

The standing army of the Republic, 40,000 men.

Vices of the Constitution.

The Union of Utrecht imports an authority in the States Gen<sup>l</sup> seemingly sufficient to secure harmony; but the Jealousy in each province of its sovereignty renders the practice very different from the Theory. Code de l'Hum.

It is clear that the delay occasioned by recurring to seven independent provinces including about 52 voting Cities &c. is a vice in the Belgic Republic which exposes it to the most fatal inconveniences. Accordingly the fathers of their country have endeavored to remedy it in the extraordinary Assemblies of the States Gen<sup>l</sup>. in (1584) in 1651, 1716, 1717, but unhappily without effect. This vice is notwithstanding deplorable. Id.—Among other evils it gives foreign ministers the means of arresting the most important deliberations by gaining a single province or city. This was done by France in 1726, when the Treaty of Hanover was delayed a whole year. In 1688 the States concluded a Treaty of themselves but at the risk of their heads. Id. It is the practice also in matters of contribution or subsidy to pass over this article of the Union, for where delay w<sup>d</sup>. be dangerous the consenting provinces furnish their quotas without waiting for the others, but by such means the Union is weakened and if often repeated must be dissolved—Id.

Foreign Ministers elude matters taken ad referendum by tampering with the provinces & Cities. Temple p. 116.

Treaty of Union obliges each Province to levy certain contributions. But this article never could probably never will be executed because the inland provinces who have little commerce cannot pay an equal Quota. Burrish, Bat. illustrat:

Deputations from agreeing to disagreeing provinces frequent. Temple.

It is certain that so many independent Corps & interests could not be kept together without such a center of Union as the Stadtholdership, as has been allowed & repeated in so many solemn Acts. Code de Hum.

In the intermission of the Stadtholdership Holland by her Riches & Authority which drew the others into a sort of dependence, supplied the place. Temple.

With such a Govern<sup>t</sup>. the Union never c<sup>d</sup> have subsisted, if in effect the provinces had not within themselves a spring capable of quick—ing their tardiness, and impelling them to the same way of thinking. This Spring is the Stadtholder. His prerogatives are immense—1, &c. &c.—A strange effect of human contradictions. Men too jealous to confide their liberty to their representatives who are their equals, abandoned it to a prince who might the more easily abuse it as the affairs of the Republic were important & had not them fixed themselves. Mably Etude d’Hist., 205. 6.

Grotius has s<sup>d</sup>. that the hatred of his countrymen ag<sup>st</sup> the H of Austria kept them from being destroyed by the vices of their Constitution. Ibid.

The difficulty of procuring unanimity has produced a breach of fundamentals in several instances—Treaty of Westphalia was concluded without consent of Zealand &c D’Albon & Temple—These tend to alter the constitution. D’Albon.

It appears by several articles of the Union that the confederates had formed the design of establishing a Gen<sup>l</sup> tax, [Impôt,] to be administered by the States Gen<sup>l</sup>.. But this design so proper for bracing this happy Union has not been executed. Code de l’Hum.

Germanic Confederacy—took its present form in the year —.—Code de l’Hum.

*The Diet* is to be convoked by the Emperor, or on his failure, by the Archbishop of Mentz, with consent of Electors once in ten years at least from the last adjournment, and six months before the time of meeting. Ratisbon is the seat of the Diet since 1663.

The members amount to 285, and compose three Colleges, to wit, that of the Electors—of Princes—of Imperial Cities. The voices amount to 159, of which 153 are individual & 6 collective. The latter are particular to the College of princes and are formed out of 39 prelates &c. and 93 Counts &c. The individual voices are common to the three Colleges, and are given by 9 Electors—94 princes, 33 of the ecclesiastical & 61 of the secular Bench—& 50 Imperial Cities, 13 of the Rhenish, & 37 of the Suabian Bench. The K. of Prussia has nine voices in as many different capacities. Id.

The three Colleges assemble in the same House but in different apartments. Id.

The Emperor as head of the Germanic body is presid<sup>t</sup>. of the Diet. He & others are represented by proxies at present. Id.

The deliberations are ground<sup>d</sup>. on propositions from Emperor & commerce in the College of Electors, from whence they pass to that of the princes, & thence to that of the Imperial Cities. They are not resolutions till they have been passed in each. When the Electors & Princes cannot agree, they confer; but do not confer with the Imperial Cities. plurality of voices decide in each College, except in matters of Religion & a few reserved cases, in which according to the Treaty of Westphalia, and the Imperial Capitulations the Empire is divided into the Catholic & Evangelic Corps. Id.

After the Resolutions have passed the three Colleges, they are presented to the Representative of the Emperor, without whose ratification they are null. Id. they are called placita after passing the three Colleges—conclusa after ratification by Emperor. Id.

The Collection of Acts of one Diet is called the Recess, which cannot be made up & have the force of law, till the Close of the Diet. the subsisting diet has not been closed for more than a hundred years, of course it has furnished no effective Resolution, though a great number of Interesting ones have passed. This delay proceeds from the Imperial Court who refuse to grant a Recess, notwithstanding the frequent and pressing applications made for one. Id.

Fœderal Authority.

The powers as well as the organization of the Diet have varied at different times. Antiently it elected as a corps the Emperors and judged of their Conduct. The Golden Bull gives this right to the Electors alone. Antiently it regulated tolls—at present the Electors alone do this. Id.

The Treaty of Westphalia & the capitulations of the Emperors from Charles V downwards, define the present powers of the Diet. These concern—1. Legislation of the Empire—2. War & peace & alliances—3. raising troops—4. contributions—5 construction of fortresses—6 Money—7 Ban of the Empire. 8 Admission of new princes—9. the Supreme tribunals—10. disposition of Grand fiefs & grand Charges—In all these points the Emperor & Diet must concur. Id.

The Ban of the Empire is a sort of proscription by which the disturbers of the public peace are punished. The offenders life & goods are at the mercy of every one, formerly the Emperors themselves pronounced the ban ag<sup>st</sup>. those who offended them. It has been since regulated that no one shall be exposed to the Ban without the examination & consent of the Diet. Encyclop.

By the Ban the party is outlawed, degraded from all his federal rights—his subjects absolved from their allegiance—and his possessions forfeited. Code de l'Hum.

The Ban is incurred when the Emperor or one of the supreme Tribunals address an order to any one, on pain in case of disobedience, of being proscribed ipso facto. Id.

The Circles formerly were in number 6 only. There are now ten. They were instituted for the more effectual preservation of the public peace, and the execution of decrees of Diet & supreme Tribunals against contumacious members, for which purposes they have their particular diets, with the chief prince of the Circle at their head, have particular officers for commanding the forces of the Circle, levy contributions, see that Justice is duly administered—that the coin is not debased—that the customs are not unduly raised.—Savage vol. 2 p. 35.

If a Circle fail to send its due succours, it is to pay damages suffered therefrom to its neighbours. If a member of the circle refuse, the Col. of the Circle is to admonish, & if this be insufficient, the delinquent party is to be compelled under a sentence from the Imperial Chamber. Id.

*Aulic Council* [established by Diet in 1512. Encyclop.,] composed of members appointed by the Emperor. Code de l'Hum.

Its cognizance is restrained to matters above 2,000 Crowns; is concurrent with the jurisdiction of the Imperial Chamber in controversies between the States—also in those of subjects of the Empire by way of appeal from subaltern Tribunals of the Empire, and from sovereign tribunals of princes. Id.—Arms are to be used for carrying its decrees into execution, as was done in 1718 by the troops of the Circle of upper Rhine in a controversy between Landgrave of Hesse Cassel & Prince of Hesse of Rhinfitz. Id.

*Imperial Chamber*, established in 1495 by the Diet as a means of public peace, by deciding controversies between members of the Empire. Code de l'Hum.

This is the first Tribunal of the Empire. It has an appellate jurisdiction in all Civil, and fiscal causes or where the public peace may be concerned. It has a concurrent jurisdiction with the Aulic Council; and causes cannot be removed from one to the other. Id.

The Judges of this Tribunal are appointed partly by the Emperor—partly by Electors—partly by circles—are supported by all the States of the Empire, excepting the Emperor. They are badly paid, though great salaries are annexed to their offices. Id.

In every action, real or personal—The Diet—Imperial Chamber and Aulic Council are so many supreme Courts to which none of the States can demur. The jurisprudence, by which they govern themselves, are according to the subject matter—1. the provincial laws of Germany 2. the Scripture—3 the law of nature—4 law of Nations—5 the Roman law—6 the canon law—7 the fœdal law of the Lombards. Id.

Members of Diet as such are subject in all public affairs to be judged by Emperor & Diet,—as individuals in private capacity are subject to Aulic Council & Imperial Chamber. Id.

The members have reserved to themselves the right 1. to enter into war & peace with foreign powers 2 to enter into alliances with foreign powers and with one another, not



prejudicial to their engagements to the Empire. Code de 'Hum.—3 to make laws, levy taxes, raise troops, to determine on life & death. Savage. 4 Coin money. Id. 5. exert territorial sovereignty within their limits in their own name. Code de l'Hum. 6. to grant pardons. Savage, p. 44. 7. to furnish their quotas of troops, equipped mounted & armed & to provide for sustenance of them, as if they served at home. Code de l'Hum.

Members of Empire restricted.

1. from entering into Confederacies prejudicial to the Empire.
2. from laying tolls or customs upon bridges, rivers, or passages to which strangers are subject, without consent of the Emperor in full Diet.
3. cannot give any other value to money, nor make any other kind of money, than what is allowed by the Empire. Savage vol. 2, p. 45.
4. (by edict of 1548, particularly) from taking arms one ag<sup>st</sup> another, from doing themselves justice—from affording retreat, much more, assistance to infractors of the public peace; the ban of the Empire being denounced ag<sup>st</sup>. the transgressors of these prohibitions, besides a fine of 2000 marks of gold and loss of regalities.—Code d'Hum.

Emperor.—has the prerogative 1. of exclusively making propositions to the Diet—2 presiding in all Assemblies & Tribunals of the Empire when he chuses—3 of giving suffrage in all affairs treated in the diet—4 of negating their resolutions—5 of issuing them in his own name—6 of watching over the safety of the Empire—7 of naming Ambassadors to negotiate within the Empire as well as at foreign Courts—affairs concerning the Germanic Corps. 8. of re-establishing in good fame persons dishonored by Council of war & civil Tribunals. Code d'Hum.—9 of giving investiture of the principal immediate fiefs of the Empire, w<sup>ch</sup> is not indeed of much consequence—10 of conferring vacant electorates—11 of preventing subjects from being withdrawn from the jurisdiction of their proper Judge—12. Of conferring charges of the Empire. 13 of conferring dignities & titles as of Kings &c.—14 of instituting military orders—15 of granting the dernier resort—16. of judging differences & controversies touching tolls—17. of deciding contests between Catholic & Protestant States touching precedence &c.—Id.—18. of founding Universities within the lands of the States, so far as to make the person endowed with Academic honors therein be regarded as such throughout Germany.—19 of granting all sorts of privileges not injurious to the States of the Empire—20 of establishing great fairs—21 of receiving the droit des Postes generales—22 of striking money, but without augmenting or diminishing its value. 23 of permitting strangers to enlist soldiers, conformably to Recess of 1654. Id. 24. Of receiving and applying Revenues of Empire.—Savage, p. NA. He cannot make war or peace, nor laws, nor levy taxes nor alter the denomination of money nor weights or measures.—Savage, v. 2, p. 35. The Emperor as such does not properly possess any territory within the Empire, nor derive any revenue for his support. Code de 'Hum.

Vices of the Constitution.

1. The Quotas are complained of & supplied very irregularly & defectively. Code de 'Hum. provision is made by decree of diet for enforcing them, but it is a delicate matter to execute it ag<sup>st</sup>. the powerful members. Id.

2. The establishm<sup>t</sup>. of Imperial Chamber has not been found an efficacious remedy ag<sup>st</sup>. civil wars. It has committed faults. *The Ressoritissans* have not always been docile. Id.

3. Altho' the establishm<sup>t</sup>. of Imperial Chambers &c give a more regular form to the police of the fiefs, it is not to be supposed they are capable of giving a certain force to the laws and maintaining the peace of the Empire if the House of Austria had not acquired power eno' to maintain itself on the imperial Throne, to make itself respected, to give orders which it might be imprudent to despise, as the laws were therefore despised. Mabley Etude d' hist., p. 180.

[Jealousy of the Imperial authority seems to have been a great cement of the Confederacy.]

[\[Back to Table of Contents\]](#)

## ORIGIN OF THE CONSTITUTIONAL CONVENTION.

Mad. Mss.

### A SKETCH NEVER FINISHED NOR APPLIED. [1](#)

As the weakness and wants of man naturally lead to an association of individuals under a Common Authority, whereby each may have the protection of the whole against danger from without, and enjoy in safety within, the advantages of social intercourse, and an exchange of the necessaries & comforts of life; in like manner feeble communities, independent of each other, have resorted to a Union, less intimate, but with common Councils, for the common safety ag<sup>st</sup>. powerful neighbors, and for the preservation of justice and peace among themselves. Ancient history furnishes examples of these confederal [2](#) associations, tho' with a very imperfect account, of their structure, and of the attributes and functions of the presiding Authority. There are examples of modern date also, some of them still existing, the modifications and transactions [3](#) of which are sufficiently known.

It remained for the British Colonies, now United States, of North America, to add to those examples, one of a more interesting character than any of them [4](#) which led to a system without an example [5](#) ancient or modern, a system founded on popular rights, and so combining a federal form with the forms of individual Republics, as may enable each to supply the defects of the other and obtain that advantage of both.

Whilst the Colonies enjoyed the protection of the parent Country as it was called, against foreign danger; and were secured by its superintending controul, against conflicts among themselves, they continued independent of each other, under a common, tho' limited dependence, on the Parental Authority. When however the growth of the offspring in strength and in wealth, awakened the jealousy and tempted the avidity of the parent, into schemes of usurpation & exaction, [1](#) the obligation was felt by the former of uniting their Counsels and efforts, to avert the impending calamity.

As early as the year 1754, indications having been given of a design [2](#) in the British government to levy contributions on the Colonies, without their consent; a meeting of Colonial deputies took place at Albany, which attempted to introduce a compromising substitute, that might at once satisfy the British requisitions, and save their own rights from violation. The attempt had no other effect, than by bringing these rights into a more conspicuous view, to invigorate the attachment to them, on the one side; and to nourish the haughty & encroaching spirit on the other.

In 1774. The progress made by G. B. in the open assertion of her pretensions, and the apprehended purpose of otherwise maintaining them by Legislative enactments and declarations, had been such that the Colonies did not hesitate to assemble, by their deputies, in a formal Congress, authorized to oppose to the British innovations

whatever measures might be found best adapted to the occasion; without however losing sight of an eventual reconciliation.

The dissuasive<sup>3</sup> measures of that Congress, being without effect, another Congress was held<sup>4</sup> in 1775, whose pacific efforts to bring about a change in the views of the other party, being equally unavailing, and the commencement of actual hostilities having at length put an end to all hope of reconciliation; the Congress finding moreover that the popular voice began to call for an entire & perpetual dissolution of the political ties which had connected them with G. B., proceeded on the memorable 4<sup>th</sup> of July, 1776 to declare the 13 Colonies Independent States.

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

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

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

The great difficulty experienced in so framing the fed<sup>l</sup>. system as to obtain the unanimity required for its due sanction, may be inferred from the long interval, and recurring discussions, between the commencement and completion of the work; from the changes made during its progress; from the language of Cong<sup>s</sup>. when proposing it to the States, wch dwelt on the impracticability of devising a system acceptable to all of them; from the reluctant assent given by some; and the various alterations proposed by others; and by tardiness in others again which produced a special address to them from Cong<sup>s</sup>, enforcing the duty of sacrificing local considerations and favorite opinions to the public safety, and the necessary harmony: Nor was the assent of some

of the States finally yielded without strong protests against particular articles, and a reliance on future amendments removing their objections.

It is to be recollected, no doubt, that these delays might be occasioned in some degree, by an occupation of the Public Councils both general & local, with the deliberations and measures, essential to a Revolutionary struggle; But there must have been a balance for these causes, in the obvious motives to hasten the establishment of a regular and efficient Gov<sup>t</sup>; and in the tendency of the crisis to repress opinions and pretensions,<sup>1</sup> which might be inflexible in another state of things.

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

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

The other source of dissatisfaction was the peculiar situation of some of the States, which having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, thro' whose ports, their commerce was carried on. New Jersey placed between Phil<sup>a</sup> & N. York, was likened to a cask tapped at both ends; And N. Carolina, between Virg<sup>a</sup> & S. Carolina to a patient bleeding at both Arms. The Articles of Confederation provided no remedy<sup>2</sup> for the complaint; which produced a strong protest on the part of N. Jersey; and never ceased to be a source of dissatisfaction & discord, until the new Constitution superseded the old.

But the radical infirmity of the "Art<sup>s</sup>. of Confederation" was the dependence of Cong<sup>s</sup> on the voluntary and simultaneous compliance with its Requisitions, by so many independent Communities, each consulting more or less its particular interests & convenience and distrusting the compliance of the others. Whilst the paper emissions

of Cong<sup>s</sup> continued to circulate they were employed as a sinew of war, like gold & silver. When that ceased to be the case, and the fatal defect of the political System was felt in its alarming force, the war was merely kept alive and brought to a successful conclusion by such foreign aids and temporary expedients as could be applied; a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy in practice, the efficiency which had been inferred from its theory.

The close of the war however brought no cure for the public embarrassments. The States relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power; (instead of a diminished disposition to part with it), persevered in omissions and in measures incompatible with their relations to the Federal Gov<sup>t</sup> and with those among themselves.

Having served as a member of Cong<sup>s</sup>. through the period between Mar. 1780 & the arrival of peace in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful opposition to every attempt to procure a remedy by new grants of power to Cong<sup>s</sup> I had found moreover that despair of success hung over the compromising provision of April 1783, for the Public necessities, which had been so elaborately planned and so impressively recommended to the States. 1 Sympathizing, under this aspect of affairs, in the alarm of the friends of free Gov<sup>t</sup> at the threatened danger of an abortive result to the great & perhaps last experiment in its favour, I could not be insensible to the obligation to co-operate as far as I could in averting the calamity. With this view I acceded to the desire of my fellow Citizens of the County that I should be one of its representatives in the Legislature, hoping that I might there best contribute to inculcate the critical posture to which the Revolutionary cause was reduced, and the merit of a leading agency of the State in bringing about a rescue of the Union, and the blessings 2 of liberty staked on it, from an impending catastrophe.

It required but little time after taking my seat in the House of Delegates in May 1784, to discover that however favorable the general disposition of the State might be towards 3 the Confederacy the Legislature retained the aversion of its predecessors to transfers of power from the State to the Gov<sup>t</sup> of the Union; notwithstanding the urgent demands of the Federal Treasury; the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the Fed<sup>t</sup> System, and the animosity kindled among the States 1 by their conflicting regulations.

The temper of the Legislature & the wayward course of its proceedings may be gathered from the Journals of its Sessions in the years 1784 & 1785.

The failure however of the varied propositions in the Legislature, for enlarging the powers of Congress, the continued failure of the efforts of Cong<sup>t</sup> to obtain from them the means of providing for the debts of the Revolution; and of countervailing the commercial laws of G. B., a source of much irritation & ag<sup>st</sup>. which the separate efforts of the States were found worse than abortive; these Considerations with the lights thrown on the whole subject, by the free & full discussion it had undergone led to a general acquiescence in the Resol<sup>n</sup>. passed on the 21. of Jan<sup>y</sup> 1786, which

proposed & invited a meeting of Deputies from all the States to—insert the Resol. (See Journal.)2

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

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

The coissioners appointed by the Legisl: & who attended the Convention were E. Randolph the attorney of the state St. Geo: Tucker & J. M. The designation of the time & place to be proposed for its meeting, and communicated to the states having been left to the Com<sup>TS</sup>. they named for the time early September and for the place the City of Annapolis avoiding the residences of Cong<sup>S</sup> and large Coercial Cities as liable to suspicions of an extraneous influence.

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

But in the interval between the proposal of the Convention, and the time of its meeting such had been the advance of public opinion in the desired direction, stimulated as it had been by the effect of the contemplated object, of the meeting, in turning the general attention to the Critical State of things, and in calling forth the sentiments and exertions of the most enlightened & influential patriots, that the Convention thin as it was did not scruple to decline the limited task assigned to it and to recommend to the States a Convention with powers adequate to the occasion. Nor was it unnoticed that the commission of the N. Jersey Deputation had extended its object to a general provision for the exigencies of the Union. A recommendation for



this enlarged purpose was accordingly reported by a Com<sup>e</sup> to whom the subject had been referred. It was drafted by Col: H., and finally agreed to unanimously in the following form. Insert it.[1](#)

The recommendation was well rec<sup>d</sup>. by the Legislature of Virg<sup>a</sup>, which happened to be the *first* that *acted* on it, the example of her compliance was made as conciliatory and impressive as possible. The Legislature were unanimous or very nearly so on the occasion, and as a proof of the magnitude & solemnity attached to it, they placed Gen<sup>l</sup>. W. at the head of the Deputation from the State; and as a proof of the deep interest he felt in the case he overstepped the obstacles to his acceptance of the appointment.[1](#)

The law[2](#) complying with the recommendation[3](#) from Annapolis was in the terms following:[4](#)

A resort to a General Convention to remodel the Confederacy, was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting & foreseeing observers of the inadequacy of the powers allowed to Congress.[1](#) In a pamphlet published in May 81 at the seat of Cong<sup>s</sup> Pelatiah Webster an able tho' not conspicuous Citizen, after discussing the fiscal system of the U. States, and suggesting among other remedial provisions including national Bank remarks that "the Authority of Cong<sup>s</sup>, at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging and limiting, the duties & powers of their Constitution."

On the 1. day of Ap<sup>l</sup>, 1783, Col: Hamilton, in a debate in Cong<sup>s</sup>. observed that.[2](#)

He alluded probably to (see life of Schuyler in Longacre[3](#) —)

It does not appear however that his expectation had been fulfilled.

In a letter to J. M. from R. H. Lee then President of Cong<sup>s</sup>. dated Nov<sup>r</sup> 26, 1784 He says:[4](#)

The answer of J. M. remarks.[5](#)

In 1785, Noah Webster whose pol & other valuable writings had made him known to the Public, in one of his publications, of American policy brought into view the same resort for supplying the defects Fed<sup>l</sup> System (see his life in Longacre).[1](#)

The proposed & expected Convention at Annapolis the first of a general character that appears to have been realized, & the state of the public mind awakened by it, had attracted the particular attention of Cong<sup>s</sup> and favored the idea there of a Convention with fuller powers for amending the Confederacy. to J. M. letters of Monroe of Grayson.[2](#)



It does not appear that in any of these cases, the reform system was to be otherwise sanctioned than by the Legislative auth<sup>y</sup> of the States; nor whether nor how far a change was to be made in the structure of the Depository of the Federal powers.

The act of Virg<sup>a</sup> providing for the Convention at Philad<sup>a</sup>, was succeeded by appointments from the other states as their Legislatures were assembled, the appointments being selections from the most experienced & highest<sup>1</sup> standing Citizens. Rh. Is. was the only exception to a compliance with the recommendation from Annapolis, well known to have been swayed by an obdurate adherence to an advantage which her position gave her of taxing her neighbors thro' their consumption of imported supplies, an advantage which it was foreseen would be taken from her by a revision of the "articles of Confederation."

As the pub. mind had been ripened for a salutary Reform of the pol. System, in the interval between the proposal & the meeting of the Com<sup>ts</sup>. at Annapolis, the interval between the last event, and the meeting of Dep<sup>s</sup> at Phil<sup>a</sup> had continued to develop more & more the necessity & the extent of a systematic provision for the preservation and Gov<sup>t</sup> of the Union. Among the ripening incidents was the Insurrection of Shays, in Mass<sup>ts</sup>., against her Gov<sup>t</sup>; which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the Fed<sup>l</sup> troops.

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

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

The want of Auth<sup>y</sup> in Cong<sup>s</sup>. to regulate Commerce had produced in Foreign nations particularly G. B., a monopolizing policy injurious to the trade of the U. S., and destructive to their navigation; the imbecility and anticipated dissolution of the Confederacy extinguish<sup>g</sup> all apprehensions of a Countervailing policy on the part of the U. States.

The same want of a general power over Commerce led to an exercise of the power separately, by the States, w<sup>ch</sup> not only proved abortive, but engendered rival, conflicting and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighbouring ports, and to coerce a relaxation of the British monopoly of the W. Ind<sup>a</sup>. navigation, which was attempted by Virginia,<sup>1</sup> (see Journal of NA) the States having ports for foreign

commerce, taxed & irritated the adjoining States, trading thro' them, as N. Y., Pen<sup>a</sup>, Virg<sup>a</sup> & S. Carolina. Some of the States, as Connecticut, taxed imports as from Mass<sup>ts</sup>, higher than imports even from G. B. of w<sup>ch</sup> Mass<sup>ts</sup>. complained to Virg<sup>a</sup>. and doubtless to other States (see letter of J. M.). In sundry instances as of N. Y., N. J., P<sup>a</sup> & Maryl<sup>d</sup>, (see NA). The navigation laws treated the Citizens of other States as aliens.

In certain cases the Auth<sup>y</sup> of the Confederacy was disregarded, as in violation not only of the Treaty of peace; but of Treaties with France & Holland, which were complained of to Cong<sup>s</sup>.

In other cases the Fed<sup>l</sup> Auth<sup>y</sup> was violated by Treaties & wars with Indians, as by Geo.; by troops raised & kept up with<sup>t</sup> the consent of Cong<sup>s</sup>, as by Mass<sup>ts</sup>.; by compacts with<sup>t</sup> the consent of Cong<sup>s</sup>, as between Pen<sup>a</sup> and N. Jersey, and between Virg<sup>a</sup> & Maryl<sup>d</sup>. From the Legisl: Journals of Virg<sup>a</sup> it appears, that a vote refusing to apply for a sanction of Cong<sup>s</sup> was followed by a vote ag<sup>st</sup> the communication of the Compact to Cong<sup>s</sup>.

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

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

As a natural consequence of this distracted and disheartening condition<sup>1</sup> of the union, the Fed<sup>l</sup> Auth<sup>y</sup> had ceased to be respected abroad, and dispositions were shewn there, particularly in G. B., to take advantage of its imbecility, and to speculate on its approaching downfall: At home it had lost all confidence & credit; the unstable and unjust career of the States had also forfeited the respect & confidence essential to order and good Govt<sup>t</sup> involving a general decay of confidence between Man & man. It was found moreover that those least partial to popular Govt<sup>t</sup>, or most distrustful of its efficacy were yielding to anticipations, that from an increase of the confusion a Govt<sup>t</sup> might result more congenial with their taste or their opinions. Whilst those most devoted to the principles and forms of Republics, were alarmed for the cause of liberty itself, at stake in the American Experiment, and anxious for a system that w<sup>d</sup> avoid the inefficacy of a mere confederacy without passing into the opposite extreme of a consolidated gov<sup>t</sup>. It was known that there were individuals who had betrayed a bias towards Monarchy (see Knox to G. W. and him to Jay,) (Marshall's life<sup>1</sup>) and there had always been some not unfavorable to a partition of the Union into several Confederacies; either from a better chance of figuring on a Sectional Theatre, or that the Sections would require stronger Gov<sup>ts</sup>, or by their hostile conflicts lead to a monarchical consolidation. The idea of a dismemberment had recently made its appearance in the Newspapers.

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

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

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

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

The curiosity I had felt during my researches into the History of the most distinguished Confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it more especially in what related to the process, the principles, the reasons, & the anticipations, which prevailed in the formation of them, determined me to preserve as far as I could an exact account of what might pass in the Convention whilst executing its trust, with the magnitude of which I was duly impressed, as I was with the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, & the reasonings from which the new System of Gov<sup>t</sup>. was to receive its peculiar structure & organization. Nor was I unaware of the value of such a contribution to the fund of materials for the History of a Constitution on which would be Staked the happiness of a people great even in its infancy, and possibly 1 the cause of liberty throughout the world.

In pursuance of the task I had assumed I chose a seat in front of the presiding member, with the other members on my right & left hands. In this favorable position

for hearing all that passed, I noted in terms legible & in abbreviations & marks intelligible to myself what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment & reassembling of the Convention I was enabled to write out my daily notes during the session or within a few finishing days after its close, in the extent and form preserved in my own hand on my files.

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

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

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

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

end of volume ii.

[1]The allusion is to his rejection the month before by Miss Floyd, a daughter of William Floyd, of New York.

[1]Cypher represented by italics.

[1]See letter of Feby. 17, [1784], shewing Buffon who had been read to have been misconceived. Note in MSS.

[1]George Hancock, a citizen of Virginia, assaulted Jonas Beard, a justice of the peace and member of the legislature of South Carolina. The Governor of South Carolina demanded Hancock's surrender from the Governor of Virginia, under the fourth article of the confederation, charging the assault as a high misdemeanor. Randolph, as Attorney General of Virginia, thought that Virginia had a right to insist upon proof of Hancock's guilt before taking action, but that South Carolina's definition of a misdemeanor must be admitted by Virginia, and that flight ought not to secure one from punishment. Randolph to Jefferson, January 30, 1784, Conway's *Randolph*, 51.

[1]Italics for cypher.

[1]Cypher.

[1]See the letter of July 3d to Jefferson.

[1]"Monroe is buying land almost adjoining me. Short will do the same. What would I not give [if] you could fall into the circle. . . . There is a little farm of 140 as adjoining me, & within two miles, all of good land, tho' old, with a small indifferent house on it, the whole not worth more than £250. Such a one might be a farm of experiment & support a little table and household. It is on the road to Orange & so much nearer than I am. It is convenient enough for supplementary supplies from thence. Once more think of it, and adieu."—Jefferson to Madison, Feb. 20, 1784. *Writings of Jefferson*, iii., 406. Madison's personal plans were given a definite shape the following summer, Aug. 19, 1784, when his father presented him with a farm of 560 acres, a part of the Montpelier tract.—*Orange County MSS. Records*.

[2]Italics for cypher.

[1]Notes of Speech on Proposed Amendment to the Constitution of Virginia. June, 1784:

"Virga Legislature.

"For Amending Constitution of Va. in 1784.

"Nature of a Constitution examd. see Massts. p. 7. 8. 15. 16. N. Y. p. 63.—Pena p. 85. 86. Del. p. 106 N. C. p. 146-150. S. C. p. 188. Geo p. 175. 186.

"Convention of 1776. without due power from people.

“1. passed the ordinance for Constn. on recommendation of Congs of May 15. 1776. prior to d of independence: as was done in N. H. p. 1 & N. J. p. 78-84.

“2. Passed it from impulse of necessity.—See last clause of the preamble.

3. before independence declared by Congs.

“4. power from people no where pretended.

“5. other ordinances of same Session deemed alterable as relative to Senators—oaths—Salt.

“6. provisions for care of West Augusta in its nature temporary.

“7. Convention make themselves branch of the Legislature.

“Constitution, if so to be called defective.

“1. in a Union of powers which is tyranny Montesq.

“2. Executive dependent on Legislature. 1. for salary. 2. for character in the treñial expulsion.—3. expensive—4. may be for life contrary to Art: 5 of Declaration of Rights.—

“3. Judiciary dependent for amt. of salary.

“4. Privileges & wages of members of Legislature unlimited & undefined.

“5. Senate badly constituted & improperly barred of the originating of laws.

“6. equality of representation not provided for see N. Y. p. 65. S. C. p. 165.

“7. Impeachmts. of great moment & on bad footing.

“8. County Courts seem to be fixed p. 143. 144. also General Court.

“9. Habeas Corpus omitted.

“10. no mode of expounding constitution & and of course no check to Genl. Assembly.

“11. Right of suffrage not well fixed—quere *if popish* recusants &c. are not disfranchised? Constn. rests on acquiescence, a bad basis.

“Revision during war improper—on peace decency requires surrender of power to people.

“No danger in referring to the people who already exercise an equivalent power.

“If no change be made in the Constitution, it is advisable to have it ratified and secured agst. the doubts and imputations under which it now labours.”—*Mad. MSS.*

[2]“J. M.’s proposition to the Gen. Assembly [June—1784]. See Journal Whereas by the 4th. article of the Definitive Treaty of Peace ratified and proclaimed by the United States in Congress assembled on the 14th. day of Jany last ‘it is agreed that Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted’: and whereas it is the duty and determination of this Commonwealth, with a becoming reverence for the faith of Treaties, truly and honestly, to give to the said article, all the effect, inasmuch as the debts due from the good people of this commonwealth to the subjects of G. Britain were contracted under the prospect of gradual payments, and are justly computed to exceed the possibility of full payment at once, more especially, under the diminution of their property resulting from the devastations of the late war: and it is therefore conceived that the interest of the British creditors themselves will be favored by fixing certain reasonable periods, at which divided payments shall be made.

“Resolved, that it is the opinion of this Committee, that the laws now in force relative to British debts, ought to be so varied & amended as to make the same recoverable in the proportions & at the periods following: that is to say, part thereof with interest of 5 per Ct from the date of the definitive Treaty of peace, on the day of and the remaining on the day of And whereas it is further stipulated by art: 7th. of the said Treaty, among other things, that ‘his Britannic Majesty shall with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States; and from every post place and harbour within the same, leaving in all fortifications the American artillery that may be therein, and shall also order and cause all archives, records, deeds & papers, belonging to any of the said States, or their citizens, which in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper States and persons to whom they belong,’ which stipulation was in the same words contained in the Provisional articles signed at Paris on the 30th day of November 1782 by the commissioners empowered on each part: and whereas posterior to the date of the said provisional articles, Sundry negroes the property of citizens of this commonwealth were carried away from the city of New York whilst in possession of the British forces, and no restitution or satisfaction on that head, has been made, either before or since the Definitive Treaty of peace; And whereas the good people of this commonwealth have a clear right to expect that whilst, on one side, they are called upon by the U. S. in Congress assembled to them by foederal Constitution the powers of war & peace are exclusively delegated, to carry into effect the stipulations in favour of British subjects, an equal observance of the stipulations in their own favor, should, on the other side, be duly secured to them under the authority of the Confederacy.

“Resolved, that it is the opinion of this Committee; that the Delegates representing this State in Congress ought to be instructed to urge in Congress peremptory measures for obtaining from G. Britain satisfaction for the infringement of the article aforesaid;



and in case of refusal or unreasonable delay of such satisfaction, to urge that the sanction of Congress be given to the just policy of retaining so much of the debts due from citizens of this commonwealth, to British subjects, as will fully repair the losses sustained from such infringement: and that to enable the said Delegates, to proceed herein with the greater precision & effect, the Executive ought to be requested to take immediate measures for obtaining & transmitting to them, all just claims of the citizens of this Commonwealth under the 7th art: as aforesaid.”—*Mad. MSS.*

[1] At this session a concerted effort was made by the various churches for State recognition. There was a committee of the legislature charged “with all matters relating to religion and morality.” Petitions were presented from the Baptists and Presbyterians asking for a removal of all remaining distinctions in favor of the Episcopal Church, in order that “religious freedom be established upon the broad basis of perfect political equality.” The bill for the Episcopal Church was debated two days.—Rives, i., 560, *et seq.* John B. Smith, president of Hampden-Sydney College, wrote to Madison, June 21, 1784, that the bill was insulting to non-Episcopalians, and any measure to *enable* the Episcopal clergy to regulate all spiritual concerns of that church was an express attempt “to draw the State into an illicit connection and commerce with them,” and to put the legislature in the position of being at the head of the church. He was sorry that Christian ministers should virtually declare their church to be a mere political machine.—Smith to Madison, *Mad. MSS.*

[1] The boundary between Virginia and Maryland was the Potomac, and the charter of Lord Baltimore had defined the Southern shore as the line. This Virginia confirmed in the Constitution of 1776, reserving, however, the free navigation and use of the river. Madison feared that this general confirmation would be construed by Maryland into a total surrender of all jurisdiction over the river. Having ascertained through Jefferson that Maryland would appoint commissioners to form regulations if Virginia did so, Madison introduced a bill to that effect, which was passed June 30th. See Rives, i., 535, *et seq.* Through a blunder in the notifications Madison and Randolph did not attend the meeting with the Maryland Commissioners, which took place at Mount Vernon, but the Maryland Commissioners having journeyed some distance, Mason and Henderson decided to proceed with the conference.—Mason to Madison, August 9, 1785.—*Mad. MSS.* The Maryland members were T. Stone, Daniel of St. Thomas Jenifer and Samuel Chase. Together with Mason and Henderson they signed the report which was dated Mount Vernon, March 28, 1785, and transmitted to the General Assembly as “Result of the Deliberations of the Commissioners of Virginia & Maryland, appointed to settle the navigation & Jurisdiction of that Part of the Chesapeake Bay within the Limits of Virginia, & of the Rivers Potomack and Pokomoke.” The Commissioners also united in a joint letter to the President of the Executive Council of Pennsylvania, recommending the cooperation of that State.—*Mad. MSS.* There is no reason for supposing that Madison’s bill had any deeper purpose than the simple one that appeared on the surface, but when it appeared that regulations between Virginia and Maryland would be useless unless Pennsylvania were included, it became equally evident that New York, New Jersey, and Delaware could render ineffective any agreement Pennsylvania might make. A general convention of all the States to bring about what was at first projected for two States only was the logical suggestion. It resulted in the call for the Annapolis meeting,



which in turn led to the Philadelphia convention. The proceedings of the Virginia and Maryland Commissioners are traced in Kate Mason Rowland's *George Mason*, ii., 12, *et seq.* For Madison's resolutions extending the Commissioners' powers, see *post*.

[1] "Mrs. Carr was informed by Mr. Jefferson, previous to his departure to Europe, that he had requested the favor of you, to direct the Studies of her two Sons Peter & Dabney in his absence. Should it be convenient for you to comply with Mr. Jeffersons request, Mrs. Carr will be much obliged to you to inform her, when, and in what manner you would wish them disposed of."—W. O. Collis to Madison, August 9, 1784.—*Mad. MSS.*

[1] Madison wrote to Washington on this subject July 2d less fully than in this letter. For Washington's suggestion that something should be done for "poor Paine," see his letter of June 12, 1784, to Madison, *Writings of Washington*, x., 393, and for Jefferson's opinion of the action of the Assembly, Jefferson to Madison, December 8, 1784, *Writings of Jefferson*, iv., 17.

[1] Chinch-bug. Note in MS.

[1] Italics for cyphers.

[1] "I can with truth therefore declare to you, and wish you to repeat it on every proper occasion, that no person on earth is authorized to place my name in any adventure for lands on the western waters." Jefferson to Madison, November 11, 1784.—*Writings of Jefferson*, iv., 3.

[1] Italics for cypher.

[1]. . . "That one reason assign'd for detaining the Western posts from the United States was, because Virginia had not repealed her laws that impede the recovery of British debts. It is sincerely to be lamented that our State should be so charged, and it is much to be wished that the Advocates for retaining those laws wd no longer insist upon furnishing pretext for detaining from the U. S. possessions of such capital importance to the Union as these posts are."—Richard Henry Lee to Madison, November 20, 1784. *Mad. MSS.*

[1] Italics for cypher.

[1] Oliver Wolcott, Richard Butler, and Arthur Lee.

[1] A paraphrase of this speech may be found in Rives i., 604. The speech is written in a microscopic hand on the back of a letter.

[1] The opening of the letter relates to Monroe's journey over the same ground substantially that Madison had just travelled.

[1] The resolution was brought in by Henry. It declared that "the people of the commonwealth, according to their respective abilities, ought to pay a moderate tax or contribution for the support of the Christian religion, or of some Christian church,

denomination, or communion of Christians, or of some form of Christian worship.” Only one petition appeared against the measure. A special committee with Henry at the head was appointed to prepare the bill. See Rives i., 599, *et seq.*

[1] Madison also had a scheme for improving the roads of the State, and prepared resolutions in the winter of 1784-85 to be introduced at this session of the Legislature, but the time being inopportune he allowed the matter to drop.

“Whereas the opening & keeping in repair of direct roads from the different parts of this Common’th to the several market Towns, and from one market Town to another would greatly encourage agriculture by cheapening the transportation of its productions to the places of consumption & exportation, and would in other respects contribute to the improvement of the Country by facilitating intercourse between the different parts thereof, and it is considered by the present general assembly, that altho’ the various necessary burdens which now press on the people render a general plan for the aforesaid purpose unadvisable at this moment, yet that such a beginning ought to be made in the work as will not only produce immediate advantage to the community; but will lead to a more diffusive & complete execution thereof: and it is the more necessary that the principal roads should be so straightened before the value of the ground to be obtained from individuals increases. Be it therefore enacted that the governour with the advice of the Council of State shall be & he hereby is authorized to cause surveys to be made in order to determine the best courses for roads, (having regard to the nature of the ground as well as to distance) from & to the following places to wit; from and for executing such surveys the Governor with the advice aforesaid is further authorized to appoint a proper person for each of such surveys who shall be allowed a sum not exceeding per day during his actual employment in the service, and who may take with him so many assistants & such daily wages as the Executive shall approve, the said Surveyors shall make to the Governour the ”—*Mad. MSS.*

[1] Cypher represented by italics.

[1] Cypher represented by italics.

[1] Italics for cypher.

[1] This passage briefly recounts the acts passed by the Legislature.

[1] James Maury. He was appointed Consul at Liverpool, where he acted as Madison’s agent in selling his tobacco for many years.

[1] Italics for cypher.

[1] By concentrating our Commerce at Alexandria and Norfolk the object of the Port-Bill. [Note in *MS.*]

[2] Italics for cypher.

[1]“You may be surprised to hear that a late Convention have unanimously agreed to petition the assembly to have this District established into a State. I cannot explain the prevailing Sentiments better, than by telling you We conceive the people of this District do not at present enjoy a greater portion of Liberty than an American Colony might have done a few years ago had she been allowed a Representation in the British Parliament. . . . Until lately I have myself thought it would be more eligible to continue as we are a while longer; but finding that our Situation is too remote to enjoy the advantages of Government with Virginia in any tolerable degree, I have fallen in with the opinion that it is better to part in peace than to remain together in a state of Jealousy and Discontent.” Caleb Wallace to Madison, Lincoln Co., July 12, 1785. *Mad. MSS.*

[1]Nicholas, of Albemarle.

[1]Italics for cypher.

[1]Italics for cypher.

[1]Several of Madison’s friends in Kentucky wrote to him asking his assistance in the framing of a new government. January 6, 1785, George Muter transmitted questions which Caleb Wallace wished answered, which were the same as those answered above. In the MSS. this letter is not addressed, and is marked as having been sent to “John Brown, Kentucky,” but Sept. 24, 1785, Caleb Wallace replied to it as a letter to him, which doubtless it was.—*Mad. MSS.*

[1]The Constitution of N. York directs an experiment on this Subject. [Note in *MS.*]

[1]Italics for cypher.

[2]R. H. Lee.

[1]By a vote of ayes 48, noes 38, the third reading of the engrossed bill to establish a provision for the teachers of the Christian religion was postponed December 24, 1784, to the fourth Thursday in the next November. Among those voting against the postponement were Benjamin Harrison, Joseph Jones, John Marshall, Philip Barbour, Richard Bland Lee, Richard Henry Lee, and Henry Tazewell. Washington also favored the bill. It was printed for distribution among the voters in order that their sentiments towards it might be ascertained. Among its opponents were Wilson Cary Nicholas and George Nicholas. A copy of the bill is found among the Washington MSS. The copy of the Remonstrance used here is one of the broadsides printed by the Phenix Press of Alexandria, now in the Virginia Historical Society, with a number of signatures appended to it. It has been collated with the notes in Madison’s hand found among the Madison MSS.

“My brother informs me that he conversed with you on the propriety of remonstrating against certain measures of the last session of Assembly and that you seemed to think it would be best that the counties opposed to the measure should be silent. I fear this would be construed into an assent especially to the law for establishing a certain

provision for the clergy: for as the Assembly only postponed the passing of it that they might know whether it was disagreeable to the people I think they may justly conclude that all are for it who do not say to the contrary. A majority of the counties are in favor of the measure but undecipherable] a great majority of the people against it, but if this majority should not appear by petition the fact will be denied. Another reason why all should petition is that some will certainly do it and those who support the bills will insist that those who petition are all the opposition. Would it not add greatly to the weight of the petition if they all hold the same language? by discovering an exact uniformity of sentiment in a majority of the country it would certainly deter the majority of the assembly from proceeding. All my expectations are from their fears, and not their justice. . . . If you think with me that it will be proper to say something to the Assembly, will you commit it to paper. I risk this because I know you are most capable of doing it properly and because it will be most likely to be generally adopted. I can get it sent to Amherst Buckingham Albemarle, Fluvanna, Augusta, Botetourt, Rock Bridge and Rockingham and have no doubt that Bedford and the counties Southward of it will readily join in the measure. I will also send it to Frederick and Berkeley and if it goes from your county to Farquieur Culpeper and Loudoun it will be adopted by the most populous part of the country.”—George Nicholas to Madison, Charlottesville, April 22nd 1785, *Mad. MSS.*

“I found that no alteration could be made to the remonstrance without injury and immediately had it copied and sent to the counties I mentioned in a former letter.”—Nicholas to Madison, Sweet Springs, July 24, 1785, *Mad. MSS.*

[1] Decl. Rights, Art: 16. [Note in the original.]

[1] Decl. Rights, Art. 1. [Note in the original.]

[2] Art: 16. [Note in the original.]

[1] Art. 16. [Note in the original.]

[1] Decl. Rights-title. [Note in the original.]

[1] This skeleton of a speech is written, as other speeches are, upon a slip of paper in a hand so small that parts of it can hardly be deciphered with the naked eye. An effect of the speech was the adoption by the House of a resolution, that “an act ought to pass to authorize the delegates of this State in Congress to give the assent of the State to a general regulation of the Commerce of the United States, under certain qualifications.”

[1] The non-importation agreements of the colonies *before* the Revolution were not entered into by Delaware until some time after the other colonies. See *Life of George Read*, 81.

[2] “*De l’Administration des Finances de la France*” had made its appearance the year before this speech was delivered.

[1] From the New York Public Library (Lenox) MSS. A copy of the letter was printed in the *Nation* July 19, 1894.

[2] The act was passed at the May session, 1782, of the General Assembly: “Whereas application hath been made to this present general assembly, that those persons who are disposed to emancipate their slaves may be empowered so to do, and the same hath been judged expedient under certain restrictions: *Be it therefore enacted*, That it shall hereafter be lawful for any person, by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal, attested and proved in the county court by two witnesses, . . . to emancipate and set free, his or her slaves, or any of them, who shall thereupon be entirely and freely discharged from the performance of any contract entered into during servitude, and enjoy as full freedom as if they had been particularly named and freed by this act.”—Hening’s *Statutes at Large*, xi, 39.

Jacob Read, of South Carolina, wrote to Madison from Congress August 29, 1785: “An opinion prevails in South Carolina that the principal holders of Slaves in your State wish to divest themselves of that kind of property and that tolerable good purchases might be made on good Security being given for payments by installments with a regular discharge of the Interest.

“Under the Impression of this opinion the Honle. Mr. J. Rutledge of So. Carolina has addressed a Letter to me wishing to become engaged in any purchase I may be able to make, & to make a joint concern. . . . My present application to you is to request you to inform me if you know of any such persons as may wish to sell a gang of Hands & the Terms on which they might be had. . . . We want! Greatly want!! the assistance of your abilities & Experience in Congress.”—*Mad. MSS.*

[1] Aug. 9, 1785, George Mason wrote from Gunston Hall to Madison, enclosing for his inspection a copy of his and Henderson’s report to the Legislature and of the joint letter to the government of Pennsylvania of the Virginia and Maryland commissioners.

January 13, 1786, the Virginia General Assembly agreed that duties on exports and imports should be the same in Virginia and Maryland, and that commissioners from the two States should meet annually to arrange the schedules—*Journal of the House of Delegates*.

[1]

The petition is in Madison’s handwriting.

June 3, 1784, a memorial from the Protestant Episcopal Church in Virginia was presented in the House of Delegates stating that the church labored under disadvantages because of several laws directing the modes of worship, and requesting the repeal of such acts; “that an act may pass, to incorporate the Protestant Episcopal Church in Virginia, to enable them to regulate all the spiritual concerns of that Church, alter its form of worship, and constitute such canons, by-laws and rules for

the government and good order thereof, as are suited to their religious principles; and in general that the Legislature will aid and patronize the Christian religion.” This was referred to the Committee on Religion, of which Madison was himself a member; but he was opposed to the views of the majority of his colleagues. On June 8 Carey reported that the memorial seemed to the committee to be reasonable. The bill for the incorporation of the Protestant Episcopal Church was read the second time June 16, and after modification to a less objectionable form passed at the next session of the Assembly. (*See Journal of the House of Delegates.*) Madison himself voted for it, as a strategic movement, to ward off action on the more important bill for religious assessments. The act contained twelve sections, providing that the “Minister and vestry of the Protestant Episcopal Church” should, under that name, constitute a body politic and corporate in the respective parishes, and should forever enjoy all glebe lands already purchased, churches, burying-grounds, etc., belonging to them, “and every other thing the property of the late established church.” In the proceedings of the ministers and vestries all matters were to be decided by a majority vote. They had full power and authority to purchase and enjoy lands, etc. In whatever parishes ministers and vestrymen wished to form a body corporate under the act, it was lawful for any two members of the church to call together the other members in the parish and elect twelve church members, to form a vestry and with the minister of the church were authorized to regulate all its religious concerns, doctrine, discipline and worship. (Hening’s *Statutes at Large*, 11, 532).

Beginning with the session of the Assembly in the Autumn of 1786 petitions to repeal the act began to pour in, and also a smaller number against the repeal (*Journal of the House of Delegates*, Oct. 31, Nov. 1, Nov. 6, Nov. 9, Nov. 10, Nov. 17, Nov. 24, Dec. 4, Dec. 5, Dec. 7.) The act of repeal was finally passed Jan. 10, 1787. (Hening’s *Stats. at Large*, 12, 266.)

Rev Dr John B. Smith, of Hampden-Sidney College, a Presbyterian, wrote to Madison under date June 21, 1784:

“Since my arrival at home, I have seen a part of your Journals, & by them have learned the objects of the Petition from the Episcopal Clergy, which in one or two instances, appear to me very exceptionable. The first part of their prayer is necessary & proper; & the whole of it might pass without much animadversion to its disadvantage, ’till you hear them requesting that ‘they, the Clergy, may be incorporated by law’; & then an attentive mind must revolt against it as very unjustifiable, & very insulting to the members of their communion in general. Had they requested that an incorporating act should pass, in favour of that Church as a party of Christians, whereby the *people* might have had a share in the direction of ecclesiastical regulations, & the appointment of Church officers for that purpose, it would have been extremely proper. But as the matter now stands, the clergy seem desirous to exclude *them* from any share in such a privilege & willing to oblige the members of their Churches to sit down patiently, under such regulations as an incorporated body of Clergymen, who wish to be peculiarly considered as ministers in the view of the law, shall chuse to make, without a legal right to interpose in any manner, but such as these spiritual leaders may think fit to allow. \* \* \* \* \*

“But that part of the petition, which concerns me most as well as every non-Episcopalian in the state, is, where these Clergymen pray for an act of the Assembly to enable, them to regulate all the spiritual concerns of that Church &c. This is an express attempt to draw the State into an illicit connexion & commerce with them, which is already the ground of that uneasiness which at present prevails thro’ a great part of the State. According to the spirit of that prayer, the Legislature is to consider itself as the head of that Party, & consequently they as members are to be fostered with particular care.”

*Mad. MSS.*

[1] “On my return to Orange I found the copy of your Notes brought along with it by Mr. Doradour. I have looked them over carefully myself & consulted several judicious friends in confidence. We are all sensible that the *freedom of your strictures* on some *particular measures* and *opinions will displease their respective abettors*. But we equally concur in thinking that this consideration ought not to be weighed against the *utility of your plan*. We think both the facts and remarks which you have assembled too *valuable* not to be made known, at least to those for whom *you destine* them, and speak of them to *one another in terms which I must not repeat to you*.”—Madison to Jefferson, November 15, 1785. *Mad. MSS.*

[1] The portions of the letter printed in italics are in cypher in the original.

[1] Meriwether Smith.

[1] Cypher for italics.

[1] “If you visit this place shortly I will present you to a young lady who will be adopted a citizen of Virga. in the course of this week.” Monroe to Madison, February 11, 1786.—*Writings of Monroe*, i., 123.

[2] Madison and Monroe bought lands in the Mohawk Valley on a speculation. They desired Jefferson to join in the enterprise but he did not accept. Apparently no money was made in the transaction.

[1] “Jersey having taken into consideration the late requisition, the house of delegates resolv’d that having enter’d into the confederation upon terms highly disadvantageous to that state, from the necessity of public Affrs at the time, and a confidence that those points in which they were aggriev’d wou. be remedied and finding this was not the case and a compact founded in such unequal principles likely, by their acquiescence to be fetter’d on them, they wou. not therefore comply with the same until their grievances were redress’d.”—Monroe to Madison, March 19, 1786.—*Writings of Monroe*, i., 124.

[1] On Virginia.

[1] “Behold, Reader, the form of George Washington. For his worth, ask History; that will tell it, when this stone shall have yielded to the decays of time. His cuntry erects this monument. Houdon makes it.’ This for one side. On the 2d represent the



evacuation of Boston with the motto ‘Hostibus primum fugatis.’ On the 3d the capture of the Hessians with ‘Hostibus iterum devictis.’ On the 4th the surrender of York, with ‘Hostibus ultimum deballatis.’”—Jefferson to Madison, February 8, 1786.—*Writings of Jefferson*, iv., 195. Fortunately the unpretentious inscription required by Virginia was adhered to.

[2] Italics for cypher.

[1]

“Fontainebleau Oct. 28. 1785.

\* \* \* \* \*

“as soon as I had got clear of the town I fell in with a poor woman walking at same rate with myself & going the same course. wishing to know the condition of the labouring poor I entered into conversation with her, which I began by enquiries for the path which would lead me into the mountain: & thence proceeded to enquiries into her vocation, condition & circumstance. she told me she was a daylabourer, at 8 sous or 4d. sterling the day: that she had two children to maintain, & to pay a rent of 30 livres for her home, (which would consume the hire of 75 days) that often she could get no employment, and of course was without bread. as we had walked together near a mile & she had so far served me as a guide, I gave her, on parting, 24 sous. she burst into tears of a gratitude which I could perceive was unfeigned, because she was unable to utter a word. she had probably never before received so great an aid. this little attendrissement, with the solitude of my walk led me into a train of reflections on that unequal division of property which occasions the numberless instances of wretchedness which I had observed in this country & is to be observed all over Europe. the property of this country is absolutely concentered in a very few hands, having revenues of from half a million of guineas a year downwards. these employ the flower of the country as servants, some of them having as many as 200 domestics. not labouring. they employ also a great number of manufacturers, & tradesmen, & lastly the class of labouring husbandmen. but after all these comes the most numerous of all the classes, that is, the poor who cannot find work. I asked myself what could be the reason that so many should be permitted to beg who are willing to work, in a country where there is a very considerable proportion of uncultivated lands? these lands are kept idle mostly for the sake of game. it should seem then that it must be because of the enormous wealth of the proprietors which places them above attention to the increase of their revenues by permitting these lands to be laboured. I am conscious that an equal division of property is impracticable. but the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for sub-dividing property, only taking care to let their sub divisions go hand in hand with the natural affections of the human mind. the descent of property of every kind therefore to all the children, or to all the brothers & sisters, or other relations in equal degree is a politic measure, and a practicable one. another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, & to tax the higher portions of property in geometrical progression as they rise. Whenever there is in any country,



uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right, the earth is given as a common stock to man to labour & live on. if, for the encouragement of industry we allow it to be appropriated, we must take care that other employment be permitted to those excluded from the appropriation. if we do not the fundamental right to labour the earth returns to the unemployed. it is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent, but it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. the small land holders are the most precious part of a state.”—Jefferson to Madison, *Mad. MSS.*

[1] Malthus’ first edition of his *Essay on the Principle of Population* was not published till 1798.

[1] in enumerating the distinctions between our mole & the coon one of Europe, I find I omitted the difference of colour. You know the colour of ours, which is pretty remote from black, tho’ somewhat darkish. [Note in MS.]

[1] Italics for cypher.

[1] The claims of the State against the General Government. See Monroe’s letter. *Writings*, i., 135.

[1] The MSS. records of the Chesapeake and Ohio Canal Company in the office of the Company in Washington show the work referred to here of the Potomac Company.

[1] The portions of the letter in cypher are represented by italics.

[1] Monroe left the White House hopelessly broken in fortune and spent the latter part of his life in absolute poverty. Madison and Jefferson left behind them estates overburdened with debt. No one of the three possessed the talent of either making or saving money. It was this land speculation, however, which Madison believed would make him moderately wealthy.

[1] August 15 Madison sent the substance of this part of the letter to Monroe. *Mad. MSS.*

[1] From the Works of Madison.

[2] “It has occur’d to G[rayson] & myself to propose to Congress that negotiations be carried on with Spn. upon the following principles: 1. That exports be admitted thro’ the Mississippi to some free port—perhaps N. Orleans, to pay there a toll to Spn. of abt 3 pr. centm. ad valorem & to be carried thence under the regulations of Congress. 2. That imports shall pass into the Western country thro’ the ports of the U. S. only. 3. That this sacrifice be given up to obtain in other respects a beneficial treaty. I beg of you to give me yr. opinion on it.”—Monroe to Madison, August 14, 1786, *Writings of Monroe*, i., 151, 152.

[1] New York Public Library (Lenox) MSS.

[1] The instructions to Jay on the subject of the Mississippi negotiations having been in part repealed, the plan of the friends of the free navigation to order the transfer of negotiations to Madrid was blocked by a newly-adopted rule of Congress “that we shall not move in form or substance any proposition which has been set aside by the previous question, unless the same number of States are present.”—Monroe to Madison, *Writings of Monroe, i., 159, 160.*

[2] The following bill is of interest as showing what Madison’s expenses were while he was attending the Annapolis convention:

“Colonel Madison’s Bill 1786.

“Sept <sup>r</sup> . 5	Lodging & Breakfast 3/9 Dinner 3/9	£ 0. 7. 0
	wine 3/9 punch 2/6 porter 2/6	0. 8. 9
	punch 1/ serv <sup>t</sup> Board 12/	0. 13. 0
6	Lodging & Breakfast 3/9 wine 2/6	0. 6. 3
	porter 2/6 Dinner 3/9. Serv <sup>t</sup> Grog 1/	0. 7. 3
	Board for Serv <sup>t</sup> . 6/	0. 6. 0
“Sept <sup>r</sup> . 7	Lodging and Breakfast 3/9 Tea 1/10	£ 0. 5. 7
	Serv <sup>t</sup> . Board 6/	0. 6. 0
8	Lodging and Breakfast 3/9 Serv <sup>t</sup> Board 6/	0. 9. 9
9	Lodging and Breakfast 3/9 Punch 1/3	0. 5. 0
	Dinner and Club 8/9 Tea 1/10 Serv <sup>t</sup> Board 6/	0. 16. 7
10	Lodging and Breakfast 3/9 Tea 1/10 Serv <sup>t</sup> board 6/	0. 11. 7
11	Lodging & Breakfast 3/9 Dinner 3/9 Club 5/	0. 12. 6
	Tea 1/10 Serv <sup>t</sup> Board 6/	0. 7. 10
12	Lodging & Breakfast 3/9 Dinner & Club 8/9	0. 12. 6
	Tea 1/10 Serv <sup>t</sup> Board 6/	0. 7. 10
13	Lodging & Breakfast 3/9 Serv <sup>t</sup> Board 6/	0. 9. 9
	Stabling & hay 45/ Oats 56 Gallons @ 10 <sup>d</sup> 46/8/	4. 11. 8
	Omitted the 4 <sup>th</sup> Punch 2/6 Supper 3/ serv <sup>t</sup> d <sup>o</sup> . 2/	4. 7. 6
	Hay and Oats 6/8	4. 6. 8
14	Lodging & Breakfast 3/9 Dinner & Club 10/9	0. 14. 6
	Serv <sup>ts</sup> Board 6/ Hay & Oats 11. 8	0. 11. 8
		£ 14. 5. 8
15	Lodging 1/ Servt. 6/	1. 6
		£ 14. 7. 2

Contents Received in full Geo Mann.” *Mad. MSS.*

[1] The prospective treaty with Spain closing the navigation of the Mississippi.

[1] The House of Delegates received a memorial from the delegates representing the counties of the district of Kentucky, setting forth that a report prevailed in that district that Congress proposed to cede to Spain the exclusive navigation of the Mississippi for twenty-five or thirty years, in consideration of some commercial advantages, that they conceived it their duty to represent that the prosperity of the Western country

was absolutely dependent on the free navigation of that river, as without it they could not carry their produce to market; that Congress could not, without a flagrant violation of the confederation, deprive them of an advantage which nature had thus given them, and for the secure enjoyment of which the federal government was formed.

Resolutions and instructions to the delegates in Congress in the sense of the memorial were passed by the House, November 29, 1786.—*Journal of House of Delegates*.

[1] Edmund Randolph was elected.

[1] The vote appears in the *Journals of the House of Delegates* as 85 to 17. The resolution was: “Resolved, that it is the opinion of this committee, [of the whole] that the petition of sundry inhabitants of the counties of Brunswick and Campbell, praying for an emission of paper money, are unreasonable and ought to be rejected; and that, in the opinion of this committee, an emission of paper money would be unjust, impolitic and destructive of public and private confidence, and of that virtue which is the basis of republican government.” Nevertheless, petitions praying for an emission of paper money were received by the House December 7.

[1] Notes on the back of a letter to Madison from Robt. Johnson, dated 23d September, 1786:

Paper Emissions

<i>Unequal to specie.</i>	Bank notes. Stock.
Object <sup>n</sup> .	navy bills. tallies Spanish paper <i>Useless</i>
<i>Unjust either to Cred<sup>ts</sup>.</i>	or debtrs
	1. alloy
	2. Weights & measures
	3. brass made for silver by Rom <sup>ns</sup> .
	4. Case of debtrs to other States
<i>Unconstitutional.</i>	1. property dec <sup>d</sup> by bill of Rights
<i>Antifed<sup>l</sup>.</i>	2. trial by Jury
Unnecessary.	1. produce will bring specie
	2. paper in Tob <sup>o</sup> . notes Warr <sup>ts</sup> . &c
Hurtful	1. by luxury increase, not cure the evil of scarcity of specie
	2. destroy confidence public & private
	3. source of dissension between States see Confed <sup>n</sup> . as to regulation of coin
	4. enrich collectors, speculators &—
	5. vitiate morals
	6. reverse the end of Gov <sup>t</sup> by punishing good Citizens & rewarding bad.
	7. discourage foreign commerce &c
	8. dishonor our Repub [illegible] the eyes of mankind
Examples of other States & during war	
Object <sup>n</sup> .	paper good formerly
Answer.	1. Not true in N. E. V <sup>a</sup> . Mary <sup>d</sup> . 12 to 20 Per C <sup>t</sup> .
	2. Confidence then
	3. principles of money not then understood
	Such w <sup>d</sup> not then nor now do in Europe
Advantages from reject <sup>g</sup> . paper	
	1. Distinguish the State & its credit
	2. draw coerce & specie
	3. Not honorable [example] to other states.

—*Mad. MSS.*

[1] Shortly after Cicero's first great speech against Catiline, Catiline's friend, Caius Manlius, despatched deputies to the Roman general, Quintus Marcius Rex, with instructions to say, among other things: "Often have your forefathers, taking compassion on the Roman people, relieved their poverty by their decrees; and very recently, within our memory, *silver was paid with brass*, owing to the pressure of debt, with the approval of all good citizens."—Sallust's *Conspiracy of Catiline*, ch. 33. The payments were in pursuance of a law proposed by L. Valerius Flaccus,

Consul, A. U. C. 667. Only the fourth part was paid, an *as* for a *sestertius*, and a *sestertius* for a *denarius*.

[1] Respecting Shay's Rebellion.

[1] "Alexa. 20th. Decr. 86.

"My Dear Sir,—After the notification of my disgrace which reached me about the 20th Nov. I hastened from N York & pressed forward to my home. Every difficulty of weather and roads opposed my progress and retarded me effectually, for it took us three weeks to reach this place which I had reckoned on accomplishing in twelve days. At length we arrived on the banks of potomac, and thro our avidity to embrace our friends, were on the point of destruction for some hours, by rashly adventuring to cross in the night, thro' bodies of floating ice. But providence, kinder to me than my beloved country rescued my family & myself, with some detriment of sense but no injury to my reputation—striking difference to be sure, and a theme for unceasing admiration of the Supreme benevolence on my part. This subject always disturbs me & excites my resentment. But cruel & ungrateful as I estimate the treatment I have received from the assembly, I am frank to declare to you that the opinion I had formed of your dereliction of the friendship which existed between us rendered my affection doubly severe. In all nations precedents are to be found demonstrative of the caprice & indelicacy of public bodys, therefore being not alone I could have procured repose to my feelings that all who knew me, would attribute my dismissal to the proper cause.

"Your abandonment of a man who loved your character to excess & who esteemed your friendship among the first blessings of his life connected with the circumstance of your election to the office from which he was dismissed, together with many other considerations which are unnecessary to repeat wounded me deeply, & has given me many melancholy hours. Your letter of the 11th. affords me some relief, & as it explains your intentions which before were subject to conjecture, strengthens my hope that you regard me as I have esteemed you, & that no difference in political sentiments ever has or ever can cool the affection which commenced in our youth, and till very lately has existed in full vigor. It is my wish that we may ever be united, & I believe you cannot question my sentiments, especially, when it relates to you."—Henry Lee to Madison, *Mad. MSS*. Lee was soon restored to favor in the State. Madison wrote to him again November 23d..

[1] "Resolved unanimously, That an act ought to pass, in conformity to the report of the Commissioners assembled at Annapolis on the 14th of September last, for appointing Commissioners on the part of this State, to meet Commissioners on the part of the other States, in Convention at Philadelphia, on the second Monday in May next, with powers to devise such further provision as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the Legislature of every State, will effectually provide for the same."

The resolution was written by Madison. The copy enclosed was contained in a newspaper clipping.

[2] Henry refused to serve. The full Virginia delegation consisted of Madison, Wythe, Randolph, Mason, Blair and McClurg.

[1] “The truth is, we have not a government to wield and correct. . . . We have only four States now on the floor.”—Carrington to Madison, from Congress, December 18, 1786. Mad. MSS.

[1] Washington declined re-election to the presidency of the Society of the Cincinnati, chiefly because he did not wish to participate in a contest over a proposed change in the plan of the society, which was to be discussed at the meeting to be held at Philadelphia in May. He gave, as his reasons for not attending, his occupations, his precarious health, and that he desired to live in retirement. To serve in the federal convention when the Cincinnati were in session might put him in a false position. He finally yielded, however, to the pleadings of his friends. Washington to Madison, December 16, 1786, Ford’s *Writings of Washington*, ii, 92, *et seq.*

[1] Cypher.

[1] “Mr. James Madison, a delegate from Virginia, produced his credentials, by which it appears, that on the 7th of November last, he was appointed a delegate to serve in Congress until the first Monday in November, 1787.”—*Journals of Congress*, February 12, 1787, vol. xii., p. 9. (Ed. 1801.)

[1] February 21, “Congress having had under consideration the letter of John Dickinson, Esq; chairman of the commissioners, who assembled at Annapolis, during the last year; also the proceedings of the said commissioners, and entirely coinciding with them, as to the inefficiency of the federal government, and the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the union, do strongly recommend to the different legislatures to send forward delegates, to meet the proposed convention, on the second Monday in May next, at the city of Philadelphia.” On motion of the Massachusetts delegates the following was substituted: “*Resolved*, That in the opinion of Congress, it is expedient, that on the second Monday in May next, a convention of delegates, who shall have been appointed by the several states, be held at Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress and the several legislatures, such alternations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal constitution adequate to the exigencies of Government, and the preservation of the Union.”—*Journals of Congress*, xii., 13, 14. (Ed. 1801.)

[1] “Extract of a letter from a Gentleman in Boston of the 4th. March 1787 to R. King  
“— has come back from Virginia with news that the commissioners on the part of New York alarmed the Virginia Delegates, with an account that the Commissioners on the part of Massachusetts were for a *monarchy*; that those Delegates wrote their

Legislature of it, who shut their Galleries and made a most serious Business of the matter—pray let me know by the next post what you hear of this, and what has been said—

“The Commissioners alluded to, are those who settled the late Territorial Controversy between Massachusetts & New York—

“Mr. King presents his compliments to Col. Grayson & Mr. Madison, and for the satisfaction of his friend, who wrote the Letter, from which the above is an Extract, begs to be informed whether they have any knowledge of a letter written by the Delegates of Virginia or any of them, containing the information suggested in the Extract, or of any proceedings of the Virginia Legislature of the nature alleged. . . .

“Monday mornng. 11 Mar. 1787.”

Mad. MSS.

[1] “On my way to this place I met a man from the Settlement on Cumberland River in North Carolina who had just come by the way of Kentucky. He informs me that the minds of all the Western People are agitated on account of the proposed cession of the Mississippi navigation to Spain every person talks of it with indignation and reprobates it as a measure of the greatest Injustice and Despotism declaring that if it takes place they will look upon themselves released from all Federal Obligations and fully at Liberty to seek alliances & connections wherever they can find them and that the British Officers at Detroit have already been tampering with them. I am apprehensive that these matters will hasten the separation of the District of Kentucky prematurely from the other part of the State. \* \* \*” John Campbell to Madison, Pittsburgh, February 21, 1787. *Mad. MSS.*

[1] From Madison’s Works. The correct date of the letter is doubtless March 18th, as Jefferson acknowledged on June 20th the receipt of two letters, dated respectively March 18th and 19th, and this letter evidently preceded the other letter to Jefferson dated March 19th. The letter should be taken in connection with that of April 8th to Randolph and April 16th to Washington as developing Madison’s plan of government. See also the letter on the subject of the Kentucky constitution, January 6, 1785, to George Muter.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[2] The Jay project for a treaty with Spain.

[1] From the Madison Papers (1840).

[1] From the Madison Papers (1840).

[2] March 21, 1787, Congress unanimously resolved that the Legislatures of the several States could not, of right, pass acts for interpreting or construing a treaty, nor



in any manner retard its operation, and that all State acts repugnant to the treaty of peace with Great Britain ought to be repealed, and the State Legislatures were requested to repeal them. Journals of Congress (Ed. 1801), xii., 23, 24. On April 13th, the Secretary for Foreign Affairs (Jay) reported a letter to the States, which was agreed to, to accompany the resolutions of March 21st. It regretted that in some of the States too little attention had been paid to the public faith pledged by the treaty, and urged the binding nature of a treaty upon each member of the Confederacy. *Id.* 22, *et seq.*

[1] From the Madison Papers (1840).

[1] This memorandum is written on small sheets of paper, which, put together, formed a compact little book, suited to be carried in the pocket. There are 39 pages, and it would seem Madison intended extending it, for an extra page is headed “Gryson Confederacy.”

[2] *L’Esprit des Lois* (1748).

[3] Canton of Grisons, Switzerland.

[4] *Code de l’Humanité on la Legislation*, by Felice in 13 vols.

[1] Translation: Strabo [Lib. xiv, cap. iii], moreover, mentions the lack of laws of the Lycians: concerning which we will add a little to what he says.—There were twenty-three cities, divided into three classes, according to their power. To the first class belonged the six largest, to the second those of intermediate rank, the number of which is uncertain, to the third all the rest, whose importance was very small. And each of these cities took care of its affairs at home, and had its own magistrates and its own system of civil government, but all, uniting, formed one joint republic, and had one deliberative assembly, a greater senate, as it were. In that assembly they deliberated and decided concerning war, peace and treaties, and, in a word, concerning all the affairs of Lycia. Persons sent from each city with the right to vote met in this assembly; and, in that matter, they were governed by a most equitable law. For any city of the first class had the right to cast three votes, of the second two, of the third one. In the same proportion they also paid taxes, and performed other duties. For as reason itself dictates, and as equity demands that those who possess more and are richer than others, should contribute more to the public service and the support of the State, thus also the same rule of equity requires that, in deciding with regard to the common interest, those same persons should have greater influence than others; especially since they are more interested in the welfare of the State than are the poor. They had no fixed place for this assembly, but they selected, from the entire number, the city that seemed best suited to the occasion. The assembly having convened, they first designated a Lyciarch as head of the whole State; they next chose other magistrates to govern the component parts of the State, and finally, they established courts of justice. And they did all these things maintaining the same proportion, so that no city was neglected, or was excluded from participation in these functions and honors. And this state of things remained unchanged until the time when the Romans, having become masters of Asia, brought it also under their control.



[1] *Encyclopédie*, published under the direction of Diderot and d'Alembert.

[1] John Potter's *Archeologia Græca*, two volumes, Oxford, (1688-9).

[1] Polybe's *General History* (probably the Paris edition of 1609).

[1] Translation: This assembly was invested with the supreme authority, and in pursuance of its decisions wars were begun and ended, and laws became valid and were abrogated. It was also within its province to choose magistrates common to the whole community, to decide upon sending embassies, etc. . . . The prætor, especially, presided over the assembly, if he was present, and also other magistrates, whom the Achæi called *δημοσγοί*. These were ten in number, and were elected from the entire community by a vote of the legitimate assembly (which was held in the spring) as being eminent for wisdom, and their advice was mainly followed by the prætor, according to law. Their power and dignity were next to those of the prætor and therefore Livy, following Polybius(II, 38 *seq.*), calls them the chief magistracy of the Achæans. With these therefore the prætor consulted beforehand concerning the transaction of the more important business in the assembly, nor was it allowable, unless the majority concurred, to lay it before the assembly.

That was indeed a specially memorable law, drawing very close the bond of the Achæan league, and strengthening harmony; by it any city forming part of this league was forbidden to send, independently, ambassadors to any foreign nation; they were not to send them to the Romans, and not to others. And this was expressly inserted in the treaties of the Achæans with the Roman people. . . . The most excellent law of all was in force among them . . . whereby any one, whether a private individual or a magistrate, was forbidden to accept gifts from any King on any account whatever.

[1] Note in Madison's writings: By ye Convention of Stantz, any member attacked has a *direct* claim on the succour of the whole confederacy. Coxe, p. 343. William Coxe's *Voyages*.

[1] Sir William Temple's *Remarks on the United Provinces* (1674).

[1] Gabriel Bonnot de Mably (1709-1785).

[1] From the context it would appear that this sketch was written about the year 1835, when Madison was preparing for posthumous publication his journal of the constitutional convention. It is an exceedingly rough draft, written upon separate slips of paper, and some of these slips have been lost since Gilpin used the sketch in his edition of *Madison's Works* (1840). The *Bulletin of the Bureau of Rolls and Library*, Department of State, No. 9, October, 1897, contained about a fifth part of the sketch, but since then all of it has been found, except the last four paragraphs which are reprinted here from the Gilpin edition.

[2] The word "confederacies" also appears here parallel with "confederal."

[3] The word "operations" also appears here.

[4] “and leading to another” also appears.

[5] The word “precedent” also appears.

[1] “extortion” also appears.

[2] “plan” also appears.

[3] “experimental” also appears.

[4] “met” also appears.

[1] “preliminary” also appears.

[1] “that would not be abandoned” also appears.

[2] “reluctance” also appears.

[1] “was” also appears.

[2] “relief” also appears.

[1] See address of Congress. Note in MS. It may be found in Vol. I, p. 454, n., of this edition.

[2] “cause” also appears.

[3] “to” also appears.

[1] “its members” also appear.

[2] “*Resolved*, that Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, and Meriwether Smith, Esquires, be appointed Commissioners, who, or any three of whom, shall meet such Commissioners as may be appointed in the other States of the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situations and trade of said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress effectually to provide for the same.” See Madison’s letter of Jan. 22, 1786, to Jefferson.

[1] The adoption of the address was the only thing done by the Annapolis meeting. The draft was submitted by Hamilton at a conference and some of the more radical features were toned down at the insistence of Randolph. Madison said to Hamilton: “You had better yield to this man, for otherwise all Virginia will be against you.”—Morse’s *Hamilton*, I, 167. The address was as follows:

\* \* \* “Deeply impressed, however, with the magnitude and importance of the object

confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken to effect a general meeting of the States in a future Convention, for the same and such other purposes, as the situation of public affairs may be found to require.

“If, in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive an indulgent construction.

“In this persuasion, your Commissioners submit an opinion, that the idea of extending the powers of their Deputies to other objects than those of commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future Convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the Federal Government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Federal System.

“That there are important defects in the system of the Federal Government, is acknowledged by the acts of all those States which have concurred in the present meeting. That the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized.

“Your Commissioners decline an enumeration of those national circumstances on which their opinion, respecting the propriety of a future Convention with more enlarged powers, is founded; as it would be an useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your Commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

“Under this impression, your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the States by whom they have been respectively delegated would themselves concur, and use their endeavors to procure the

concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose, to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same.

“Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this Report to the United States in Congress assembled, and to the Executives of the other States.”

[1] “Trust” also appears.

[2] “Bill” and “act” also appear.

[3] “Bill” also appears.

[4] It was written by Madison:

“Whereas, the Commissioners who assembled at Annapolis, on the fourteenth day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the commercial interests of the United States, have represented the necessity of extending the revision of the Federal system to all its defects; and have recommended that deputies for that purpose be appointed by the several Legislatures, to meet in Convention in the City of Philadelphia, on the second Monday of May next,—a provision which seems preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would, besides, be deprived of the valuable counsels of sundry individuals who are disqualified by the constitutions or laws of particular States, or restrained by peculiar circumstances from a seat in that Assembly:

“And whereas, the General Assembly of this Commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made from time to time, by the United States in Congress, particularly in their act of the fifteenth day of February last, can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those, by whose virtue and valour, it has been accomplished:

“And whereas, the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the citizens of this

Commonwealth to unite with their brethren of the other States, in establishing a federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such farther concessions and provisions, as may be necessary to secure the great objects for which that government was instituted, and to render the United States as happy in peace, as they have been glorious in war.

“Be it, therefore, enacted, by the General Assembly of the Commonwealth of Virginia, That seven Commissioners be appointed by joint ballot of both Houses of Assembly, who, or any three of them, are hereby authorized as Deputies of this Commonwealth, to meet such Deputies as may be appointed and authorized by other States, to assemble in Convention at Philadelphia, as above recommended, and to join with them in devising and discussing all such alterations and farther provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union; and in reporting such an act for that purpose, to the United States in Congress, as when agreed to by them, and duly confirmed by the several States, will effectually provide for the same.

“And be it further enacted, That in case of the death of any of the said deputies, or of their declining their appointments, the Executive are hereby authorized to supply such vacancies; and the Governor is requested to transmit forthwith a copy of this act to the United States in Congress, and to the Executives of each of the States in the Union.”

[1] See Alexander Hamilton to James Duane, Sept. 3, 1780. Works of Hamilton (Lodge), i., 203.

[2]— he wished to see a general convention with the object of strengthening the federal constitution instead of several conventions of representatives of the several sections of the country. Vol. i., 439, of this edition.

[3] The reference is incorrect, and should be to the sketch of *Hamilton* in Longacre, Vol. ii.: “The same legislature [of 1782] that appointed him [Hamilton] unanimously passed resolutions, introduced into the senate by General Schuyler, declaring that the confederation was defective in not giving congress power to provide revenue for itself, or in not investing them with funds from established and productive sources; and that it would be advisable to revise and amend the confederation.”

[4]— that a general convention to revise the articles of confederation is being talked about in congress.

[5]— that he favors the project, but doubts if it is favored in Virginia. See his letter to Lee, December 24, 1784, ante.

[1] “Sketches of American Policy,” published in the winter of 1784-85. Longacre Vol. ii.

[2] Cf. the letters of Monroe to Madison, December 26, 1785, February 11 and March 19, 1786. *Writings of Monroe*, i., 109, 122, 123. The letter of Grayson is dated New

York, March 22, 1786:

\* \* \* \* \*

“There has been a great contest in Jersey for the Argent papier; but though it went triumphantly through the lower house, it was lost in the Council, 8 to 5,—some of the Members who were adverse to it, have been burnt in effigy, in particular Colo Ogden at or near Elizabeth town: the old Governor was drawn up to the Stake but pardoned, on account of his having been the first magistrate: This same Jersey bill was one of the most iniquitous things I ever saw in my life; the money was a tender, if it was refused, the debt was suspended for 12 years, in the mean time the act of limitation ran of course, which in effect destroyed it.—Jersey has not been singular in her attempts at cheating: in this place a bill is depending, of the same purport as that of Jersey, & which it is probable will pass, although it is violently opposed by the upright & respectable part of the Commy. The Antients were surely men of more candor than We are; they contended openly for an abolition of debts in so many words, while we strive as hard for the same thing under the decent & specious pretense of a circulating medium. Montesquieu was not wrong when he said the democratical might be as tyrannical as the despotic, for where is there a greater act of despotism than that of issuing paper to depreciate for the purpose of paying debts, on easy terms; If Lord Effingham is right that an act agt. the Constitution is void, surely paper money with a tender annexed to it is void for is it not an attack upon property, the security of which is made a fundamental in every State in the Union:—There has been some serious thoughts in the minds of some of the Members of Congress to recommend to the States the meeting of a general Convention, to consider, of an alteration of the Confederation & there is a motion to this effect now under Consideration: it is contended that the present Confederation is utterly inefficient, and that if it remains much longer in its present State of imbecillity we shall be one of the most contemptible Nations on the face of the Earth:—for my own part I have not yet made up my mind on the subject: I am doubtful whether it is not better to bear those ills we have than fly to others that we know not of: I am however in no doubt about the weakness of the foederal Government: if it was weaker notwithstanding, it would answer if the States had power as in the United Netherlands the foederal Government is weak but the Individual States are strong—It is no wonder our Government should not work well, being formed on the Dutch model where circumstances are so materially different:— \* \* \* .”

[1]“High” also appears.

[1]The allusion is to the act of the Virginia Assembly passed January 21, 1786, imposing a tonnage tax of 5s. on vessels of foreigners, described in Madison’s letter to Monroe of January 22, 1786, ante.

[1]“appearances” also appears.

[1]June 27, 1786, Jay wrote to Washington: “What I most fear is, that the better kind of people (by which I mean the people who are orderly and industrious, who are content with their situations, and not uneasy in their circumstances) will be led by the

insecurity of property, the loss of confidence in their rulers, and the want of public faith and rectitude, to consider the charms of liberty as imaginary and delusive. A state of uncertainty and fluctuation must disgust and alarm such men, and prepare their minds for almost any change that may promise them quiet and security.” In the course of his reply Washington said: “What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking, proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous! what a triumph for our enemies to verify their predictions!—what a triumph for the advocates of despotism to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious! Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend.”—Marshall’s *Washington* (2d. Ed.), ii., 107, 109.

From New York, October 28, 1786, Knox wrote to Washington as follows:

“. . . Our political machine constituted of thirteen independent sovereignties, have [sic] been constantly operating against each other, and against the federal head, ever since the peace. The powers of Congress are utterly inadequate to preserve the balance between the respective States, and oblige them to do those things which are essential to their own welfare, and for the general good. The human mind in the local legislatures seems to be exerted, to prevent the federal constitution from having any beneficial effects. The machine works inversely to the public good in all its parts. Not only is State against State, and all against the federal head, but the States within themselves possess the name only, without having the essential concomitant of government, the power of preserving the peace, the protection of the liberties and property of the citizens.

“On the first impression of Faction and licentiousness the fine theoretic government of Massachusetts has given way, and its laws arrested and trampled under foot. Men at a distance, who have admired our systems of government, unfounded in nature, are apt to accuse the rulers, and say that taxes have been assessed too high and collected too rigidly. This is a deception equal to any that has hitherto been entertained. It is indeed a fact, that high taxes are the ostensible cause of the commotions, but that they are the real cause is as far remote from truth as light from darkness. The people who are the insurgents have never paid any, or but very little taxes. But they see the weakness of government; They feel at once their own poverty, compared with the opulent, and their own force, and they are determined to make use of the latter, in order to remedy the former. Their creed is ‘That the property of the United States has been protected from the confiscation of Great Britain by the joint exertions of all, and therefore ought to be the common property of all. And he that attempts opposition to this creed is an enemy to equity and justice, and ought to be swept from off the face of the earth.’ In a word they are determined to annihilate all debts public and private and have agrarian Laws, which are easily affected by the means of unfortunate paper money which shall be a tender in all cases whatever.

“The numbers of these people amount in Massachusetts to about one fifth part of several populous counties, and to them may be collected, people of similar



sentiments, from the States of Rhode Island, Connecticut and New Hampshire so as to constitute a body of 12 or 15000 desperate & unprincipled men. They are chiefly of the young and active part of the community, more easily collected than perhaps kept together afterwards. But they will probably commit overt acts of treason, which will compell them to embody for their own safety—once embodied they will be constrained to submit to discipline for the same reason. Having proceeded to this length for which they are now ripe, we shall have a formidable rebellion against reason, the principles of all government, and the very name of liberty. This dreadful situation has alarmed every man of principle and property in New England. They start as from a dream, and ask what has been the cause of our delusion? what is to afford us security against the violence of lawless men? Our government must be braced, changed, or altered to secure our lives and property. We imagined that the mildness of our government and *the virtue* of the people were so correspondent, that we were not as other nations requiring brutal force to support the laws. But we find that we are men, actual men, possessing all the turbulent passions belonging to that animal and that we must have government proper and adequate for him. The people of Massachusetts for instance, are far advanced in this doctrine, and the men of reflection, & principle, are determined to endeavor to establish a government which shall have the power to protect them in their lawful pursuits, and which will be efficient in all cases of internal commotions or foreign invasions. They mean that liberty shall be the basis, a liberty resulting from the equal and firm administration of the laws. They wish for a general government of unity as they see the local legislatures, must naturally and necessarily tend to retard and frustrate all general government.

“We have arrived at that point of time in which we are forced to see our national humiliation, and that a progression in this line, cannot be productive of happiness either public or private. Something is wanting and something must be done or we shall be involved in all the horror of faction and civil war without a prospect of its termination. Every tried friend to the liberties of his country is bound to reflect, and to step forward to prevent the dreadful consequences which will result from a government of events. Unless this is done we shall be liable to be ruled by an arbitrary and capricious armed tyranny, whose word and will must be law. . . .”—*Wash. MSS.*

[1]“perhaps” also appears.



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James Madison, *The Writings, vol. 3 (1787)* [1902]

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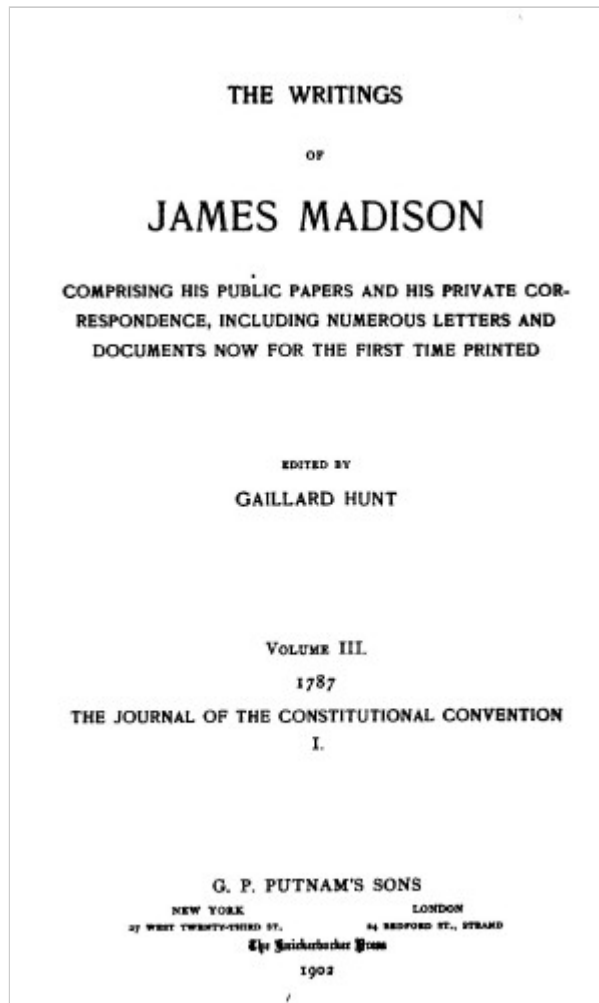
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CONTENTS OF VOLUME III.

---

PAGE

(An index to Volumes III. and IV., comprising the  
Journal of the Constitutional Convention, will be found  
at the end of Volume IV.)

The Journals of the Constitutional Convention (Introduction) . . . . .	ix
Chronology . . . . .	xix
Journal of the Constitutional Convention . . . . .	i



v

## Table Of Contents

[List of Fac-similes](#)

[The Journals of the Constitutional Convention.](#)

[Chronology of James Madison. 1787.](#)

[The Writings of James Madison.](#)

[Journal of the Constitutional Convention of 1787.](#)

The Knickerbocker Press, New York

[\[Back to Table of Contents\]](#)

## LIST OF FAC-SIMILES

	facing page
First Page of the Journal, showing note on a separate slip of paper inserted where Madison indicated it should go	2
Charles Pinckney's Letter	22
The Pinckney Draft	24
Hamilton's Principal Speech	184

[\[Back to Table of Contents\]](#)

## THE JOURNALS OF THE CONSTITUTIONAL CONVENTION.

James Madison's contemporaries generally conceded that he was the leading statesman in the convention which framed the Constitution of the United States; but in addition to this he kept a record of the proceedings of the convention which outranks in importance all the other writings of the founders of the American Republic. He is thus identified, as no other man is, with the making of the Constitution and the correct interpretation of the intentions of the makers. His is the only continuous record of the proceedings of the convention. He took a seat immediately in front of the presiding officer, facing the members, and took down every speech or motion as it was made, using abbreviations of his own and immediately afterwards transcribing his notes when he returned to his lodgings. A few motions only escaped him and of important speeches he omitted none. The proceedings were ordered to be kept secret, but his self-imposed task of reporter had the unofficial sanction of the convention. Alexander Hamilton corrected slightly Madison's report of his great speech and handed him his plan of government to copy. The same thing was done with Benjamin Franklin's speeches, which were written out by Franklin and read by his colleague Wilson, the fatigue of delivery being too great for the aged Franklin, and Madison also copied the Patterson plan. Edmund Randolph wrote out for him his opening speech from his notes two years after the convention adjourned.<sup>1</sup>

In the years after the convention Madison made a few alterations and additions in his journal, with the result that in parts there is much interlineation and erasure, but after patient study the meaning is always perfectly clear. Three different styles of Madison's own penmanship at different periods of his life appear in the journal, one being that of his old age within five years of his death. In this hand appears the following note at the end of the journal: "The few alterations and corrections made in the debates which are not in my handwriting were dictated by me and made in my presence by John C. Payne."<sup>2</sup> The rare occasions where Payne's penmanship is distinguishable are indicated in the notes to this edition.

The importance attached by Madison to his record is shown by the terms of his will, dated April 15, 1835, fourteen months before his death:

"I give all my personal estate ornamental as well as useful, except as herein after otherwise given, to my dear Wife; and I also give to her all my manuscript papers, having entire confidence in her discreet and proper use of them, but subject to the qualification in the succeeding clause. Considering the peculiarity and magnitude of the occasion which produced the Convention at Philadelphia in 1787, the Characters who composed it, the Constitution which resulted from their deliberations, its effects during a trial of so many years on the prosperity of the people living under it, and the interest it has inspired among the friends of free Government, it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United

States, and to all who take an interest in the progress of political science and the course of true liberty. It is my desire that the Report as made by me should be published under her authority and direction.”<sup>1</sup>

This desire was never consummated, for Mrs. Madison’s friends advised her that she could not herself profitably undertake the publication of the work, and she accordingly offered it to the Government, by which it was bought for \$30,000, by act of Congress, approved March 3, 1837. On July 9, 1838, an act was approved authorizing the Joint Committee on the Library to cause the papers thus purchased to be published, and the Committee intrusted the superintendence of the work to Henry D. Gilpin, Solicitor of the Treasury. The duplicate copy of the journal which Mrs. Madison had delivered was, under authority of Congress, withdrawn from the State Department and placed in Mr. Gilpin’s hands. In 1840 (Washington: Lantree & O’Sullivan), accordingly, appeared the three volumes, *The Papers of James Madison Purchased by Order of Congress*, edited by Henry D. Gilpin. Other issues of this edition, with changes of date, came out later in New York, Boston, and Mobile. This issue contained not only the journal of the Constitutional Convention, but Madison’s notes of the debates in the Continental Congress and in the Congress of the Confederation from February 19 to April 25, 1787, and a report Jefferson had written of the debates in 1776 on the Declaration of Independence, besides a number of letters of Madison’s. From the text of Gilpin a fifth volume was added to Elliot’s *Debates* in 1845, and it was printed in one volume in Chicago, 1893.

Mr. Gilpin’s reading of the duplicate copy of the Madison journal is thus the only one that has hitherto been published.<sup>1</sup> His work was both painstaking and thorough, but many inaccuracies and omissions have been revealed by a second reading from the original manuscript journal written in Madison’s own hand, just as he himself left it; and this original manuscript has been followed with rigid accuracy in the text of the present edition.

The editor has compared carefully with Madison’s report, as the notes will show, the incomplete and less important records of the convention, kept by others. Of these, the best known is that of Robert Yates, a delegate in the convention from New York, who took notes from the time he entered the convention, May 25, to July 5, when he went home to oppose what he foresaw would be the result of the convention’s labors. These notes were published in 1821 (Albany), edited by Yates’s colleague in the convention, John Lansing, under the title, *Secret Proceedings and Debates of the Convention Assembled at Philadelphia, in the Year 1787, for the Purpose of Forming the Constitution of the United States of America*. This was afterwards reprinted in several editions and in the three editions of *The Debates on the Federal Constitution*, by Jonathan Elliot (Washington, 1827-1836). Madison pronounced Yates’s notes “Crude and broken.” “When I looked over them some years ago,” he wrote to J. C. Cabell, February 2, 1829, “I was struck with the number of instances in which he had totally mistaken what was said by me, or given it in scraps and terms which, taken without the developments or qualifications accompanying them, had an import essentially different from what was intended.” Yates’s notes were colored by his prejudices, which were strong against the leaders of the convention, but, making allowance for

this and for their incompleteness, they are of high value and rank next to Madison's in importance.

Rufus King, a delegate from Massachusetts, kept a number of notes, scattered and imperfect, which were not published till 1894, when they appeared in *King's Life and Correspondence of Rufus King* (New York: Putnam's).

William Pierce, a delegate from Georgia, made some memoranda of the proceedings of the convention, and brief and interesting sketches of all the delegates, which were first printed in *The Savannah Georgian*, April 18-28, 1828, and reprinted in *The American Historical Review* for January, 1898.

The notes of Yates, King, and Pierce are the only unofficial record of the convention extant, besides Madison's, and their chief value is in connection with the Madison record, which in the main they support, and which occasionally they elucidate.

December 30, 1818, Charles Pinckney wrote to John Quincy Adams that he had made more notes of the convention than any other member except Madison, but they were never published and have been lost or destroyed.<sup>1</sup>

In 1819 (Boston) was published the *Journal, Acts and Proceedings of the Convention*, etc., under the supervision of John Quincy Adams, Secretary of State, by authority of a joint resolution of Congress of March 27, 1818. This was the official journal of the convention, which the Secretary, William Jackson, had turned over to the President, George Washington, when the convention adjourned, Jackson having previously burned all other papers of the convention in his possession. March 16, 1796, Washington deposited the papers Jackson had given him with the Secretary of State, Timothy Pickering. They consisted of three volumes,—the journal of the convention, the journal of the proceedings of the Committee of the Whole of the convention, and a list of yeas and nays, beside a printed draft of the Constitution as reported August 6th, showing erasures and amendments afterwards adopted, and the Virginia plan in different stages of development.

In preparing the matter for publication Secretary Adams found that for Friday, September 14, and Saturday, September 15, the journal was a mere fragment, and Madison was applied to and completed it from his minutes. From General B. Bloomfield, executor of the estate of David Brearley, a delegate in the convention from New Jersey, Adams obtained a few additional papers, and from Charles Pinckney a copy of what purported to be the plan of a constitution submitted by him to the convention. All of these papers, with some others, appeared in the edition of 1819, which was a singularly accurate publication, as comparison by the present editor of the printed page with the original papers has shown.

The Pinckney plan, as it appeared in this edition of the journal, was incorporated by Madison into his record, as he had not secured a copy of it when the convention was sitting. But the draft furnished to Secretary Adams in 1818, and the plan presented by Pinckney to the convention in 1787 were not identical, as Madison conclusively proved in his note to his journal, in his letter to Jared Sparks of November 25, 1831,



and in several other letters, in all of which he showed that the draft did not agree in several important respects with Pinckney's own votes and motions in the convention, and that there were important discrepancies between it and Pinckney's *Observations on the Plan of Government*, a pamphlet printed shortly after the convention adjourned.<sup>1</sup>

It is, indeed, inconceivable that the convention should have incorporated into the constitution so many of the provisions of the Pinckney draft, and that at the same time so little reference should have been made to it in the course of the debates; and it is equally extraordinary that the contemporaries of Pinckney did not accord to him the chief paternity of the Constitution, which honor would have belonged to him if the draft he sent to Mr. Adams in 1818 had been the one he actually offered the convention in the first week of its session. The editor has made a careful examination of the original manuscripts in the case. They consist (1) of Mr. Pinckney's letter to Mr. Adams of December 12, 1818, written from Wingaw, S. C., while Pinckney was temporarily absent from Charleston, acknowledging Mr. Adams's request for the draft, (2) his letter of December 30, written from Charleston, transmitting the draft, and (3) the draft. The penmanship of all three papers is contemporaneous, and the letter of December 30 and the draft were written with the same pen and ink. This may possibly admit of a difference of opinion, because the draft is in a somewhat larger chirography than the letter, having been, as befitted its importance, written more carefully. But the letter and the draft are written upon the same paper, and this paper was not made when the convention sat in 1787. There are several sheets of the draft and one of the letter, and all bear the same water-mark—"Russell & Co. 1797." The draft cannot, therefore, claim to be the original Pinckney plan, and was palpably made for the occasion, from Mr. Pinckney's original notes doubtless, aided and modified by a copy of the Constitution itself. Thirty years had elapsed since the close of the Constitutional Convention when the draft was compiled, and its incorrectness is not a circumstance to occasion great wonder.<sup>1</sup>

Correspondence on the subject of the convention, written while it was in session, was not extensive, but some unpublished letters throwing light upon contemporaneous opinion have been found and are quoted in the notes.

The editor desires to record his obligation for assistance in preparing these volumes to his friend, Montgomery Blair, Esq., of Silver Spring, Md.

Gaillard Hunt.

Cherry Hill Farm, Va.,  
September, 1902.

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1787.

1787. May 6-25. Prepares the “Virginia plan” in conjunction with the Virginia delegates.
- May 14. Attends the first gathering of the delegates.
- May 30. Moves postponement of question of representation by free population.  
Moves that congressional representation be proportioned to the importance and size of the States.  
Makes his first speech on this subject.
- May 31. Advocates representation in one house by popular election.  
Opposes uniting several States into one district for representation in Senate.  
Doubts practicability of enumerating powers of national legislature.  
Suggests the impossibility of using force to coerce individual States.
- June 1. Moves that the powers of the Executive be enumerated.
- June 2. Objects to giving Congress power to remove the President upon demand of a majority of the State legislatures.
- June 4. Favors giving power to more than a majority of the national legislature to overrule an Executive negative of a law.
- June 5. Opposes election of judges by both branches of Congress.
- June 5. Advocates submission of constitution to conventions of the people.  
Favors inferior judicial tribunals.
- June 6. Speaks for popular representation in the House.  
Seconds motion to include a portion of the Judiciary with the Executive in revisionary power over laws.
- June 7. Speaks for proportional representation in both houses of Congress.
- June 8. Seconds motion to give Congress power to negative State laws.  
Suggests temporary operation of urgent laws.
- June 12. Seconds motion to make term of Representatives three years.  
Thinks the people will follow the convention.  
Favors a term of seven years for Senators.
- June 13. Moves defining powers of Judiciary.  
Objects to appointment of judges by whole legislature.  
Thinks both houses should have right to originate money bills.  
Advocates a national government and opposes the “Jersey plan.”
- June 21. Speaks in favor of national supremacy.  
Opposes annual or biennial elections of Representatives.
- June 22. Favors fixing payment of salaries by a standard.
- June 23. Proposes to debar Senators from offices created or enhanced during their term.  
Speaks for the proposition.
- June 25. Wishes to take up question of right of suffrage.
- June 26. Speaks for a long term for Senators.  
Opposes their payment by the States.
- June 28. Speaks for proportional representation.
- June 29. Insists that too much stress is laid on State sovereignty.

- June 30. Contends against equal State representation in the Senate.  
Speaks again on subject, but would preserve State rights.
- July 2. Opposes submission of the question to a special committee.
- July 5. Opposes compromise report of committee.
- July 6. Thinks part of report need not be postponed.
- July 7. Thinks question of representation ought to be settled before other questions.
- July 9. Suggests free inhabitants as basis of representation in one house, and all inhabitants as basis in the other house.
- July 10. Moves increase of Representatives.
- July 11. Favors representation based on population.
- July 14. Urges proportional representation as necessary to protect the smaller States.
- July 17. Advocates national power of negative over State laws.  
Thinks the branches of government should be kept separate.  
Thinks monarchy likely to follow instability.  
Thinks there should be provision for interregnum between adoption and operation of constitution.  
Moves national guarantee of States against domestic violence.
- July 18. Seconds motion forbidding a State to form any but a republican government.

[\[Back to Table of Contents\]](#)

## ***THE WRITINGS OF JAMES MADISON.***

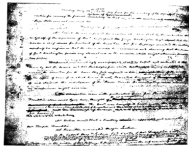
### **JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1787.**

Monday May 14<sup>th</sup> 1787 was the day fixed for the meeting of the deputies in Convention for revising the federal System of Government. On that day a small number only had assembled. Seven States were not convened till,

Friday 25 of May, when the following members appeared to wit:

From *Massachusetts*, Rufus King. *N. York*, Robert Yates,<sup>1</sup> Alex<sup>r</sup>. Hamilton. *N. Jersey*, David Brearly, William Churchill Houston, William Patterson. *Pennsylvania*, Robert Morris, Thomas Fitzsimons, James Wilson, Gouverneur Morris. *Delaware*, George Read, Richard Basset,<sup>1</sup> Jacob Broome. *Virginia*, George Washington, Edmund Randolph, John Blair,<sup>2</sup> James Madison, George Mason, George Wythe, James McClurg. *N. Carolina*, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, Hugh Williamson. *S. Carolina*, John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler. *Georgia*, William Few.<sup>3</sup>

M<sup>r</sup>. Robert Morris<sup>4</sup> informed the members assembled that by the instruction & in behalf, of the deputation of Pen<sup>a</sup>. he proposed George Washington, Esq<sup>r</sup>. late Commander in chief for president of the Convention. M<sup>r</sup>. Jn<sup>o</sup>. Rutledge seconded the motion; expressing his confidence that the choice would be unanimous, and observing that the presence of Gen<sup>l</sup>. Washington forbade any observations on the occasion which might otherwise be proper.



General Washington<sup>1</sup> was accordingly unanimously elected by ballot, and conducted to the Chair by M<sup>r</sup>. R. Morris and M<sup>r</sup>. Rutledge; from which in a very emphatic manner he thanked the Convention for the honor they had conferred on him, reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.

(The nomination came with particular grace from Pea, as Doc<sup>r</sup>. Franklin alone could have been thought of as a competitor. The Doc<sup>r</sup>. was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.)

M<sup>r</sup>. Wilson<sup>1</sup> moved that a Secretary be appointed, and nominated M<sup>r</sup>. Temple Franklin.

Col Hamilton<sup>2</sup> nominated Major Jackson.

On the ballot Maj<sup>r</sup> Jackson had 5 votes & M<sup>r</sup>. Franklin 2 votes.

On reading the Credentials of the deputies it was noticed that those from Delaware were prohibited from changing the Article in the Confederation establishing an equality of votes among the States.<sup>1</sup>

The appointment of a Committee, consisting of Mess<sup>rs</sup>. Wythe, Hamilton & C. Pinckney, on the motion of Mr. Pinckney, to prepare standing rules & orders was the only remaining step taken on this day.

## Monday May 28.—

From Mass<sup>ts</sup>. Nat: Gorham & Caleb Strong. From Connecticut Oliver Elseworth. From Delaware, Gunning Bedford. From Maryland James M<sup>c</sup>Henry. From Penn<sup>a</sup>. B. Franklin, George Clymer, Th<sup>s</sup>. Mifflin & Jared Ingersol, took their seats.<sup>2</sup>

M<sup>r</sup>. Wythe<sup>1</sup> from the Committee for preparing rules made a report which employed the deliberations of this day.

M<sup>r</sup>. King<sup>2</sup> objected to one of the rules in the Report authorizing any member to call for the yeas & nays and have them entered on the minutes. He urged that as the acts of the Convention were not to bind the Constituents, it was unnecessary to exhibit this evidence of the votes; and improper as changes of opinion would be frequent in the course of the business & would fill the minutes with contradictions.

Col. Mason<sup>1</sup> seconded the objection; adding that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulged must furnish handles to the adversaries of the Result of the Meeting.

The proposed rule was rejected nem. contrad certe. The standing rules<sup>2</sup> agreed to were as follows:<sup>3</sup>

Viz.

A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may adjourn from day to day.

Immediately after the President shall have taken the chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

Every member, rising to speak, shall address the President; and whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet or paper, printed or manuscript—and of two members rising at the same time, the President shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other, who had been silent, shall have been heard, if he choose to speak upon the subject.

A motion made and seconded, shall be repeated, and if written, as it shall be when any member shall so require, read aloud by the Secretary, before it shall be debated; and may be withdrawn at any time, before the vote upon it shall have been declared.

Orders of the day shall be read next after the minutes, and either discussed or postponed, before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate shall be received.

1 A question which is complicated, shall, at the request of any member, be divided, and put separately on the propositions of which it is compounded.

The determination of a question, altho' fully debated, shall be postponed, if the deputies of any State desire it until the next day.

A writing which contains any matter brought on to be considered, shall be read once throughout for information, then by paragraphs to be debated, and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put on the whole, amended, or approved in its original form, as the case shall be.

Committees shall be appointed by ballot; and the members who have the greatest number of ballots, altho' not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list in the order of taking down the ballots, shall be preferred.

A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct or expressions supposed to be reprehensible. And all questions of order shall be decided by the President without appeal or debate.

Upon a question to adjourn for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

When the House shall adjourn, every member shall stand in his place, until the President pass him.

A letter from sundry persons of the State of Rho. Island addressed to the Honorable The Chairman of the General Convention was presented to the Chair by Mr. Gov<sup>r</sup>. Morris,1 and being read,2 was ordered to lie on the table for further consideration.



M<sup>r</sup>. Butler<sup>1</sup> moved that the House provide ag<sup>st</sup> interruption of business by absence of members, and against licentious publications of their proceedings—to which was added by—M<sup>r</sup>. Spaight<sup>1</sup>—a motion to provide that on the one hand the House might not be precluded by a vote upon any question, from revising the subject matter of it, When they see cause, nor, on the other hand, be led too hastily to rescind a decision, which was the result of mature discussion.—Whereupon it was ordered that these motions be referred for the consideration of the Committee appointed to draw up the standing rules and that the Committee make report thereon.

Adj<sup>j</sup>. till tomorrow 10. OClock.

## Tuesday May 29.

John Dickenson and Elbridge Gerry, the former from Delaware, the latter from Mass<sup>ts</sup>. took their seats. The following rules were added, on the report of M<sup>r</sup>. Wythe from the Committee—

That no member be absent from the House, so as to interrupt the representation of the State, without leave.

That Committees do not sit whilst the House shall be or ought to be, sitting.

That no copy be taken of any entry on the journal during the sitting of the House without leave of the House.

That members only be permitted to inspect the journal.

That nothing spoken in the House be printed, or otherwise published or communicated without leave.

That a motion to reconsider a matter which has been determined by a majority, may be made, with leave unanimously given, on the same day on which the vote passed; but otherwise not without one day's previous notice: in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.

M<sup>r</sup>. C. Pinkney<sup>1</sup> moved that a Committee be appointed to superintend the Minutes.

M<sup>r</sup>. Gov<sup>r</sup>. Morris objected to it. The entry of the proceedings of the Convention belonged to the Secretary as their impartial officer. A committee might have an interest & bias in moulding the entry according to their opinions and wishes.

The motion was negatived, 5 noes, 4 ays.

Mr. Randolph<sup>1</sup> then opened the main business.<sup>2</sup>

He expressed his regret, that it should fall to him, rather than those, who were of longer standing in life and political experience, to open the great subject of their mission. But, as the convention had originated from Virginia, and his colleagues

supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed that in revising the federal system we ought to inquire 1. into the properties, which such a government ought to possess, 2. the defects of the confederation, 3. the danger of our situation & 4. the remedy.

1. The Character of such a government ought to secure 1. against foreign invasion: 2. against dissensions between members of the Union, or seditions in particular States: 3. to procure to the several States various blessings, of which an isolated situation was incapable: 4. to be able to defend itself against encroachment: & 5. to be paramount to the state constitutions.

2. In speaking of the defects of the confederation he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science, of constitutions, & of confederacies,—when the inefficiency of requisitions was unknown—no commercial discord had arisen among any States—no rebellion had appeared as in Mass<sup>ts</sup>—foreign debts had not become urgent—the havoc of paper money had not been foreseen—treaties had not been violated—and perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects. 1. that the confederation produced no security against foreign invasion; congress not being permitted to prevent a war nor to support it by their own authority—Of this he cited many examples; most of which tended to shew, that they could not cause infractions of treaties or of the law of nations to be punished: that particular states might by their conduct provoke war without controul; and that neither militia nor draughts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

2, that the federal government could not check the quarrels between states, nor a rebellion in any, not having constitutional power nor means to interpose accordingly to the exigency.

3, that there were many advantages, which the U. S. might acquire, which were not attainable under the confederation—such as a productive impost—counteraction of the commercial regulations of other nations—pushing of commerce ad libitum,—&c &c.

4, that the federal government could not defend itself against encroachments from the states.

5, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation, appealed to the sense of the best friends of the U. S. the prospect of anarchy from the laxity of government every where; and to other considerations.

4. He then proceeded to the remedy; the basis of which he said must be the republican principle.

He proposed as conformable to his ideas the following resolutions, which he explained one by one.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, “common defence, security of liberty, and general welfare.”

2. Res<sup>d</sup>. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Res<sup>d</sup>. that the National Legislature ought to consist of two branches.

4. Res<sup>d</sup>. that the members of the first branch of the National Legislature ought to be elected by the people of the several States every — for the term of —; to be of the age of — years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belong to the functions of the first branch, during the term of service, and for the space of — after its expiration; to be incapable of re-election for the space of — after the expiration of their term of service, and to be subject to recall.

5. Resol<sup>d</sup>. that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of — years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of — after the expiration thereof.

6. Resolved that each branch ought to possess the right of originating Acts; that the National Legislature ought to be empowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union ag<sup>st</sup>. any member of the Union failing to fulfil its duty under the articles thereof.

7. Res<sup>d</sup>. that a National Executive be instituted; to be chosen by the National Legislature for the term of — years, to receive punctually at stated times, a fixed

compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the national laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.

8. Res<sup>d</sup>. that the Executive and a convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by — of the members of each branch.

9. Res<sup>d</sup>. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all Piracies & felonies on the high seas, captures from an enemy: cases in which foreigners or Citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. Resolv<sup>d</sup>. that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of Government & Territory or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

11. Res<sup>d</sup>. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State.

12. Res<sup>d</sup>. that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

13. Res<sup>d</sup>. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Res<sup>d</sup>. that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

15. Res<sup>d</sup>. that the amendments which shall be offered to the Confederation, by the Convention ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly or assemblies of Representatives, recommended by the

several Legislatures to be expressly chosen by the people to consider & decide thereon.

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the U. S. to pass away unimproved.<sup>1</sup>

It was then Resolved—That the House will tomorrow resolve itself into a Committee of the Whole House to consider of the state of the American Union — and that the propositions moved by M<sup>r</sup>. Randolph be referred to the said Committee.

M<sup>r</sup>. Charles Pinkney laid before the House the draft of a federal Government which he had prepared, to be agreed upon between the free and independent States of America.<sup>1</sup>—M<sup>r</sup>. P. plan ordered that the same be referred to the Committee of the Whole appointed to consider the state of the American Union.<sup>2</sup>



#### CHARLES PINCKNEY'S LETTER.

(Reduced.)

We the People of the States of New Hampshire Massachusetts Rhode Island & Providence Plantations Connecticut New York New Jersey Pennsylvania Delaware Maryland Virginia North Carolina South Carolina & Georgia do ordain, declare & establish the following Constitution for the government of ourselves & Posterity.



#### THE PINCKNEY DRAFT.

(Reduced.)

#### Article 1:

The Style of this Government shall be The United States of America & the Government shall consist of supreme legislative Executive & judicial Powers.

2

The Legislative Power shall be vested in a Congress to consist of two separate Houses—one to be called the House of Delegates & the other the Senate who shall meet on the — — Day of — in every year.

3

The members of the House of Delegates shall be chosen every — year by the people of the several States & the qualification of the electors shall be the same as those of the electors in the several States for their legislatures—each member shall have been a citizen of the United States for — years; and shall be of — years of age & a resident in the State he is chosen for—Until a census of the people shall be taken in the manner herein after mentioned the House of Delegates shall consist of — to be chosen from the different States in the following proportions: for New Hampshire, —; for Massachusetts — for Rhode Island, — for Connecticut, — for New York — for New Jersey, — for Pennsylvania, — for Delaware, — for Maryland, — for Virginia, — for North Carolina, — for South Carolina, — for Georgia, — & the Legislature shall hereafter regulate the number of delegates by the number of inhabitants according to the Provisions herein after made, at the rate of one for every — thousand.—All money bills of every kind shall originate in the house of Delegates & shall not be altered by the Senate. The House of Delegates shall exclusively possess the power of impeachment & shall choose it's own officers & vacancies therein shall be supplied by the executive authority of the State in the representation from which they shall happen.

4

The Senate shall be elected & chosen by the House of Delegates which House immediately after their meeting shall choose by ballot — Senators from among the Citizens & residents of New Hampshire — from among those of Massachusetts — from among those of Rhode Island — from among those of Connecticut — from among those of New York — from among those of New Jersey — from among those of Pennsylvania — from among those of Delaware — from among those of Maryland — from among those of Virginia — from among those of North Carolina — from among those of South Carolina & — from among those of Georgia—

The Senators chosen from New Hampshire Massachusetts Rhode Island & Connecticut shall form one class—those from New York New Jersey Pennsylvania & Delaware one class—& those from Maryland Virginia North Carolina South Carolina & Georgia one class.

The House of Delegates shall number these Classes one two & three & fix the times of their service by Lot—the first class shall serve for — years—the second for — years & the third for — years—as their times of service expire the House of Delegates shall fill them up by elections for — years & they shall fill all vacancies that arise

from death or resignation for the time of service remaining of the members so dying or resigning.

Each Senator shall be — years of age at least—shall have been a Citizen of the United States 4 years before his election & shall be a resident of the State he is chosen from. The Senate shall choose its own Officers.

## 5

Each State shall prescribe the time & manner of holding elections by the People for the house of Delegates & the House of Delegates shall be the judges of the elections returns & Qualifications of their members.

In each house a Majority shall constitute a Quorum to do business — Freedom of Speech & Debate in the legislature shall not be impeached or Questioned in any place out of it & the Members of both Houses shall in all cases except for Treason Felony or Breach of the Peace be free from arrest during their attendance at Congress & in going to & returning from it—Both Houses shall keep journals of their Proceedings & publish them except on secret occasions & the yeas & nays may be entered thereon at the desire of one — of the members present. Neither house without the consent of the other shall adjourn for more than — days nor to any Place but where they are sitting.

The members of each house shall not be eligible to or capable of holding any office under the Union during the time for which they have been respectively elected nor the members of the Senate for one year after.

The members of each house shall be paid for their services by the States which they represent.

Every bill which shall have passed the Legislature shall be presented to the President of the United States for his revision—if he approves it he shall sign it—but if he does not approve it he shall return it with his objections to the house it originated in, which house if two thirds of the members present, notwithstanding the President's objections agree to pass it, shall send it to the other house with the President's objections, where if two thirds of the members present also agree to pass it, the same shall become a law—& all bills sent to the President & not returned by him within — days shall be laws unless the Legislature by their adjournment prevent their return in which case they shall not be laws.

## 6<sup>Th</sup>

The Legislature of the United States shall have the power to lay & collect Taxes Duties Imposts & excises

To regulate Commerce with all nations & among the several States.

To borrow money & emit bills of Credit

To establish Post offices.

To raise armies

To build & equip Fleets

To pass laws for arming organizing & disciplining the Militia of the United States

To subdue a rebellion in any State on application of its legislature

To coin money & regulate the Value of all coins & fix the Standard of Weights & measures

To provide such Dock Yards & arsenals & erect such fortifications as may be necessary for the United States & to exercise exclusive Jurisdiction therein

To appoint a Treasurer by ballot

To constitute Tribunals inferior to the Supreme Court

To establish Post & military Roads

To establish & provide for a national University at the Seat of the Government of the United States

To establish uniform rules of Naturalization

To provide for the establishment of a Seat of Government for the United States not exceeding — miles square in which they shall have exclusive jurisdiction

To make rules concerning Captures from an Enemy

To declare the law & Punishment of piracies & felonies at sea & of counterfeiting Coin & of all offences against the Laws of Nations

To call forth the aid of the Militia to execute the laws of the Union enforce treaties suppress insurrections and repel invasions

And to make all laws for carrying the foregoing powers into execution.

The Legislature of the United States shall have the Power to declare the Punishment of Treason which shall consist only in levying War against the United States or any of them or in adhering to their Enemies. No person shall be convicted of Treason but by the testimony of two witnesses.

The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description which number shall within — years after the first meeting of the Legislature & within the term of every — year after be taken in the manner to be prescribed by the legislature



No Tax shall be laid on articles exported from the States—nor capitation tax but in proportion to the Census before directed

All Laws regulating Commerce shall require the assent of two thirds of the members present in each house—The United States shall not grant any title of Nobility—The Legislature of the United States shall pass no Law on the subject of Religion, nor touching or abridging the Liberty of the Press nor shall the privilege of the writ of Habeas Corpus ever be suspended except in case of Rebellion or Invasion.

All acts made by the Legislature of the United States pursuant to this Constitution & all Treaties made under the authority of the United States shall be the supreme Law of the land & all Judges shall be bound to consider them as such in their decisions.

7

The Senate shall have the sole & exclusive power to declare War & to make treaties & to appoint Ambassadors & other Ministers to foreign nations & Judges of the Supreme Court.

They shall have the exclusive power to regulate the manner of deciding all disputes & controversies now subsisting or which may arise between the States respecting Jurisdiction or Territory.

8

The Executive Power of the United States shall be vested in a President of the United States of America which shall be his style & his title shall be His Excellency. He shall be elected for — years & shall be reeligible.

He shall from time to time give information to the Legislature of the state of the Union & recommend to their consideration the measures he may think necessary—he shall take care that the laws of the United States be duly executed: he shall commission all the officers of the United States & except as to Ambassadors other ministers and Judges of the Supreme Court he shall nominate & with the consent of the Senate appoint all other officers of the United States. He shall receive public Ministers from foreign nations & may correspond with the Executives of the different States. He shall have power to grant pardons & reprieves except in impeachments—He shall be Commander in chief of the army & navy of the United States & of the Militia of the several States & shall receive a compensation which shall not be increased or diminished during his continuance in office. At entering on the Duties of his office he shall take an oath faithfully to execute the duties of a President of the United States.—He shall be removed from his office on impeachment by the house of Delegates & Conviction in the Supreme Court of Treason bribery or Corruption—In case of his removal death resignation or disability the President of the Senate shall exercise the duties of his office until another President be chosen—& in case of the death of the President of the Senate the Speaker of the House of Delegates shall do so.

9

The Legislature of the United States shall have the Power and it shall be their duty to establish such Courts of Law Equity & Admiralty as shall be necessary—The Judges of the Courts shall hold their offices during good behaviour & receive a compensation, which shall not be increased or diminished during their continuance in office—One of these Courts shall be termed the Supreme Court whose jurisdiction shall extend to all cases arising under the laws of the United States or affecting ambassadors other public Ministers & Consuls—to the trial of impeachment of officers of the United States—to all cases of Admiralty & maritime jurisdiction—In cases of impeachment affecting ambassadors and other public Ministers this Jurisdiction shall be original & in all other cases appellate—

All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed—the trials shall be open & public & shall be by Jury.

10

Immediately after the first census of the people of the United States the House of Delegates shall apportion the Senate by electing for each State out of the citizens resident therein one Senator for every — members each State shall have in the House of Delegates—Each State shall be entitled to have at least one member in the Senate.

11

No State shall grant letters of marque & reprisal or enter into treaty or alliance or confederation nor grant any title of nobility nor without the Consent of the Legislature of the United States lay any impost on imports—nor keep troops or Ships of War in time of peace—nor enter into compacts with other States or foreign powers or emit bills of Credit or make any thing but Gold Silver or Copper a tender in payment of debts nor engage in War except for self defence when actually invaded or the danger of invasion be so great as not to admit of a delay until the Government of the United States can be informed thereof—& to render these prohibitions effectual the Legislature of the United States shall have the power to revise the laws of the several States that may be supposed to infringe the Powers exclusively delegated by this Constitution to Congress & to negative & annual such as do.

12

The Citizens of each State shall be entitled to all privileges & immunities of Citizens in the several States—Any person charged with Crimes in any State fleeing from justice to another shall on demand of the Executive of the State from which he fled be delivered up & removed to the State having jurisdiction of the offence.

13

Full faith shall be given in each State to the acts of the Legislature & to the records & judicial Proceedings of the Courts & magistrates of every State.

14

The Legislature shall have power to admit new States into the Union on the same terms with the original States provided two thirds of the members present in both Houses agree.

15

On the application of the legislature of a State the United States shall protect it against domestic insurrection.

16

If two thirds of the Legislatures of the States apply for the same the Legislature of the United States shall call a Convention for the purpose of amending the Constitution—or should Congress, with the Consent of two thirds of each house, propose to the States amendments to the same—the agreement of two thirds of the Legislatures of the States shall be sufficient to make the said amendments parts of the Constitution.

The Ratification of the conventions of — States shall be sufficient for organizing this Constitution.<sup>1</sup>

Adjourned.

Wednesday May 30.

Roger Sherman (from Connecticut) took his seat.

The House went into Committee of the Whole on the State of the Union. M<sup>r</sup>. Gorham was elected to the Chair by Ballot.

The propositions of M<sup>r</sup>. Randolph which had been referred to the Committee being taken up. He moved on the suggestion of M<sup>r</sup>. G. Morris, that the first of his propositions to wit “Resolved that the articles of Confederation ought to be so corrected & enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty, and general welfare,—should be postponed, in order to consider the 3 following:

1. that a union of the States merely federal will not accomplish the objects proposed by the articles of Confederation, namely common defence, security of liberty, & gen<sup>l</sup> welfare.

2. that no treaty or treaties among the whole or part of the States, as individual Sovereignties, would be sufficient.

3. that a *national* Government ought to be established consisting of a *supreme* Legislative, Executive & Judiciary.

The motion for postponing was seconded by M<sup>r</sup>. Gov<sup>r</sup>. Morris and unanimously agreed to.

Some verbal criticisms were raised ag<sup>st</sup>. the first proposition, and it was agreed on motion of M<sup>r</sup>. Butler seconded by M<sup>r</sup>. Randolph, to pass on to the third, which underwent a discussion, less however on its general merits than on the force and extent of the particular terms *national & supreme*.

M<sup>r</sup>. Charles Pinkney wished to know of M<sup>r</sup>. Randolph, whether he meant to abolish the State Govern<sup>ts</sup>. altogether. M<sup>r</sup>. R. replied that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

M<sup>r</sup>. Butler said he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations he concluded with saying that he had opposed the grant of powers to Cong<sup>s</sup>. heretofore, because the whole power was vested in one body. The proposed distribution of the powers into different bodies changed the case, and would induce him to go great lengths.

Gen<sup>l</sup>. Pinkney<sup>1</sup> expressed a doubt whether the act of Cong<sup>s</sup> recom<sup>nd</sup>ending the Convention, or the Commissions of the Deputies to it, could authorize a discussion of a system founded on different principles from the federal Constitution.

M<sup>r</sup>. Gerry<sup>1</sup> seemed to entertain the same doubt.

M<sup>r</sup>. Gov<sup>r</sup>. Morris explained the distinction between a *federal* and *national, supreme*, Gov<sup>t</sup>.; the former being a mere compact resting on the good faith of the parties; the latter having a compleat and *compulsive* operation. He contended that in all Communities there must be one supreme power, and one only.

M<sup>r</sup>. Mason observed that the present confederation was not only deficient in not providing for coercion & punishment ag<sup>st</sup>. delinquent States; but argued very cogently that punishment could not in the nature of things be executed on the States collectively, and therefore that such a Gov<sup>t</sup>. was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

M<sup>r</sup> Sherman<sup>1</sup> who took his seat today, admitted that the Confederation had not given sufficient power to Cong<sup>s</sup>. and that additional powers were necessary; particularly that of raising money which he said would involve many other powers. He admitted also that the General & particular jurisdictions ought in no case to be concurrent. He seemed however not to be disposed to make too great inroads on the existing system; intimating as one reason, that it would be wrong to lose every amendment, by inserting such as would not be agreed to by the States.

It was moved by M<sup>r</sup>. Read, <sup>2<sup>ded</sup></sup> by M<sup>r</sup>. Ch<sup>s</sup>. Cotesworth Pinkney, to postpone the 3<sup>d</sup>. proposition last offered by M<sup>r</sup>. Randolph viz that a national Government ought to be established consisting of a supreme Legislative Executive and Judiciary, in order to take up the following,—viz. “Resolved that in order to carry into execution the Design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation a more effective Government consisting of a Legislative, Executive and Judiciary, ought to be established.” The motion to postpone for this purpose was lost:

Yeas Massachusetts, Connecticut, Delaware, S. Carolina—4 Nays. N. Y. Pennsylvania, Virginia, North Carolina—4.

On the question as moved by M<sup>r</sup>. Butler, on the third proposition it was resolved in Committee of whole that a national govern<sup>t</sup>. ought to be established consisting of a supreme Legislative Executive & Judiciary,—Mass<sup>ts</sup>. being ay—Connect.—no. N. York divided (Col. Hamilton ay M<sup>r</sup>. Yates no) Pen<sup>a</sup> ay. Delaware ay. Virg<sup>a</sup>. ay. N. C. ay. S. C. ay.

The following Resolution, being the 2<sup>d</sup>. of those proposed by M<sup>r</sup>. Randolph was taken up, viz.—“that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.”

M<sup>r</sup>. Madison<sup>1</sup> observing that the words, “*or to thenumber of free inhabitants,*” might occasion debates which would divert the Committee from the general question whether the principle of representation should be changed, moved that they might be struck out.

M<sup>r</sup>. King observed that the quotas of contribution which would alone remain as the measure of representation, would not answer, because waving every other view of the matter, the revenue might hereafter be so collected by the General Gov<sup>t</sup>. that the sums respectively drawn from the States would not appear, and would besides be continually varying.

M<sup>r</sup>. Madison admitted the propriety of the observation, and that some better rule ought to be found.

Col. Hamilton moved to alter the resolution so as to read “that the rights of suffrage in the national Legislature ought to be proportioned to the number of free inhabitants.” M<sup>r</sup>. Spaight <sup>2<sup>ded</sup></sup> the motion.

It was then moved that the Resolution be postponed, which was agreed to.

M<sup>r</sup>. Randolph and M<sup>r</sup>. Madison then moved the following resolution—“that the rights of suffrage in the national Legislature ought to be proportioned.”

It was moved and <sup>2<sup>ded</sup></sup> to amend it by adding “and not according to the present system”—which was agreed to.

It was then moved & 2<sup>ded</sup>. to alter the resolution so as to read “that the rights of suffrage in the national Legislature ought not to be according to the present system.”

It was then moved & 2<sup>ded</sup>. to postpone the Resolution moved by M<sup>r</sup>. Randolph & M<sup>r</sup>. Madison, which being agreed to:

M<sup>r</sup>. Madison, moved, in order to get over the difficulties, the following resolution—“that the equality of suffrage established by the articles of Confederation ought not to prevail in the national Legislature, and that an equitable ratio of representation ought to be substituted.” This was 2<sup>ded</sup>. by M<sup>r</sup>. Gov<sup>r</sup>. Morris, and being generally relished, would have been agreed to; when,

M<sup>r</sup>. Reed moved that the whole clause relating to the point of Representation be postponed; reminding the Com<sup>e</sup>. that the deputies from Delaware were restrained by their com<sup>?</sup>ission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

M<sup>r</sup>. Gov<sup>r</sup>. Morris observed that the valuable assistance of those members could not be lost without real concern, and that so early a proof of discord in the Convention as the secession of a State, would add much to the regret; that the change proposed was however so fundamental an article in a national Gov<sup>t</sup>., that it could not be dispensed with.

M<sup>r</sup>. Madison observed that whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a National Govern<sup>t</sup>. should be put into the place. In the former case, the acts of Cong<sup>s</sup>. depended so much for their efficacy on the cooperation of the States, that these had a weight both within & without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the Gen<sup>l</sup> Gov<sup>t</sup>. would take effect without the intervention of the State legislatures, a vote from a small State w<sup>d</sup>. have the same efficacy & importance as a vote from a large one, and there was the same reason for different numbers of representatives from different States, as from Counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point and saving the Delaware deputies from embarrassment, that the question should be taken in Committee, and the clause on report to the House, be postponed without a question there. This however did not appear to satisfy Mr. Read.

By several it was observed that no just construction of the Act of Delaware, could require or justify a secession of her deputies, even if the resolution were to be carried thro’ the House as well as the Committee. It was finally agreed however that the clause should be postponed: it being understood that in the event the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone being agreed to,

The Committee then rose. The Chairman reported progress, and the House having resolved to resume the subject in Committee to-morrow,

Adjourned to 10 O Clock.

## Thursday May 31<sup>1</sup>

William Pierce, from Georgia took his seat.<sup>2</sup>

In Committee of the whole on Mr. Randolph's propositions.

The 3<sup>d</sup>. Resolution "that the national Legislature ought to consist of two branches" was agreed to without debate or dissent, except that of Pennsylvania, given probably from complaisance to Doc<sup>r</sup>. Franklin who was understood to be partial to a single House of Legislation.

Resol: 4. first clause, "that the members of the first branch of the National Legislature ought to be elected by the people of the several States," being taken up,

M<sup>r</sup>. Sherman opposed the election by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

M<sup>r</sup>. Gerry. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Mass<sup>ts</sup>. it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of Governm<sup>t</sup>. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamour in Mass<sup>ts</sup>. for the reduction of salaries and the attack made on that of the Gov<sup>t</sup>. though secured by the spirit of the Constitution itself. He had he said been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levelling spirit.

M<sup>r</sup>. Mason argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Gov<sup>t</sup>. It was, so to speak, to be our House of Commons—It ought to know & sympathize with every part of the community; and ought therefore to be taken not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in Virg<sup>a</sup>., different interests and views arising from difference of produce, of habits &c &c. He admitted that we had been too democratic but was afraid we s<sup>d</sup>. incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity & policy, considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years, not only might but certainly would, distribute their posterity

throughout the lowest classes of Society. Every selfish motive therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest than of the highest orders of Citizens.

M<sup>r</sup>. Wilson contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the national Legislature. All interference between the general and local Govern<sup>ts</sup>. should be obviated as much as possible. On examination it would be found that the opposition of States to federal measures had proceeded much more from the officers of the States, than from the people at large.

M<sup>r</sup>. Madison considered the popular election of one branch of the national Legislature as essential to every plan of free Government. He observed that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the general legislature should be elected by the State Legislatures, the second branch elected by the first—the Executive by the second together with the first; and other appointments again made for subordinate purposes by the Executive, the people would be lost sight of altogether; and the necessary sympathy between them and their rulers and officers, too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive & judiciary branches of the Government. He thought too that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

M<sup>r</sup>. Gerry did not like the election by the people. The maxims taken from the British Constitution were often fallacious when applied to our situation which was extremely different. Experience he said had shewn that the State legislatures drawn immediately from the people did not always possess their confidence. He had no objection however to an election by the people if it were so qualified that men of honor & character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number out of which the State legislatures should be bound to choose.[1](#)

M<sup>r</sup>. Butler thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national Legislature, by the people,

Mass<sup>ts</sup>. ay. Connec<sup>t</sup>. div<sup>d</sup>. N. York ay. N. Jersey no. Pen<sup>a</sup>. ay. Delaw<sup>r</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. no. Georg<sup>a</sup>. ay.



The remainig Clauses of Resolution 4<sup>th</sup>. relating to the qualifications of members of the National Legislature, being post<sup>d</sup>. nem. con., as entering too much into detail for general propositions;

The Committee proceeded to Resolution 5. “that the second, (or senatorial) branch of the National Legislature ought to be chosen by the first branch out of persons nominated by the State Legislatures.”

M<sup>r</sup>. Spaight contended that the 2<sup>d</sup>. branch ought to be chosen by the State Legislatures and moved an amendment to that effect.[1](#)

M<sup>r</sup>. Butler apprehended that the taking so many powers out of the hands of the States as was proposed, tended to destroy all that balance and security of interests among the States which it was necessary to preserve; and called on M<sup>r</sup>. Randolph the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

M<sup>r</sup> Rand<sup>f</sup>. observed that he had at the time of offering his propositions stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed that the general object was to provide a cure for the evils under which the U.S. laboured; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy: that some check therefore was to be sought for ag<sup>st</sup>. this tendency of our Governments: and that a good Senate seemed most likely to answer the purpose.[1](#)

M<sup>r</sup>. King reminded the Committee that the choice of the second branch as proposed (by M<sup>r</sup>. Spaight) viz. by the State Legislatures would be impracticable, unless it was to be very numerous, or *the idea of proportion* among the States was to be disregarded. According to this *idea*, there must be 80 or 100 members to entitle Delaware to the choice of one of them.—M<sup>r</sup>. Spaight withdrew his motion.

M<sup>r</sup>. Wilson opposed both a nomination by the State Legislatures, and an election by the first branch of the national Legislature, because the second branch of the latter, ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of chusing the Senate of N. York to wit of uniting several election districts for one branch, in chusing members for the other branch, as a good model.

M<sup>r</sup>. Madison observed that such a mode would destroy the influence of the smaller States associated with larger ones in the same district; as the latter would chuse from within themselves, altho’ better men might be found in the former. The election of Senators in Virg<sup>a</sup>. where large & small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality, would often prefer a resident within the County or State, to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own State.[1](#)

M<sup>r</sup>. Sherman favored an election of one member by each of the State Legislatures.<sup>2</sup>

M<sup>r</sup>. Pinkney moved to strike out the “nomination by the State Legislatures;” on this question.

<sup>3</sup> Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. Pen<sup>a</sup>. no. Del. div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. no. Georg no.

On the whole question for electing by the first branch out of nominations by the State Legislatures, Mass. ay. Con<sup>t</sup>. no. N. Y. no. N. Jersey, no. Pen<sup>a</sup>. no. Del. no. Virg<sup>a</sup>. ay. N. C. no. S. C, ay, G<sup>a</sup>. no.

So the clause was disagreed to & a chasm left in this part of the plan.

The sixth Resolution stating the cases in which the national Legislature ought to legislate was next taken into discussion: On the question whether each branch sh<sup>d</sup>. originate laws, there was an unanimous affirmative without debate. On the question for transferring all the Legislative power of the existing Cong<sup>s</sup>. to this Assembly, there was also a silent affirmative nem. con.

On the proposition for giving “Legislative power in all cases to which the State Legislatures were individually incompetent,”

M<sup>r</sup>. Pinkney & M<sup>r</sup> Rutledge<sup>1</sup> objected to the vagueness of the term *incompetent*, and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.<sup>1</sup>

M<sup>r</sup> Butler repeated his fears that we were running into an extreme in taking away the powers of the States, and called on Mr. Randolph for the extent of his meaning.

M<sup>r</sup>. Randolph disclaimed any intention to give indefinite powers to the national Legislature, declaring that he was entirely opposed to such an inroad on the State jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

M<sup>r</sup>. Madison said that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national Legislature; but had also brought doubts concerning its practicability. His wishes remained unaltered; but his doubts had become stronger. What his opinion might ultimately be he could not yet tell. But he should shrink from nothing which should be found essential to such a form of Gov<sup>t</sup>. as would provide for the safety, liberty and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to which the States are not competent—Mass<sup>ts</sup>. ay. Con<sup>t</sup>. div<sup>d</sup>. (Sherman no Elseworth ay) N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. V<sup>a</sup>. ay. N. C. ay. S. Carolina ay. Georg<sup>a</sup>. ay.

The other clauses giving powers necessary to preserve harmony among the States to negative all State laws contravening in the opinion of the Nat. Leg. the articles of union, down to the last clause, (the words “or any treaties subsisting under the authority of the Union,” being added after the words “contravening &c. the articles of the Union,” on motion of D<sup>r</sup>. Franklin) were agreed to with<sup>t</sup>. debate or dissent.

The last clause of Resolution 6, authorizing an exertion of the force of the whole ag<sup>st</sup>. a delinquent State came next into consideration.

M<sup>r</sup>. Madison, observed that the more he reflected on the use of force, the more he doubted, the practicability, the justice and the efficacy of it when applied to people collectively and not individually.—A union of the States containing such an ingredient seemed to provide for its own destruction. The use of force ag<sup>st</sup>. a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed. This motion was agreed to, nem. con.

The Committee then rose & the House

Adjourned.<sup>1</sup>

Friday June 1<sup>st</sup>. 1787

William Houston from Georgia took his seat.

The Committee of the whole proceeded to Resolution 7. “that a national Executive be instituted, to be chosen by the national Legislature for the term of — years &c to be ineligible thereafter, to possess the Executive powers of Congress &c.”

M<sup>r</sup>. Pinkney was for a vigorous Executive but was afraid the Executive powers of the existing Congress might extend to peace & war &c which would render the Executive a monarchy, of the worst kind, to wit an elective one.

M<sup>r</sup>. Wilson moved that the Executive consist of a single person. M<sup>r</sup>. C. Pinkney seconded the motion, so as to read “that a National Ex. to consist of a single person, be instituted.

A considerable pause ensuing and the Chairman<sup>1</sup> asking if he should put the question, Doc<sup>r</sup>. Franklin observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put.

M<sup>r</sup>. Rutledge animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the Executive power in a single person, tho’ he was

not for giving him the power of war and peace. A single man would feel the greatest responsibility and administer the public affairs best.

M<sup>r</sup>. Sherman said he considered the Executive magistracy as nothing more than an institution for carrying the will of the Legislature into effect, that the person or persons ought to be appointed by and accountable to the Legislature only, which was the depository of the supreme will of the Society. As they were the best judges of the business which ought to be done by the Executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more as experience might dictate.

M<sup>r</sup>. Wilson preferred a single magistrate, as giving most energy dispatch and responsibility to the office. He did not consider the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. Some of these prerogatives were of a Legislative nature. Among others that of war & peace &c. The only powers he considered strictly Executive were those of executing the laws, and appointing officers, not appertaining to and appointed by the Legislature.<sup>1</sup>

M<sup>r</sup>. Gerry favored the policy of annexing a Council to the Executive in order to give weight & inspire confidence.<sup>2</sup>

M<sup>r</sup>. Randolph strenuously opposed a unity in the Executive magistracy. He regarded it as the fœtus of monarchy. We had he said no motive to be governed by the British Govern<sup>t</sup> as our prototype. He did not mean however to throw censure on that Excellent fabric. If we were in a situation to copy it he did not know that he should be opposed to it; but the fixt genius of the people of America required a different form of Government. He could not see why the great requisites for the Executive department, vigor, dispatch & responsibility could not be found in three men, as well as in one man. The Executive ought to be independent. It ought therefore in order to support its independence to consist of more than one.

M<sup>r</sup>. Wilson said that unity in the Executive instead of being the fetus of monarchy would be the best safeguard against tyranny. He repeated that he was not governed by the British Model which was inapplicable to the situation of this Country; the extent of which was so great, and the manners so republican, that nothing but a great confederated Republic would do for it.

M<sup>r</sup>. Wilson's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz—"that a National Executive be instituted."<sup>1</sup>

M<sup>r</sup>. Madison thought it would be proper, before a choice sh<sup>d</sup>. be made between a unity and a plurality in the Executive, to fix the extent of the Executive authority; that as certain powers were in their nature Executive, and must be given to that depart<sup>t</sup>. whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to

the powers of the Executive sh<sup>d</sup>. be struck out & that after the words “that a national Executive ought to be instituted” there be inserted the words following viz. “with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers “not Legislative nor Judiciary in their nature,” as may from time to time be delegated by the national Legislature.” The words “not legislative nor judiciary in their nature” were added to the proposed amendment, in consequence of a suggestion by Gen<sup>l</sup>. Pinkney that improper powers might otherwise be delegated.

M<sup>r</sup>. Wilson seconded this motion.

M<sup>r</sup>. Pinkney moved to amend the amendment by striking out the last member of it; viz: “and to execute such other powers not Legislative nor Judiciary in their nature as may from time to time be delegated.” He said they were unnecessary, the object of them being included in the “power to carry into effect the national laws.”

M<sup>r</sup>. Randolph seconded the motion.

M<sup>r</sup>. Madison did not know that the words were absolutely necessary, or even the preceding words, “to appoint to offices &c. the whole being perhaps included in the first member of the proposition. He did not however see any inconveniency in retaining them, and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of M<sup>r</sup>. Pinkney, the question on M<sup>r</sup>. Madison’s motion was divided; and the words objected to by M<sup>r</sup>. Pinkney struck out; by the votes of Connecticut, N. Y., N. J., Pen<sup>a</sup>., Del., N. C., & Geo. ag<sup>st</sup>. Mass., Virg<sup>a</sup>. & S. Carolina the preceding part of the motion being first agreed to; Connecticut divided all the other States in the affirmative.

The next clause in Resolution 7, relating to the mode of appointing, & the duration of, the Executive being under consideration,

M<sup>r</sup>. Wilson said he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say however at least that in theory he was for an election by the people. Experience, particularly in N. York & Mass<sup>ts</sup>, shewed that an election of the first magistrate by the people at large, was both a convenient & successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

M<sup>r</sup>. Sherman was for the appointment by the Legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was in his opinion the very essence of tyranny if there was any such thing.

M<sup>r</sup>. Wilson moves that the blank for the term of duration should be filled with three years, observing at the same time that he preferred this short period, on the supposition that a re-eligibility would be provided for.

M<sup>r</sup>. Pinkney moves for seven years.

M<sup>r</sup>. Sherman was for three years, and ag<sup>st</sup>. the doctrine of rotation as throwing out of office the men best qualified to execute its duties.

M<sup>r</sup>. Mason was for seven years at least, and for prohibiting a re-eligibility as the best expedient both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment.

M<sup>r</sup>. Bedford<sup>1</sup> was strongly opposed to so long a term as seven years. He begged the Committee to consider what the situation of the Country would be, in case the first magistrate should be saddled on it for such a period and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment he said would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

On the question for seven years,

Mass<sup>ts</sup>. divid<sup>d</sup>. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. Pen<sup>a</sup>. ay. Del. ay. Virg<sup>a</sup>. ay. N. C. no. S. C. no. Geor. no.

There being 5 ays, 4 noes, & 1 div<sup>d</sup>., a question was asked whether a majority had voted in the Affirmative? The President decided that it was an affirmative vote.

The *mode of appointing* the Executive was the next question.

M<sup>r</sup>. Wilson renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the Legislature from the people, without the intervention of the State Legislatures but the Executive also; in order to make them as independent as possible of each other, as well as of the States;

Col. Mason favors the idea, but thinks it impracticable. He wishes however that M<sup>r</sup>. Wilson might have time to digest it into his own form.—the clause, “to be chosen by the National Legislature”—was accordingly postponed.—

M<sup>r</sup>. Rutledge suggests an election of the Executive by the second branch only of the national Legislature.

The Committee then rose and the House

Adjourned.

## Saturday June 2<sup>D</sup>. In Committee Of Whole

William Sam<sup>l</sup>. Johnson from Connecticut, Daniel of St. Thomas Jenifer, from Mary<sup>d</sup>., & John Lansing J<sup>r</sup>. from N. York, took their seats.

It was mov<sup>d</sup>. & 2<sup>ded</sup>. to postpone ye Resol: of M<sup>r</sup>. Randolph respecting the Executive, in order to take up the 2<sup>d</sup> branch of the Legislature; which being negatived by Mas: Con: Del: Virg: N. C. S. C. Geo: ag<sup>st</sup>. N. Y. Pen<sup>a</sup>. Mary<sup>d</sup>. The mode of appointing the Executive was resumed.

M<sup>r</sup>. Wilson made the following motion, to be substituted for the mode proposed by Mr. Randolph's resolution, "that the Executive Magistracy shall be elected in the following manner: That the States be divided into — districts: & that the persons qualified to vote in each district for members of the first branch of the national Legislature elect — members for their respective districts to be electors of the Executive Magistracy, that the said Electors of the Executive magistracy meet at — and they or any — of them so met shall proceed to elect by ballot, but not out of their own body — person— in whom the Executive authority of the national Government shall be vested."

M<sup>r</sup>. Wilson repeated his arguments in favor of an election without the intervention of the States. He supposed too that this mode would produce more confidence among the people in the first magistrate, than an election by the national Legislature.

M<sup>r</sup>. Gerry, opposed the election by the National legislature. There would be a constant intrigue kept up for the appointment. The Legislature & the candidates w<sup>d</sup>. bargain & play into one another's hands, votes would be given by the former under promises or expectations from the latter, of recompensing them by services to members of the Legislature or to their friends. He liked the principle of M<sup>r</sup>. Wilson's motion, but fears it would alarm & give a handle to the State partizans, as tending to supersede altogether the State authorities. He thought the Community not yet ripe for stripping the States of their powers, even such as might not be requisite for local purposes. He was for waiting till the people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the States, instead of Electors, or letting the Legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

M<sup>r</sup> Williamson<sup>1</sup> could see no advantage in the introduction of Electors chosen by the people who would stand in the same relation to them as the State Legislatures, whilst the expedient would be attended with great trouble and expence.

On the question for agreeing to M<sup>r</sup>. Wilson's substitute, it was negatived: Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. 2 no. P<sup>a</sup>. ay. Del. no. Mar<sup>d</sup>. ay. Virg<sup>a</sup>. no. N. C. no. S. C. no. Geo<sup>a</sup> no.

On the question for electing the Executive by the national Legislature for the term of seven years, it was agreed to, Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. ay. Pen<sup>a</sup>. no. Del. ay. Mary<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

Doc<sup>r</sup>. Franklin moved that what related to the compensation for the services of the Executive be postponed, in order to substitute—"whose necessary expences shall be defrayed, but who shall receive no salary, stipend fee or reward whatsoever for their services." He said that being very sensible of the effect of age on his memory, he had



been unwilling to trust to that for the observations which seemed to support his motion and had reduced them to writing, that he might with the permission of the Committee read instead of speaking them. M<sup>r</sup>. Wilson made an offer to read the paper, which was accepted. The following is a literal copy of the paper:

Sir,

It is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading I have borne a good will to it, and in general wished it success. In this particular of salaries to the Executive branch I happen to differ; and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty that I hazard it. The Committee will judge of my reasons when they have heard them, and their judgment may possibly change mine.—I think I see inconveniences in the appointment of salaries; I see none in refusing them, but on the contrary, great advantages.

Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men, a post of *honour* that shall be at the same time a place of *profit*, and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British Government so tempestuous. The struggles for them are the true sources of all those factions which are perpetually dividing the Nation, distracting its Councils, hurrying sometimes into fruitless & mischievous wars, and often compelling a submission to dishonorable terms of peace.

And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your Government and be your rulers.—And these too will be mistaken in the expected happiness of their situation: For their vanquished competitors of the same spirit, and from the same motives will perpetually be endeavouring to distress their administration, thwart their measures, and render them odious to the people.

Besides these evils, Sir, tho' we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them. Hence as all history informs us, there has been in every State & Kingdom a constant kind of warfare between the Governing & Governed; the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the Princes, or enslaving of the people. Generally indeed the ruling power carries its point, the revenues of princes constantly



increasing, and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes; the greater need the prince has of money to distribute among his partizans and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in an hundred who would not, if he could, follow the example of Pharoah, get first all the people's money, then all their lands, and then make them and their children servants for ever. It will be said, that we don't propose to establish Kings. I know it. But there is a natural inclination in mankind to Kingly Government. It sometimes relieves them from Aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among Citizens, and that they like. I am apprehensive therefore, perhaps too apprehensive, that the Government of these States, may in future times, end in a Monarchy. But this Catastrophe I think may be long delayed, if in our proposed System we do not sow the seeds of contention, faction & tumult, by making our posts of honor, places of profit. If we do, I fear that tho' we do employ at first a number, and not a single person, the number will in time be set aside, it will only nourish the fœtus of a King, as the honorable gentleman from Virginia very aptly expressed it, and a King will the sooner be set over us.

It may be imagined by some that this is an Utopian Idea, and that we can never find men to serve us in the Executive department, without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high Sheriff of a County in England is an honorable office, but it is not a profitable one. It is rather expensive and therefore not sought for. But yet, it is executed and well executed, and usually by some of the principal Gentlemen of the County. In France, the office of Counsellor, or Member of their Judiciary Parliaments is more honorable. It is therefore purchased at a high price: There are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than three Per Cent on the sum paid for the place. Therefore as legal interest is there at five PerC<sup>t</sup>. they in fact pay two PerC<sup>t</sup> for being allowed to do the Judiciary business of the Nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services. I do not however mean to recommend this as an eligible mode for our Judiciary department. I only bring the instance to shew that the pleasure of doing good & serving their Country and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the Public, without the mean inducement of pecuniary satisfaction.

Another instance is that of a respectable Society who have made the experiment, and practised it with success more than one hundred years. I mean the Quakers. It is an established rule with them, that they are not to go to law; but in their controversies they must apply to their monthly, quarterly and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees or perquisites. And indeed in all cases of Public service the less the profit the greater the honor.

To bring the matter nearer home, have we not seen, the great and most important of our offices, that of General of our armies executed for eight years together without the smallest salary, by a Patriot whom I will not now offend by any other praise; and this through fatigues and distresses in common with the other brave men his military friends & companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the U. States, with public spirit enough to bear sitting in peaceful Council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed. Sir, I have a better opinion of our Country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

Sir. The saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is, that I move the amendment. If it is not seconded or accepted I must be contented with the satisfaction of having delivered my opinion frankly and done my duty.

The motion was seconded by Col. Hamilton, with the view he said merely of bringing so respectable a proposition before the Committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it, than from any apparent conviction of its expediency or practicability.

M<sup>r</sup>. Dickinson moved,<sup>1</sup> “that the Executive be made removable by the National Legislature on the request of a majority of the Legislatures of individual States.” It was necessary he said to place the power of removing somewhere. He did not like the plan of impeaching the Great officers of State. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the State Governments as some gentlemen seemed inclined to do. The happiness of this Country in his opinion required considerable powers to be left in the hands of the States.

M<sup>r</sup>. Bedford seconded the motion.

M<sup>r</sup>. Sherman contended that the national Legislature should have power to remove the Executive at pleasure.

M<sup>r</sup>. Mason. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the Executive the mere creature of the Legislature as a violation of the fundamental principle of good Government.

M<sup>r</sup>. Madison & M<sup>r</sup> Wilson observed that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent y<sup>e</sup>. removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues ag<sup>st</sup>. him in States where his administration tho’ just might be unpopular, and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his

partizans. They both thought it bad policy to introduce such a mixture of the State authorities, where their agency could be otherwise supplied.

M<sup>t</sup>. Dickinson considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive, & Judiciary departments ought to be made as independ<sup>t</sup>. as possible; but that such an Executive as some seemed to have in contemplation was not consistent with a republic: that a firm Executive could only exist in a limited monarchy. In the British Gov<sup>t</sup>. itself the weight of the Executive arises from the attachments which the Crown draws to itself, & not merely from the force of its prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the Legislature. The division of the Country into distinct States formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the States. This was the ground of his consolation for the future fate of his Country. Without this, and in case of a consolidation of the States into one great Republic, we might read its fate in the history of smaller ones. A limited Monarchy he considered as *one* of the best Governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican form. A limited Monarchy however was out of the question. The spirit of the times—the state of our affairs forbade the experiment, if it were desirable. Was it possible moreover in the nature of things to introduce it even if these obstacles were less insuperable. A House of Nobles was essential to such a Gov<sup>t</sup>. could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this Country. But though a form the most perfect *perhaps* in itself be unattainable, we must not despair. If antient republics have been found to flourish for a moment only & then vanish for ever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this Country into distinct States; a division which some seemed desirous to abolish altogether.

As to the point of representation in the national Legislature as it might affect States of different sizes, he said it must probably end in mutual concession. He hoped that each State would retain an equal voice at least in one branch of the National Legislature, and supposed the sums paid within each State would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.<sup>1</sup>

A motion being made to strike out, “on request by a majority of the Legislatures of the individual States,” and rejected, Connecticut, S. Carol: & Geo. being ay, the rest no: the question on M<sup>t</sup>. Dickinson’s motion for making Executive removable by Nat<sup>l</sup>. Legislature at request of majority of State Legislatures was also rejected all the States being in the negative Except Delaware which gave an affirmative vote.

The Question for making y<sup>e</sup>. Executive ineligible after seven years, was next taken and agreed to: Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. ay. Pa<sup>a</sup> div<sup>d</sup>. Del. ay. Mary<sup>d</sup>. ay. Va<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.<sup>1</sup>

M<sup>r</sup>. Williamson 2<sup>ded</sup>. by M<sup>r</sup>. Davie<sup>2</sup> moved to add to the last clause, the words—“and to be removable on impeachment & conviction of mal-practice or neglect of duty”—which was agreed to.

M<sup>r</sup>. Rutledge & M<sup>r</sup>. C. Pinkney moved that the blank for the n<sup>o</sup>. of persons in the Executive be filled with the words “one person.” He supposed the reasons to be so obvious & conclusive in favor of one that no member would oppose the motion.

M<sup>r</sup>. Randolph opposed it with great earnestness, declaring that he should not do justice to the Country which sent him if he were silently to suffer the establishm<sup>t</sup>. of a Unity in the Executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged 1. that the permanent temper of the people was adverse to the very semblance of Monarchy. 2. that a unity was unnecessary a plurality being equally competent to all the objects of the department. 3. that the necessary confidence would never be reposed in a single Magistrate. 4. that the appointments would generally be in favor of some inhabitant near the center of the Community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the Executive to be drawn from different portions of the country.

M<sup>r</sup>. Butler contended strongly for a single magistrate as most likely to answer the purpose of the remote parts. If one man should be appointed he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In Military matters this would be particularly mischievous. He said his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a plurality of military heads distracted Holland when threatened with invasion by the imperial troops. One man was for directing the force to the defence of this part, another to that part of the Country, just as he happened to be swayed by prejudice or interest.

The motion was then postp<sup>d</sup>., the Committee rose & the House Adj<sup>d</sup>.

## Monday June 4. In Committee Of The Whole

The Question was resumed on motion of M<sup>r</sup>. Pinkney, 2<sup>ded</sup>. by M<sup>r</sup>. Wilson, “shall the blank for the number of the Executive be filled with a single person?”

M<sup>r</sup> Wilson was in favor of the motion. It had been opposed by the gentleman from Virg<sup>a</sup>. (Mr. Randolph) but the arguments used had not convinced him. He observed that the objections of M<sup>r</sup>. R. were levelled not so much ag<sup>st</sup> the measure itself, as ag<sup>st</sup>. its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination he could see no evidence of the alledged antipathy of the people. On the contrary he was persuaded that it does not exist. All know that a single magistrate is not a King. One fact has great weight with him. All the 13 States tho agreeing in scarce any other instance, agree in placing a single magistrate at the head of the Govern<sup>t</sup>. The idea of three heads has taken place

in none. The degree of power is indeed different; but there are no co-ordinate heads. In addition to his former reasons for preferring a Unity, he would mention another. The *tranquility* not less than the vigor of the Gov<sup>t</sup>. he thought would be favored by it. Among three equal members, he foresaw nothing but uncontroled, continued, & violent animosities; which would not only interrupt the public administration; but diffuse their poison thro' the other branches of Gov<sup>t</sup>., thro' the States, and at length thro' the people at large. If the members were to be unequal in power the principle of opposition to the Unity was given up. If equal, the making them an odd number would not be a remedy. In Courts of Justice there are two sides only to a question. In the Legislative & Executive departm<sup>ts</sup>. questions have commonly many sides. Each member therefore might espouse a separate one & no two agree.1

M<sup>r</sup>. Sherman. This matter is of great importance and ought to be well considered before it is determined. M<sup>r</sup>. Wilson he said had observed that in each State a single magistrate was placed at the head of the Gov<sup>t</sup>. It was so he admitted, and properly so, and he wished the same policy to prevail in the federal Gov<sup>t</sup>. But then it should be also remarked that in all the States there was a Council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in G. B. the King has a Council; and though he appoints it himself, its advice has its weight with him, and attracts the Confidence of the people.

M<sup>r</sup>. Williamson asks M<sup>r</sup>. Wilson whether he means to annex a Council.

M<sup>r</sup>. Wilson means to have no Council, which oftener serves to cover, than prevent malpractices.

M<sup>r</sup>. Gerry was at a loss to discover the policy of three members for the Executive. It w<sup>d</sup>. be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.

On the question for a single Executive it was agreed to Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. Pen<sup>a</sup>. ay. Del. no. Mary<sup>d</sup>. no. Virg<sup>a</sup>. ay. (M<sup>r</sup>. R. & M<sup>r</sup>. Blair no—Doc<sup>r</sup> M<sup>c</sup>C<sup>g</sup>. M<sup>r</sup> M. & Gen. W. ay. Col. Mason being no, but not in the house, M<sup>r</sup>. Wythe ay but gone home). N. C. ay. S. C. ay. Georg<sup>a</sup>. ay.

First Clause of Proposition 8<sup>th</sup>. relating to a *Council of Revision* taken into consideration.

M<sup>r</sup>. Gerry doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check ag<sup>st</sup> encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. In some States the Judges had actually set aside laws as being ag<sup>st</sup>. the Constitution. This was done too with general approbation. It was quite foreign from the nature of y<sup>e</sup>. office to make them judges of the policy of public measures. He moves to postpone the clause in order to propose “that the National Executive shall have a right to negative any

Legislative act which shall not be afterwards passed by — parts of each branch of the national Legislature.”

M<sup>r</sup>. King seconds the motion, observing that the Judges ought to be able to expound the law as it should come before them, free from the bias of having participated in its formation.

M<sup>r</sup> Wilson thinks neither the original proposition nor the amendment goes far enough. If the Legislative Ex & Judiciary ought to be distinct & independent, The Executive ought to have an absolute negative. Without such a self-defence the Legislature can at any moment sink it into non-existence. He was for varying the proposition in such a manner as to give the Executive & Judiciary jointly an absolute negative.

On the question to postpone in order to take M<sup>r</sup>. Gerry’s proposition into consideration it was agreed to, Mass<sup>s</sup>. ay. Con<sup>t</sup>. no. N. Y. ay. P<sup>a</sup>. ay. Del. no. Mary<sup>d</sup>. no. Virg<sup>a</sup>. no. N. C. ay. S. C. ay. G<sup>a</sup>. ay.

Mr. Gerry’s proposition being now before Committee, M<sup>r</sup>. Wilson & M<sup>r</sup>. Hamilton move that the last part of it (viz. “w<sup>ch</sup>. s<sup>l</sup>. not be afterw<sup>ds</sup>. passed “unless by — parts of each branch of the National legislature”) be struck out, so as to give the Executive an absolute negative on the laws. There was no danger they thought of such a power being too much exercised. It was mentioned by Col: Hamilton that the King of G. B. had not exerted his negative since the Revolution.

M<sup>r</sup>. Gerry sees no necessity for so great a controul over the legislature as the best men in the Community would be comprised in the two branches of it.

Doc<sup>t</sup>. Franklin, said he was sorry to differ from his colleague for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the Executive on the Legislature, under the proprietary Government of Pen<sup>a</sup>. The negative of the Governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice, to have orders in his favor on the Treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the Governor in the means of self-defence could not be got, till it was agreed that his Estate should be exempted from taxation: so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischevous sort of check. If the Executive was to have a Council, such a power would be less objectionable. It was true, the King of G. B. had not, as was said, exerted his negative since the Revolution; but that matter was easily explained. The bribes and emoluments now given to the members of parliament rendered it unnecessary, every thing being done according to the will of the Ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last eno’ would be gotten to influence & bribe the Legislature into a compleat subjection to the will of the Executive.

M<sup>r</sup>. Sherman was ag<sup>st</sup>. enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the Legislature.

M<sup>r</sup>. Madison supposed that if a proper proportion of each branch should be required to overrule the objections of the Executive, it would answer the same purpose as an absolute negative. It would rarely if ever happen that the Executive constituted as ours is proposed to be, would have firmness eno<sup>u</sup> to resist the legislature, unless backed by a certain part of the body itself. The King of G. B. with all his splendid attributes would not be able to withstand y<sup>e</sup>. unanimous and eager wishes of both houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this Country; its present temper at least.

M<sup>r</sup>. Wilson believed as others did that this power would seldom be used. The Legislature would know that such a power existed, and would refrain from such laws, as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pen<sup>a</sup>. formerly was very different from its present case. The Executive was not then as now to be appointed by the people. It will not in this case as in the one cited be supported by the head of a Great Empire, actuated by a different & sometimes opposite interest. The salary too is now proposed to be fixed by the Constitution, or if D<sup>r</sup>. F.'s idea should be adopted all salary whatever interdicted. The requiring a large proportion of each House to overrule the Executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the Executive and Legislative branches, and in which the former ought to be able to defend itself.

M<sup>r</sup> Butler had been in favor of a single Executive Magistrate; but could he have entertained an idea that a compleat negative on the laws was to be given him he certainly should have acted very differently. It had been observed that in all countries the Executive power is in a constant course of increase. This was certainly the case in G. B. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the Executive power. But why might not a Cataline or a Cromwell arise in this Country as well as in others.

M<sup>r</sup>. Bedford was opposed to every check on the Legislature, even the Council of Revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the Legislative Authority, which would give all the requisite security to the rights of the other departments. The Representatives of the people were the best Judges of what was for their interest, and ought to be under no external controul whatever. The two branches would produce a sufficient controul within the Legislature itself.

Col. Mason observed that a vote had already passed he found [he was out at the time] for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by D<sup>r</sup>. F. as proved by experience, the best of all tests. Will not the same door be opened here. The Executive may refuse its assent to necessary measures till

new appointments shall be referred to him; and having by degrees engrossed these into all his own hands, the American Executive, like the British, will by bribery & influence, save himself the trouble & odium of exerting his negative afterwards. We are M<sup>t</sup>. Chairman going very far in this business. We are not indeed constituting a British Government, but a more dangerous monarchy, an elective one. We are introducing a new principle into our system, and not necessary as in the British Gov<sup>t</sup>. where the Executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary Monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment but forever, of the plan which shall be proposed to them. Notwithstanding the oppression & injustice experienced among us from democracy; the genius of the people is in favor of it, and the genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between extinction of an old, and the establishment of a new Governm<sup>t</sup>. and to the scenes of confusion which may ensue. He hoped that nothing like a Monarchy would ever be attempted in this Country. A hatred to its oppressions had carried the people through the late Revolution. Will it not be eno<sup>t</sup> to enable the Executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance. He never could agree to give up all the rights of the people to a single magistrate: If more than one had been fixed on, greater powers might have been entrusted to the Executive. He hoped this attempt to give such powers would have its weight hereafter as an argument for increasing the number of the Executive.

Doc<sup>t</sup> Franklin. A Gentleman from S. C., (M<sup>t</sup>. Butler) a day or two ago called our attention to the case of the U. Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that Gov<sup>t</sup>. The people being under great obligations to the Prince of Orange whose wisdom and bravery had saved them, chose him for the Stadtholder. He did very well. Inconveniences however were felt from his powers; which growing more & more oppressive, they were at length set aside. Still however there was a party for the P. of Orange, which descended to his son who excited insurrections, spilt a great deal of blood, murdered the de Witts, and got the powers revested in the Stadtholder. Afterwards another Prince had power to excite insurrections & make the Stadtholdership hereditary. And the present Stadth<sup>der</sup>. is ready to wade thro' a bloody civil war to the establishment of a monarchy. Col. Mason had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new appointment would be suffered as heretofore in Pens<sup>a</sup>. unless it be referred to the Executive; so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. No body knows what sort may come afterwards. The Executive will be always increasing here, as elsewhere, till it ends in a Monarchy.

On the question for striking out so as to give Executive an absolute negative,—Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Georg<sup>a</sup>. no.



M<sup>r</sup>. Butler moved that the Resol<sup>n</sup>. be altered so as to read—“Resolved that the National Executive have a power to suspend any Legislative act for the term of —.”

Doct<sup>r</sup>. Franklin seconds the motion.

M<sup>r</sup>. Gerry observed that a power of suspending might do all the mischief dreaded from the negative of useful laws; without answering the salutary purpose of checking unjust or unwise ones.

On question “for giving this suspending power” all the States, to wit Mass<sup>ts</sup>. Con<sup>t</sup>. N. Y. P<sup>a</sup>. Del. Mary<sup>d</sup>. Virg<sup>a</sup>. N. C. S. C. Georgia, were *No*.

On a question for enabling *two thirds* of each branch of the Legislature to overrule the revisionary check, it passed in the affirmative sub silentio; and was inserted in the blank of M<sup>r</sup>. Gerry’s motion.

On the question on M<sup>r</sup>. Gerry’s motion which gave the Executive alone without the Judiciary the revisionary controul on the laws unless overruled by ? of each branch; Mass<sup>ts</sup> ay. Con<sup>t</sup>. no. N. Y. ay. P<sup>a</sup> ay. Del. ay. Mary<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

It was moved by M<sup>r</sup>. Wilson 2<sup>ded</sup>. by M<sup>r</sup>. Madison—that the following amendment be made to the last resolution—after the words “National Ex.” to add “& a convenient number of the National Judiciary.”1

An Objection of order being taken by M<sup>r</sup>. Hamilton to the introduction of the last amendment at this time, notice was given by M<sup>r</sup>. W. & M<sup>r</sup>. M., that the same w<sup>d</sup>. be moved to-morrow,—whereupon Wednesday (the day after) was assigned to reconsider the amendment of M<sup>r</sup>. Gerry.

It was then moved & 2<sup>ded</sup>. to proceed to the consideration of the 9<sup>th</sup>. resolution submitted by M<sup>r</sup>. Randolph—when on motion to agree to the first clause namely “Resolved, that a National Judiciary be established,” It passed in the affirmative nem. con.

It was then moved & 2<sup>ded</sup>. to add these words to the first clause of the ninth resolution namely—“to consist of one supreme tribunal, and of one or more inferior tribunals,” which passed in the affirmative.

The Comm<sup>e</sup>. then rose and the House

Adjourned.

## Tuesday June 5. In Committee Of The Whole

Governor Livingston from New Jersey, took his seat.

The words, “one or more” were struck out before “inferior tribunals” as an amendment to the last clause of Resol<sup>n</sup> 9<sup>th</sup>. The Clause—“that the National Judiciary be chosen by the National Legislature,” being under consideration.

M<sup>r</sup>. Wilson opposed the appointm<sup>t</sup> of Judges by the National Legisl: Experience shewed the impropriety of such appointm<sup>ts</sup>. by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the Executive was that officers might be appointed by a single, responsible person.

M<sup>r</sup>. Rutledge was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards Monarchy. He was against establishing any national tribunal except a single supreme one. The State tribunals are most proper to decide in all cases in the first instance.

Doc<sup>t</sup>. Franklin observed that two modes of chusing the Judges had been mentioned, to wit, by the Legislature and by the Executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practised in Scotland. He then in a brief and entertaining manner related a Scotch mode, in which the nomination proceeded from the Lawyers, who always selected the ablest of the profession in order to get rid of him, and share his practice among themselves. It was here he said the interest of the electors to make the best choice, which should always be made the case if possible.

Mr. Madison disliked the election of the Judges by the Legislature or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The Legislative talents which were very different from those of a Judge, commonly recommended men to the favor of Legislative Assemblies. It was known too that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand He was not satisfied with referring the appointment to the Executive. He rather inclined to give it to the Senatorial branch, as numerous eno’ to be confided in—as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only and moved that the *appointment by the Legislature* might be struck out, & a blank left to be hereafter filled on maturer reflection. M<sup>r</sup>. Wilson second it. On the question for striking out, Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. Pen<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

Mr. Wilson gave notice that he should at a future day move for a reconsideration of that clause which respects “inferior tribunals.”

M<sup>r</sup>. Pinkney gave notice that when the clause respecting the appointment of the Judiciary should again come before the Committee he should move to restore the “appointment by the national Legislature.”

The following clauses of Resol: 9. were agreed to viz “to hold their offices during good behaviour, and to receive punctually at stated times, a fixed compensation for

their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.”

The remaining clause of Resolution 9. was postponed.

Resolution 10 was agreed to,—viz—that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory, or otherwise with the consent of a number of voices in the National Legislature less than the whole.

The 11. Propos: “*for guaranteeing to States Republican Gov<sup>t</sup>. & territory*” &c. being read M<sup>t</sup> Patterson<sup>1</sup> wished the point of representation could be decided before this clause should be considered, and moved to postpone it, which was not opposed, and agreed to,—Connecticut & S. Carolina only voting ag<sup>st</sup>. it.

Propos. 12 “*for continuing Cong<sup>s</sup> till a given day and for fulfilling their engagements,*” produced no debate.

On the question, Mass. ay. Con<sup>t</sup>. no. N. Y. ay. N. J.<sup>2</sup> ay. Pa. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. G. ay.

Propos: 13. “*that provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the Nat<sup>t</sup>. Legislature*”, being taken up,

M<sup>t</sup>. Pinkney doubted the propriety or necessity of it.

M<sup>t</sup>. Gerry favored it. The novelty & difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the Gov<sup>t</sup>. Nothing had yet happened in the States where this provision existed to prove its impropriety.—The proposition was postponed for further consideration: the votes being, Mas: Con. N. Y. P<sup>a</sup>. Del. Ma. N. C. ay Virg<sup>a</sup>. S. C. Geo. no.

Propos. 14. “*requiring oath from the State officers to support National Gov<sup>t</sup>.*” was postponed after a short uninteresting conversation: the votes. Con. N. Jersey M<sup>d</sup>. Virg. S. C. Geo. ay N. Y. P<sup>a</sup>. Del. N. C. no Massachusetts divided.

Propos. 15. for “*recommending Conventions under appointment of the people to ratify the new Constitution*” &c. being taken up,

M<sup>t</sup>. Sherman thought such a popular ratification unnecessary: the articles of Confederation providing for changes and alterations with the assent of Cong<sup>s</sup>. and ratification of State Legislatures.

M<sup>t</sup>. Madison thought this provision essential. The articles of Confed<sup>n</sup>. themselves were defective in this respect, resting in many of the States on the Legislative sanction only. Hence in conflicts between acts of the States, and of Cong<sup>s</sup>. especially where the former are of posterior date, and the decision is to be made by State tribunals, an uncertainty must necessarily prevail, or rather perhaps a certain decision in favor of

the State authority. He suggested also that as far as the articles of Union were to be considered as a Treaty only of a particular sort, among the Governments of Independent States, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from the whole obligation. For these reasons as well as others he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

M<sup>r</sup>. Gerry observed that in the Eastern States the Confed<sup>n</sup>. had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of Government in the world. They were for abolishing the Senate in Mass<sup>ts</sup>. and giving all the other powers of Gov<sup>t</sup>. to the other branch of the Legislature.

M<sup>r</sup>. King supposed that the last article of y<sup>e</sup> Confed<sup>n</sup>. Rendered the legislature competent to the ratification. The people of the Southern States where the federal articles had been ratified by the Legislatures only, had since *impliedly* given their sanction to it. He thought notwithstanding that there might be policy in varying the mode. A Convention being a single house, the adoption may more easily be carried thro' it, than thro' the Legislatures where there are several branches. The Legislatures also being to lose power, will be most likely to raise objections. The people having already parted with the necessary powers it is immaterial to them, by which Government they are possessed, provided they be well employed.

M<sup>r</sup>. Wilson took this occasion to lead the Committee by a train of observations to the idea of not suffering a disposition in the plurality of States to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few States. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest. [1](#)

M<sup>r</sup>. Pinkney hoped that in case the experiment should not unanimously take place, nine States might be authorized to unite under the same Governm<sup>t</sup>.

The propos. 15. was postponed nem. con<sup>t</sup>.

M<sup>r</sup>. Pinkney & M<sup>r</sup>. Rutledge moved that to-morrow be assigned to reconsider that clause of Propos: 4: which respects the election of the first branch of the National Legislature—which passed in affirmative,—Con.: N. Y., P<sup>a</sup>. Del. M<sup>d</sup>., V<sup>a</sup>., ay—6 Mas.: N. J.: N. C.: S. C.: Geo.: no. 5.

Mr. Rutledge hav<sup>g</sup>. obtained a rule for reconsideration of the clause for establishing *inferior* tribunals under the national authority, now moved that that part of the clause in the propos. 9. should be expunged: arguing that the State tribunals might and ought to be left in all cases to decide in the first instance the right of appeal to the supreme national tribunal being sufficient to secure the national rights & uniformity of Judgm<sup>ts</sup>: that it was making an unnecessary encroachment on the jurisdiction of the States and creating unnecessary obstacles to their adoption of the new system. Mr. Sherman 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Madison observed that unless inferior tribunals were dispersed throughout the Republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that besides, an appeal would not in many cases be a remedy. What was to be done after improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the Supreme bar would oblige the parties to bring up their witnesses, tho' ever so distant from the seat of the Court. An effective Judiciary establishment commensurate to the legislative authority, was essential. A Government without a proper Executive & Judiciary would be the mere trunk of a body, without arms or legs to act or move.

M<sup>r</sup>. Wilson opposed the motion on like grounds. He said the admiralty jurisdiction ought to be given wholly to the national Government, as it related to cases not within the jurisdiction of particular states, & to a scene in which controversies with foreigners would be most likely to happen.

M<sup>r</sup>. Sherman was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of Courts, when the existing State Courts would answer the same purpose.

M<sup>r</sup>. Dickinson contended strongly that if there was to be a National Legislature, there ought to be a national Judiciary, and that the former ought to have authority to institute the latter.

On the question for M<sup>r</sup>. Rutledge's motion to strike out "inferior tribunals"

Mass<sup>ts</sup>. divided. Con<sup>t</sup>. ay. N. Y. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Wilson & M<sup>r</sup>. Madison then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the Resol: 9. the words following "that the National Legislature be empowered to institute inferior tribunals." They observed that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the Legislature to establish or not establish them. They repeated the necessity of some such provision.

M<sup>r</sup>. Butler. The people will not bear such innovations. The States will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon who gave the Athenians not the best Gov<sup>t</sup>. he could devise, but the best they w<sup>d</sup>. receive.

M<sup>r</sup>. King remarked as to the comparative expence, that the establishment of inferior tribunals w<sup>d</sup>. cost infinitely less than the appeals that would be prevented by them.

On this question as moved by M<sup>r</sup>. W. & M<sup>r</sup>. M.

Mass. ay. C<sup>t</sup>. no. N. Y. div<sup>d</sup>. N. J. 1 ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

The Committee then rose & the House adjourned to 11 O'clock<sup>w</sup>.

## Wednesday June 6<sup>Th</sup>. In Committee Of The Whole.

M<sup>r</sup>. Pinkney according to previous notice & rule obtained, moved “that the first branch of the national Legislature be elected by the State Legislatures, and not by the people;” contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.

M<sup>r</sup>. Rutledge 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Gerry. 2 Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme: hence in Mass<sup>ts</sup>. the worst men get into the Legislature. Several members of that Body had lately been convicted of infamous crimes. Men of indigence, ignorance & baseness, spare no pains, however dirty to carry their point ag<sup>st</sup>. men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever ag<sup>st</sup>. aristocracy and monarchy. It was necessary on the one hand that the people should appoint one branch of the Gov<sup>t</sup>. in order to inspire them with the necessary confidence. But he wished the election on the other to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons in certain districts, out of whom the State Legislatures sh<sup>d</sup> make the appointment.

M<sup>r</sup> Wilson. He wished for vigor in the Gov<sup>t</sup>., but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Gov<sup>t</sup>. ought to possess not only 1<sup>st</sup>. the *force*, but 2<sup>dly</sup>. the *mind or sense* of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected he said from the *Governments*, not from the Citizens of the States. The latter had parted as was observed (by M<sup>r</sup>. King) with all the necessary powers; and it was immaterial to them, by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people he supposed would be rather more attached to the national Gov<sup>t</sup>. than to the State Gov<sup>ts</sup>. as being more important in itself, and more flattering to their pride. There is no danger of improper elections if made by *large* districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.

M<sup>r</sup>. Sherman. If it were in view to abolish the State Gov<sup>ts</sup>. the elections ought to be by the people. If the State Gov<sup>ts</sup>. are to be continued, it is necessary in order to preserve harmony between the National & State Gov<sup>ts</sup> that the elections to the former sh<sup>d</sup>. be made by the latter. The right of participating in the National Gov<sup>t</sup>. would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few, 1. defence ag<sup>st</sup>. foreign danger, 2 ag<sup>st</sup>. internal disputes & a resort to force, 3. Treaties with foreign nations 4 regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects

alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than in large States. States may indeed be too small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Gov<sup>t</sup>. not being able to pervade them. He was for giving the General Gov<sup>t</sup>. power to legislate and execute within a defined province.

Col. Mason. Under the existing Confederacy, Cong<sup>s</sup>. represent the *States* and not the *people* of the States: their acts operate on the *States*, not on the individuals. The case will be changed in the new plan of Gov<sup>t</sup>. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the Rep<sup>s</sup>. should sympathize with their constituents; sh<sup>d</sup>. think as they think, & feel as they feel; and that for these purposes sh<sup>d</sup>. even be residents among them. Much he s<sup>d</sup>. had been alledged ag<sup>st</sup>. democratic elections. He admitted that much might be said; but it was to be considered that no Gov<sup>t</sup>. was free from imperfections & evils; and that improper elections in many instances were inseparable from Republican Gov<sup>ts</sup>. But compare these with the advantage of this Form in favor of the rights of the people, in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter when the former were against it. Was it to be supposed that the State Legislatures then w<sup>d</sup>. not send to the Nat<sup>l</sup>. legislature patrons of such projects, if the choice depended on them.

M<sup>f</sup>. Madison considered an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Gov<sup>t</sup>. and that this mode under proper regulations had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the General one. He differed from the member from Connecticut (Mr. Sherman) in thinking the objects mentioned to be all the principal ones that required a National Gov<sup>t</sup>. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than anything else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the States. The gentleman (M<sup>f</sup>. Sherman) had admitted that in a very small State, faction & oppression w<sup>d</sup>. prevail. It was to be inferred then that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest tho' less than in the smallest; and were we not thence admonished to enlarge the sphere as far as the nature of the Gov<sup>t</sup>. would Admit. This was the only defence ag<sup>st</sup>. the inconveniences of democracy consistent with the democratic form of Gov<sup>t</sup>. All civilized Societies would be divided into different Sects, Factions, & interests, as they happened to consist of rich & poor, debtors & creditors, the landed the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader—the disciples of this religious Sect or that religious Sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is

always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, Religion itself may become a motive to persecution & oppression. These observations are verified by the Histories of every country antient & modern. In Greece & Rome the rich & poor, the Creditors & debtors, as well as the patricians & plebeians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens & Carthage, & their respective provinces; the former possessing the power, & the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of Parliamentary injustice? Because G. Britain had a separate interest real or supposed, & if her authority had been admitted, could have pursued that interest at our expence. We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The Holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a Republican Gov<sup>t</sup>. the majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1<sup>st</sup>. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2<sup>d</sup> place that in case they sh<sup>d</sup> have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale & in such a form as will controul all the evils w<sup>ch</sup>. have been experienced.

M<sup>r</sup>. Dickinson considered it essential that one branch of the Legislature sh<sup>d</sup>. be drawn immediately from the people; and as expedient that the other sh<sup>d</sup>. be chosen by the Legislatures of the States. This combination of the State Gov<sup>ts</sup>. with the national Gov<sup>t</sup>. was as politic as it was unavoidable. In the formation of the Senate we ought to carry it through such a refining process as will assimilate it as nearly as may be to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Gov<sup>t</sup>. but for leaving the States a considerable agency in the System. The objection ag<sup>st</sup>. making the former dependent on the latter might be obviated by giving to the Senate an authority permanent & irrevocable for three, five or seven years. Being thus independent they will check & decide with becoming freedom.

M<sup>r</sup>. Read. Too much attachment is betrayed to the State Govern<sup>ts</sup>. We must look beyond their continuance. A national Gov<sup>t</sup> must soon of necessity swallow all of them up. They will soon be reduced to the mere office of electing the National Senate. He was ag<sup>st</sup>. patching up the old federal System: he hoped the idea w<sup>d</sup>. be dismissed. It would be like putting new cloth on an old garment. The confederation was founded on temporary principles. It cannot last: it can not be amended. If we do not establish a



good Gov<sup>t</sup>. on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a Gen<sup>l</sup>. Gov<sup>t</sup>.. The aversion lies among interested men who possess their confidence.

M<sup>r</sup>. Pierce<sup>1</sup> was for an election by the people as to the 1<sup>st</sup>. branch & by the States as to the 2<sup>d</sup>. branch; by which means the Citizens of the States w<sup>d</sup>. be represented both *individually & collectively*.

General Pinkney wished to have a good National Gov<sup>t</sup>. & at the same time to leave a considerable share of power in the States. An election of either branch by the people scattered as they are in many States, particularly in S. Carolina was totally impracticable. He differed from gentlemen who thought that a choice by the people w<sup>d</sup>. be a better guard ag<sup>st</sup>. bad measures, than by the Legislatures. A majority of the people in S. Carolina were notoriously for paper-money as a legal tender; the Legislature had refused to make it a legal tender. The reason was that the latter had some sense of character and were restrained by that consideration. The State Legislatures also he said would be more jealous, & more ready to thwart the National Gov<sup>t</sup>., if excluded from a participation in it. The Idea of abolishing these Legislatures w<sup>d</sup>. never go down.

M<sup>r</sup>. Wilson would not have spoken again, but for what had fallen from Mr. Read; namely, that the idea of preserving the State Gov<sup>ts</sup>. ought to be abandoned. He saw no incompatibility between the national & State Gov<sup>ts</sup>. provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated Systems antient & modern the reverse had happened; the Generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the 1<sup>st</sup>. branch by the State Legislatures as moved by M<sup>r</sup>. Pinkney: it was negatived:

Mass. no. C<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

M<sup>r</sup>. Wilson moved to reconsider the vote excluding the Judiciary from a share in the revision of the laws, and to add after “National Executive” the words “with a convenient number of the national Judiciary;” remarking the expediency of reinforcing the Executive with the influence of that Department.

M<sup>r</sup>. Madison 2<sup>ded</sup>. the motion. He observed that the great difficulty in rendering the Executive competent to its own defence arose from the nature of Republican Gov<sup>t</sup>. which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest ag<sup>st</sup>. betraying the national interest, which appertain to an hereditary magistrate. In a Republic personal merit alone could be the ground of political exaltation, but it would rarely happen that this merit would be so pre-eminent as to produce universal acquiescence. The Executive Magistrate would be envied & assailed by disappointed competitors: His firmness therefore w<sup>d</sup>. need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest which w<sup>d</sup>. place him out of the

reach of foreign corruption. He would stand in need therefore of being controuled as well as supported. An association of the Judges in his revisionary function w<sup>d</sup>. both double the advantage and diminish the danger. It w<sup>d</sup>. also enable the Judiciary Department the better to defend itself ag<sup>st</sup>. Legislative encroachments. Two objections had been made 1<sup>st</sup>. that the Judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them. 2<sup>dly</sup>. that the Judiciary Departm<sup>t</sup>. ought to be separate & distinct from the other great Departments. The 1<sup>st</sup>. objection had some weight; but it was much diminished by reflecting that a small proportion of the laws coming in question before a Judge w<sup>d</sup>. be such wherein he had been consulted; that a small part of this proportion w<sup>d</sup>. be so ambiguous as to leave room for his prepossessions; and that but a few cases w<sup>d</sup>. probably arise in the life of a Judge under such ambiguous passages. How much good on the other hand w<sup>d</sup>. proceed from the perspicuity, the conciseness, and the systematic character w<sup>ch</sup> the Code of laws w<sup>d</sup>. receive from the Judiciary talents. As to the 2<sup>d</sup>. objection, it either had no weight, or it applied with equal weight to the Executive & to the Judiciary revision of the laws. The maxim on which the objection was founded required a separation of the Executive as well as the Judiciary from the Legislature & from each other. There w<sup>d</sup>. in truth however be no improper mixture of these distinct powers in the present case. In England, whence the maxim itself had been drawn, the Executive had an absolute negative on the laws; and the Supreme tribunal of Justice (the House of Lords) formed one of the other branches of the Legislature. In short whether the object of the revisionary power was to restrain the Legislature from encroaching on the other co-ordinate Departments, or on the rights of the people at large; or from passing laws unwise in their principle, or incorrect in their form, the utility of annexing the wisdom and weight of the Judiciary to the Executive seemed incontestable.

M<sup>r</sup>. Gerry thought the Executive, whilst standing alone w<sup>d</sup>. be more impartial than when he c<sup>d</sup>. be covered by the sanction & seduced by the sophistry of the Judges.

M<sup>r</sup>. King. If the Unity of the Executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary as to the executive power.

M<sup>r</sup>. Pinkney had been at first in favor of joining the heads of the principal departm<sup>ts</sup>. the Secretary at War, of foreign affairs &c—in the council of revision. He had however relinquished the idea from a consideration that these could be called on by the Executive Magistrate whenever he pleased to consult them. He was opposed to the introduction of the Judges into the business.

Col. Mason was for giving all possible weight to the revisionary institution. The Executive power ought to be well secured ag<sup>st</sup>. Legislative usurpations on it. The purse & the sword ought never to get into the same hands whether Legislative or Executive.

M<sup>r</sup>. Dickinson. Secrecy, vigor & despatch are not the principal properties req<sup>d</sup>. in the Executive. Important as these are, that of responsibility is more so, which can only be preserved; by leaving it singly to discharge its functions. He thought too a junction of the Judiciary to it, involved an improper mixture of powers.

M<sup>r</sup>. Wilson remarked, that the responsibility required belonged to his Executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

M<sup>r</sup>. Williamson, was for substituting a clause requiring ? for every effective act of the Legislature, in place of the revisionary provision.

On the question for joining the Judges to the Executive in the revisionary business,

Mass. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Pinkney gave notice that tomorrow he should move for the reconsideration of that clause in the sixth Resolution adopted by the Comm<sup>e</sup>. which vests a negative in the National Legislature on the laws of the several States.

The Com<sup>e</sup> rose & the House adj<sup>d</sup>. to 11 OC.

## Thursday June 7<sup>Th</sup>. 1787—In Committee Of The Whole

M<sup>r</sup>. Pinkney according to notice moved to reconsider the clause respecting the negative on State laws, which was agreed to, and tomorrow for fixed the purpose.

The Clause providing for y<sup>e</sup>. appointment of the 2<sup>d</sup>. branch of the national Legislature, having lain blank since the last vote on the mode of electing it, to wit, by the 1<sup>st</sup>. branch, M<sup>r</sup>. Dickinson now moved “that the members of the 2<sup>d</sup>. branch ought to be chosen by the individual Legislatures.”

M<sup>r</sup>. Sherman seconded the motion; observing that the particular States would thus become interested in supporting the National Governm<sup>t</sup>. and that a due harmony between the two Governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

M<sup>r</sup>. Pinkney. If the small States should be allowed one Senator only, the number will be too great, there will be 80 at least.

M<sup>r</sup>. Dickinson had two reasons for his motion. 1, because the sense of the States would be better collected through their Governments; than immediately from the people at large; 2. because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the State Legislatures, than in any other mode. The greatness of the number was no objection with him. He hoped there would be 80 and twice 80. of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

M<sup>r</sup>. Williamson, preferred a small number of Senators, but wished that each State should have at least one. He suggested 25 as a convenient number. The different modes of representation in the different branches, will serve as a mutual check.

M<sup>r</sup>. Butler was anxious to know the ratio of representation before he gave any opinion.

M<sup>r</sup>. Wilson. If we are to establish a national Government, that Government ought to flow from the people at large. If one branch of it should be chosen by the Legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people as well as the other branch, the people might be divided into proper districts for the purpose & moved to postpone the motion of M<sup>r</sup>. Dickinson, in order to take up one of that import.

M<sup>r</sup>. Morris 2<sup>ded</sup>. him.

M<sup>r</sup>. Read proposed “that the Senate should be appointed by the Executive Magistrate out of a proper number of persons to be nominated by the individual legislatures.” He said he thought it his duty, to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of Government would answer the purpose, and he thought it best to come directly to the point at once.—His proposition was not seconded nor supported.

M<sup>r</sup>. Madison, if the motion (of Mr. Dickinson) should be agreed to, we must either depart from the doctrine of proportional representation; or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, & with more wisdom, than the popular branch. Enlarge their number and you communicate to them the vices which they are meant to correct. He differed from M<sup>r</sup>. D. who thought that the additional number would give additional weight to the body. On the contrary it appeared to him that their weight would be in an inverse ratio to their number. The example of the Roman Tribunes was applicable. They lost their influence and power, in proportion as their number was augmented. The reason seemed to be obvious: They were appointed to take care of the popular interests & pretensions at Rome, because the people by reason of their numbers could not act in concert; were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people therefore were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters; the greater the number the greater the weight. When it depends on the degree of political authority lodged in them the smaller the number the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

M<sup>r</sup>. Gerry. 4 modes of appointing the Senate have been mentioned. 1. by the 1<sup>st</sup>. branch of the National Legislature. This would create a dependance contrary to the end proposed. 2. by the National Executive. This is a stride towards monarchy that few will think of. 3. by the people. The people have two great interests, the landed interest, and the commercial including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being Chiefly composed of the landed interest, and erroneously supposing, that the other interests are adverse to it. 4 by the Individual Legislatures. The elections being carried thro' this refinement, will be most likely to provide some check in favor of the Commercial interest ag<sup>st</sup> the landed; without which oppression will take place, and no free Gov<sup>t</sup> can last long where that is the case. He was therefore in favor of this last.

M<sup>r</sup>. Dickenson. 1 The preservation of the States in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the States altogether, would degrade the Councils of our Country, would be impracticable, would be ruinous. He compared the proposed National System to the Solar System, in which the States were the planets, and ought to be left to move freely in their proper orbits. The Gentleman from P<sup>a</sup>. (M<sup>r</sup>. Wilson) wished he said to extinguish these planets. If the State Governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be that the national Gov<sup>t</sup>. would move in the same direction as the State Gov<sup>ts</sup>. now do, and would run into all the same mischiefs. The reform would only unite the 13 small streams into one great current pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence from family weight & other causes would be increased thereby. He did not admit that the Tribunes lost their weight in proportion as their n<sup>o</sup>. was augmented and gave a historical sketch of this institution. If the reasoning of (M<sup>r</sup>. Madison) was good it would prove that the number of the Senate ought to be reduced below ten, the highest n<sup>o</sup>. of the Tribunitial corps.

M<sup>r</sup>. Wilson. The subject it must be owned is surrounded with doubts and difficulties. But we must surmount them. The British Govern<sup>t</sup>. cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the States being devoured by the Nation<sup>l</sup>. Gov<sup>t</sup>. On the contrary, he wished to keep them from devouring the national Gov<sup>t</sup>. He was not however for extinguishing these planets as was supposed by Mr. D.—neither did he on the other hand, believe that they would warm or enlighten the Sun. Within their proper orbits they must still be suffered to act for subordinate purposes, for which their existence is made essential by the great extent of our Country. He could not comprehend in what manner the landed interest w<sup>d</sup>. be rendered less predominant in the Senate, by an election through the medium of the Legislatures than by the people themselves. If the Legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views. He was for an election by the people in large districts which w<sup>d</sup>. be most likely to obtain men of intelligence & uprightness; subdividing the districts only for the accommodation of voters.

M<sup>r</sup>. Madison could as little comprehend in what manner family weight, as desired by M<sup>r</sup>. D. would be more certainly conveyed into the Senate through elections by the State Legislatures, than in some other modes. The true question was in what mode the best choice w<sup>d</sup>. be made? If an election by the people, or thro' any other channel than the State Legislatures promised as uncorrupt & impartial a preference of merit, there could surely be no necessity for an appointment by those Legislatures. Nor was it apparent that a more useful check would be derived thro' that channel than from the people thro' some other. The great evils complained of were that the State Legislatures run into schemes of paper money &c. whenever solicited by the people, & sometimes without even the sanction of the people. Their influence then, instead of checking a like propensity in the National Legislature, may be expected to promote it. Nothing can be more contradictory than to say that the Nat<sup>l</sup>. Legislature with<sup>t</sup>. a proper check, will follow the example of the State Legislatures, & in the same breath, that the State Legislatures are the only proper check.

M<sup>r</sup>. Sharman opposed elections by the people in districts, as not likely to produce such fit men as elections by the State Legislatures.

M<sup>r</sup>. Gerry insisted that the commercial & monied interest w<sup>d</sup>. be more secure in the hands of the State Legislatures, than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money when the Legislatures are ag<sup>st</sup>. it. In Mass<sup>ts</sup>. the County Conventions had declared a wish for a *depreciating* paper that w<sup>d</sup>. sink itself. Besides, in some States there are two Branches in the Legislature, one of which is somewhat aristocratic. There w<sup>d</sup>. therefore be so far a better chance of refinement in the choice. There seemed, he thought to be three powerful objections ag<sup>st</sup>. elections by districts. 1. it is impracticable; the people cannot be brought to one place for the purpose; and whether brought to the same place or not, numberless frauds w<sup>d</sup>. be unavoidable. 2. small States forming part of the same district with a large one, or large part of a large one, w<sup>d</sup>. have no chance of gaining an appointment for its citizens of merit. 3 a new source of discord w<sup>d</sup>. be opened between different parts of the same district.

M<sup>r</sup>. Pinkney thought the 2<sup>d</sup>. branch ought to be permanent & independent; & that the members of it w<sup>d</sup>. be rendered more so by receiving their appointment from the State Legislatures. This mode w<sup>d</sup>. avoid the rivalships & discontents incident to the election by districts. He was for dividing the States into three classes according to their respective sizes, & for allowing to the 1<sup>st</sup>. class three members, to the 2<sup>d</sup>. two, & to the 3<sup>d</sup>. one.

On the question for postponing M<sup>r</sup>. Dickinson's motion referring the appointment of the Senate to the State Legislatures, in order to consider M<sup>r</sup>. Wilson's for referring it to the people.

Mass. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. Pa. ay Del. no. M<sup>d</sup>. no. Va. no. N. C. no. S. C. no. Geo. no.

Col. Mason. Whatever power may be necessary for the Nat<sup>l</sup>. Gov<sup>t</sup>. a certain portion must necessarily be left in the States. It is impossible for one power to pervade the

extreme parts of the U. S. so as to carry equal justice to them. The State Legislatures also ought to have some means of defending themselves ag<sup>st</sup>. encroachments of the Nat<sup>l</sup>. Gov<sup>t</sup>. In every other department we have studiously endeavoured to provide for its self-defence. Shall we leave the States alone unprovided with the means for this purpose? And what better means can we provide than the giving them some share in, or rather to make them a constituent part of, the Nat<sup>l</sup>. Establishment. There is danger on both sides no doubt; but we have only seen the evils arising on the side of the State Gov<sup>ts</sup>. Those on the other side remain to be displayed. The example of Cong<sup>s</sup>. does not apply. Cong<sup>s</sup>. had no power to carry their acts into execution, as the Nat<sup>l</sup>. Gov<sup>t</sup>. will have.

On M<sup>r</sup>. Dickinson's motion for an appointment of the Senate by the State Legislatures,

Mass. ay. C<sup>t</sup>. ay. N. Y. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gerry gave notice that he w<sup>d</sup>. tomorrow move for a reconsideration of the mode of appointing the Nat<sup>l</sup>. Executive in order to substitute an appointm<sup>t</sup>. by the State Executives.

The Committee rose & The House adj<sup>d</sup>.

## Friday June 8<sup>Th</sup>. In Committee Of The Whole.

On a reconsideration of the clause giving the Nat<sup>l</sup>. Legislature a negative on such laws of the States as might be contrary to the articles of Union, or Treaties with foreign nations,

M<sup>r</sup>. Pinkney moved "that the National Legislature sh<sup>d</sup>. have authority to negative all laws which they sh<sup>d</sup>. judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it w<sup>d</sup>. be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations: that this universal negative was in fact the corner stone of an efficient national Gov<sup>t</sup>.; that under the British Gov<sup>t</sup>. the negative of the Crown had been found beneficial, and the *States* are more one nation now, than the *Colonies* were then.

M<sup>r</sup>. Madison seconded the motion. He could not but regard an indefinite power to negative legislative acts of the States as absolutely necessary to a perfect System. Experience had evinced a constant tendency in the States to encroach on the federal authority; to violate national Treaties; to infringe the rights & interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy w<sup>d</sup>. lie in an appeal to coercion. Was such a remedy eligible? was it practicable? Could the national resources, if exerted to the utmost

enforce a national decree ag<sup>st</sup>. Mass<sup>ts</sup>. abetted perhaps by several of her neighbours? It w<sup>d</sup>. not be possible. A small proportion of the Community, in a compact situation acting on the defensive, and at one of its extremities, might at any time bid defiance to the National authority. Any Gov<sup>t</sup>. for the U. States formed on the supposed practicability of using force ag<sup>st</sup> the unconstitutional proceedings of the States, w<sup>d</sup>. prove as visionary & fallacious as the Gov<sup>t</sup>. of Cong<sup>s</sup>. The negative w<sup>d</sup>. render the use of force unnecessary. The States c<sup>d</sup>. of themselves pass no operative act, any more than one branch of a Legislature where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases. A discrimination w<sup>d</sup>. only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system. This prerogative of the General Gov<sup>t</sup>., is the great pervading principle that must controul the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits and destroy the order & harmony of the political System.

M<sup>r</sup>. Williamson was ag<sup>st</sup>. giving a power that might restrain the States from regulating their internal police.

M<sup>r</sup>. Gerry c<sup>d</sup>. not see the extent of such a power, and was ag<sup>st</sup>. every power that was not necessary. He thought a remonstrance ag<sup>st</sup> unreasonable acts of the States w<sup>d</sup>. reclaim them. If it sh<sup>d</sup>. not force might be resorted to. He had no objection to authorize a negative to paper money and similar measures. When the confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper money am<sup>g</sup>. the exclusive powers of Congress. He observed that the proposed negative w<sup>d</sup>. extend to the regulations of the Militia, a matter on which the existence of a State might depend. The Nat<sup>l</sup>. Legislature with such a power may enslave the States. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector, and there are eno<sup>t</sup> of that character among us, in politics as well as in other things, has in any pamphlet or newspaper thrown out the idea. The States too have different interests and are ignorant of each other's interests. The Negative therefore will be abused. New States too having separate views from the old States will never come into the Union. They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other States?

M<sup>r</sup>. Sherman thought the cases in which the negative ought to be exercised, might be defined. He wished the point might not be decided till a trial at least sh<sup>d</sup>. be made for that purpose.

M<sup>r</sup>. Wilson would not say what modifications of the proposed power might be practicable or expedient. But however novel it might appear the principle of it when viewed with a close & steady eye, is right. There is no instance in which the laws say that the individual sh<sup>d</sup>. be bound in one case, & at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual person may happen as well as over the individual States. Federal liberty is to the States, what civil liberty, is to private individuals, and States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, that the savage is to purchase Civil liberty by the surrender of the personal



sovereignty, which he enjoys in a State of nature. A definition of the cases in which the Negative should be exercised, is impracticable. A discretion must be left on one side or the other? will it not be most safely lodged on the side of the Nat<sup>l</sup>. Gov<sup>t</sup>.? Among the first sentiments expressed in the first Cong<sup>s</sup>. one was that Virg<sup>a</sup>. is no more, that Mass<sup>ts</sup>. is no [more], that P<sup>a</sup>. is no more &c. We are now one nation of brethren. We must bury all local interests & distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Gov<sup>ts</sup>. formed than their jealousy & ambition began to display themselves. Each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the confederation became frittered down to the impotent condition in which it now stands. Review the progress of the articles of Confederation thro' Congress & compare the first & last draught of it. To correct its vices is the business of this convention. One of its vices is the want of an effectual controul in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

M<sup>r</sup>. Dickenson deemed it impossible to draw a line between the cases proper & improper for the exercise of the negative. We must take our choice of two things. We must either subject the States to the danger of being injured by the power of the Nat<sup>l</sup>. Gov<sup>t</sup>. or the latter to the danger of being injured by that of the States. He thought the danger greater from the States. To leave the power doubtful, would be opening another spring of discord, and he was for shutting as many of them as possible.

M<sup>r</sup>. Bedford In answer to his colleague's question, where w<sup>d</sup>. be the danger to the States from this power, would refer him to the smallness of his own State which may be injured at pleasure without redress. It was meant he found to strip the small States of their equal right of suffrage. In this case Delaware would have about for its share in the General Councils, whilst P<sup>a</sup>. & V<sup>a</sup>. would possess ? of the whole. Is there no difference of interests, no rivalship of commerce, of manufactures? Will not these large States crush the small ones whenever they stand in the way of their ambitious or interested views. This shews the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And after all, if a State does not obey the law of the new System, must not force be resorted to as the only ultimate remedy, in this as in any other system. It seems as if P<sup>a</sup>. & V<sup>a</sup>. by the conduct of their deputies wished to provide a system in which they would have an enormous & monstrous influence. Besides, How can it be thought that the proposed negative can be exercised? Are the laws of the States to be suspended in the most urgent cases until they can be sent seven or eight hundred miles, and undergo the deliberation of a body who may be incapable of Judging of them? Is the National Legislature too to sit continually in order to revise the laws of the States?

M<sup>r</sup>. Madison observed that the difficulties which had been started were worthy of attention and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the Nat<sup>l</sup>. Gov<sup>t</sup>. into each State so far as to give a temporary assent at least. This was the practice in the Royal Colonies before the Revolution and would not have been inconvenient if the supreme power of negating had been faithful to the American

interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the senate alone, and that the more numerous & expensive branch therefore might not be obliged to sit constantly. He asked M<sup>r</sup>. B. what would be the consequence to the small States of a dissolution of the Union w<sup>ch</sup>. seemed likely to happen if no effectual substitute was made for the defective System existing, and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage? If the large States possessed the Avarice & ambition with which they were charged, would the small ones in their neighbourhood, be more secure when all controul of a Gen<sup>l</sup>. Gov<sup>t</sup>. was withdrawn.

M<sup>r</sup>. Butler was vehement ag<sup>st</sup> the Negative in the proposed extent, as cutting off all hope of equal justice to the distant States. The people there would not he was sure give it a hearing.

On the question for extending the negative power to all cases as proposed by (M<sup>r</sup>. P. & M<sup>r</sup>. M.) Mass. ay. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. div<sup>d</sup>. M<sup>r</sup>. Read & M<sup>r</sup>. Dickenson ay. M<sup>r</sup>. Bedford & M<sup>r</sup>. Basset no. Mary<sup>d</sup>. no. V<sup>a</sup>. ay. M<sup>r</sup>. R. M<sup>r</sup>. Mason no. M<sup>r</sup>. Blair, Doc<sup>r</sup>. M<sup>c</sup> C<sup>g</sup>. M<sup>r</sup>. M. ay. Gen<sup>l</sup>. W. not consulted N. C. no. S. C. no. Geo no.

On motion of M<sup>r</sup> Gerry and M<sup>r</sup>. King tomorrow was assigned for reconsidering the mode of appointing the National Executive: the reconsideration being voted for by all the States except Connecticut & N. Carolina.

M<sup>r</sup>. Pinkney and M<sup>r</sup>. Rutledge moved to add to the Resol<sup>n</sup> 4. agreed to by the Com<sup>e</sup>. the following, viz. “that the States be divided into three classes, the 1<sup>st</sup>. class to have 3 members, the 2<sup>d</sup>. two, & the 3<sup>d</sup>. one member each, that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to.” The Committee then rose and the House adjourned.

## Saturday June 9<sup>Th</sup>. 1Mr. Luther Martin From Maryland Took His Seat. In Committee Of The Whole

M<sup>r</sup>. Gerry, according to previous notice given by him, moved “that the national Executive should be elected by the Executives of the States whose proportion of votes should be the same with that allowed to the States in the election of the Senate.” If the appointm<sup>t</sup> should be made by the Nat<sup>l</sup>. Legislature, it would lessen that independence of the Executive which ought to prevail, would give birth to intrigue and corruption between the Executive & Legislature previous to the election, and to partiality in the Executive afterwards to the friends who promoted him. Some other mode therefore appeared to him necessary. He proposed that of appointing by the State Executives as most analogous to the principle observed in electing the other branches of the Nat<sup>l</sup>. Gov<sup>t</sup>.; the first branch being chosen by the *people* of the States, & the 2<sup>d</sup>. by the Legislatures of the States, he did not see any objection ag<sup>st</sup> letting the Executive be appointed by the Executives of the States. He supposed the Executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

M<sup>r</sup>. Randolph, urged strongly the inexpediency of M<sup>r</sup>. Gerry's mode of appointing the Nat<sup>l</sup> Executive. The confidence of the people would not be secured by it to the Nat<sup>l</sup> magistrate. The small States would lose all chance of an appointm<sup>t</sup>. from within themselves. Bad appointments would be made; the Executives of the States being little conversant with characters not within their own small spheres. The State Executives too notwithstanding their constitutional independence, being in fact dependent on the State Legislatures will generally be guided by the views of the latter, and prefer either favorites within the States, or such as it may be expected will be most partial to the interests of the State. A Nat<sup>l</sup> Executive thus chosen will not be likely to defend with becoming vigilance & firmness the National rights ag<sup>st</sup>. State encroachments. Vacancies also must happen. How can these be filled? He could not suppose either that the Executives would feel the interest in supporting the Nat<sup>l</sup>. Executive which had been imagined. They will not cherish the great Oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the Nat<sup>l</sup>. Executive to the State Executives as prop<sup>d</sup>. by M<sup>r</sup>. Gerry Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. div<sup>d</sup>. M<sup>d</sup>. no. V<sup>a</sup>. no. S. C. no. Geo. no. [1](#)

M<sup>r</sup>. Patterson moves that the Committee resume the clause relating to the rule of suffrage in the Nat<sup>l</sup> Legislature.

M<sup>r</sup>. Brearly [2](#) seconds him. He was sorry he said that any question on this point was brought into view. It had been much agitated in Cong<sup>s</sup>. at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign State an equal vote. Otherwise the smaller States must have been destroyed instead of being saved. The substitution of a ratio, he admitted carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the States by the quota of Cong<sup>s</sup>., Virg<sup>a</sup> would have 16 votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be 3 large states, and 10 small ones. The large States by which he meant Mass<sup>ts</sup>. Pen<sup>a</sup>. & Virg<sup>a</sup> will carry every thing before them. It had been admitted, and was known to him from facts within N. Jersey that where large & small counties were united into a district for electing representatives for the district, the large counties always carried their point, and consequently that the large States would do so. Virg<sup>a</sup>. with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her Solitary vote, and the other little States will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the convention with a view of being as useful as he could in giving energy and stability to the federal Government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair then it will be asked that Georgia should have an equal vote with Virg<sup>a</sup>.? He would not say it was. What remedy then? One only, that a map of the U. S. be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into 13 equal parts.

M<sup>r</sup>. Patterson considered the proposition for a proportional representation as striking at the existence of the lesser States. He w<sup>d</sup>. premise however to an investigation of this question some remarks on the nature structure and powers of the Convention. The

Convention he said was formed in pursuance of an Act of Cong<sup>s</sup>. that this act was recited in several of the Commissions, particularly that of Mass<sup>ts</sup>. which he required to be read: that the amendment of the Confederacy was the object of all the laws and Commissions on the subject: that the articles of the Confederation were therefore the proper basis of all the proceedings of the Convention. We ought to keep within its limits, or we should be charged by our Constituents with usurpation, that the people of America were sharpsighted and not to be deceived. But the Commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the States on the subject of our deliberation. The idea of a National Gov<sup>t</sup>. as contradistinguished from a federal one, never entered into the mind of any of them, and to the public mind we must accommodate ourselves. We have no power to go beyond the federal Scheme, and if we had the people are not ripe for any other. We must follow the people; the people will not follow us.—The *proposition* could not be maintained whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it & sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virg<sup>a</sup>. Mass<sup>ts</sup> & P<sup>a</sup>. as the three large States, and the other ten as small ones; repeating the calculations of M<sup>r</sup> Brearly, as to the disparity of votes which w<sup>d</sup> take place, and affirming that the small States would never agree to it. He said there was no more reason that a great individual State contributing much, should have more votes than a small one contributing little, than that a rich individual citizen should have more votes than an indigent one. If the rateable property of A was to that of B as 40 to 1, ought A for that reason to have 40 times as many votes as B. Such a principle would never be admitted, and if it were admitted would put B entirely at the mercy of A. As A. has more to be protected than B so he ought to contribute more for the common protection. The same may be said of a large State w<sup>ch</sup>. has more to be protected than a small one. Give the large States an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have every thing to fear. It was once proposed by Galloway & some others that America should be represented in the British Parl<sup>t</sup>. and then be bound by its laws. America could not have been entitled to more than  $\frac{1}{10}$  of the n<sup>o</sup>. of Representatives which would fall to the share of G. B. Would American rights & interests have been safe under an authority thus constituted? It has been said that if a Nat<sup>l</sup>. Gov<sup>t</sup>. is to be formed so as to operate on the people, and not on the States, the representatives ought to be drawn from the people. But why so? May not a Legislature filled by the State Legislatures operate on the people who chuse the State Legislatures? or may not a practicable coercion be found. He admitted that there was none such in the existing System.—He was attached strongly to the plan of the existing Confederacy, in which the people chuse their Legislative representatives; and the Legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the States with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint thrown out heretofore by M<sup>r</sup>. Wilson of the necessity to which the large States might be reduced of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. N. Jersey will never confederate on the plan before the Committee. She

would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here but on his return home do every thing in his power to defeat it there.

M<sup>r</sup>. Wilson, hoped if the Confederacy should be dissolved, that a *majority*, that a *minority* of the States would unite for their safety. He entered elaborately into the defence of a proportional representation, stating for his first position that as all authority was derived from the people, equal numbers of people ought to have an equal n<sup>o</sup>. of representatives, and different numbers of people different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time. As to the case of A. & B. stated by M<sup>r</sup> Patterson, he observed that in districts as large as the States, the number of people was the best measure of their comparative wealth. Whether therefore wealth or numbers were to form the ratio it would be the same. M<sup>r</sup>. P. admitted persons, not property to be the measure of suffrage. Are not the Citizens of Pen<sup>a</sup>. equal to those of N. Jersey? does it require 150 of the former to balance 50 of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective Constituents hold to each other. If the small States will not confederate on this plan, Pen<sup>a</sup>. & he presumed some other States, would not confederate on any other. We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of Civil Government. He can not. As little can a Sovereign State, when it becomes a member of a federal govern<sup>t</sup>. If N. J. will not part with her sovereignty it is vain to talk of Gov<sup>t</sup>. A new partition of the States is desirable, but evidently & totally impracticable.

M<sup>r</sup>. Williamson illustrated the cases by a comparison of the different States, to Counties of different sizes within the same State; observing that proportional representation was admitted to be just in the latter case, and could not therefore be fairly contested in the former.

The Question being about to be put M<sup>r</sup>. Patterson hoped that as so much depended on it, it might be thought best to postpone the decision till tomorrow, which was done, nem. con.

The Com<sup>e</sup>. rose & the House adjourned.

Monday, June 11th. M<sup>r</sup>. Abraham Baldwin from Georgia took his seat. In Committee of the Whole.

The clause concerning the rule of suffrage in the Nat<sup>l</sup>. Legislature postponed on saturday was resumed.

M<sup>r</sup>. Sharman proposed that the proportion of suffrage in the 1<sup>st</sup> branch should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more. He said as the States would remain possessed of certain individual rights, each State ought to be able to protect itself: otherwise a few large States will rule the rest. The House of Lords in England

he observed had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons that they may be able to defend their rights.

M<sup>r</sup>. Rutledge proposed that the proportion of suffrage in the 1<sup>st</sup>. branch should be according to the quotas of contribution. The justice of this rule he said could not be contested. M<sup>r</sup>. Butler urged the same idea: adding that money was power; and that the States ought to have weight in the Gov<sup>t</sup> in proportion to their wealth.

M<sup>r</sup>. King & M<sup>r</sup> Wilson,<sup>1</sup> in order to bring the question to a point moved “that the right of suffrage in the first branch of the national Legislature ought not to be according [to] the rule established in the articles of Confederation, but according to some equitable ratio of representation.” The clause so far as it related to suffrage in the first branch was postponed in order to consider this motion.

M<sup>r</sup>. Dickenson contended for the *actual* contributions of the States as the rule of their representation & suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed.

M<sup>r</sup>. King remarked that it was uncertain what mode might be used in levying a National revenue; but that it was probable, imposts would be one source of it. If the *actual* contributions were to be the rule the non-importing States, as Con<sup>t</sup> & N. Jersey, w<sup>d</sup> be in a bad situation indeed. It might so happen that they w<sup>d</sup>. have no representation. This situation of particular States had been always one powerful argument in favor of the 5 Per C<sup>t</sup> impost.

The question being ab<sup>t</sup>. to be put Doc<sup>r</sup>. Franklin s<sup>d</sup>. he had thrown his ideas of the matter on a paper w<sup>ch</sup>. Mr. Wilson read to the Committee in the words following—Mr. Chairman.

It has given me great pleasure to observe that till this point, the proportion of representation, came before us, our debates were carried on with great coolness & temper. If any thing of a contrary kind, has on this occasion appeared. I hope it will not be repeated; for we are sent here to *consult*, not to *contend*, with each other; and declarations of a fixed opinion, and of determined resolution, never to change it, neither enlighten nor convince us. Positiveness and warmth on one side, naturally beget their like on the other; and tend to create and augment discord & division in a great concern, wherein harmony & Union are extremely necessary to give weight to our Councils, and render them effectual in promoting & securing the common good.

I must own that I was originally of opinion it would be better if every member of Congress, or our national Council, were to consider himself rather as a representative of the whole, than as an Agent for the interests of a particular State; in which case the proportion of members for each State would be of less consequence, & it would not be very material whether they voted by States or individually. But as I find this is not to be expected, I now think the number of Representatives should bear some proportion to the number of the Represented; and that the decisions sh<sup>d</sup>. be by the majority of members, not by the majority of the States. This is objected to from an

apprehension that the greater States would then swallow up the smaller. I do not at present clearly see what advantage the greater States could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that in the beginning of this Century, When the Union was proposed of the two Kingdoms, England & Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed however that the different proportions of importance in the Union, of the two Nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords; A very great inferiority of numbers! And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of Public officers, Civil & Military of that nation will find I believe that the North Britons enjoy at least their full proportion of emolument.

But, sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater; and this is mathematically demonstrable. Suppose for example, that 7 smaller States had each 3 members in the House, and the 6 larger to have one with another 6 members; and that upon a question, two members of each smaller State should be in the affirmative and one in the Negative, they would make

Affirmatives	14	Negatives 7
And that all the larger States should be unanimously in the Negative, they would make		Negatives 36
In all		43

It is then apparent that the 14 carry the question against the 43. and the minority overpowers the majority, contrary to the common practice of Assemblies in all Countries and Ages.

The greater States Sir are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the States. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different Constitution, some with greater others with fewer privileges, it was of importance to the borderers when their boundaries were contested, whether by running the division lines, they were placed on one side or the other. At present when such differences are done away, it is less material. The Interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured. Small States are more easily well & happily governed than large ones. If therefore in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to N. Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and however equally made at first, it would be continually varying by the augmentation of inhabitants in some States, and their fixed proportion in others; and thence frequent occasion for new divisions, I beg leave to propose for

the consideration of the Committee another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

Let the weakest State say what proportion of money or force it is able and willing to furnish for the general purposes of the Union.

Let all the others oblige themselves to furnish each an equal proportion.

The whole of these joint supplies to be absolutely in the disposition of Congress.

The Congress in this case to be composed of an equal number of Delegates from each State.

And their decisions to be by the Majority of individual members voting.

If these joint and equal supplies should on particular occasions not be sufficient, Let Congress make requisitions on the richer and more powerful States for further aids, to be voluntarily afforded, leaving to each State the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

This mode is not new. it was formerly practised with success by the British Government with respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just to accept; and in the last war carried on while we were united, they gave us back in 5 years a million Sterling. We should probably have continued such voluntary contributions, whenever the occasions appeared to require them for the common good of the Empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions that we refused & resisted. Those contributions however were to be disposed of at the pleasure of a Government in which we had no representative. I am therefore persuaded, that they will not be refused to one in which the Representation shall be equal.

My learned colleague (M<sup>r</sup>. Wilson) has already mentioned that the present method of voting by States, was submitted to originally by Congress, under a conviction of its impropriety, inequality, and injustice. This appears in the words of their Resolution. It is of Sep<sup>r</sup>. 6. 1774. The words are

“Resolved that in determining questions in this Cong<sup>s</sup>. each Colony or province shall have one vote: The Cong<sup>s</sup>. not being possessed of or at present able to procure materials for ascertaining the importance of each Colony.”

On the question for agreeing to M<sup>r</sup>. King’s and M<sup>r</sup>. Wilsons motion it passed in the affirmative.

Mass<sup>ts</sup>. ay. C<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

It was then moved by M<sup>r</sup> Rutlidge, 2<sup>ded</sup>. by M<sup>r</sup>. Butler to add to the words “equitable ratio of representation” at the end of the motion just agreed to, the words “according to the quotas of contribution.” On motion of M<sup>r</sup>. Wilson seconded by M<sup>r</sup>. Pinkney,



this was postponed; in order to add, after the words “equitable ratio of representation” the words following: “in proportion to the whole number of white & other free Citizens & inhabitants of every age sex & condition including those bound to servitude for a term of years and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State,” this being the rule in the Act of Congress agreed to by eleven States, for apportioning quotas of revenue on the States, and requiring a Census only every 5, 7, or 10 years.

M<sup>f</sup>. Gerry thought property not the rule of representation. Why then sh<sup>d</sup>. the blacks, who were property in the South, be in the rule of representation more than the Cattle & horses of the North.1

On the question,—Mass: Con: N. Y. Pen: Mary<sup>d</sup>. Virg<sup>a</sup>. N. C. S. C. & Geo: were in the affirmative: N. J. & Del: in the negative.

M<sup>f</sup>. Sharman moved that a question be taken whether each State shall have one vote in the 2<sup>d</sup>. branch. Every thing he said depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch. M<sup>f</sup>. Elsworth1 seconded the motion. On the question for allowing each State one vote in the 2<sup>d</sup>. branch,

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>f</sup>. Wilson & M<sup>f</sup>. Hamilton moved that the right of suffrage in the 2<sup>d</sup>. branch ought to be according to the same rule as in the 1<sup>st</sup>. branch. On this question for making the ratio of representation the same in the 2<sup>d</sup>. as in the 1<sup>st</sup>. branch it passed in the affirmative;

Mass<sup>ts</sup> ay. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Resol: 11, for guarantying Republican Gov<sup>t</sup>. & territory to each State, being considered—the words “or partition,” were, on motion of M<sup>f</sup>. Madison added, after the words “voluntary junction;”

Mas. N. Y. P. V<sup>a</sup>. N. C. S. C. G. ay. Con: N. J. Del: M<sup>d</sup>. no.

M<sup>f</sup>. Read disliked the idea of guarantying territory. It abetted the idea of distinct States w<sup>ch</sup>. would be a perpetual source of discord. There can be no cure for this evil but in doing away States altogether and uniting them all into one great Society.

Alterations having been made in the Resolution, making it read, “that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States,” the whole was agreed to nem. con.1

Resolution 13. for amending the national Constitution hereafter without consent of the Nat<sup>l</sup>. Legislature being considered, Several members did not see the necessity of the

Resolution at all, nor the propriety of making the consent of the Nat<sup>l</sup>. Legisl. unnecessary.

Col. Mason urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments therefore will be necessary, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Nat<sup>l</sup>. Legislature, because they may abuse their power, and refuse their consent on that very account. The opportunity for such an abuse, may be the fault of the Constitution calling for amendm<sup>t</sup>.

M<sup>r</sup>. Randolph enforced these arguments.

The words, “without requiring the consent of the Nat<sup>l</sup>. Legislature” were postponed. The other provision in the clause passed nem. con.

Resolution 14. requiring oaths from the members of the State Gov<sup>ts</sup>. to observe the Nat<sup>l</sup>. Constitution & laws, being considered,1

M<sup>r</sup>. Sharman opposed it as unnecessarily intruding into the State jurisdictions.

M<sup>r</sup>. Randolph considered it necessary to prevent that competition between the National Constitution & laws & those of the particular States, which had already been felt. The officers of the States are already under oath to the States. To preserve a due impartiality they ought to be equally bound to the Nat<sup>l</sup>. Gov<sup>t</sup>. The Nat<sup>l</sup>. authority needs every support we can give it. The Executive & Judiciary of the States, notwithstanding their nominal independence on the State Legislatures are in fact, so dependent on them, that unless they be brought under some tie to the Nat<sup>l</sup>. System, they will always lean too much to the State systems, whenever a contest arises between the two.

M<sup>r</sup>. Gerry did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the States from Nat<sup>l</sup> officers, as vice versa.

M<sup>r</sup>. Luther Martin moved to strike out the words requiring such an oath from the State officers, viz “within the several States,” observing that if the new oath should be contrary to that already taken by them it would be improper; if coincident the oaths already taken will be sufficient.

On the question for striking out as proposed by Mr. L. Martin

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

Question on whole Resolution as proposed by M<sup>r</sup>. Randolph;

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Com<sup>e</sup>. rose & House Adj<sup>d</sup>.

## Tuesday June 12<sup>Th</sup>. In Committee Of Whole

The Question taken on the Resolution 15, to wit, referring the new system to the people of the States for ratification it passed in the affirmative Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. no. N. J. no. Pa<sup>a</sup>. 1 ay. Del. div<sup>d</sup>. M<sup>d</sup>. div<sup>d</sup>. Va<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Sharman & M<sup>r</sup>. Elsworth moved to fill the blank left in the 4<sup>th</sup>. Resolution for the periods of electing the members of the first branch with the words, “every year;” Mr. Sharman observing that he did it in order to bring on some question.

M<sup>r</sup>. Rutledge proposed “every two years.”

M<sup>r</sup>. Jennifer 1 prop<sup>d</sup>., “every three years,” observing that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

M<sup>r</sup>. Madison seconded the motion for three years. Instability is one of the great vices of our republics, to be remedied. Three years will be necessary, in a Government so extensive, for members to form any knowledge of the various interests of the States to which they do not belong, and of which they can know but little from the situation and affairs of their own. One year will be almost consumed in preparing for and travelling to & from the seat of national business.

M<sup>r</sup>. Gerry. The people of New England will never give up the point of annual elections, they know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defence of the people ag<sup>st</sup>. tyranny. He was as much ag<sup>st</sup>. a triennial House as ag<sup>st</sup>. a hereditary Executive.

M<sup>r</sup>. Madison, observed that if the opinions of the people were to be our guide, it w<sup>d</sup>. be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his Constituents were at this time; much less could he say what they would think if possessed of the information & lights possessed by the members here; & still less what would be their way of thinking 6 or 12 months hence. We ought to consider what was right & necessary in itself for the attainment of a proper Govern<sup>t</sup>. A plan adjusted to this idea will recommend itself—The respectability of this convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it, and all the most enlightened & respectable citizens will be its advocates. Should we fall short of the necessary & proper point, this influential class of Citizens, will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

M<sup>r</sup>. Gerry repeated his opinion that it was necessary to consider what the people would approve. This had been the policy of all Legislators. If the reasoning of Mr. Madison were just, and we supposed a limited Monarchy the best form in itself, we ought to recommend it, tho’ the genius of the people was decidedly adverse to it, and

having no hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

On the question for the triennial election of the 1<sup>st</sup>. branch

Mass. no. (M<sup>r</sup> King ay.) M<sup>r</sup>. Ghorum wavering. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. ay.

The words requiring members of y<sup>e</sup>. 1<sup>st</sup>. branch to be of the age of — years were struck out Maryland alone no. The words “*liberal compensation for members,*” being consid<sup>d</sup> M<sup>r</sup>. Madison moves to insert the words, “*& fixt.*” He observed that it would be improper to leave the members of the Nat<sup>l</sup>. legislature to be provided for by the State Legisl<sup>s</sup>., because it would create an improper dependence; and to leave them to regulate their own wages, was an indecent thing, and might in time prove a dangerous one. He thought wheat or some other article of which the average price throughout a reasonable period preceding might be settled in some convenient mode, would form a proper standard.

Col. Mason seconded the motion; adding that it would be improper for other reasons to leave the wages to be regulated by the States. 1. the different States would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal. 2. the parsimony of the States might reduce the provision so low that as had already happened in choosing delegates to Congress, the question would be not who were most fit to be chosen, but who were most willing to serve.

On the question for inserting the words, “and fixt”

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

Doc<sup>f</sup> Franklyn said he approved of the amendment just made for rendering the salaries as fixed as possible; but disliked the word “*liberal.*” He would prefer the word moderate if it was necessary to substitute any other. He remarked the tendency of abuses in every case, to grow of themselves when once begun, and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the Apostles, to the establishment of the papal system. The word “liberal” was struck out nem con.

On the motion of M<sup>r</sup>. Pierce, that the wages should be paid out of the National Treasury, Mass<sup>ts</sup>. ay. C<sup>t</sup>. no. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. G. ay.

Question on the clause relating to term of service & compensation of 1<sup>st</sup>. branch,

Mass<sup>ts</sup>. ay. C<sup>t</sup> no. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

On a question for striking out the “*ineligibility* of members of the Nat<sup>l</sup>. Legis: to *State offices*,”

Mass<sup>ts</sup>. div<sup>d</sup>. Con<sup>t</sup>. ay. N. Y. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. no.

On the question for agreeing to the clause as amended,

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

On a question for making members of the Nat<sup>l</sup>. Legislature *ineligible* to any office under the Nat. Gov<sup>t</sup>. for the term of 3 years after ceasing to be members,

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On the question for such ineligibility for one year,

Mass<sup>ts</sup>. ay. C<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

On question moved by Mr. Pinckney, for striking out “incapable of re-election into 1<sup>st</sup>. branch of the Nat<sup>l</sup>. Legisl. for — years, and subject to recall” ag<sup>d</sup>. to nem. con.

On question for striking out from the Resol: 5 the words requiring members of the Senatorial branch to be of the age of — years at least

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. div<sup>d</sup>. S. C. no. Geo. div<sup>d</sup>.

On the question for filling the blank with 30 years as the qualification; it was agreed to,

Mass<sup>ts</sup>. ay. C<sup>t</sup>. no. N. Y. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

M<sup>r</sup>. Spaight moved to fill the blank for the duration of the appointm<sup>ts</sup>. to the 2<sup>d</sup>. branch of the National Legislature with the words “7 years.

M<sup>r</sup>. Sherman, thought 7 years too long. He grounded his opposition he said on the principle that if they did their duty well, they would be reelected. And if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred 5 years which w<sup>d</sup>. be between the terms of the 1<sup>st</sup>. branch & of the executive.

M<sup>r</sup>. Pierce proposed 3 years. 7 years would raise an alarm. Great mischiefs had arisen in England from their septennial Act which was reprobated by most of their patriotic Statesmen.

M<sup>r</sup>. Randolph was for the term of 7 years. The democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. The object of this 2<sup>d</sup>. branch is to controul the democratic branch of the Nat<sup>l</sup>. Legislature. If it be not a firm body, the other branch being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland constituted on like principles had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure, of the Executive, will in all cases be necessary. A firmness & independence may be the more necessary also in this branch, as it ought to guard the Constitution ag<sup>st</sup>. encroachments of the Executive who will be apt to form combinations with the demagogues of the popular branch.

M<sup>r</sup>. Madison, considered 7 years as a term by no means too long. What we wished was to give to the Gov<sup>t</sup>. that stability which was every where called for, and which the Enemies of the Republican form alledged to be inconsistent with its nature. He was not afraid of giving too much stability by the term of Seven years. His fear was that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The Constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Mary<sup>d</sup>. created just suspicions of danger from it. In some instances perhaps it may have erred by yielding to the H. of Delegates. In every instance of their opposition to the measures of the H. of D. they had had with them the suffrages of the most enlightened and impartial people of the other States as well as of their own. In the States where the Senates, were chosen in the same manner as the other branches, of the Legislature, and held their seats for 4 years, the institution was found to be no check whatever ag<sup>st</sup>. the instabilities of the other branches. He conceived it to be of great importance that a stable & firm Gov<sup>t</sup>., organized in the republican form should be held out to the people. If this be not done, and the people be left to judge of this species of Gov<sup>t</sup>. by y<sup>e</sup>. operations of the defective systems under which they now live, it is much to be feared the time is not distant when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

On the question for “seven years” as the term for the 2<sup>d</sup>. branch Mass<sup>ts</sup> divided. (M<sup>r</sup>. King, M<sup>r</sup> Ghorum ay, M<sup>r</sup>. Gerry, M<sup>r</sup>. Strong, no) Con<sup>t</sup> no. N. Y. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Butler and M<sup>r</sup>. Rutledge proposed that the members of the 2<sup>d</sup>. branch should be entitled to no salary or compensation for their services. On the question, 1 —

Mass<sup>ts</sup> div<sup>d</sup>. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. no.

It was then moved & agreed that the clauses respecting the stipends & ineligibility of the 2<sup>d</sup> branch be the same as, of the 1<sup>st</sup> branch:—Con: disagreeing to the ineligibility.

It was moved & 2<sup>ded</sup> to alter the Resol: 9. so as to read “that the jurisdiction of the supreme tribunal shall be to hear & determine in the dernier resort, all piracies, felonies, &c.”

It was moved & 2<sup>ded</sup>. to strike out “all piracies & felonies on the high seas,” which was agreed to.

It was moved & agreed to strike out “all captures from an enemy.”

It was moved & agreed to strike out “other States” and insert “two distinct States of the Union”

It was moved & agreed to postpone the consideration of the Resolution 9, relating to the Judiciary:

The Com<sup>e</sup>. then rose & the House Adjourned

### Wednesday June 13. 1In Committee Of The Whole

Resol: 9 being resumed

The latter parts of the clause relating to the jurisdiction of the Nat<sup>l</sup> tribunals, was struck out nem. con in order to leave full room for their organization.

M<sup>r</sup>. Randolph & M<sup>r</sup>. Madison, then moved the following resolution respecting a National Judiciary, viz “that the jurisdiction of the National Judiciary shall extend to cases, which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony” which was agreed to.

M<sup>r</sup>. Pinkney & M<sup>r</sup>. Sherman moved to insert after the words “one supreme tribunal” the words “the Judges of which to be appointed by the National Legislature.”

M<sup>r</sup>. Madison, objected to an app<sup>t</sup> by the whole Legislature. Many of them were incompetent Judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had perhaps assisted ignorant members in business of their own, or of their Constituents, or used other winning means, would without any of the essential qualifications for an expositor of the laws prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate, which as a less numerous & more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

M<sup>r</sup>. Sharman & M<sup>r</sup>. Pinkney withdrew their motion, and the app<sup>t</sup>. by the Senate was ag<sup>d</sup>. to nem. con.

M<sup>r</sup>. Gerry moved to restrain the Senatorial branch from originating money bills. The other branch was more immediately the representatives of the people, and it was a maxim that the people ought to hold the Purse-strings. If the Senate should be allowed to originate such bills, they w<sup>d</sup>. repeat the experiment, till chance should furnish a sett of representatives in the other branch who will fall into their snares.

M<sup>r</sup>. Butler saw no reason for such a discrimination. We were always following the British Constitution when the reason of it did not apply. There was no analogy between the H. of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

M<sup>r</sup>. Madison observed that the Comentators on the Brit: Const: had not yet agreed on the reason of the restriction on the H. of L. in money bills. Certain it was there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the 1<sup>st</sup> branch. If they s<sup>d</sup>. have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable sett of men, it w<sup>d</sup>. be wrong to disable them from any preparation of the business, especially of that which was most important, and in our republics, worse prepared than any other. The Gentleman in pursuance of his principle ought to carry the restraint to the *amendment*, as well as the originating of money bills, since, an addition of a given sum w<sup>d</sup>. be equivalent to a distinct proposition of it.

M<sup>r</sup>. King differed from M<sup>r</sup>. Gerry, and concurred in the objections to the proposition.

M<sup>r</sup>. Read favored the proposition, but would not extend the restraint to the case of amendments.

M<sup>r</sup>. Pinkney thinks the question premature. If the Senate sh<sup>d</sup> be formed on the *same* proportional representation as it stands at present, they s<sup>d</sup> have equal power, otherwise if a different principle s<sup>d</sup>. be introduced.

M<sup>r</sup>. Sherman. As both branches must concur, there can be no danger whichever way the Senate be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business—The Senate bear their share of the taxes, and are also the representatives of the people. What a man does by another, he does by himself is a maxim. In Con<sup>t</sup>. both branches can originate in all cases, and it has been found safe & convenient. Whatever might have been the reason of the rule as to The H. of Lords, it is clear that no good arises from it now even there.

Gen<sup>l</sup>. Pinkney. This distinction prevails in S. C. and has been a source of pernicious disputes between y<sup>e</sup>. 2 branches. The Constitution is now evaded, by informal schedules of amendments handed from y<sup>e</sup> Senate to the other House.

M<sup>r</sup>. Williamson wishes for a question chiefly to prevent re-discussion. The restriction will have one advantage, it will oblige some member in the lower branch to move, & people can then mark him.

On the question for excepting money bills, as prop<sup>d</sup>. by M<sup>r</sup>. Gerry, Mass. no. Con<sup>t</sup>. no. N. Y. ay. N. J. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no. [1](#)



Committee rose & M<sup>r</sup>. Ghorum made report, which was postponed till tomorrow, to give an opportunity for other plans to be proposed. the report was in the words following:

Report of the Committee of Whole on M<sup>r</sup>. Randolph's propositions.

1. Res<sup>d</sup>. that it is the opinion of this Committee that a National Govern<sup>t</sup>. ought to be established, consisting of a supreme Legislative, Executive & Judiciary.
2. Resol<sup>d</sup>. that the National Legislature ought to consist of two branches.
3. Res<sup>d</sup>. that the members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of three years, to receive fixed Stipends by which they may be compensated for the devotion of their time to public service, to be paid out of the National Treasury: to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to the functions of the first branch), during the term of service, and under the national Government for the Space of one year after its expiration.
4. Res<sup>d</sup> that the members of the second branch of the Nat<sup>l</sup>. Legislature ought to be chosen by the individual Legislatures, to be of the age of 30 years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, to receive fixed stipends by which they may be compensated for the devotion of their time to public service to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or under the authority of the U. States, (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the Nat<sup>l</sup>. Gov<sup>t</sup>. for the space of one year after its expiration.
5. Res<sup>d</sup>. that each branch ought to possess the right of originating Acts
6. Res<sup>d</sup>. that the Nat<sup>l</sup> Legislature ought to be empowered to enjoy the Legislative rights vested in Cong<sup>s</sup>. by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union, or any treaties subsisting under the authority of the Union.
7. Res<sup>d</sup>. that the rights of suffrage in the 1<sup>st</sup>. branch of the National Legislature, ought not to be according to the rule established in the articles of confederation but according to some equitable ratio of representation, namely, in proportion to the whole number of white & other free citizens & inhabitants, of every age sex and condition, including those bound to servitude for a term of years, & three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each State.
8. Resolved that the right of suffrage in the 2<sup>d</sup>. branch of the National Legislature ought to be according to the rule established for the first.

9. Resolved that a National Executive be instituted to consist of a single person, to be chosen by the Nat<sup>l</sup>. Legislature for the term of seven years, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for—to be ineligible a second time, & to be removeable on impeachment and conviction of malpractices or neglect of duty—to receive a fixed stipend by which he may be compensated for the devotion of his time to public service to be paid out of the national Treasury.

10. Resol<sup>d</sup>. that the Nat<sup>l</sup> Executive shall have a right to negative any Legislative Act, which shall not be afterwards passed unless by two thirds of each branch of the National Legislature.

11. Resol<sup>d</sup>. that a Nat<sup>l</sup>. Judiciary be established, to consist of one supreme tribunal, the Judges of which to be appointed by the 2<sup>d</sup> branch of the Nat<sup>l</sup>. Legislature, to hold their offices during good behaviour, & to receive punctually at stated times a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resol<sup>d</sup>. that the Nat<sup>l</sup> Legislature be empowered to appoint inferior Tribunals.

13. Res<sup>d</sup>. that the jurisdiction of the Nat<sup>l</sup>. Judiciary shall extend to all cases which respect the collection of the Nat<sup>l</sup>. revenue, impeachments of any Nat<sup>l</sup>. Officers, and questions which involve the national peace & harmony.

14. Res<sup>d</sup>. that provision ought to be made for the admission of States lawfully arising within the limits of the U. States, whether from a voluntary junction of Government & territory or otherwise, with the consent of a number of voices in the Nat<sup>l</sup>. Legislature less than the whole.

15. Res<sup>d</sup>. that provision ought to be made for the continuance of Congress and their authorities and privileges untill a given day after the reform of the articles of Union shall be adopted and for the completion of all their engagements.

16. Res<sup>d</sup>. that a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States.

17. Res<sup>d</sup>. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary.

18. Res<sup>d</sup> that the Legislative, Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

19. Res<sup>d</sup>. that the amendments which shall be offered to the confederation by the Convention ought at a proper time or times after the approbation of Cong<sup>s</sup>. to be submitted to an Assembly or Assemblies recommended by the several Legislatures to be expressly chosen by the people to consider and decide thereon.

## Thursday June 14. In Convention.

M<sup>r</sup>. Patterson, observed to the Convention that it was the wish of several deputations, particularly that of N. Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contradistinguished from the reported plan. He said they hoped to have such an one ready by tomorrow to be laid before the Convention: And the Convention adjourned that leisure might be given for the purpose.

## Friday June 15<sup>Th</sup> 1787

M<sup>r</sup>. Patterson, laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by M<sup>r</sup>. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation it was agreed that it should be referred to a Committee of the Whole, and that in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of M<sup>r</sup>. Lansing<sup>1</sup> & some other gentlemen, it was also agreed that the Convention should not go into Committee of the whole on the subject till tomorrow, by which delay the friends of the plan proposed by M<sup>r</sup>. Patterson w<sup>d</sup>. be better prepared to explain & support it, and all would have an opportunity<sup>y</sup>. of taking copies.<sup>2</sup>

The propositions from N. Jersey moved by M<sup>r</sup>. Patterson were in the words following.

1. Res<sup>d</sup>. that the articles of Confederation ought to be so revised, corrected, & enlarged, as to render the federal Constitution adequate to the exigencies of Government, & the preservation of the Union.
2. Res<sup>d</sup>. that in addition to the powers vested in the U. States in Congress, by the present existing articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the U. States, by Stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office, to be applied to such federal purposes as they shall deem proper & expedient; to make rules & regulations for the collection thereof; and the same from time to time, to alter & amend in such manner as they shall think proper, to pass Acts for the regulation of trade & commerce as well with foreign Nations as with each other: provided that all punishments, fines, forfeitures & penalties to be incurred for contravening such acts rules and regulations shall be adjudged by the Common law Judiciaries of the State in which any Offence contrary to the true intent & meaning of such Acts rules & regulations shall have been committed or perpetrated, with liberty of commencing in the first instance all suits & prosecutions for that purpose in the Superior Common law Judiciary in such State, subject nevertheless, for the correction of all errors, both in law & fact in rendering Judgment, to an appeal to the Judiciary of the U. States.
3. Res<sup>d</sup>. that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the articles of Confederation, the United States in Cong<sup>s</sup> be authorized to make such requisitions in proportion to the whole number of white &

other free citizens & inhabitants of every age Sex and condition including those bound to servitude for a term of years & three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non complying States & for that purpose to devise and pass acts directing & authorizing the same; provided that none of the powers hereby vested in the U. States in Cong<sup>s</sup>. shall be exercised without the consent of at least — States, and in that proportion if the number of Confederated States should hereafter be increased or diminished.

4. Res<sup>d</sup>. that the U. States in Cong<sup>s</sup>. be authorized to elect a federal Executive to consist of — persons, to continue in office for the term of — years, to receive punctually at stated times a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution, to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service and for — years thereafter: to be ineligible a second time, & removeable by Cong<sup>s</sup>. on application by a majority of the Executives of the several States; that the Executives besides their general authority to execute the federal acts ought to appoint all federal officers not otherwise provided for, & to direct all military operations; provided that none of the persons composing the federal Executive shall on any occasion take command of any troops, so as personally to conduct any enterprise as General or in any other capacity.

5. Res<sup>d</sup>. that a federal Judiciary be established to consist of a supreme Tribunal the Judges of which to be appointed by the Executive, & to hold their offices during good behaviour, to receive punctually at stated times a fixed compensation for their services in which no increase nor diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution: that the Judiciary so established shall have authority to hear & determine in the first instance on all impeachments of federal Officers, & by way of appeal in the dernier resort in all cases touching the rights of Ambassadors, in all cases of captures from an enemy, in all cases of piracies & felonies on the high Seas, in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any of the Acts for the regulation of trade, or the collection of the federal Revenue: that none of the Judiciary shall during the time they remain in office be capable of receiving or holding any other office or appointment during their term of service, or for — thereafter.

6. Res<sup>d</sup> that all Acts of the U. States in Cong<sup>s</sup>. made by virtue & in pursuance of the powers hereby & by the Articles of Confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions any thing in the respective laws of the Individual States to the Contrary notwithstanding: and that if any State, or any body of men in any State shall oppose or prevent y<sup>e</sup>. carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth y<sup>e</sup> power of the Confederated States, or so much thereof as

may be necessary to enforce and compel an Obedience to such Acts, or an observance of such Treaties.

7. Res<sup>d</sup>. that provision be made for the admission of new States into the Union.

8. Res<sup>d</sup>. that the rule for naturalization ought to be same in every State.

9. Res<sup>d</sup>. that a Citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a Citizen of the State in which the offence was committed. [1](#)

Adjourned.

## Saturday June 16. In Committee Of The Whole

on Resolutions propos<sup>d</sup>. by M<sup>r</sup>. P. & M<sup>r</sup>. R.

M<sup>r</sup>. Lansing called for the reading of the 1<sup>st</sup>. resolution of each plan, which he considered as involving principles directly in contrast; that of M<sup>r</sup>. Patterson says he sustains the sovereignty of the respective States, that of M<sup>r</sup>. Randolph destroys it: the latter requires a negative on all the laws of the particular States; the former, only certain general powers for the general good. The plan of M<sup>r</sup>. R. in short absorbs all power except what may be exercised in the little local matters of the States which are not objects worthy of the supreme cognizance. He grounded his preference of M<sup>r</sup>. P's plan, chiefly on two objections ag<sup>st</sup>. that of M<sup>r</sup>. R. 1. want of power in the Convention to discuss & propose it. 2. the improbability of its being adopted. 1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The Act of Congress The tenor of the Acts of the States, the Com<sup>missions</sup> produced by the several deputations all proved this. And this limitation of the power to an amendment of the Confederacy, marked the opinion of the States, that it was unnecessary & improper to go farther. He was sure that this was the case with his State. N. York would never have concurred in sending deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. was it probable that the States would adopt & ratify a scheme, which they had never authorized us to propose? and which so far exceeded what they regarded as sufficient? We see by their several Acts particularly in relation to the plan of revenue proposed by Cong. in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place. To rely on any change which is hereafter to take place in the sentiments of the people would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The States will never feel a sufficient confidence in a general Government to give it a negative on their laws. The Scheme is itself totally novel. There is no parallel to it to be found. The Authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

M<sup>r</sup>. Patterson, said as he had on a former occasion given his sentiments on the plan proposed by M<sup>r</sup>. R. he would now avoiding repetition as much as possible give his reasons in favor of that proposed by himself. He preferred it because it accorded 1. with the powers of the Convention, 2. with the sentiments of the people. If the confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a Governm<sup>t</sup>. as may be best in itself, but such a one as our Constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no Confederacy at present exists, it can not be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it. He reads the 5<sup>th</sup>. art: of Confederation giving each State a vote—& the 13<sup>th</sup>. declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed (by M<sup>r</sup>. Wilson) that the larger State gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back. Can the donor resume his gift without the consent of the donee. This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The larger States acceded readily to the confederacy. It was the small ones that came in reluctantly and slowly. N. Jersey & Maryland were the two last, the former objecting to the want of power in Congress over trade: both of them to the want of power to appropriate the vacant territory to the benefit of the whole.—If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty, is that of throwing the States into Hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the Citizens of Mass<sup>ts</sup>. Pen<sup>a</sup>. & V<sup>a</sup> accede to it. It will be objected that Coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according that of M<sup>r</sup>. R. A distinct executive & Judiciary also were equally provided by his plan. It is urged that two branches in the Legislature are necessary. Why? for the purpose of a check. But the reason of the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary, and besides, the delegations of the different States are checks on each other. Do the people at large complain of Cong<sup>s</sup>.? No, what they wish is that Cong<sup>s</sup>. may have more power. If the power now proposed be not eno<sup>d</sup>, the people hereafter will make additions to it. With proper powers Cong<sup>s</sup>. will act with more energy & wisdom than the proposed Nat<sup>l</sup> Legislature; being fewer in number, and more secreted & refined by the mode of election. The plan of M<sup>r</sup>. R. will also be enormously expensive. Allowing Georgia & Del. two representatives each in the popular branch the aggregate number of that branch will be 180. Add to it half as many for the other branch and you have 270, coming once at least a year from the most distant as well as the most central parts of the republic. In the present deranged State of our finances can so expensive a System

be seriously thought of? By enlarging the powers of Cong<sup>s</sup>. the greatest part of this expence will be saved, and all purposes will be answered. At least a trial ought to be made.

M<sup>r</sup>. Wilson entered into a contrast of the principal points of the two plans so far he said as there had been time to examine the one last proposed. These points were 1. in the Virg<sup>a</sup>. plan there are 2 & in some degree 3 branches in the Legislature: in the plan from N. J. there is to be a *single* legislature only—2. Representation of the people at large is the basis of one: the State Legislatures, the pillars of the other—3. proportional representation prevails in one;—equality of suffrage in the other—4. A single Executive Magistrate is at the head of the one:—a plurality is held out in the other.—5. in the one the majority of the people of the U. S. must prevail:—in the other a minority may prevail. 6. the Nat<sup>l</sup>. Legislature is to make laws in all cases to which the separate States are incompetent &:—in place of this Cong<sup>s</sup>. are to have additional power in a few cases only—7. A negative on the laws of the States:—in place of this coercion to be substituted—8. The Executive to be removable on impeachment & conviction;—in one plan: in the other to be removable at the instance of a majority of the Executives of the States—9. Revision of the laws provided for in one:—no such check in the other—10. inferior national tribunals in one:—none such in the other. 11. In one y<sup>e</sup>. jurisdiction of Nat<sup>l</sup>. tribunals to extend &c—; an appellate jurisdiction only allowed in the other. 12. Here the jurisdiction is to extend to all cases affecting the Nation<sup>l</sup>. peace & harmony; *there* a few cases only are marked out. 13. finally y<sup>e</sup>. ratification is in this to be by the people themselves:—in that by the legislative authorities according to the 13 art: of the Confederation.

With regard to the *power of the Convention*, he conceived himself authorized to *conclude nothing*, but to be at liberty to *propose any thing*. In this particular he felt himself perfectly indifferent to the two plans.

With *regard to the sentiments of the people*, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved, were commonly mistaken for the general voice. He could not persuade himself that the State Gov<sup>ts</sup>. & Sovereignties were so much the idols of the people, nor a Nat<sup>l</sup>. Gov<sup>t</sup>. so obnoxious to them, as some supposed. Why s<sup>d</sup>. a Nat<sup>l</sup>. Gov<sup>t</sup>. be unpopular? Has it less dignity? will each Citizen enjoy under it less liberty or protection? Will a Citizen of *Delaware* be degraded by becoming a Citizen of the *United States*? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their Gov<sup>ts</sup>.? no, Sir. It is from the Nat<sup>l</sup>. Councils that relief is expected. For these reasons he did not fear, that the people would not follow us into a National Gov<sup>t</sup>. and it will be a further recommendation of M<sup>r</sup>. R<sup>'s</sup>. plan that it is to be submitted to *them*, and not to the *Legislatures*, for ratification.

Proceeding now to the 1<sup>st</sup>. point on which he had contrasted the two plans, he observed that anxious as he was for some augmentation of the federal powers, it would be with extreme reluctance indeed that he could ever consent to give powers to Cong<sup>s</sup>. he had two reasons either of w<sup>ch</sup>. was sufficient, 1. Cong<sup>s</sup>. as a Legislative body does not stand on the people. 2. it is a *single* body. 1. He would not repeat the remarks he had formerly made on the principles of Representation, he would only say

that an inequality in it, has ever been a poison contaminating every branch of Gov<sup>t</sup>. In G. Britain where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of Justice, the Judges of which are neither appointed nor paid, by a venal Parliament. The political liberty of that Nation, owing to the inequality of representation is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that Country & ours at present. But it is a lesson we ought not to disregard, that the smallest bodies in G. B. are notoriously the most corrupt. Every other source of influence must also be stronger in small than large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added, that it was not Holland, but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, he will only remark that the *Impost*, so anxiously wished for by the public was defeated not by any of the *larger* States in the Union. 2. *Congress is a single Legislature*. Despotism comes on Mankind in different Shapes, sometimes in an Executive, sometimes in a Military, one. Is there no danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a single House there is no check, but the inadequate one, of the virtue & good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the whole. It vested the Executive powers in a single Magistrate. The plan of N. Jersey, vested them in a plurality. In order to controul the Legislative authority, you must divide it. In order to controul the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves till one becomes the master of his colleagues. In the triumvirates of Rome first Cæsar, then Augustus, are witnesses of this truth. The Kings of Sparta, & the Consuls of Rome prove also the factious consequences of dividing the Executive Magistracy. Having already taken up so much time he w<sup>d</sup>. not he s<sup>d</sup>., proceed to any of the other points. Those on which he had dwelt, are sufficient of themselves; and on the decision of them, the fate of the others will depend.

M<sup>r</sup>. Pinkney, 1 the whole comes to this, as he conceived. Give N. Jersey an equal vote, and she will dismiss her scruples, and concur in the Nat<sup>l</sup>. system. He thought the Convention authorized to go any length in recommending, which they found necessary to remedy the evils which produced this Convention.

M<sup>r</sup>. Elseworth proposed as a more distinctive form of collecting the mind of the Committee on the subject, “that the Legislative power of the U. S. should remain in Cong<sup>s</sup>.” This was not seconded, though it seemed better calculated for the purpose than the 1<sup>st</sup>. proposition of M<sup>r</sup>. Patterson in place of which Mr. E. wished to substitute it.

M<sup>r</sup>. Randolph, was not scrupulous on the point of power. When the Salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary. He painted in strong colours, the imbecility of the existing Confederacy, & the danger of delaying a substantial reform. In answer to the objection drawn from the



sense of our Constituents as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that as each State acted separately in the case, it would have been indecent for it to have charged the existing Constitution with all the vices which it might have perceived in it. The first State that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are certainly reasons of a peculiar nature where the ordinary cautions must be dispensed with; and this is certainly one of them. He w<sup>d</sup>. not as far as depended on him leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.

The true question is whether we shall adhere to the federal plan, or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes, by which the end of a Gen<sup>l</sup>. Gov<sup>t</sup>. can be attained: the 1<sup>st</sup>. is by coercion as proposed by M<sup>r</sup>. P's plan 2. by real legislation as prop<sup>d</sup>. by the other plan. Coercion he pronounced to be *impracticable, expensive, cruel to individuals*. It tended also to habituate the instruments of it to shed the blood & riot in the Spoils of their fellow Citizens, and consequently trained them up for the service of Ambition. We must resort therefore to a National *Legislation over individuals*, for which Cong<sup>s</sup>. are unfit. To vest such power in them, would be blending the Legislative with the Executive, contrary to the rec<sup>d</sup>. maxim on this subject: If the Union of these powers heretofore in Cong<sup>s</sup>. has been safe, it has been owing to the general impotency of that body. Cong<sup>s</sup> are moreover not elected by the people, but by the Legislatures who retain even a power of recall. They have therefore no will of their own, they are a mere diplomatic body, and are always obsequious to the views of the States, who are always encroaching on the authority of the U. States. A provision for harmony among the States, as in trade, naturalization &.—for crushing rebellion whenever it may rear its crest—and for certain other general benefits, must be made. The powers for these purposes can never be given to a body, inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed. A Nat<sup>l</sup>. Gov<sup>t</sup>. alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for estang one. After this select experiment, the people will yield to despair.

The Committee rose & the House adjourned.

## Monday June 18. In Committee Of The Whole

on the propositions of M<sup>r</sup>. Patterson & M<sup>r</sup>. Randolph

On motion of M<sup>r</sup>. Dickinson to postpone the 1<sup>st</sup>. Resolution in M<sup>r</sup>. Patterson's plan, in order to take up the following viz—"that the Articles of Confederation ought to be revised and amended, so as to render the Government of the U. S. adequate to the exigencies, the preservation and the prosperity of the Union" the postponement was agreed to by 10 States, Pen: divided.

Mr. Hamilton,<sup>1</sup> had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities age & experience rendered him unwilling to bring forward ideas dissimilar to theirs, and partly from his delicate situation with respect to his own State, to whose sentiments as expressed by his Colleagues, he could by no means accede. This crisis however which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety & happiness. He was obliged therefore to declare himself unfriendly to both plans. He was particularly opposed to that from N. Jersey, being fully convinced, that no amendment of the Confederation, leaving the States in possession of their Sovereignty could possibly answer the purpose. On the other hand he confessed he was much discouraged by the amazing extent of Country in expecting the desired blessings from any general sovereignty that could be substituted.—As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions & reasonings too subtle. A *federal* Gov<sup>t</sup>. he conceived to mean an association of independent Communities into one. Different Confederacies have different powers, and exercise them in different ways. In some instances the powers are exercised over collective bodies; in others over individuals, as in the German Diet—& among ourselves in cases of piracy. Great latitude therefore must be given to the signification of the term. The plan last proposed departs itself from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed moreover with the Honble gentleman from V<sup>a</sup>. (M<sup>r</sup>. R.) that we owed it to our Country, to do on this emergency whatever we should deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. To rely on & propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said that the *States* cannot *ratify* a plan not within the purview of the article of the Confederation providing for alterations & amendments. But may not the States themselves in which no constitutional authority equal to this purpose exists in the Legislatures, have had in view a reference to the people at large. In the Senate of N. York, a proviso was moved, that no act of the Convention should be binding untill it should be referred to the people & ratified; and the motion was lost by a single voice only, the reason assigned ag<sup>st</sup>. it being, that it might possibly be found an inconvenient shackle.

The great question is what provision shall we make for the happiness of our Country? He would first make a comparative examination of the two plans—prove that there were essential defects in both—and point out such changes as might render a *national one*, efficacious.—The great & essential principles necessary for the support of Government are 1. an active & constant interest in supporting it. This principle does not exist in the States in favor of the federal Gov<sup>t</sup>. They have evidently in a high degree, the esprit de corps. They constantly pursue internal interests adverse to those of the whole. They have their particular debts—their particular plans of finance &c. All these when opposed to, invariably prevail over the requisitions & plans of Congress. 2. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shewn a disposition rather to regain the powers delegated by them than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the controul of the Gen<sup>l</sup>. Government. It may be remarked too that the Citizens have not that anxiety to

prevent a dissolution of the Gen<sup>l</sup>. Gov<sup>t</sup>. as of the particular Gov<sup>ts</sup>. A dissolution of the latter would be fatal; of the former would still leave the purposes of Gov<sup>t</sup> attainable to a considerable degree. Consider what such a State as Virg<sup>a</sup>. will be in a few years, a few compared with the life of nations. How strongly will it feel its importance and self-sufficiency? 3. An habitual attachment of the people. The whole force of this tie is on the side of the State Gov<sup>t</sup>. Its sovereignty is immediately before the eyes of the people: its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize & endear a Gov<sup>t</sup>. to a people, are dispensed to them. 4. *Force* by which may be understood a *coercion of laws* or *coercion of arms*. Cong<sup>s</sup>. have not the former except in few cases. In particular States, this Coercion is nearly sufficient; tho' he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Mass<sup>ts</sup>. is now feeling this necessity & making provision for it. But how can this force be exerted on the States collectively. It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union will ensue. 5. *Influence*. he did not mean corruption, but a dispensation of those regular honors & emoluments, which produce an attachment to the Gov<sup>t</sup>. Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist. All the passions then we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the States, and do not flow into the stream of the Gen<sup>l</sup> Gov<sup>t</sup>. The former therefore will generally be an overmatch for the Gen<sup>l</sup>. Gov<sup>t</sup>. and render any confederacy, in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphycionian Council had it would seem ample powers for general purposes. It had in particular the power of fining and using force ag<sup>st</sup>. delinquent members. What was the consequence. Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip at length taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German Confederacy affords another lesson. The Authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs however, exercising their local sovereignties, soon felt the spirit & found the means of, encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded, which tho' aided by a Prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of Confederated Governments. Other examples instruct us in the same truth. The Swiss cantons have scarce any union at all, and have been more than once at war with one another.—How then are all these evils to be avoided? only by such a compleat sovereignty in the General Govern<sup>t</sup>. as will turn all the strong principles & passions abovementioned on its side. Does the scheme of N. Jersey produce this effect? does it afford any substantial remedy whatever? On the contrary it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Cong<sup>s</sup>. but this will not be sufficient. The balance can only be supplied by requisitions: which experience proves cannot be relied on. If States are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too must in the nature of things be so unequal as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France or Eng<sup>d</sup>.

with other countries of Europe, Pen<sup>a</sup>. with N. Carol<sup>a</sup>. will the relative pecuniary abilities in those instances, correspond with the relative value of land. Take numbers of inhabitants for the rule and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different Countries render the first object a precarious measure of wealth. Much depends too on *situation*. Con<sup>t</sup>. N. Jersey & N. Carolina, not being commercial States & contributing to the wealth of the Commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will & must fail in their duty, their example will be followed, and the union itself be dissolved. Whence then is the national revenue to be drawn? from Commerce; even from exports which notwithstanding the com<sup>o</sup>n opinion are fit objects of moderate taxation, from excise, &c &c. These tho' not equal, are less unequal than quotas. Another destructive ingredient in the plan, is that equality of suffrage which is so much desired by the small States. It is not in human nature that V<sup>a</sup>. & the large States should consent to it, or if they did that they sh<sup>d</sup>. long abide by it. It shocks too much all ideas of Justice, and every human feeling. Bad principles in a Gov<sup>t</sup>. tho slow are sure in their operation, and will gradually destroy it. A doubt has been raised whether Cong<sup>s</sup>. at present have a right to keep Ships or troops in time of peace. He leans to the negative. Mr. P<sup>'s</sup> plan provides no remedy.—If the powers proposed were adequate, the organization of Cong<sup>s</sup>. is such that they could never be properly & effectually exercised. The members of Cong<sup>s</sup>. being chosen by the States & subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power whatever be its form if it preserves itself, must swallow up the State powers. Otherwise it will be swallowed up by them. It is ag<sup>st</sup>. all the principles of a good Government to vest the requisite powers in such a body as Cong<sup>s</sup>. Two Sovereignities can not co-exist within the same limits. Giving powers to Cong<sup>s</sup> must eventuate in a bad Gov<sup>t</sup>. or in no Gov<sup>t</sup>. The plan of N. Jersey therefore will not do. What then is to be done? Here he was embarrassed. The extent of the Country to be governed, discouraged him. The expence of a general Gov<sup>t</sup>. was also formidable; unless there were such a diminution of expence on the side of the State Gov<sup>ts</sup>. as the case would admit. If they were extinguished, he was persuaded that great œconomy might be obtained by substituting a general Gov<sup>t</sup>. He did not mean however to shock the public opinion by proposing such a measure. On the other hand he saw no *other* necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities he was aware would be necessary. There must be district tribunals; corporations for local purposes. But cui bono, the vast & expensive apparatus now appertaining to the States. The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the centre of the Community. What inducements can be offered that will suffice? The moderate wages for the 1<sup>st</sup>. branch would only be a bait to little demagogues. Three dollars or thereabouts he supposed would be the utmost. The Senate he feared from a similar cause, would be filled by certain undertakers who wish for particular offices under the Gov<sup>t</sup>. This view of the subject almost led him to despair that a Republican Gov<sup>t</sup>. could be established over so great an extent. He was sensible at the same time that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinion of so many of the wise & good, that the British Gov<sup>t</sup>. was the best in the world: and that he doubted much whether any

thing short of it would do in America. He hoped Gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place and was still going on. It was once thought that the power of Cong<sup>s</sup>. was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming ag<sup>st</sup>. the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself would join in the praise bestowed by M<sup>t</sup>. Neckar on the British Constitution, namely, that it is the only Gov<sup>t</sup>. in the world “which unites public strength with individual security.”—In every Com<sup>u</sup>nity where industry is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & Creditors &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both therefore ought to have the power, that each may defend itself ag<sup>st</sup>. the other. To the want of this check we owe our paper money, instalment laws &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their house of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest by means of their property, in being faithful to the national interest, they form a permanent barrier ag<sup>st</sup>. every pernicious innovation, whether attempted on the part of the Crown or of the Commons. No temporary Senate will have firmness eno<sup>g</sup> to answer the purpose. The Senate (of Maryland) which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous & eager in the late appeal to them on the subject of a paper emission they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it.—Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the senate an adequate firmness, from not duly considering the amazing violence & turbulence of the democratic spirit. When a great object of Gov<sup>t</sup>. is pursued, which seizes the popular passions, they spread like wild fire, and become irresistible. He appealed to the gentlemen from the N. England States whether experience had not there verified the remark.—As to the Executive, it seemed to be admitted that no good one could be established on Republican Principles. Was not this giving up the merits of the question; for can there be a good Gov<sup>t</sup> without a good Executive. The English Model was the only good one on this subject. The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the danger of being corrupted from abroad—and at the same time was both sufficiently independent and sufficiently controuled, to answer the purpose of the institution at home. one of the weak sides of Republics was their being liable to foreign influence & corruption. Men of little character, acquiring great power become easily the tools of intermeddling Neighbours. Sweden was a striking instance. The French & English had each their parties during the late Revolution which was effected by the predominant influence of the former.—What is the inference from all these observations? That we ought to go as far in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life or at least during good behaviour. Let the Executive also be for life. He appealed to the feelings of the members present whether a term of seven years, would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best Citizens. On this plan we should have

in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a Republican Gov<sup>t</sup>., it will be asked? Yes if all the Magistrates are appointed, and vacancies are filled, by the people, or a process of election originating with the people. He was sensible that an Executive constituted as he proposed would have in fact but little of the power and independence that might be necessary. On the other plan of appointing him for 7 years, he thought the Executive ought to have but little power. He would be ambitious, with the means of making creatures, and as the object of his ambition w<sup>d</sup>. be to *prolong* his power, it is probable that in case of a war, he would avail himself of the emergence, to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected probably, that such an Executive will be an *elective Monarch*, and will give birth to the tumults which characterize that form of Gov<sup>t</sup>. He w<sup>d</sup>. reply that *Monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive Magistrate w<sup>d</sup>. be a monarch for life—the other prop<sup>d</sup>. by the Report from the Com<sup>tee</sup> of the whole, w<sup>d</sup>. be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers that elective monarchies w<sup>d</sup>. be the best if they could be guarded ag<sup>st</sup>. the *tumults* excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He rather thought this character of Elective Monarchies had been taken rather from particular cases than from general principles. The election of Roman Emperors was made by the *Army*. In *Poland* the election is made by great rival *princes* within dependent power, and ample means, of raising commotions. In the German Empire, The appointment is made by the Electors & Princes, who have equal motives & means, for exciting cabals & parties. Might not such a mode of election be devised among ourselves as will defend the community ag<sup>st</sup>. these effects in any dangerous degree? Having made these observations he would read to the Committee a sketch of a plan which he sh<sup>d</sup>. prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving or already dissolved—he sees evils operating in the States which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made & is still going on in the public mind. He thinks therefore that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of M<sup>r</sup>. R. w<sup>d</sup>. place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of M<sup>r</sup>. R. in the proper stages of its future discussion. He read his sketch in the words following; to wit



## HAMILTON'S PRINCIPAL SPEECH.

(Reduced)

I. "The supreme Legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate who together shall form the Legislature of the United States with power to pass all laws whatsoever subject to the Negative hereafter mentioned.

II. The Assembly to consist of persons elected by the people to serve for three years.

III. The Senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people: in order to this the States to be divided into election districts. On the death, removal or resignation of any Senator his place to be filled out of the district from which he came.

IV. The supreme Executive authority of the United States to be vested in a Governour to be elected to serve during good behaviour—the election to be made by Electors chosen by the people in the Election Districts aforesaid—The authorities & functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have with the advice and approbation of the Senate the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs; to have the nomination of all other officers (Ambassadors to foreign Nations included) subject to the approbation or rejection of the Senate; to have the power of pardoning all offences except Treason; which he shall not pardon without the approbation of the Senate.

V. On the death resignation or removal of the Governour his authorities to be exercised by the President of the Senate till a Successor be appointed.

VI. The Senate to have the sole power of declaring war, the power of advising and approving all Treaties, the power of approving or rejecting all appointments of officers except the heads or chiefs of the departments of Finance War and foreign affairs.

VII. The supreme Judicial authority to be vested in — Judges to hold their offices during good behaviour with adequate and permanent salaries. This Court to have original jurisdiction in all causes of capture, and an appellative jurisdiction in all

causes in which the revenues of the General Government or the Citizens of foreign Nations are concerned.

VIII. The Legislature of the United States to have power to institute Courts in each State for the determination of all matters of general concern.

IX. The Governour Senators and all officers of the United States to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, & disqualified for holding any place of trust or profit—All impeachments to be tried by a Court to consist of the Chief — or Judge of the Superior Court of Law of each State, provided such Judge shall hold his place during good behavior, and have a permanent salary.

X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governour or president of each State shall be appointed by the General Government and shall have a Negative upon the laws about to be passed in the State of which he is the Governour or President.

XI. No State to have any forces land or Naval; and the militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.

On these several articles he entered into explanatory observations corresponding with the principles of his introductory reasoning. [1](#)

Comittee rose & the House Adjourned.

## Tuesday June 19<sup>Th</sup>. In Committee Of Whole On The Propositions Of M<sup>R</sup>. Patterson,—[1](#)

The substitute offered yesterday by M<sup>T</sup>. Dickenson being rejected by a vote now taken on it; Con. N. Y. N. J. Del. ay. Mass. P<sup>a</sup>. V. N. C. S. C. Geo. no Mary<sup>d</sup>. divided M<sup>T</sup>. Patterson's plan was again at large before the Committee.

M<sup>T</sup>. Madison. Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic, was that in a *federal* Government, the power was exercised not on the people individually; but on the people *collectively*, on the *States*. Yet in some instances as in piracies, captures &c. the existing Confederacy, and in many instances the amendments to it proposed by M<sup>T</sup>. Patterson, must operate immediately on individuals. The other characteristic was, that a *federal* Gov<sup>t</sup>. derived its appointments not immediately from the people, but from the States which they respectively composed. Here too were facts on the other side. In two of the States, Connect<sup>t</sup>. & Rh. Island, the delegates to Cong<sup>s</sup>. were chosen, not by the Legislatures, but by the people at large; and the plan of M<sup>T</sup>. P. intended no change in this particular.



It had been alledged (by M<sup>t</sup>. Patterson), that the Confederation having been formed by unanimous consent, could be dissolved by unanimous Consent only. Does this doctrine result from the nature of compacts? does it arise from any particular stipulation in the articles of Confederation? If we consider the federal Union as analagous to the fundamental compact by which individuals compose one Society, and which must in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the Society would certainly absolve the other part from their obligations to it. If the breach of *any* article by *any* of the parties, does not set the others at liberty, it is because, the contrary is *implied* in the compact itself, and particularly by that law of it, which gives an indefinite authority to the majority to bind the whole in all cases. This latter circumstance shews that we are not to consider the federal Union as analagous to the social compact of individuals: for if it were so, a Majority would have a right to bind the rest, and even to form a new Constitution for the whole, which the Gentl<sup>n</sup>: from N. Jersey would be among the last to admit. If we consider the federal Union as analagous not to the Social compacts among individual men: but to the conventions among individual States, What is the doctrine resulting from these conventions? Clearly, according to the Expositors of the law of Nations, that a breach of any one article by any one party, leaves all the other parties at liberty, to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties indeed it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which in general is understood to dissolve all subsisting Treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it that there is not even an express stipulation that force shall be used to compell an offending member of the Union to discharge its duty. He observed that the violations of the federal articles had been numerous & notorious. Among the most notorious was an act of N. Jersey herself; by which she *expressly refused* to comply with a Constitutional requisition of Cong<sup>s</sup>: and yielded no farther to the expostulations of their deputies, than barely to rescind her vote of refusal without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper however that the true nature of the existing confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of M<sup>t</sup>. Patterson's plan, he stated the object of a proper plan to be two-fold. 1. to preserve the Union. 2. to provide a Governm<sup>t</sup>. that will remedy the evils felt by the States both in their united and individual capacities. Examine M<sup>t</sup>. P<sup>s</sup>. plan, & say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations & of Treaties which if not prevented must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Cong<sup>s</sup>. contain complaints already, from almost every Nation with which treaties have been formed. Hitherto indulgence has been shewn to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought therefore to be effectually provided that no part of a

nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the States as uncontroled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified, among ourselves, as well as in every other confederated republic antient and modern. By the federal articles, transactions with the Indians appertain to Cong<sup>s</sup>. Yet in several instances, the States have entered into treaties & wars with them. In like manner no two or more States can form among themselves any treaties &c. without the consent of Cong<sup>s</sup>. Yet Virg<sup>a</sup>. & Mary<sup>d</sup>. in one instance—Pen<sup>a</sup>. & N. Jersey in another, have entered into compacts, without previous application or subsequent apology. No State again can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Mass<sup>ts</sup>, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Cong<sup>s</sup>. of Her intention? In fine—Have we not seen the public land dealt out to Con<sup>t</sup>. to bribe her acquiescence in the decree constitutionally awarded ag<sup>st</sup>. her claim on the territory of Pen<sup>a</sup>.: for no other possible motive can account for the policy of Cong<sup>s</sup>. in that measure?—If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphyctionic & Achæan confederacies among the antients, and the Helvetic, Germanic & Belgic among the moderns, tracing their analogy to the U. States in the constitution and extent of their federal authorities—in the tendency of the particular members to usurp on these authorities, and to bring confusion & ruin on the whole.—He observed that the plan of Mr. Pat[er]son, besides omitting a controul over the States as a general defence of the federal prerogatives was particularly defective in two of its provisions. 1. Its ratification was not to be by the people at large, but by the *legislatures*. It could not therefore render the acts of Cong<sup>s</sup> in pursuance of their powers, even legally *paramount* to the acts of the States. 2. It gave to the federal Tribunal an appellate jurisdiction only—even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittals in the State tribunals, of what avail c<sup>d</sup>. an appellate tribunal be, after an acquittal? Besides in most if not all of the States, the Executives have by their respective *Constitutions*, the right of pard<sup>g</sup>. How could this be taken from them by a *legislative* ratification only?

3. Will it prevent trespasses of the States on each other? Of these enough has been already seen. He instanced Acts of Virg<sup>a</sup>. & Maryland which gave a preference to their own Citizens in cases where the Citizens of other States are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money & other kindred measures as also aggressions. The States relatively to one another being each of them either Debtor or Creditor; The creditor States must suffer unjustly from every emission by the debtor States. We have seen retaliating Acts on the subject which threatened danger not to the harmony only, but the tranquility of the Union. The plan of M<sup>t</sup>. Paterson, not giving even a negative on the Acts of the States, left them as much at liberty as ever to execute their unrighteous projects ag<sup>st</sup>. each other.

4. Will it secure the internal tranquillity of the States themselves? The insurrections in Mass<sup>ts</sup> admonished all the States of the danger to which they were exposed. Yet the plan of M<sup>r</sup>. P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. 2. one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of established Government. 3. where slavery exists, the Republican Theory becomes still more fallacious.

5. Will it secure a good internal legislation & administration to the particular States? In developing the evils which vitiate the political system of the U. S. it is proper to take into view those which prevail within the States individually as well as those which affect them collectively: Since the former indirectly affect the whole; and there is great reason to believe that the pressure of them had a full share in the motives which produced the present Convention. Under this head he enumerated and animadverted on 1. the multiplicity of the laws passed by the several States. 2. the mutability of their laws. 3. the injustice of them. 4. the impotence of them: observing that M<sup>r</sup>. Patterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the Community.

6. Will it secure the Union ag<sup>st</sup> the influence of foreign powers over its members. He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphyctionic Confederates first by the Kings of Persia, and afterwards fatally by Philip of Macedon: Among the Achæans, first by Macedon & afterwards no less fatally by Rome: among the Swiss by Austria, France & the lesser neighbouring powers: among the members of the Germanic Body by France, England, Spain & Russia—And in the Belgic Republic, by all the great neighbouring powers. The plan of M<sup>r</sup>. Patterson, not giving to the general Councils any negative on the will of the particular States, left the door open for the like pernicious Machinations among ourselves.

7. He begged the smaller States which were most attached to M<sup>r</sup>. Patterson's plan to consider the situation in which it would leave them. In the first place they would continue to bear the whole expence of maintaining their Delegates in Congress. It ought not to be said that if they were willing to bear this burthen, no others had a right to complain. As far as it led the small States to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one that the public business had been frequently delayed by this cause; and that the States most frequently unrepresented in Cong<sup>s</sup>. were not the larger States. He reminded the Convention of another consequence of leaving on a small State the burden of

maintaining a Representation in Cong<sup>s</sup>. During a considerable period of the War, one of the Representatives of Delaware, in whom alone before the signing of the Confederation the entire vote of that State and after that event one half of its vote, frequently resided, was a Citizen & Resident of Pen<sup>a</sup> and held an office in his own State incompatible with an appointment from it to Cong<sup>s</sup>. During another period, the same State was represented by three delegates two of whom were citizens of Penn<sup>a</sup>. and the third a Citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting Delegates from their own State. But whatever might have been y<sup>e</sup>. cause, was not in effect the vote of one State doubled, and the influence of another increased by it? In the 2<sup>d</sup>. place the coercion, on which the efficacy of the plan depends, can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphyctionic confederates: and the ban of the German Empire. It was the cobweb w<sup>ch</sup>. could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain in case their pertinacious adherence to an inadmissible plan, should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the Union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent & sovereign; or two or more Confederacies must be formed among them. In the first event would the small States be more secure ag<sup>st</sup>. the ambition & power of their larger neighbours, than they would be under a General Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part ag<sup>st</sup>. every other part? In the second, can the smaller expect that their larger neighbours would confederate with them on the principle of the present Confederacy, which gives to each member, an equal suffrage; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of M<sup>r</sup>. Randolph?

The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from N. Jersey, (M<sup>r</sup>. Brearly and M<sup>r</sup>. Patterson) that it would not be *just to allow Virg<sup>a</sup>*. which was 16 times as large as Delaware an equal vote only. Their language was that it would not be *safe for Delaware* to allow Virg<sup>a</sup>. 16 times as many votes. The expedient proposed by them was that all the States should be thrown into one mass and a new partition be made into 13 equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of the different States, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (K. of France) directed by the wisdom of one of the most enlightened and patriotic Ministers (M<sup>r</sup>. Neckar) that any age has produced, to equalize in some points only the different usages & regulations of the different provinces. But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real; would not a particular and voluntary coalition of these with their neighbours, be less inconvenient to the whole community, and equally effectual for their own safety. If N.

Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbours, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the States, when it was, to say the least, extremely difficult, would be obnoxious to many of the States, and when neither the inconveniency, nor the benefit of the expedient to themselves, would be lessened by confining it to themselves.—The prospect of many new States to the Westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they sh<sup>d</sup>. be entitled to vote according to their proportions of inhabitants, all would be right & safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.1

On a question for postponing generally the 1<sup>st</sup>. proposition of M<sup>r</sup>. Patterson's plan, it was agreed to: N. Y. & N. J. only being no.

On the question moved by M<sup>r</sup>. King whether the Com<sup>tee</sup> should rise & M<sup>r</sup>. Randolph's proposition be reported without alteration, which was in fact a question whether M<sup>r</sup>. R's should be adhered to as preferable to those of M<sup>r</sup>. Patterson;

Mass<sup>ts</sup>. ay. Con<sup>t</sup> ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Copy of the Resol<sup>ns</sup>. of Mr. R. as altered in Com<sup>e</sup>. and reported to the House.

(Of M<sup>r</sup>. Randolph's plan as reported from the Com<sup>tee</sup>)—the 1. propos: “that a Nat<sup>l</sup>. Gov<sup>t</sup>. ought to be established consisting &c.” being taken up in the House.

M<sup>r</sup>. Wilson observed that by a Nat<sup>l</sup>. Gov<sup>t</sup>. he did not mean one that would swallow up the State Gov<sup>ts</sup>. as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of (Col. Hamilton) that they might not only subsist but subsist on friendly terms with the former. They were absolutely necessary for certain purposes which the former could not reach. All large Governments must be subdivided into lesser jurisdictions. As Examples he mentioned Persia, Rome, and particularly the divisions & subdivisions of England by Alfred.

Col. Hamilton coincided with the proposition as it stood in the Report. He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the National & State Legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the States would gradually subvert it. Even as Corporations the extent of some of them as V<sup>a</sup>. Mass<sup>ts</sup>. &c would be formidable. *As States*, he thought they ought to be abolished. But he admitted the necessity of leaving in them, subordinate jurisdictions. The examples of Persia & the Roman Empire, cited by (M<sup>r</sup>. Wilson) were he thought in favor of his doctrine: the great powers delegated to the Satraps & proconsuls having frequently produced revolts, and schemes of independence.

M<sup>f</sup>. King wished as every thing depended on this proposition, that no objections might be improperly indulged ag<sup>st</sup>. the phraseology of it. He conceived that the import of the term “States” “Sovereignty” “*national*” “federal,” had been often used & applied in the discussions inaccurately & delusively. The States were not “Sovereigns” in the sense contended for by some. They did not possess the peculiar features of sovereignty, they could not make war, nor peace, nor alliances nor treaties. Considering them as political Beings, they were dumb, for they could not speak to any foreign Sovereign whatever. They were deaf, for they could not hear any propositions from such Sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war. On the other side, if the Union of the States comprises the idea of a confederation, it comprises that also of consolidation. A Union of the States is a Union of the men composing them, from whence a *national* character results to the whole. Cong<sup>s</sup>. can act alone without the States—they can act & their acts will be binding ag<sup>st</sup>. the Instructions of the States. If they declare war: war is de jure declared—captures made in pursuance of it are lawful—no Acts of the States can vary the situation, or prevent the judicial consequences. If the States therefore retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects—they formed a Nation in others. The Convention could clearly deliberate on & propose any alterations that Cong<sup>s</sup>. could have done under y<sup>e</sup>. federal articles, and Could not Cong<sup>s</sup>. propose by virtue of the last article, a change in any article whatever; and as well that relating to the equality of suffrage, as any other. He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the States; but thought that much of their power ought to be taken from them.1

M<sup>f</sup> Martin.1 said he considered that the separation from G. B. placed the 13 States in a state of Nature towards each other; that they would have remained in that state till this time, but for the confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it on the same footing; and that he could never accede to a plan that would introduce an inequality and lay 10 States at the mercy of V<sup>a</sup>. Mass<sup>ts</sup>. and Penn<sup>a</sup>.

M<sup>f</sup>. Wilson. could not admit the doctrine that when the Colonies became independent of G. Britain, they became independent also of each other. He read the declaration of Independence, observing thereon that the *United Colonies* were declared to be free & independent States; and inferring that they were independent, not *individually* but *Unitedly* and that they were confederated as they were independent, States.

Col. Hamilton assented to the doctrine of M<sup>f</sup>. Wilson. He denied the doctrine that the States were thrown into a State of Nature. He was not yet prepared to admit the doctrine that the Confederacy, could be dissolved by partial infractions of it. He admitted that the States met now on an equal footing but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing for the purpose of appeasing the fears of the small States, that two circumstances would render them secure under a National Gov<sup>t</sup>. in which they might lose the equality of rank they now held: one was the local situation of the 3 largest States Virg<sup>a</sup> Mass<sup>ts</sup> & P<sup>a</sup>. They were separated from each other by distance of place,

and equally so, by all the peculiarities which distinguish the interests of one State from those of another. No combination therefore could be dreaded. In the second place, as there was a gradation in the States from V<sup>a</sup> the largest down to Delaware the smallest, it would always happen that ambitious combinations among a few States might & w<sup>d</sup>. be counteracted by defensive combinations of greater extent among the rest. No combination has been seen among the large Counties merely as such, ag<sup>st</sup>. lesser Counties. The more close the Union of the States, and the more compleat the authority of the whole: the less opportunity will be allowed to the stronger States to injure the weaker.

Adj<sup>d</sup>.

### Wednesday June 20. 1897. In Convention.

M<sup>r</sup>. William Blount from N. Carolina took his seat.

1<sup>st</sup>. propos: of the Report of Com<sup>e</sup>. of the whole, before the House.

M<sup>r</sup>. Elseworth 2<sup>ded</sup>. by M<sup>r</sup>. Gorham, moves to alter it so as to run “that the Government of the United States ought to consist of a supreme legislative, Executive and Judiciary.” This alteration he said would drop the word *national*, and retain the proper title “the United States.” He could not admit the doctrine that a breach of any of the federal articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished also the plan of the Convention to go forth as an amendment of the articles of the Confederation, since under this idea the authority of the Legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification several succeeding Conventions within the States would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up Constitutions.

M<sup>r</sup>. Randolph. did not object to the change of expression, but apprised the gentleman who wished for it that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification. The motion of M<sup>r</sup>. Elsew<sup>th</sup> was acquiesced in nem: con:

The 2<sup>d</sup>. Resol: “that the National Legislature ought to consist of two branches” taken up, the word “national” struck out as of course.

M<sup>r</sup>. Lansing. observed that the true question here was, whether the Convention would adhere to or depart from the foundation of the present Confederacy; and moved instead of the 2<sup>d</sup>. Resolution, “that the powers of Legislation be vested in the U. States in Congress.” He had already assigned two reasons ag<sup>st</sup>. such an innovation as was proposed: 1. the want of competent powers in the Convention.—2. the state of the public mind. It had been observed by (M<sup>r</sup>. Madison) in discussing the first point, that in two States the Delegates to Cong<sup>s</sup>. were chosen by the people. Notwithstanding the first appearance of this remark, it had in fact no weight, as the Delegates however chosen, did not represent the people merely as so many individuals; but as forming a Sovereign State. (Mr. Randolph) put it, he said, on its true footing namely that the

public safety superseded the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. (M<sup>r</sup>. Wilson) contended that as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect, and if it does not succeed, will be a source of great dissensions. He admitted that there was no certain criterion of the Public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the States to the scheme of an Impost. It could not be expected that those possessing Sovereignty could ever voluntarily part with it. It was not to be expected from any one State, much less from thirteen. He proceeded to make some observations on the plan itself and the argum<sup>ts</sup>. urged in support of it. The point of Representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness; but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the Counties of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress represent the State Prejudices: will not any other body whether chosen by the Legislatures or people of the States, also represent their prejudices? It had been asserted by his colleague (Col. Hamilton) that there was no coincidence of interests among the large States that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the States, there was equal safety for all of them, whether the representation remained as heretofore, or were proportioned as now proposed. It is proposed that the Gen<sup>l</sup>. Legislature shall have a negative on the laws of the States. Is it conceivable that there will be leisure for such a task? There will on the most moderate calculation, be as many Acts sent up from the States as there are days in the year. Will the members of the General Legislature be competent Judges? Will a gentleman from Georgia be a judge of the expediency of a law which is to operate in N. Hampshire. Such a Negative would be more injurious than that of Great Britain heretofore was. It is said that the National Gov<sup>t</sup> must have the influence arising from the grant of offices and honors. In order to render such a Government effectual he believed such an influence to be necessary. But if the States will not agree to it, it is in vain, worse than in vain to make the proposition. If this influence is to be attained, the States must be entirely abolished. Will any one say this would ever be agreed to? He doubted whether any Gen<sup>l</sup>. Government equally beneficial to all can be attained. That now under consideration he is sure, must be utterly unattainable. He had another objection. The system was too novel & complex. No man could foresee what its operation will be either with respect to the Gen<sup>l</sup> Gov<sup>t</sup>. or the State Gov<sup>ts</sup>. One or other it has been surmised must absorb the whole.

Col. Mason. did not expect this point would have been reagitated. The essential differences between the two plans, had been clearly stated. The principal objections ag<sup>st</sup>. that of M<sup>r</sup>. R. were the *want of power* & the *want of practicability*. There can be no weight in the first as the fiat is not to be *here*, but in the people. He thought with his colleague M<sup>r</sup>. R. that there were besides certain crises, in which all the ordinary cautions yielded to public necessity. He gave as an example, the eventual Treaty with G. B. in forming which the Com<sup>ts</sup> of the U. S. had boldly disregarded the improvident shackles of Cong<sup>s</sup>. had given to their Country an honorable & happy



peace, and instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass. The *impracticability* of gaining the public concurrence he thought was still more groundless. (M<sup>r</sup>. Lansing) had cited the attempts of Congress to gain an enlargement of their powers, and had inferred from the miscarriage of these attempts, the hopelessness of the plan which he (M<sup>r</sup>. L) opposed. He thought a very different inference ought to have been drawn; viz that the plan which (M<sup>r</sup>. L) espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Cong<sup>s</sup>. as a body, much less on any particular members of it. He meant however to speak his sentiments without reserve on this subject; it was a privilege of age, and perhaps the only compensation which nature had given for, the privation of so many other enjoyments: and he should not scruple to exercise it freely. Is it to be thought that the people of America, so watchful over their interests; so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body, and that too not chosen immediately by themselves? They never will. They never ought. Will they trust such a body, with the regulation of their trade, with the regulation of their taxes; with all the other great powers, which are in contemplation? Will they give unbounded confidence to a secret Journal—to the intrigues—to the factions which in the nature of things appertain to such an Assembly? If any man doubts the existence of these characters of Congress, let him consult their Journals for the years 78, 79, & 80.—It will be said, that if the people are averse to parting with power, why is it hoped that they will part with it to a National Legislature. The proper answer is that in this case they do not part with power: they only transfer it from one sett of immediate Representatives to another sett.—Much has been said of the unsettled state of the mind of the people, he believed the mind of the people of America, as elsewhere, was unsettled as to some points; but settled as to others. In two points he was sure it was well settled. 1. in an attachment to Republican Government. 2. in an attachment to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted. This must either have been a miracle, or have resulted from the genius of the people. The only exceptions to the establishm<sup>t</sup>. of two branches in the Legislatures are the State of P<sup>a</sup>. & Cong<sup>s</sup>. and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that Body further powers—It was acknowledged by (M<sup>r</sup> Patterson) that his plan could not be enforced without military coercion. Does he consider the force of this concession. The most jarring elements of Nature; fire & water themselves are not more incompatible than [n] such a mixture of civil liberty and military execution. Will the militia march from one State to another, in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the Citizens of the invaded State assist one another till they rise as one Man, and shake off the Union altogether. Rebellion is the only case, in which the military force of the State can be properly exerted ag<sup>st</sup>. its Citizens. In one point of view he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death, was a severity not yet adopted by despotism itself: yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that notwithstanding his solicitude to establish a national Government, he never would

agree to abolish the State Gov<sup>ts</sup>. or render them absolutely insignificant. They were as necessary as the Gen<sup>l</sup>. Gov<sup>t</sup>. and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, tho' comprising so many distinguished characters, could not be expected to make a faultless Gov<sup>t</sup>. And he would prefer trusting to Posterity the amendment of its defects, rather than to push the experiment too far.

M<sup>r</sup>. Luther Martin agreed with (Col Mason) as to the importance of the State Gov<sup>ts</sup> he would support them at the expence of the Gen<sup>l</sup>. Gov<sup>t</sup>. which was instituted for the purpose of that support. He saw no necessity for two branches, and if it existed Congress might be organized into two. He considered Cong<sup>s</sup> as representing the people, being chosen by the Legislatures who were chosen by the people. At any rate, Congress represented the Legislatures; and it was the Legislatures not the people who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the States must always have been ready, to place further confidence in Cong<sup>s</sup>. The causes of repugnance must therefore be looked for elsewhere.—At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties & properties: to these they must look up. The federal Gov<sup>t</sup>. they formed, to defend the whole ag<sup>st</sup>. foreign nations, in case of war, and to defend the lesser States ag<sup>st</sup>. the ambition of the larger: they are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular States which the Union was meant to support; and expose the lesser to being swallowed up by the larger. He conceived also that the people of the States having already vested their powers in their respective Legislatures, could not resume them without a dissolution of their Governments. He was ag<sup>st</sup>. Conventions in the States: was not ag<sup>st</sup>. assisting States ag<sup>st</sup>. rebellious subjects; thought the *federal* plan of M<sup>r</sup>. Patterson did not require coercion more than the *National one*, as the latter must depend for the deficiency of its revenues on requisitions & quotas, and that a national Judiciary extended into the States would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.

M<sup>r</sup>. Sherman 2<sup>ded</sup> & supported M<sup>r</sup>. Lansings motion. He admitted two branches to be necessary in the State Legislatures, but saw no necessity for them in a Confederacy of States. The examples were all, of a single Council. Cong<sup>s</sup>. carried us thro' the war, and perhaps as well as any Gov<sup>t</sup>. could have done. The complaints at present are not that the views of Cong<sup>s</sup> are unwise or unfaithful; but that their powers are insufficient for the execution of their views. The national debt & the want of power somewhere to draw forth the National resources, are the great matters that press. All the States were sensible of the defect of power in Cong<sup>s</sup>. He thought much might be said in apology for the failure of the State Legislatures to comply with the Confederation. They were afraid of leaning too hard on the people, by accumulating taxes; no *constitutional* rule had been or could be observed in the quotas—the Accounts also were unsettled & every State supposed itself in advance, rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade which was the most convenient resource. As almost all the States had agreed to the recommendation of

Cong<sup>s</sup>. on the subject of an impost, it appeared clearly that they were willing to trust Cong<sup>s</sup>. with power to draw a revenue from Trade. There is no weight therefore in the argument drawn from a distrust of Cong<sup>s</sup>. for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Cong<sup>s</sup> indeed by the confederation have in fact the right of saying how much the people shall pay, and to what purpose it shall be applied: and this right was granted to them in the expectation that it would in all cases have its effect. If another branch were to be added to Cong<sup>s</sup>. to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points, and the people would have no more confidence in their new representatives than in Cong<sup>s</sup>. He saw no reason why the State Legislatures should be unfriendly as had been suggested, to Cong<sup>s</sup> If they appoint Cong<sup>s</sup> and approve of their measures, they would be rather favourable and partial to them. The disparity of the States in point of size he perceived was the main difficulty. But the large States had not yet suffered from the equality of votes enjoyed by the small ones. In all great and general points, the interests of all the States were the same. The State of Virg<sup>a</sup> notwithstanding the equality of votes, ratified the Confederation without, or even proposing, any alteration. Mass<sup>ts</sup> also ratified without any material difficulty &c. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the States as some had proposed would dissolve our Treaties with foreign Nations, which had been formed with us, as *Confederated* States. He did not however suppose that the creation of two branches in the Legislature would have such an effect. If the difficulty on the subject of representation can not be otherwise got over, he would agree to have two branches, and a proportional representation in one of them, provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please. Each State like each individual had its peculiar habits usages and manners, which constituted its happiness. It would not therefore give to others a power over this happiness, any more than an individual would do, when he could avoid it.

M<sup>t</sup>. Wilson. urged the necessity of two branches; observed that if a proper model were not to be found in other Confederacies it was not to be wondered at. The number of them was small & the duration of some at least short. The Amphyctionic and Achæan were formed in the infancy of political Science; and appear by their History & fate, to have contained radical defects. The Swiss & Belgic Confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighbouring nations: The German owed its continuance to the influence of the H. of Austria. He appealed to our own experience for the defects of our Confederacy. He had been 6 years in the 12 since the commencement of the Revolution, a member of Congress, and had felt all its weaknesses. He appealed to the recollection of others whether on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes, than the Constitution of Congress. In many instances it went on even ag<sup>st</sup>. the difficulties arising from Cong<sup>s</sup> themselves. He admitted that the large States did accede as had been stated, to the Confederation in its present form. But it was the effect of necessity not of choice. There are other instances of their yielding from the same motive to the unreasonable measures of the small States. The situation of things

is now a little altered. He insisted that a jealousy would exist between the State Legislatures & the General Legislature: observing that the members of the former would have views & feelings very distinct in this respect from their constituents. A private Citizen of a State is indifferent whether power be exercised by the Gen<sup>l</sup>. or State Legislatures, provided it be exercised most for his happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the National Legisl: with the eye of a jealous rival. He observed that the addresses of Cong<sup>s</sup>. to the people at large, had always been better received & produced greater effect, than those made to the Legislatures.

On the question for postponing in order to take up M<sup>r</sup>. Lansing's proposition "to vest the powers of legislation in Cong<sup>s</sup>."

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On motion of the Deputies from Delaware, the question on the 2<sup>d</sup>. Resolution in the Report from the Committee of the whole was postponed till tomorrow.

Adj<sup>d</sup>.

Thursday June 21. In Convention.

M<sup>r</sup>. Jonathan Dayton from N. Jersey took his seat.[1](#)

Doc<sup>f</sup>. Johnson.[1](#) On a comparison of the two plans which had been proposed from Virginia & N. Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from V<sup>a</sup>. did not profess to destroy this individuality altogether, but was charged with such a tendency. One Gentleman alone (Col. Hamilton) in his animadversions on the plan of N. Jersey, boldly and decisively contended for an abolition of the State Gov<sup>ts</sup>. M<sup>r</sup> Wilson & the gentleman from Virg<sup>a</sup>. who also were adversaries of the plan of N. Jersey held a different language. They wished to leave the States in possession of a considerable, tho' a subordinate jurisdiction. They had not yet however shewn how this c<sup>d</sup>. consist with, or be secured ag<sup>st</sup>. the general sovereignty & jurisdiction, which they proposed to give to the National Government. If this could be shewn in such a manner as to satisfy the patrons of the N.

Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shewn their objections would have their full force. He wished it therefore to be well considered whether in case the States, as was proposed, sh<sup>d</sup>. retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the Gen<sup>l</sup>. Gov<sup>t</sup>., without giving them each a distinct and equal vote for the purpose of defending themselves in the general Councils.

M<sup>r</sup>. Wilson's respect for Doc<sup>f</sup> Johnson, added to the importance of the subject led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was

asked how the Gen<sup>l</sup>. Gov<sup>t</sup> and individuality of the particular States could be reconciled to each other; and how the latter could be secured ag<sup>st</sup> the former? Might it not, on the other side be asked how the former was to be secured ag<sup>st</sup> the latter? It was generally admitted that a jealousy & rivalry would be felt between the Gen<sup>l</sup>. & particular Gov<sup>ts</sup>. As the plan now stood, tho' indeed contrary to his opinion, one branch of the Gen<sup>l</sup>. Gov<sup>t</sup>. (the Senate or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the Gen<sup>l</sup>. Gov<sup>t</sup>. would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the Gen<sup>l</sup>. Gov<sup>t</sup>. of defending itself by having an appointment of some one constituent branch of the State Gov<sup>ts</sup>. If a security be necessary on one side, it w<sup>d</sup>. seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States from the Gen<sup>l</sup>. Gov<sup>t</sup>. In case a combination should be made by the large ones it w<sup>d</sup>. produce a general alarm among the rest; and the project w<sup>d</sup>. be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any propositions in the National Legislature to encroach on the State Legislatures, he conceived a general alarm w<sup>d</sup>. take place in the National Legislature itself, that it would communicate itself to the State Legislatures, and w<sup>d</sup>. finally spread among the people at large. The Gen<sup>l</sup>. Gov<sup>t</sup>. will be as ready to preserve the rights of the States as the latter are to preserve the rights of individuals; all the members of the former, having a common interest, as representatives of all the people of the latter, to leave the State Gov<sup>ts</sup>. in possession of what the people wish them to retain. He could not discover, therefore any danger whatever on the side from which it was apprehended. On the contrary, he conceived that in spite of every precaution the General Gov<sup>t</sup>. would be in perpetual danger of encroachments from the State Gov<sup>ts</sup>.

M<sup>t</sup>. Madison was of opinion that there was 1. less danger of encroachment from the Gen<sup>l</sup>. Gov<sup>t</sup>. than from the State Gov<sup>ts</sup>. 2. that the mischief from encroachments would be less fatal if made by the former, than if made by the latter. 1. All the examples of other confederacies prove the greater tendency in such systems to anarchy than to tyranny; to a disobedience of the members than usurpations of the federal head. Our own experience had fully illustrated this tendency.—But it will be said that the proposed change in the principles & form of the Union will vary the tendency; that the Gen<sup>l</sup>. Gov<sup>t</sup>. will have real & greater powers, and will be derived in one branch at least from the people, not from the Gov<sup>ts</sup>. of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the Gen<sup>l</sup>. Legislature, and the States reduced to Corporations dependent on the Gen<sup>l</sup>. Legislature; Why sh<sup>d</sup>. it follow that the Gen<sup>l</sup>. Gov<sup>t</sup>. w<sup>d</sup>. take from the States any branch of their power as far as its operation was beneficial, and its continuance desirable to the people? In some of the States, particularly in Connecticut, all the Townships are incorporated, and have a certain limited jurisdiction. Have the Representatives of the people of the Townships in the Legislature of the State ever endeavoured to despoil the Townships of any part of their local authority? As far as this local authority is convenient to the people they are attached to it; and their representatives chosen by & amenable to them, naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a General Gov<sup>t</sup>. to State Gov<sup>ts</sup>. is parallel. 2. Guards were more necessary ag<sup>st</sup> encroachments of the State Gov<sup>ts</sup>. on the Gen<sup>l</sup>. Gov<sup>t</sup>. than of the latter on the former.

The great objection made ag<sup>st</sup>. an abolition of the State Gov<sup>ts</sup>. was that the Gen<sup>l</sup>. Gov<sup>t</sup>. could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not ag<sup>st</sup>. the probable abuse of the general power, but ag<sup>st</sup>. the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable it could not in this view be improper; as far as it would be impracticable, the conveniency of the Gen<sup>l</sup>. Gov<sup>t</sup>. itself would concur with that of the people in the maintenance of subordinate Governments. Were it practicable for the Gen<sup>l</sup>. Gov<sup>t</sup>. to extend its care to every requisite object without the cooperation of the State Gov<sup>ts</sup>. the people would not be less free as members of one great Republic than as members of thirteen small ones. A Citizen of Delaware was not more free than a Citizen of Virginia: nor would either be more free than a Citizen of America. Supposing therefore a tendency in the Gen<sup>l</sup>. Government to absorb the State Gov<sup>ts</sup>. no fatal consequence could result. Taking the reverse as the supposition, that a tendency should be left in the State Gov<sup>ts</sup>. towards an independence on the General Gov<sup>t</sup>. and the gloomy consequences need not be pointed out. The imagination of them, must have suggested to the States the experiment we are now making to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

On the question for resolving “that the Legislature ought to consist of two Branches”

Mass. ay. Con<sup>t</sup>. ay. N. Y. no. N. Jersey, no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The *third* resolution of the Report taken into consideration.

Gen<sup>l</sup>. Pinkney moved “that the 1<sup>st</sup>. branch, instead of being elected by the people, sh<sup>d</sup>. be elected in such manner as the Legislature of each State should direct.” He urged 1. that this liberty would give more satisfaction, as the Legislatures could then accommodate the mode to the conveniency & opinions of the people. 2. that it would avoid the undue influence of large Counties which would prevail if the elections were to be made in districts as must be the mode intended by the Report of the Committee. 3. that otherwise disputed elections must be referred to the General Legislature which would be attended with intolerable expence and trouble to the distant parts of the Republic.

M<sup>t</sup>. L. Martin seconded the Motion.[1](#)

Col. Hamilton considered the Motion as intended manifestly to transfer the election from the people to the State Legislatures, which would essentially vitiate the plan. It would increase that State influence which could not be too watchfully guarded ag<sup>st</sup>. All too must admit the possibility, in case the Gen<sup>l</sup>. Gov<sup>t</sup>. sh<sup>d</sup>. maintain itself, that the State Gov<sup>ts</sup>. might gradually dwindle into nothing. The system therefore sh<sup>d</sup>. not be engrafted on what might possibly fail.

M<sup>r</sup>. Mason urged the necessity of retaining the election by the people. Whatever inconveniency may attend the democratic principle, it must actuate one part of the Gov<sup>t</sup>. It is the only security for the rights of the people.

M<sup>r</sup>. Sherman, would like an election by the Legislatures best, but is content with the plan as it stands.

M<sup>r</sup> Rutledge could not admit the solidity of the distinction between a mediate & immediate election by the people. It was the same thing to act by oneself, and to act by another. An election by the Legislature would be more refined than an election immediately by the people: and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts it is not to be supposed that such proper characters would have been preferred. The Delegates to Cong<sup>s</sup>. he thought had also been fitter men than would have been appointed by the people at large.

M<sup>r</sup>. Wilson considered the election of the 1<sup>st</sup>. branch by the people not only as the Corner Stone, but as the foundation of the fabric: and that the difference between a mediate & immediate election was immense. The difference was particularly worthy of notice in this respect: that the Legislatures are actuated not merely by the sentiment of the people; but have an official sentiment opposed to that of the Gen<sup>l</sup>. Gov<sup>t</sup>. and perhaps to that of the people themselves.

M<sup>r</sup>. King enlarged on the same distinction. He supposed the Legislatures w<sup>d</sup>. constantly choose men subservient to their own views as contrasted to the general interest; and that they might even devise modes of election that w<sup>d</sup>. be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the Gen<sup>l</sup>. Gov<sup>t</sup>.: and mentioned particularly a competition between the National & State debts, for the most certain & productive funds.

Gen<sup>l</sup>. Pinkney was for making the State Gov<sup>ts</sup>. a part of the General System. If they were to be abolished, or lose their agency, S. Carolina & other States would have but a small share of the benefits of Gov<sup>t</sup>.

On the question for Gen<sup>l</sup>. Pinkney motion to substitute election of the 1<sup>st</sup>. branch in such mode as the Legislatures should appoint, in stead of its being elected by the people”

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

General Pinkney then moved that the 1<sup>st</sup>. branch be elected *by the people* in such mode as the Legislatures should direct; but waived it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for y<sup>e</sup>. election of the 1<sup>st</sup>. branch by the *people*”

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Election of the 1<sup>st</sup>. branch “for the term of three years,” considered.

M<sup>r</sup>. Randolph moved to strike out, “three years” and insert “two years”—he was sensible that annual elections were a source of great mischiefs in the States, yet it was the want of such checks ag<sup>st</sup>. the popular intemperence as were now proposed, that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the U. S. and the inconveniency which would result from them to the representatives of the extreme parts of the Empire. The people were attached to frequency of elections. All the Constitutions of the States except that of S. Carolina, had established annual elections.

M<sup>r</sup>. Dickinson. The idea of annual elections was borrowed from the antient Usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial, and in order to prevent the inconveniency of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.

M<sup>r</sup>. Elseworth was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections and might be safely indulged in one branch of the Legislature. He moved for 1 year.

M<sup>r</sup>. Strong<sup>1</sup> seconded & supported the motion.

M<sup>r</sup>. Wilson being for making the 1<sup>st</sup>. branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar & pleasing to the people. It would not be more inconvenient to them, than triennial elections, as the people in all the States have annual meetings with which the election of the National representatives might be made to co-incide. He did not conceive that it would be necessary for the Nat<sup>l</sup>. Leigsl: to sit constantly; perhaps not half—perhaps not one fourth of the year.

M<sup>r</sup>. Madison was persuaded that annual elections would be extremely inconvenient and apprehensive that biennial would be too much so: he did not mean inconvenient to the electors; but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expences. Besides, none of those who wished to be re-elected would remain at the seat of Governm<sup>t</sup>.; confiding that their absence would not affect them. The members of Cong<sup>s</sup>. had done this with few instances of disappointment. But as the choice was here to be made by the people themselves who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a Rival candidate, it must be supposed that the members from the most distant States would travel backwards & forwards at least as often as the elections should be repeated. Much was to be said also on the time requisite for new Members who would always form a large proportion, to acquire that knowledge of the affairs of the States in general without which their trust could not be usefully discharged.



M<sup>r</sup>. Sherman preferred annual elections, but would be content with biennial. He thought the Representatives ought to return home and mix with the people. By remaining at the seat of Gov<sup>t</sup>. they would acquire the habits of the place which might differ from those of their Constituents.

Col. Mason observed that the States being differently situated such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual the middle States would have a great advantage over the extreme ones. He wished them to be biennial; and the rather as in that case they would coincide with the periodical elections of S. Carolina as well of the other States.

Col. Hamilton urged the necessity of 3 years. there ought to be neither too much nor too little dependence, on the popular sentiments. The checks in the other branches of the Govern<sup>t</sup>. would be but feeble, and would need every auxiliary principle that could be interwoven. The British House of Commons were elected septennially, yet the democratic spirit of y<sup>e</sup>. Constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the States. In Virg<sup>a</sup>. it had been lately found necessary to force the attendance & voting of the people by severe regulations.

On the question for striking out “three years”

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. div<sup>d</sup>. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The motion for “two years” was then inserted nem. con.

Adj<sup>d</sup>.

## Friday June 22. In Convention

The clause in Resol. 3 “to receive fixed stipends to be paid out of the Nation<sup>l</sup>. Treasury” considered.

M<sup>r</sup>. Elseworth, moved to substitute payment by the States out of their own Treasuries: observing that the manners of different States were very different in the stile of living and in the profits accruing from the exercise of like talents. What would be deemed therefore a reasonable compensation in some States, in others would be very unpopular, and might impede the system of which it made a part.

M<sup>r</sup>. Williamson favored the idea. He reminded the House of the prospect of new States to the Westward. They would be too poor—would pay little into the common Treasury—and would have a different interest from the old States. He did not think therefore that the latter ought to pay the expences of men who would be employed in thwarting their measures & interests.

M<sup>r</sup>. Ghorum<sup>1</sup> wished not to refer the matter to the State Legislatures who were always paring down salaries in such a manner as to keep out of offices men most

capable of executing the functions of them. He thought also it would be wrong to fix the compensations by the constitution, because we could not venture to make it as liberal as it ought to be without exciting an enmity ag<sup>st</sup>. the whole plan. Let the Nat<sup>l</sup>. Legisl: provide for their own wages from time to time; as the State Legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

M<sup>r</sup>. Randolph said he feared we were going too far, in consulting popular prejudices. Whatever respect might be due to them, in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on nor honorable for the Convention, to sacrifice right & justice to that consideration. If the States were to pay the members of the Nat<sup>l</sup>. Legislature, a dependence would be created that would vitiate the whole System. The whole nation has an interest in the attendance & services of the members. The Nation<sup>l</sup>. Treasury therefore is the proper fund for supporting them.

M<sup>r</sup>. King, urged the danger of creating a dependence on the States by leav<sup>g</sup>. to them the payment of the members of the Nat<sup>l</sup>. Legislature. He supposed it w<sup>d</sup>. be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the Nat<sup>l</sup>. Legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

M<sup>r</sup>. Sherman contended for referring both the quantum and the payment of it to the State Legislatures.

M<sup>r</sup>. Wilson was ag<sup>st</sup>. *fixing* the compensation as circumstances would change and call for a change of the amount. He thought it of great moment that the members of the Nat<sup>l</sup> Gov<sup>t</sup>. should be left as independent as possible of the State Gov<sup>ts</sup>. in all respects.

M<sup>r</sup>. Madison concurred in the necessity of preserving the compensations for the Nat<sup>l</sup>. Gov<sup>t</sup>. independent on the State Gov<sup>ts</sup>. but at the same time approved of *fixing* them by the Constitution, which might be done by taking a standard which w<sup>d</sup>. not vary with circumstances. He disliked particularly the policy suggested by M<sup>r</sup>. Williamson of leaving the members from the poor States beyond the Mountains, to the precarious & parsimonious support of their constituents. If the Western States hereafter arising should be admitted into the Union, they ought to be considered as equals & as brethren. If their representatives were to be associated in the Common Councils, it was of common concern that such provisions should be made as would invite the most capable and respectable characters into the service.

M<sup>r</sup>. Hamilton apprehended inconveniency from *fixing* the wages. He was strenuous ag<sup>st</sup>. making the National Council dependent on the Legislative rewards of the States. Those who pay are the masters of those who are paid. Payment by the States would be unequal as the distant States would have to pay for the same term of attendance and more days in travelling to & from the seat of the Gov<sup>t</sup>. He expatiated emphatically on the difference between the feelings & views of the *people*—& the *Governments* of the States arising from the personal interest & official inducements which must render the latter unfriendly to the Gen<sup>l</sup>. Gov<sup>t</sup>.

M<sup>r</sup>. Wilson moved that the Salaries of the 1<sup>st</sup>. branch “*be ascertained by the National Legislature,*” and be paid out of the Nat<sup>l</sup>. Treasury.

M<sup>r</sup>. Madison, thought the members of the Legis<sup>l</sup>. too much interested to ascertain their own compensation. It w<sup>d</sup>. be indecent to put their hands into the public purse for the sake of their own pockets.

On this question Mass. no. Con<sup>t</sup>. no. N. Y. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. div<sup>d</sup>.

On the question for striking out “Nat<sup>l</sup>. Treasury” as moved by M<sup>r</sup>. Elsworth.

M<sup>r</sup>. Hamilton renewed his opposition to it. He pressed the distinction between the State Gov<sup>ts</sup>. & the people. The former w<sup>d</sup>. be the rivals of the Gen<sup>l</sup>. Gov<sup>t</sup>. The State legislatures ought not therefore to be the paymasters of the latter.

M<sup>r</sup>. Elsworth. If we are jealous of the State Gov<sup>ts</sup>. they will be so of us. If on going home I tell them we gave the Gen: Gov<sup>t</sup>. such powers because we c<sup>d</sup>. not trust you. Will they adopt it, and with<sup>t</sup> y<sup>r</sup>. approbation it is a nullity.[1](#)

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. div<sup>d</sup>. N. J. no. Pen<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. div<sup>d</sup>.[2](#)

On a question for substituting “adequate compensation” in place of “fixt stipends” it was agreed to nem. con. the friends of the latter being willing that the practicability of *fixing* the compensation should be considered hereafter in forming the details.

It was then moved by M<sup>r</sup>. Butler that a question be taken on both points jointly; to wit “adequate compensation to be paid out of the Nat<sup>l</sup>. Treasury.” It was objected to as out of order, the parts having been separately decided on. The Presid<sup>t</sup>. refer<sup>d</sup>. the question of order to the House, and it was determined to be in order. Con. N. J. Del. M<sup>d</sup>. N. C. S. C.—ay—N. Y. P<sup>a</sup>. V<sup>a</sup>. Geo. no—Mass. divided. The question on the sentence was then postponed by S. Carolina in right of the State.

Col. Mason moved to insert “twenty-five years of age as a qualification for the members of the 1<sup>st</sup>. branch.” He thought it absurd that a man today should not be permitted by the law to make a bargain for himself, and tomorrow should be authorized to manage the affairs of a great nation. It was more extraordinary as every man carried with him in his own experience a scale for measuring the deficiency of young politicians; since he would if interrogated be obliged to declare that his political opinions at the age of 21. were too crude & erroneous to merit an influence on public measures. It had been said that Cong<sup>s</sup>. had proved a good school for our young men. It might be so for any thing he knew but if it were, he chose that they should bear the expence of their own education.

M<sup>r</sup> Wilson was ag<sup>st</sup>. abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons chusing. The motion tended to damp the efforts of genius, and of laudable ambition. There was no more reason for incapacitating *youth* than *age*, where the requisite

qualifications were found. Many instances might be mentioned of signal services rendered in high stations to the public before the age of 25: The present M<sup>r</sup>. Pitt and Lord Bolingbroke were striking instances.

On the question for inserting “25 years of age”

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

M<sup>r</sup>. Ghorum moved to strike out the last member of the 3 Resol: concerning ineligibility of members of the 1<sup>st</sup>. branch to office during the term of their membership & for one year after. He considered it as unnecessary & injurious. It was true abuses had been displayed in G. B. but no one c<sup>d</sup>. say how far they might have contributed to preserve the due influence of the Gov<sup>t</sup>. nor what might have ensued in case the contrary theory had been tried.

M<sup>r</sup>. Butler opposed it. This precaution ag<sup>st</sup>. intrigue was necessary. He appealed to the example of G. B. where men got into Parl<sup>t</sup>. that they might get offices for themselves or their friends. This was the source of the corruption that ruined their Gov<sup>t</sup>.

M<sup>r</sup>. King, thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the Executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

M<sup>r</sup>. Wilson was ag<sup>st</sup>. fettering elections, and discouraging merit. He suggested also the fatal consequence in time of war, of rendering perhaps the best Commanders ineligible; appealing to our situation during the late war, and indirectly leading to a recollection of the appointment of the Com<sup>mander</sup> in Chief out of Congress.1

Col. Mason was for shutting the door at all events ag<sup>st</sup>. corruption. He enlarged on the venality and abuses in this particular in G. Britain: and alluded to the multiplicity of foreign Embassies by Cong<sup>s</sup>. The disqualification he regarded as a corner stone in the fabric.

Col. Hamilton, there are inconveniences on both sides. We must take man as we find him, and if we expect him to serve the public must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of M<sup>r</sup>. Ghorum a just one. It was impossible to say what w<sup>d</sup>. be the effect in G. B. of such a reform as had been urged. It was known that one of the ablest politicians (M<sup>r</sup>. Hume) had pronounced all that influence on the side of the crown, which went under the name of corruption, an essential part of the weight which maintained the equilibrium of the Constitution.

On M<sup>r</sup>. Ghorum’s Motion for striking out “ineligibility,”

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. Y. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. div<sup>d</sup>. Del. div<sup>d</sup>. Mar<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. G<sup>a</sup>. ay. Adj<sup>d</sup>.

## Saturday June 23. In Convention

The 3<sup>d</sup>. Resol: resumed.

On Question yesterday postponed by S. Carol: for agreeing to the whole sentence “for allowing an adequate compensation to be paid out of the *Treasury of the U. States*”

Masst<sup>s</sup>. ay. Con<sup>t</sup>. no. N. Y. no. N. J. ay. Pen<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. divided. So the question was lost, & the sentence not inserted:

Gen<sup>l</sup>. Pinkney moves to strike out the ineligibility of members of the 1<sup>st</sup>. branch to offices established “by a particular State.” He argued from the inconveniency to which such a restriction would expose both the members of the 1<sup>st</sup>. branch, and the States wishing for their services; & from the smallness of the object to be attained by the restriction.

It w<sup>d</sup>. seem from the ideas of some that we are erecting a Kingdom to be divided ag<sup>st</sup>. itself, 1 he disapproved such a fetter on the Legislature.

M<sup>r</sup>. Sherman seconds the motion. It w<sup>d</sup>. seem that we are erecting a Kingdom at war with itself. The Legislature ought not to [be] fettered in such a case. On the question

Masst<sup>s</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. M<sup>d</sup>. div<sup>d</sup>. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison renewed his motion yesterday made & waved to render the members of the 1<sup>st</sup>. branch “ineligible during their term of service, & for one year after—to such offices only as should be established, or the emoluments thereof augmented, by the Legislature of the U. States during the time of their being members.” He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, & that if the door was shut ag<sup>st</sup>. them: it might properly be left open for the appoint<sup>t</sup>. of members to other offices as an encouragem<sup>t</sup>. to the Legislative service.

M<sup>r</sup>. Alex: Martin 1 seconded the Motion.

M<sup>r</sup>. Butler. The amend<sup>t</sup>. does not go far eno. & w<sup>d</sup>. be easily evaded

M<sup>r</sup>. Rutledge, was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of its corruption.

M<sup>r</sup>. Mason. 1 The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the Legislature of Virginia to its own members. He enlarged on the abuses & corruption in the British Parliament, connected with the appointment of its members. He c<sup>d</sup>. not suppose that a sufficient number of Citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the Legislative service. Genius & virtue it may be

said, ought to be encouraged. Genius, for aught he knew, might, but that virtue should be encouraged by such a species of venality, was an idea, that at least had the merit of being new.

M<sup>r</sup>. King remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality. We were losing therefore the advantages on one side, without avoiding the evils on the other.

M<sup>r</sup>. Wilson supported the motion. The proper cure he said for corruption in the Legislature was to take from it the power of appointing to offices. One branch of corruption would indeed remain, that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the Government; an ambition most likely to be felt in the early & most incorrupt period of life, & which all wise & free Gov<sup>ts</sup>. had deemed it sound policy, to cherish, not to check. The members of the Legislature have perhaps the hardest & least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

M<sup>r</sup>. Sherman, observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter. A new Embassy might be established to a new Court, & an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconveniences lay on both sides. He hoped there w<sup>d</sup>. be sufficient inducements to the public service without resorting to the prospect of desirable offices, and on the whole was rather ag<sup>st</sup>. the motion of M<sup>r</sup>. Madison.

M<sup>r</sup>. Gerry<sup>1</sup> thought there was great weight in the objection of M<sup>r</sup>. Sherman. He added as another objection ag<sup>st</sup> admitting the eligibility of members in any case that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to M<sup>r</sup>. King he observed that although members, if disqualified themselves might still intrigue & cabal for their sons, brothers &c, yet as their own interests would be dearer to them, than those of their nearest connections, it might be expected they would go greater lengths to promote it.

M<sup>r</sup>. Madison had been led to this motion as a middle ground between an eligibility in all cases, and an absolute disqualification. He admitted the probable abuses of an eligibility of the members, to offices particularly within the gift of the Legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia Assembly by his colleague (Col. Mason). He appealed however to him, in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the Legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages & disadvantages on both ought to be fairly compared. The objects to

be aimed at were to fill all offices with the fittest characters, & to draw the wisest & most worthy citizens into the Legislative service. If on one hand, public bodies were partial to their own members; on the other they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers on those recommendations must be sensible of this truth. Nor w<sup>d</sup>. the partialities of such Bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of Gov<sup>t</sup>. or be found among the residents there, and practise all the means of courting the favor of the members. A great proportion of the appointments made by the States were evidently brought about in this way. In the General Gov<sup>t</sup>. the evil must be still greater, the characters of distant states, being much less known throughout the U. States than those of the distant parts of the same State. The elections by Congress had generally turned on men living at the seat of the fed<sup>l</sup> Gov<sup>t</sup>. or in its neighbourhood.—As to the next object, the impulse to the Legislative service, was evinced by experience to be in general too feeble with those best qualified for it. This inconveniency w<sup>d</sup>. also be more felt in the Nat<sup>l</sup>. Gov<sup>t</sup>. than in the State Gov<sup>ts</sup>. as the Sacrifices req<sup>d</sup>. from the distant members, w<sup>d</sup>. be much greater, and the pecuniary provisions, probably, more disproportionate. It w<sup>d</sup> therefore be impolitic to add fresh objections to the Legislative service by an absolute disqualification of its members. The point in question was whether this would be an objection with the most capable citizens. Arguing from experience he concluded that it would. The Legislature of Virg<sup>a</sup>. would probably have been without many of its best members, if in that situation, they had been ineligible to Cong<sup>s</sup>. to the Gov<sup>t</sup>. & other honorable offices of the State.

M<sup>r</sup>. Butler thought Characters fit for office w<sup>d</sup>. never be unknown.

Col. Mason. If the members of the Legislature are disqualified, still the honors of the State will induce those who aspire to them to enter that service, as the field in which they can best display & improve their talents, & lay the train for their subsequent advancement.

M<sup>r</sup>. Jenifer remarked that in Maryland, the Senators chosen for five years, c<sup>d</sup>. hold no other office & that this circumstance gained them the greatest confidence of the people.

On the question for agreeing to the motion of M<sup>r</sup>. Madison,

Mass<sup>ts</sup>. div<sup>d</sup>. C<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Sherman mov<sup>d</sup>. to insert the words “and incapable of holding” after the words “eligible to offices” w<sup>ch</sup>. was agreed to without opposition.

The word “established” & the words “Nat<sup>l</sup>. Gov<sup>t</sup>.” were struck out of the Resolution  
3<sup>d</sup>.



M<sup>r</sup>. Spaight called for a division of the question, in consequence of which it was so put, as that it turned in the first member of it, “on the ineligibility of members *during the term for which they were elected*”—whereon the States were,

Mass<sup>ts</sup>. div<sup>d</sup>. C<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

On the 2<sup>d</sup>. member of the sentence extending ineligibility of members to one year after the term for which they were elected Col. Mason thought this essential to guard ag<sup>st</sup>. evasions by resignations, and stipulations for office to be filled at the expiration of the legislative term. M<sup>r</sup>. Gerry, had known such a case. M<sup>r</sup>. Hamilton. Evasions c<sup>d</sup>. not be prevented—as by proxies—by friends holding for a year, & then opening the way &c. M<sup>r</sup>. Rutledge admitted the possibility of evasions, but was for contracting them as possible. Mass. no. C<sup>t</sup>. no. N. Y. ay. N. J. no. P<sup>a</sup>. div<sup>d</sup>. Del. ay. Mar<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

Adj<sup>d</sup>.

## Monday, June 25. In Convention.

Resolution 4. being taken up.

M<sup>r</sup>. Pinkney spoke as follows—1 The efficacy of the System will depend on this article. In order to form a right judgm<sup>t</sup>. in the case, it will be proper to examine the situation of this Country more accurately than it has yet been done. The people of the U. States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune & less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection & security; and a very moderate share of property entitles them to the possession of all the honors and privileges the Public can bestow: hence arises a greater equality, than is to be found among the people of any other Country, and an equality which is more likely to continue—I say this equality is likely to continue, because in a new Country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration & where industry must be rewarded with competency, there will be few poor, and few dependent—Every member of the Society almost, will enjoy an equal power of arriving at the supreme offices & consequently of directing the strength & sentiments of the whole Community. None will be excluded by birth, & few by fortune, from voting for proper persons to fill the offices of Government — the whole community will enjoy in the fullest sense that kind of political liberty which consists in the power the members of the State reserve to themselves, of arriving at the Public offices, or at least, of having votes in the nomination of those who fill them.

If this State of things is true & the prospect of its continuing probable, it is perhaps not politic to endeavour too close an imitation of a Government calculated for a people whose situation is, & whose views ought to be extremely different.

Much has been said of the Constitution of G. Britain. I will confess that I believe it to be the best Constitution in existence; but at the same time I am confident it is one that



will not or cannot be introduced into this Country, for many centuries.—If it were proper to go here into a historical dissertation on the British Constitution, it might easily be shewn that the peculiar excellence, the distinguishing feature of that Governm<sup>t</sup>. cannot possibly be introduced into our System—that its balance between the Crown & the people cannot be made a part of our Constitution,—that we neither have nor can have the members to compose it, nor the rights, privileges & properties of so distinct a class of Citizens to guard,—that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our Legislative, until the Executive power is so constituted as to have something fixed & dangerous in its principle—By this I mean a sole, hereditary, though limited Executive.

That we cannot have a proper body for forming a Legislative balance between the inordinate power of the Executive and the people, is evident from a review of the accidents & circumstances which gave rise to the peerage of Great Britain—I believe it is well ascertained that the parts which compose the British Constitution arose immediately from the forests of Germany; but the antiquity of the establishment of Nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of dux et comes, was derived from the old Roman to the German Empire; while others are of the opinion that they existed among the Germans long before the Romans were acquainted with them. The institution however of Nobility is immemorial among the Nations who may properly be termed the ancestors of Britain.—At the time they were summoned in England to become a part of the National Council, the circumstances which contributed to make them a Constituent part of that constitution, must be well known to all gentlemen who have had industry & curiosity enough to investigate the subject—The Nobles with their possessions & dependents composed a body permanent in their nature and formidable in point of power. They had a distinct interest both from the King and the people; an interest which could only be represented by themselves, and the guardianship could not be safely intrusted to others.—At the time they were originally called to form a part of the National Council, necessity perhaps as much as other cause, induced the Monarch to look up to them. It was necessary to demand the aid of his subjects in personal & pecuniary services. The power and possessions of the Nobility would not permit taxation from any Assembly of which they were not a part: & the blending the Deputies of the Commons with them, & thus forming what they called their parlerment was perhaps as much the effect of chance as of any thing else. The Commons were at that time compleatly subordinate to the nobles, whose consequence & influence seem to have been the only reasons for their superiority; a superiority so degrading to the Commons that in the first summons we find the peers are called upon to consult the commons to consent. From this time the peers have composed a part of the British Legislature, and notwithstanding their power and influence have diminished & those of the Commons have increased, yet still they have always formed an excellent balance ag<sup>st</sup>. either the encroachments of the Crown or the people.

I have said that such a body cannot exist in this Country for ages, and that untill the situation of our people is exceedingly changed no necessity will exist for so permanent a part of the Legislature. To illustrate this I have remarked that the people

of the United States are more equal in their circumstances than the people of any other Country—that they have very few rich men among them,—by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe—perhaps there are not one hundred such on the Continent; that it is not probable this number will be greatly increased; that the genius of the people their mediocrity of situation & the prospects which are afforded their industry in a Country which must be a new one for centuries are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture & the equal division of the property of Intestates will also have an effect to preserve this mediocrity; for laws invariably affect the manners of a people. On the other hand that vast extent of unpeopled territory which opens to the frugal & industrious a sure road to competency & independence will effectually prevent for a considerable time the increase of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us.

If equality is as I contend the leading feature of the U. States, where then are the riches & wealth whose representation & protection is the peculiar province of this Permanent body. Are they in the hands of the few who may be called rich; in the possession of less than a hundred citizens? Certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty.—Is it probable that a change will be created, and that a new order of men will arise? If under the British Government, for a century no such change was probable, I think it may be fairly concluded it will not take place while even the semblance of Republicanism remains.—How is this change to be effected? Where are the sources from whence it is to flow? From the landed interest? No. That is too unproductive & too much divided in most of the States. From the Monied interest? If such exists at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, Sir, I apprehend that on this point the policy of the U. States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old instead of a new country. We have adopted the maxims of a State full of people & manufactures & established in credit. We have deserted our true interest, and instead of applying closely to those improvements in domestic policy which would have ensured the future importance of our commerce, we have rashly & prematurely engaged in schemes as extensive as they are imprudent. This however is an error which daily corrects itself & I have no doubt that a few more severe trials will convince us, that very different commercial principles ought to govern the conduct of these States.

The people of this Country are not only very different from the inhabitants of any State we are acquainted with in the modern world; but I assert that their situation is distinct from either the people of Greece or Rome, or of any State we are acquainted with among the antients.—Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits & manners of Sparta be resembled to our habits & manners? Are the distinction of Patrician & Plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the

same or a situation like ours? I apprehend not.—They are perfectly different, in their distinctions of rank, their Constitutions, their manners & their policy.

Our true situation appears to me to be this,—a new extensive Country containing within itself the materials for forming a Government capable of extending to its Citizens all the blessings of Civil & religious liberty—capable of making them happy at home. This is the great end of Republican Establishments. We mistake the object of our Government, if we hope or wish that it is to make us respectable abroad. Conquest or superiority among other powers is not or ought not ever to be the object of republican Systems. If they are sufficiently active & energetic to rescue us from contempt & preserve our domestic happiness & security, it is all we can expect from them,—it is more than almost any other Government ensures to its citizens.

I believe this observation will be found generally true:—that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same Government with equal benefit; that a system must be suited to the habits & genius of the People it is to govern, and must grow out of them.

The people of the U. S. may be divided into three classes—*Professional men* who must from their particular pursuits always have a considerable weight in the Government while it remains popular—*Commercial men*, who may or may not have weight as a wise or injudicious commercial policy is pursued.—If that commercial policy is pursued which I conceive to be the true one, the merchants of this Country will not or ought not for a considerable time to have much weight in the political scale.—The third is the *landed interest*, the owners and cultivators of the soil, who are and ought ever to be the governing spring in the system.—These three classes, however distinct in their pursuits are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must in private as well as public affairs be connected with the professional men; who in their turn must in some measure depend on them. Hence it is clear from this manifest connection, & the equality which I before stated exists, & must for the reasons then assign, continue, that after all there is one, but one great & equal body of Citizens composing the inhabitants of this Country among whom there are no distinctions of rank, and very few or none of fortune.

For a people thus circumstanced are we then to form a Government & the question is what sort of Government is best suited to them.

Will it be the British Gov<sup>t</sup>? No. Why? Because G. Britain contains three orders of people distinct in their situation, their possessions & their principles.—These orders combined form the great body of the Nation. And as in national expences the wealth of the whole community must contribute, so ought each component part to be properly & duly represented.—No other combination of power could form this due representation, but the one that exists.—Neither the peers or the people could represent the royalty, nor could the Royalty & the people form a proper representation for the Peers.—Each therefore must of necessity be represented by itself, or the sign

of itself; and this accidental mixture has certainly formed a Government admirably well balanced.

But the U. States contain but one order that can be assimilated to the British Nation,—this is the order of Commons. They will not surely then attempt to form a Government consisting of three branches, two of which shall have nothing to represent. They will not have an Executive & Senate (hereditary) because the King & Lords of England are so. The same reasons do not exist and therefore the same provisions are not necessary.

We must as has been observed suit our Govern<sup>t</sup>. to the people it is to direct. These are I believe as active, intelligent & susceptible of good Govern<sup>t</sup>. as any people in the world. The Confusion which has produced the present relaxed State is not owing to them. It is owing to the weakness & (defects) of a Gov<sup>t</sup>. incapable of combining the various interests it is intended to unite, and destitute of energy.—All that we have to do then is to distribute the powers of Gov<sup>t</sup>. in such a manner, and for such limited periods, as while it gives a proper degree of permanency to the Magistrate, will reserve to the people, the right of election they will not or ought not frequently to part with.—I am of opinion that this may easily be done; and that with some amendments the propositions before the Committee will fully answer this end.

No position appears to me more true than this; that the General Gov<sup>t</sup>. cannot effectually exist without reserving to the States the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support & execution of their powers, however immediately operating upon the people, and not upon the States.

Much has been said about the propriety of abolishing the distinction of State Governments, & having but one general System. Suffer me for a moment to examine this question.1

The mode of constituting the 2<sup>d</sup>. branch being under consideration.

The word “national” was struck out, and “United States” inserted.

M<sup>f</sup>. Ghorum, inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small States. If V<sup>a</sup>. should have 16. votes & Del<sup>te</sup>. with several other States together 16, those from Virg<sup>a</sup>. would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to States, but to Counties or other districts of the same State. Accordingly the Constitution of Mass<sup>ts</sup>. had provided that the representatives of the larger districts should not be in an exact ratio to their numbers, and experience he thought had shewn the provision to be expedient.

M<sup>f</sup>. Read. The States have heretofore been in a sort of partnership. They ought to adjust their old affairs before they open a new account. He brought into view the appropriation of the com<sup>mon</sup> interest in the Western lands, to the use of particular States. Let justice be done on this head; let the fund be applied fairly & equally to the

discharge of the general debt, and the smaller States who had been injured; would listen then perhaps to those ideas of just representation which had been held out.

M<sup>r</sup>. Ghorum, did not see how the Convention could interpose in the case. Errors he allowed had been committed on the subject. But Cong<sup>s</sup>. were now using their endeavours to rectify them. The best remedy would be such a Government as would have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller States.

M<sup>r</sup>. Wilson, the question is shall the members of the 2<sup>d</sup>. branch be chosen by the Legislatures of the States? When he considered the amazing extent of Country—the immense population which is to fill it, the influence which the Gov<sup>t</sup>. we are to form will have, not only on the present generation of our people & their multiplied posterity, but on the whole Globe, he was lost in the magnitude of the object. The project of Henry the 4<sup>th</sup>. & his Statesmen was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the State Legislatures. In explaining his reasons it was necessary to observe the twofold relation in which the people would stand, 1. as Citizens of the Gen<sup>l</sup>. Gov<sup>t</sup>. 2. as Citizens of their particular State. The Gen<sup>l</sup>. Gov<sup>t</sup>. was meant for them in the first capacity: the State Gov<sup>ts</sup>. in the second. Both Gov<sup>ts</sup>. were derived from the people—both meant for the people—both therefore ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the Citizens to their State Gov<sup>ts</sup>. were applicable to their relation to the Gen<sup>l</sup>. Gov<sup>t</sup>. and in forming the latter, we ought to proceed, by abstracting as much as possible from the idea of the State Gov<sup>ts</sup>. With respect to the province & object of the Gen<sup>l</sup>. Gov<sup>t</sup> they should be considered as having no existence. The election of the 2<sup>d</sup>. branch by the Legislatures, will introduce & cherish local interests & local prejudices. The Gen<sup>l</sup>. Gov<sup>t</sup>. is not an assemblage of States, but of individuals for certain political purposes—it is not meant for the States, but for the individuals composing them; the *individuals* therefore not the *States*, ought to be represented in it: A proportion in this representation can be preserved in the 2<sup>d</sup>. as well as in the 1<sup>st</sup> branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect which was not seconded.

M<sup>r</sup>. Elsworth saw no reason for departing from the mode contained in the Report. Whoever chooses the member, he will be a Citizen of the State he is to represent & will feel the same spirit & act the same part whether he be appointed by the people or the Legislature. Every State has its particular views & prejudices, which will find their way into the general Councils, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch. Would not more of it issue from the Legislatures; than from an immediate election by the people. He urged the necessity of maintaining the existence, & agency of the States. Without their co-operation it would be impossible to support a Republican Gov<sup>t</sup>. over so great an extent of Country. An army could scarcely render it practicable. The largest States are the worst Governed. Virg<sup>a</sup>. is obliged to acknowledge her incapacity to extend her Gov<sup>t</sup>. to Kentuckey. Mass<sup>ts</sup> cannot keep the peace one hundred miles from her capitol and is now forming an army for its support. How long Pen<sup>a</sup> may be free from a like situation cannot be

foreseen. If the principles & materials of our Gov<sup>t</sup>. are not adequate to the extent of these single States; how can it be imagined that they can support a single Gov<sup>t</sup>. throughout the U. States. The only chance of supporting a Gen<sup>l</sup> Gov<sup>t</sup>. lies in grafting it on that of the individual States.

Doc<sup>r</sup>. Johnson urged the necessity of preserving the State Gov<sup>ts</sup>. which would be at the mercy of the Gen<sup>l</sup> Gov<sup>t</sup>. on M<sup>r</sup>. Wilson's plan.

M<sup>r</sup>. Madison thought it w<sup>d</sup>. obviate difficulty if the present resol: were postponed, & the 8<sup>th</sup>. taken up, which is to fix the right of suffrage in the 2<sup>d</sup>. branch.

Doc<sup>r</sup>. Williamson professed himself a friend to such a system as would secure the existence of the State Gov<sup>ts</sup>. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate untill he knew the number of its members. In order to ascertain this, he moved to insert these words after "2<sup>d</sup>. branch of the Nat<sup>l</sup>. Legislature"—"who shall bear such proportion to the n<sup>o</sup>. of the 1<sup>st</sup>. branch as 1 to —." He was not seconded.

M<sup>r</sup>. Mason. It has been agreed on all hands that an efficient Gov<sup>t</sup>. is necessary that to render it such it ought to have the faculty of self defence, that to render its different branches effectual each of them ought to have the same power of self defence. He did not wonder that such an agreement should have prevailed in these points. He only wondered that there should be any disagreement about the necessity of allowing the State Gov<sup>ts</sup>. the same self-defence. If they are to be preserved as he conceived to be essential, they certainly ought to have this power. And the only mode left of giving it to them, was by allowing them to appoint the 2<sup>d</sup>. branch of the Nat<sup>l</sup>. Legislature.

M<sup>r</sup>. Butler observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of representation w<sup>d</sup>. prevail finally in the 2<sup>d</sup>. branch, moved to postpone the 4<sup>th</sup>. Resol: & to proceed to the Resol: on that point. M<sup>r</sup>. Madison seconded him.

On the question.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. ay. Geo. ay.

On a question to postpone the 4 and take up the 7 Resol: ays, Mary<sup>d</sup>. V<sup>a</sup>. N. C. S. C. Geo;—Noes, Mass. C<sup>t</sup>. N. Y. N. J. P<sup>a</sup>. Del:

On the question to agree "that the members of the 2<sup>d</sup> branch be chosen by the indiv<sup>l</sup>. Legislatures." Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay. [1](#)

On a question on the clause requiring the age of 30 years at least,—it was agreed to unanimously:

On a question to strike out the words, "sufficient to ensure their independency" after the word "term" it was agreed to.

That the 2<sup>d</sup>. branch hold their offices for a term of seven years, considered.

M<sup>r</sup>. Ghorum suggests a term of “4 years,” ¼ to be elected every year.

M<sup>r</sup>. Randolph, supported the idea of rotation, as favorable to the wisdom & stability of the Corps, which might possibly be always sitting, and aiding the Executive.

And moves after “7 years,” to add, “to go out in fixt proportion” which was agreed to.

M<sup>r</sup>. Williamson suggests “6 years,” as more convenient for Rotation than 7 years.

M<sup>r</sup>. Sherman seconds him.

M<sup>r</sup> Reed proposed that they s<sup>d</sup> hold their offices “during good behaviour. Mr. R. Morris seconds him.

Gen<sup>l</sup>. Pinkney, proposed “4 years.” A longer term w<sup>d</sup>. fix them at the seat of Gov<sup>t</sup>. They w<sup>d</sup>. acquire an interest there, perhaps transfer their property & lose sight of the States they represent. Under these circumstances the distant States w<sup>d</sup>. labour under great disadvantages. [1](#)

M<sup>r</sup>. Sherman moved to strike out “7 years” in order to take questions on the several propositions.

On the question to strike out “seven.”

Mass<sup>ts</sup> ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

On the question to insert “6 years”, which failed 5 St<sup>s</sup>. being ay. 5 no, & 1 divided.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

On a motion to adjourn, the votes were 5 for 5 ag<sup>st</sup>. it & 1 divided,—Con. N. J. P<sup>a</sup>. Del. V<sup>a</sup>. ay. Mass<sup>ts</sup>. N. Y. N. C. S. C. Geo: no. Mary<sup>d</sup>. divided.

On the question for “5 years” it was lost.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

Adj<sup>d</sup>.

## Tuesday, June 26. In Convention

The duration of the 2<sup>d</sup>. branch under consideration.

M<sup>r</sup>. Ghorum moved to fill the blank with “six years,” one third of the members to go out every second year.

M<sup>r</sup>. Wilson 2<sup>ded</sup>. the motion.

Gen<sup>l</sup>. Pinkney opposed six years in favor of four years. The States he said had different interests. Those of the Southern, and of S. Carolina in particular were different from the Northern. If the Senators should be appointed for a long term, they w<sup>d</sup>. settle in the State where they exercised their functions; and would in a little time be rather the representatives of that than of the State appoint<sup>g</sup> them.

M<sup>r</sup>. Reed mov<sup>d</sup>. that the term be nine years. This w<sup>d</sup>. admit of a very convenient rotation, one third going out triennially. He w<sup>d</sup>. still prefer “during good behaviour,” but being little supported in that idea, he was willing to take the longest term that could be obtained.

M<sup>r</sup>. Broome 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Madison. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were first to protect the people ag<sup>st</sup>. their rulers; secondly to protect the people ag<sup>st</sup>. the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of Gov<sup>t</sup>. most likely to secure their happiness, would first be aware, that those charg<sup>d</sup>. with the public happiness might betray their trust. An obvious precaution ag<sup>st</sup>. this danger w<sup>d</sup>. be to divide the trust between different bodies of men, who might watch & check each other. In this they w<sup>d</sup>. be governed by the same prudence which has prevailed in organizing the subordinate departments of Gov<sup>t</sup>., where all business liable to abuses is made to pass thro’ separate hands, the one being a check on the other. It w<sup>d</sup>. next occur to such people, that they themselves were liable to temporary errors, thro’ want of information as to their true interest, and that men chosen for a short term, & employed but a small portion of that in public affairs, might err from the same cause. This reflection w<sup>d</sup>. naturally suggest that the Gov<sup>t</sup>. be so constituted as that one of its branches might have an opp<sup>y</sup>. of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, w<sup>d</sup>. be that they themselves, as well as a numerous body of Representatives, were liable to err also, from fickleness and passion. A necessary fence ag<sup>st</sup>. this danger would be to select a portion of enlightened citizens, whose limited number, and firmness might seasonably interpose ag<sup>st</sup>. impetuous councils. It ought finally to occur to a people deliberating on a Gov<sup>t</sup>. for themselves, that as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses be tempted to commit injustice on the minority. In all civilized Countries the people fall into different classes hav<sup>g</sup>. a real or supposed difference of interests. There will be creditors & debtors; farmers, merch<sup>ts</sup>. & manufacturers. There will be particularly the distinction of rich & poor. It was true as had been observ<sup>d</sup>. (by M<sup>r</sup>. Pinkney) we had not among us those hereditary distinctions, of rank which were a great source of the contests in the ancient Gov<sup>ts</sup>. as well as the modern States of Europe, nor those extremes of wealth or poverty which characterize the latter. We cannot however be



regarded even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we sh<sup>d</sup>. not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, & secretly sigh for a more equal distribution of its blessings. These may in time out-number those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this Country, but symptoms, of a levelling spirit, as we have understood, have sufficiently appeared in certain quarters, to give notice of the future danger. How is this danger to be guarded ag<sup>st</sup>. on the republican principles? How is the danger in all cases of interested coalitions to oppress the minority to be guarded ag<sup>st</sup>.? Among other means by the establishment of a body in the Gov<sup>t</sup>. sufficiently respectable for its wisdom & virtue, to aid on such emergencies, the preponderance of justice by throwing its weight into that scale. Such being the objects of the second branch in the proposed Gov<sup>t</sup>. he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but in pursuing his particular ideas on the subject, he should require that the long term allowed to the 2<sup>d</sup>. branch should not commence till such a period of life, as would render a perpetual disqualification to be re-elected little inconvenient either in a public or private view. He observed that as it was more than probable we were now digesting a plan which in its operation w<sup>d</sup>. decide for ever the fate of Republican Gov<sup>t</sup>. we ought not only to provide every guard to liberty that its preservation c<sup>d</sup>. require, but be equally careful to supply the defects which our own experience had particularly pointed out.

M<sup>r</sup>. Sherman. Gov<sup>t</sup>. is instituted for those who live under it. It ought therefore to be so constituted as not to be dangerous to their liberties. The more permanency it has the worse if it be a bad Gov<sup>t</sup>. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-election. In Connecticut elections have been very frequent, yet great stability & uniformity both as to persons & measures have been experienced from its original establishm<sup>t</sup>. to the present time; a period of more than a 130 years. He wished to have provision made for steadiness & wisdom in the system to be adopted; but he thought six or four years would be sufficient. He sh<sup>d</sup>. be content with either.

M<sup>r</sup>. Read wished it to be considered by the small States that it was their interest that we should become one people as much as possible; that State attachments sh<sup>d</sup>. be extinguished as much as possible; that the Senate sh<sup>d</sup>. be so constituted as to have the feelings of Citizens of the whole.

M<sup>r</sup>. Hamilton. He did not mean to enter particularly into the subject. He concurred with M<sup>r</sup> Madison in thinking we were now to decide forever the fate of Republican Government; and that if we did not give to that form due stability and wisdom, it would be disgraced & lost among ourselves, disgraced & lost to mankind forever. He acknowledged himself not to think favorably of Republican Government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their Government as high as possible. He professed himself to be as

zealous an advocate for liberty as any man whatever, and trusted he should be as willing a martyr to it though he differed as to the form in which it was most eligible.—He concurred also in the general observations of (M<sup>f</sup>. Madison) on the subject, which might be supported by others if it were necessary. It was certainly true that nothing like an equality of property existed; that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great & fundamental distinction in Society. When the Tribunitial power had levelled the boundary between the *patricians* & *plebeians*, what followed? The distinction between rich & poor was substituted. He meant not however to enlarge on the subject. He rose principally to remark that (M<sup>f</sup>. Sherman) seemed not to recollect that one branch of the proposed Gov<sup>t</sup>. was so formed, as to render it particularly the guardians of the poorer orders of Citizens; nor to have adverted to the true causes of the stability which had been exemplified in Con<sup>t</sup>. Under the British system as well as the federal, many of the great powers appertaining to Gov<sup>t</sup>. particularly all those relating to foreign Nations were not in the hands of the Gov<sup>t</sup>. there. Their internal affairs also were extremely simple, owing to sundry causes many of which were peculiar to that Country. Of late the Governm<sup>t</sup>. had entirely given way to the people, and had in fact suspended many of its ordinary functions in order to prevent those turbulent scenes which had appeared elsewhere. He asks M<sup>f</sup>. S. whether the State at this time dare impose & collect a tax on y<sup>e</sup>. people? To these causes & not to the frequency of elections, the effect as far as it existed ought to be chiefly ascribed.

M<sup>f</sup>. Gerry, wished we could be united in our ideas concerning a permanent Gov<sup>t</sup>. All aim at the same end, but there are great differences as to the means. One circumstance He thought should be carefully attended to. There was not part of our fellow citizens who were not ag<sup>st</sup>. every approach towards Monarchy. Will they ever agree to a plan which seems to make such an approach. The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many out of respect to the quarter it proceeds from as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord & confusion will ensue, and it is even possible that we may become a prey to foreign powers. He did not deny the position of M<sup>f</sup>. Madison, that the majority will generally violate justice when they have an interest in so doing: But did not think there was any such temptation in this Country. Our situation was different from that of G. Britain; and the great body of lands yet to be parcelled out & settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public Councils, they had not proceeded so far as not to leave hopes, that there would be a sufficient sense of justice & virtue for the purpose of Gov<sup>t</sup>. He admitted the evils arising from a frequency of elections; and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

M<sup>f</sup>. Wilson did not mean to repeat what had fallen from others, but w<sup>d</sup>. add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations 1 to its own citizens. 2 to foreign nations. It is therefore not only liable to anarchy & tyranny within, but has wars to avoid & treaties to obtain

from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign Nations. The true reason why G. Britain has not yet listened to a commercial treaty with us has been, because she had no confidence in the stability or efficacy of our Government. 9 years with a rotation, will provide these desirable qualities; and give our Gov<sup>t</sup> an advantage in this respect over Monarchy itself. In a Monarchy much must always depend on the temper of the man. In such a body, the personal character will be lost in the political. He w<sup>d</sup> add another observation. The popular objection ag<sup>st</sup>. appointing any public body for a long term was that it might by gradual encroachments prolong itself first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection that as ? would go out triennially, there would be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses.—On the question for 9 years, ? to go out triennially,

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On the question for 6 years,1 ? to go out biennially

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

“To receive fixt stipends by which they may be compensated for their services” considered.

General Pinkney proposed “that no Salary should be allowed.” As this (the Senatorial) branch was meant to represent the wealth of the Country, it ought to be composed of persons of wealth; and if no allowance was to be made the wealthy alone would undertake the service. He moved to strike out the clause.

Doct<sup>r</sup>. Franklin seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended we might be chargeable with having carved out places for ourselves. On the question,—Mas<sup>ts</sup> Connecticut<sup>2</sup> P<sup>a</sup>. M<sup>d</sup>. S. Carolina ay. N. Y. N. J. Del. Virg<sup>a</sup>. N. C. Geo. no.

M<sup>r</sup>. Williamson moved to change the expression into these words to wit “to receive a compensation for the devotion of their time to the public service.” The motion was seconded by M<sup>r</sup>. Elseworth, and agreed to by all the States except S. Carol<sup>a</sup>. It seemed to be meant only to get rid of the word “fixt” and leave greater room for modifying the provision on this point.

M<sup>r</sup>. Elseworth moved to strike out “to be paid out of the Nati<sup>l</sup>. Treasury” and insert “to be paid by their respective States.” If the Senate was meant to strengthen the Gov<sup>t</sup>. it ought to have the confidence of the States. The States will have an interest in keeping up a representation, and will make such provision for supporting the members as will ensure their attendance.

M<sup>r</sup>. Madison considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of 6 years. They would if this motion should be agreed to, hold their places during pleasure; during the pleasure of the State Legislatures. One great end of the institution was, that being a firm, wise and impartial body, it might not only give stability to the Gen<sup>l</sup> Gov<sup>t</sup>. in its operations on individuals, but hold an even balance among different States. The motion would make the Senate like Congress, the mere Agents & Advocates of State interests & views, instead of being the impartial umpires & Guardians of justice and the general Good. Cong<sup>s</sup>. had lately by the establishment of a board with full powers to decide on the mutual claims between the U. States & the individual States, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

M<sup>r</sup>. Dayton<sup>1</sup> considered the payment of the Senate by the States as fatal to their independence, he was decided for paying them out of the Nat<sup>l</sup>. Treasury.

On the question for payment of the Senate to be left to the States as moved by M<sup>r</sup>. Elseworth.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

Col. Mason. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was to secure the rights of property. To give them weight & firmness for this purpose, a considerable duration in office was thought necessâry. But a longer term than 6 years, would be of no avail in this respect, if needy persons should be appointed. He suggested therefore the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

A question was then taken whether the words “to be paid out of the public treasury,” should stand.

Mass<sup>ts</sup>. ay. Con<sup>t</sup> no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Butler moved to strike out the ineligibility of Senators to *State offices*.

Mr. Williamson seconded the motion.<sup>1</sup>

M<sup>r</sup>. Wilson remarked the additional dependance this w<sup>d</sup> create in the Senators on the States. The longer the time he observed allotted to the Officer, the more compleat will be the dependance if it exists at all.<sup>2</sup>

Gen<sup>l</sup>. Pinkney was for making the States as much as could be conveniently done, a part of the Gen<sup>l</sup>. Gov<sup>t</sup>. If the Senate was to be appointed by the States, it ought in pursuance of the same idea to be paid by the States: and the States ought not to be

barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

M<sup>r</sup>. Williamson moved a resolution so penned as to admit of the two following questions. 1. whether the members of the Senate should be ineligible to & incapable of holding offices *under the U. States*.

2. Whether &c. under the *particular States*.

On the Question to postpone in order to consider Williamson's Resol<sup>n</sup>. Mas<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gerry & M<sup>r</sup> Madison move to add to M<sup>r</sup>. Williamson's 1. Quest: "and for 1 year thereafter." On this amend<sup>t</sup>.

Mas<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

On M<sup>r</sup>. Will[iam]son's 1 Question as amend<sup>ed</sup>. vz, inelig: & incapable &c. &c. for 1 year &c. ag<sup>d</sup>. to unānously.

On the 2. question as to ineligibility &c. to State offices,

Mass. ay. C<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

The 5. Resol: "that each branch have the right of originating acts," was agreed to nem. con.

Adj<sup>d</sup>.

## Wednesday June 27. In Convention.

M<sup>r</sup>. Rutledge moved to postpone the 6<sup>th</sup>. Resolution, defining the powers of Cong<sup>s</sup>. in order to take up the 7 & 8 which involved the most fundamental points; the rules of suffrage in the 2 branches which was agreed to nem. con.

A question being proposed on the Resol: 7; declaring that the suffrage in the first branch sh<sup>d</sup>. be according to an equitable ratio.

M<sup>r</sup> L. Martin<sup>1</sup> contended at great length and with great eagerness that the General Gov<sup>t</sup>. was meant merely to preserve the State Govern<sup>ts</sup>., not to govern individuals: that its powers ought to be kept within narrow limits: that if too little power was given to it, more might be added; but that if too much, it could never be resumed: that individuals as such have little to do but with their own States; that the Gen<sup>l</sup>. Gov<sup>t</sup>. has no more to apprehend from the States composing the Union, while it pursues proper measures, that Gov<sup>t</sup>. over individuals has to apprehend from its subjects: that to resort

to the Citizens at large for their sanction to a new Govern<sup>t</sup>. will be throwing them back into a state of Nature; that the dissolution of the State Gov<sup>ts</sup>. is involved in the nature of the process; that the people have no right to do this without the consent of those to whom they have delegated their power for State purposes: through their tongues only they can speak, through their ears, only can hear: that the States have shewn a good disposition to comply with the Acts of Cong<sup>s</sup>, weak, contemptibly weak as that body has been; and have failed through inability alone to comply: that the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability; that he did not conceive the instances mentioned by M<sup>r</sup>. Madison of compacts between V<sup>a</sup>. & M<sup>d</sup>. between P<sup>a</sup>. & N. J. or of troops raised by Mass<sup>ts</sup>. for defence against the Rebels, to be violations of the articles of confederation—that an equal vote in each State was essential to the federal idea, and was founded in justice & freedom, not merely in policy: that tho' the States may give up this right of sovereignty, yet they had not, and ought not: that the States like individuals were in a State of nature equally sovereign & free. In order to prove that individuals in a State of Nature are equally free & independent he read passages from Locke, Vattel, Lord Summers—Priestly. To prove that the case is the same with States till they surrender their equal sovereignty, he read other passages in Locke & Vattel, and also Rutherford: that the States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty: that the propositions on the table were a system of slavery for 10 States: that as V<sup>a</sup>. Mass<sup>ts</sup>. & P<sup>a</sup>. have of the votes they can do as they please without a miraculous Union of the other ten: that they will have nothing to do, but to gain over one of the ten to make them compleat masters of the rest; that they can then appoint an Execut<sup>e</sup>. & Judiciary & legislate for them as they please: that there was & would continue a natural predilection & partiality in men for their own States; that the States, particularly the smaller, would never allow a negative to be exercised over their laws: that no State in Ratifying the Confederation had objected to the equality of votes; that the complaints at present run not ag<sup>st</sup>. this equality but the want of power: that 16 members from V<sup>a</sup>. would be more likely to act in concert than a like number formed of members from different States: that instead of a junction of the small States as a remedy, he thought a division of the large States would be more eligible.—This was the substance of a speech which was continued more than three hours. He was too much exhausted he said to finish his remarks, and reminded the House that he should tomorrow, resume them.

Adj<sup>d</sup>.

## Thursday June 28th. In Convention

M<sup>r</sup> L. Martin resumed his discourse,<sup>1</sup> contending that the Gen<sup>l</sup>. Gov<sup>t</sup>. ought to be formed for the States, not for individuals: that if the States were to have votes in proportion to their numbers of people, it would be the same thing whether their representatives were chosen by the Legislatures or the people; the smaller States would be equally enslaved; that if the large States have the same interest with the smaller as was urged, there could be no danger in giving them an equal vote; they would not injure themselves, and they could not injure the large ones on that supposition without injuring themselves and if the interests, were not the same, the inequality of suffrage w<sup>d</sup>. be dangerous to the smaller States: that it will be in vain to

propose any plan offensive to the rulers of the States, whose influence over the people will certainly prevent their adopting it: that the large States were weak at present in proportion to their extent; & could only be made formidable to the small ones, by the weight of their votes: that in case a dissolution of the Union should take place, the small States would have nothing to fear from their power; that if in such a case the three great States should league themselves together, the other ten could do so too; & that he had rather see partial Confederacies take place, than the plan on the table. This was the substance of the residue of his discourse which was delivered with much diffuseness & considerable vehemence.

M<sup>r</sup>. Lansing & M<sup>r</sup>. Dayton moved to strike out “not,” so that the 7 art. might read that the rights of suffrage in the 1<sup>st</sup>. branch ought to be according to the rule established by the Confederation.”

M<sup>r</sup>. Dayton expressed great anxiety that the question might not be put till tomorrow; Govern<sup>r</sup>. Livingston being kept away by indisposition, and the representation of N. Jersey thereby suspended.

M<sup>r</sup>. Williamson, thought that if any political truth could be grounded on mathematical demonstration, it was that if the States were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller States would be injured in the case, and wished some Gentleman would vouchsafe a solution of it. He observed that the small States, if they had a plurality of votes would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new States from the Westward might be kept in view. They would be small States, they would be poor States, they would be unable to pay in proportion to their numbers; their distance from market rendering the produce of their labour less valuable; they would consequently be tempted to combine for the purpose of laying burdens on com?erce & consumption which would fall with greatest weight on the old States.

M<sup>r</sup>. Madison, s<sup>d</sup>. he was much disposed to concur in any expedient not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor necessary for the safety of the small States ag<sup>st</sup>. the large States. That it was not just, had been conceded by M<sup>r</sup> Breerly & M<sup>r</sup>. Paterson themselves. The expedient proposed by them was a new partition of the territory of the U. States. The fallacy of the reasoning drawn from the equality of Sovereign States in the formation of compacts, lay in confounding together mere Treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, & making laws for the government of them. If France, England & Spain were to enter into a Treaty for the regulation of commerce &c with the Prince of Monacho & 4 or 5 other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. W<sup>d</sup>. the case be the same, if a Council were to be formed of deputies from each with authority and discretion, to raise money, levy troops,

determine the value of coin &c? Would 30 or 40, million of people submit their fortunes into the hands of a few thousands? If they did it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are Counties of the Same States represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the Nation<sup>l</sup> Legislature. Is it because, the larger have more at stake than the smaller? The Case will be the same with the larger & smaller States. Is it because the laws are to operate immediately on their persons & properties? The same is the case in some degree as the articles of confederation stand; the same will be the case in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a federal army, the property & persons of individuals depend on the laws of Cong<sup>s</sup>. By the plan proposed a compleat power of taxation, the highest prerogative of supremacy is proposed to be vested in the National Gov<sup>t</sup>. Many other powers are added which assimilate it to the Gov<sup>t</sup>. of individual States. The negative proposed on the State laws, will make it an essential branch of the State Legislatures & of course will require that it should be exercised by a body established on like principles with the other branches of those Legislatures.—That it is not necessary to secure the small States ag<sup>st</sup>. the large ones he conceived to be equally obvious: Was a combination of the large ones dreaded? This must arise either from some interest common to V<sup>a</sup>. Mass<sup>ts</sup>. & P<sup>a</sup>. & distinguishing them from the other States, or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation they could not have been more effectually separated from each other by the most jealous citizen of the most jealous State. In point of manners, Religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States—In point of the staple productions they were as dissimilar as any three other States in the Union. The Staple of Mass<sup>ts</sup>. was *fish*, of P<sup>a</sup>. *flower*, of V<sup>a</sup>. *Tob<sup>o</sup>*. Was a Combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The journals of Cong<sup>s</sup>. did not present any peculiar association of these States in the votes recorded. It had never been seen that different Counties in the same State, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence & weight in Society, rivalships were much more frequent than coalitions. Among independent Nations, pre-eminent over their neighbours, the same remark was verified. Carthage & Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the Earth. The Houses of Austria & France were hostile as long as they remained the greatest powers of Europe. England & France have succeeded to the pre-eminence & to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of antient & Modern confederacies, we find the same effect from the same cause. The contentions, not the Coalitions of Sparta, Athens & Thebes, proved fatal to the smaller members of the Amphyctionic Confederacy. The contentions, not the combinations of Prussia & Austria, have distracted & oppressed the German empire. Were the large States formidable *singly* to their smaller neighbours? On this supposition the latter ought to wish for such a General Gov<sup>t</sup>. as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their



superior force. Here again Experience was an instructive monitor. What is y<sup>e</sup>. situation of the weak compared with the strong in those stages of civilization in which the violence of individuals is least controuled by an efficient Government? The Heroic period of Antient Greece the feudal licentiousness of the middle ages of Europe, the existing condition of the American Savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no controul but the nominal authority of the law of Nations? Is not the danger to the former exactly in proportion to their weakness. But there are cases still more in point. What was the condition of the weaker members of the Amphyctionic Confederacy. Plutarch (life of Themistocles) will inform us that it happened but too often that the strongest cities corrupted & awed the weaker, and that Judgment went in favor of the more powerful party. What is the condition of the lesser states in the German Confederacy? We all know that they are exceedingly trampled upon: and that they owe their safety as far as they enjoy it, partly to their enlisting themselves, under the rival banners of the pre-eminent members, partly to alliances with neighbouring Princes which the Constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch Confederacy? Holland contains about ½ the People, supplies about ½ of the money, and by her influence, silently & indirectly governs the whole republic. In a word; the two extremes before us are a perfect separation & a perfect incorporation, of the 13 States. In the first case they would be independent nations subject to no law, but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case the smaller States would have every thing to fear from the larger. In the last they would have nothing to fear. The true policy of the small States therefore lies in promoting those principles & that form of Gov<sup>t</sup> which will most approximate the States to the condition of counties. Another consideration may be added. If the Gen<sup>l</sup>. Gov<sup>t</sup>. be feeble, the large States distrusting its continuance, and foreseeing that their importance & security may depend on their own size & strength, will never submit to a partition. Give to the Gen<sup>l</sup>. Gov<sup>t</sup>. sufficient energy & permanency, & you remove the objection. Gradual partitions of the large, & junctions of the small States will be facilitated, and time may effect that equalization, which is wished for by the small States now, but can never be accomplished at once.

M<sup>r</sup>. Wilson. The leading argument of those who contend for equality of votes among the States is that the States as such being equal, and being represented not as districts of individuals, but in their political & corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning the representation of the boroughs in Eng which has been allowed on all hands to be the rotten part of the Constitution, is perfectly right & proper. They are like the States represented in their corporate capacity like the States therefore they are entitled to equal voices, old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of Complaint lies with old Sarum: for London instead of two which is her proper share, sends four representatives to Parliament. [1](#)

M<sup>r</sup>. Sherman. The question is not what rights naturally belong to man; but how they may be most equally & effectually guarded in Society. And if some give up more than others in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the

rights of some, would be sacrificing the end to the means. The rich man who enters into Society along with the poor man, gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man in proportion to his superior stake the rights of the poor man would immediately cease to be secure. This consideration prevailed when the articles of Confederation were formed.1

The determination of the question from striking out the word “not” was put off till tomorrow at the request of the Deputies of N. York.

Doc<sup>r</sup> Franklin. M<sup>t</sup>. President

The small progress we have made after 4 or five weeks close attendance & continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ays, is methinks a melancholy proof of the imperfection of the Human Understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of Government, and examined the different forms of those Republics which having been formed with the seeds of their own dissolution now no longer exist. And we have viewed Modern States all round Europe, but find none of their Constitutions suitable to our circumstances.

In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with G. Britain, when we were sensible of danger we had daily prayer in this room for the divine protection.—Our prayers, Sir, were heard, & they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—*that God Governs in the affairs of men*. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings that “except the Lord build the House they labour in vain that build it.” I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the Builders of Babel: We shall be divided by our little partial local interests; our projects will be confounded, and we ourselves shall become a reproach and bye word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing Governments by Human wisdom and leave it to chance, war and conquest.

I therefore beg leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the Clergy of this City be requested to officiate in that Service—

M<sup>r</sup>. Sharman seconded the motion.

M<sup>r</sup>. Hamilton & several others expressed their apprehensions that however proper such a resolution might have been at the beginning of the convention, it might at this late day, 1. bring on it some disagreeable animadversions, & 2. lead the public to believe that the embarrassments and dissensions within the Convention, had suggested this measure. It was answered by Doc<sup>r</sup>. F. M<sup>r</sup>. Sherman & others, that the past omission of a duty could not justify a further omission—that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it: and that the alarm out of doors that might be excited for the state of things within, would at least be as likely to do good as ill.

M<sup>r</sup>. Williamson, observed that the true cause of the omission could not be mistaken. The Convention had no funds.

M<sup>r</sup>. Randolph proposed in order to give a favorable aspect to y<sup>e</sup>. measure, that a sermon be preached at the request of the convention on 4<sup>th</sup>. of July, the anniversary of Independence; & thenceforward prayers be used in y<sup>e</sup>. Convention every morning. D<sup>r</sup>. Frank<sup>n</sup>. 2<sup>ded</sup>. this motion. After several unsuccessful attempts for silently postponing this matter by adjourn<sup>g</sup>. the adjournment was at length carried, without any vote on the motion.

### Friday June 29<sup>Th</sup>. In Convention.

Doc<sup>r</sup>. Johnson. The controversy must be endless whilst Gentlemen differ in the grounds of their arguments; Those on one side considering the States as districts of people composing one political Society; those on the other considering them as so many political societies. The fact is that the States do exist as political Societies, and a Gov<sup>t</sup>. is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the States as such are to exist they must be armed with some power of self-defence. This is the idea of (Col. Mason) who appears to have looked to the bottom of this matter. Besides the aristocratic and other interests, which ought to have the means of defending themselves, the States have their interests as such, and are equally entitled to like means. On the whole he thought that as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in *one* branch the *people*, ought to be represented, in the *other* the *States*.

M<sup>r</sup>. Ghoram. The States as now confederated have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small States which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union w<sup>d</sup>. be an event unhappy for all, but surely the large States would be least unable to take care of themselves, and to make connections with one another. The weak therefore were most interested in establishing some general system for maintaining order. If among individuals, composed partly of weak, and partly of strong, the former most need the protection of law & Government, the case is exactly the same with weak & powerful States. What

would be the situation of Delaware (for these things he found must be spoken out, & it might as well be done at first as last) what w<sup>d</sup>. be the situation of Delaware in case of a separation of the States? Would she not be at the mercy of Pennsylvania? would not her true interest lie in being consolidated with her, and ought she not now to wish for such a union with P<sup>a</sup>. under one Gov<sup>t</sup>. as will put it out of the power of Pen<sup>a</sup>. to oppress her? Nothing can be more ideal than the danger apprehended by the States from their being formed into one nation. Mass<sup>ts</sup>. was originally three colonies, viz old Mass<sup>ts</sup>. Plymouth—& the province of Mayne. These apprehensions existed then. An incorporation took place; all parties were safe & satisfied; and every distinction is now forgotten. The case was similar with Connecticut & New haven. The dread of Union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner N. Jersey has been made one society out of two parts. Should a separation of the States take place, the fate of N. Jersey w<sup>d</sup>. be worst of all. She has no foreign commerce & can have but little. P<sup>a</sup>. & N. York will continue to levy taxes on her consumption. If she consults her interest she w<sup>d</sup>. beg of all things to be annihilated. The apprehensions of the small States ought to be appeased by another reflection. Mass<sup>ts</sup>. will be divided. The province of Maine is already considered as approaching the term of its annexation to it; and P<sup>a</sup>. will probably not increase, considering the present state of her population, & other events that may happen. On the whole he considered a Union of the States as necessary to their happiness, & a firm Gen<sup>l</sup>. Gov<sup>t</sup>. as necessary to their Union. He sh<sup>d</sup>. consider it as his duty if his colleagues viewed the matter in the same light he did to stay here as long as any other State would remain with them, in order to agree on some plan that could with propriety be recommended to the people.

M<sup>r</sup>. Elseworth, did not despair. He still trusted that some good plan of Gov<sup>t</sup>. w<sup>d</sup>. be devised & adopted.

M<sup>r</sup>. Read. He sh<sup>d</sup>. have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little States he thought had not much to fear. He suspected that the large States felt their want of energy, & wished for a Gen<sup>l</sup>. Gov<sup>t</sup>. to supply the defect. Mass<sup>ts</sup>. was evidently labouring under her weakness and he believed Delaware w<sup>d</sup>. not be in much danger if in her neighbourhood. Delaware had enjoyed tranquillity & he flattered himself w<sup>d</sup>. continue to do so. He was not however so selfish as not to wish for a good Gen<sup>l</sup>. Gov<sup>t</sup>. In order to obtain one the whole States must be incorporated. If the States remain, the representatives of the large ones will stick together, and carry everything before them. The Executive also will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the States in existence. They must be done away. The ungranted lands also which have been assumed by particular States must also be given up. He repeated his approbation of the plan of M<sup>r</sup>. Hamilton, & wished it to be substituted in the place of that on the table.

M<sup>r</sup>. Madison agreed with Doc<sup>r</sup>. Johnson, that the mixed nature of the Gov<sup>t</sup>. ought to be kept in view: but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed from the smallest corporation, with the most limited powers, to the largest empire with the most perfect sovereignty.

He pointed out the limitations on the sovereignty of the States, as now confederated their laws in relation to the paramount law of the Confederacy were analagous to that of bye laws to the supreme law within a State; Under the proposed Gov<sup>t</sup>. the powers of the States will be much farther reduced. According to the views of every member, the Gen<sup>l</sup>. Gov<sup>t</sup>. will have powers far beyond those exercised by the British Parliament, when the States were part of the British Empire. It will in particular have the power, without the consent of the State Legislatures, to levy money directly on the people themselves; and therefore not to divest such *unequal* portions of the people as composed the several States, of an *equal* voice, would subject the system to the reproaches & evils which have resulted from the vicious representation in G. B.

He entreated the gentlemen representing the small States to renounce a principle w<sup>ch</sup>. was confessedly unjust, which c<sup>d</sup>. never be admitted, & if admitted must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been s<sup>d</sup>. that the want of energy in the large states w<sup>d</sup>. be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the States ag<sup>st</sup>. all external danger. Let each state depend on itself for its security, & let apprehensions arise of danger, from distant powers or from neighbouring States, & the languishing condition of all the States, large as well as small, w<sup>d</sup>. soon be transformed into vigorous & high toned Gov<sup>ts</sup>. His great fear was that their Gov<sup>ts</sup>. w<sup>d</sup>. then have too much energy, that these might not only be formidable in the large to the small States, but fatal to the internal liberty of all. The same causes which have rendered the old world the Theatre of incessant wars, & have banished liberty from the face of it, w<sup>d</sup>. soon produce the same effects here. The weakness & jealousy of the small States w<sup>d</sup>. quickly introduce some regular military force ag<sup>st</sup>. sudden danger from their powerful neighbours. The example w<sup>d</sup>. be followed by others, and w<sup>d</sup>. soon become universal. In time of actual war, great discretionary powers are constantly given to the Executive Magistrate. Constant apprehension of war, has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defence ag<sup>st</sup>. foreign danger, have been always the instruments of tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people. It is perhaps questionable, whether the best concerted system of absolute power in Europe c<sup>d</sup>. maintain itself, in a situation, where no alarms of external danger c<sup>d</sup>. tame the people to the domestic yoke. The insular situation of G. Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence w<sup>ch</sup>. c<sup>d</sup>. not be used for the purpose of oppression.—These consequences he conceived ought to be apprehended whether the States should run into a total separation from each other, or sh<sup>d</sup>. enter into partial confederacies. Either event w<sup>d</sup>. be truly deplorable; & those who might be accessory to either, could never be forgiven by their Country, nor by themselves.

1 M<sup>r</sup>. Hamilton observed that individuals forming political Societies modify their rights differently with regard to suffrage. Examples of it are found in all the States. In all of them some individuals are deprived of the right altogether, not having the

requisite qualification of property. In some of the States the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a certain quantum of property, to vote for a member in another branch of the Legislature, a higher quantum of property is required. In like manner States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller share of it. But as States are a collection of individual men which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition. Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been s<sup>d</sup>. that if the smaller States renounce their *equality*, they renounce at the same time their *liberty*. The truth is it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger. The State of Delaware having 40,000 souls will *lose power*, if she has only of the votes allowed to P<sup>a</sup> having 400,000: but will the people of Del: *be less free*, if each citizen has an equal vote with each citizen of P<sup>a</sup> He admitted that common residence within the same State would produce a certain degree of attachment; and that this principle might have a certain influence in public affairs. He thought however that this might by some precautions be in a great measure excluded: and that no material inconvenience could result from it, as there could not be any ground for combination among the States whose influence was most dreaded. The only considerable distinction of interests, lay between the carrying & non-carrying States, which divides instead of uniting the largest States. No considerable inconvenience had been found from the division of the State of N. York into different districts of different sizes.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival & hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign Nations having American dominion are & must be jealous of us. Their representatives betray the utmost anxiety for our fate, & for the result of this meeting, which must have an essential influence on it.—It had been said that respectability in the eyes of foreign Nations was not the object at which we aimed; that the proper object of republican Government was domestic tranquillity & happiness. This was an ideal distinction. No Government could give us tranquillity & happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a Government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak & sensible of our weakness. Henceforward the motives will become feebler, and the difficulties greater. It is a miracle that we were now here exercising our tranquil & free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.

M<sup>r</sup>. Pierce considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Cong<sup>s</sup>. were advocates for local advantages. State distinctions must be sacrificed as far as the general good required, but without destroying the States. Tho' from a small State he felt himself a Citizen of the U. S.

M<sup>r</sup>. Gerry, urged that we never were independent States, were not such now, & never could be even on the principles of the Confederation. The States & the advocates for them were intoxicated with the idea of their *sovereignty*. He was a member of Congress at the time the federal articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was ag<sup>st</sup>. his Judgment, and under the pressure of public danger, and the obstinacy of the lesser States. The present Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Cong<sup>s</sup>. If they do Cong<sup>s</sup>. will probably be kept up till the new System should be adopted. He lamented that instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators.

M<sup>r</sup>. L. Martin remarked that the language of the States being *sovereign & independent*, was once familiar & understood; though it seemed now so strange & obscure. He read those passages in the articles of Confederation, which describe them in that language.

On the question as moved by M<sup>r</sup>. Lansing. Shall the word “not” be struck out.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On the motion to agree to the clause as reported, “that the rule of suffrage in the 1<sup>st</sup>. branch ought not to be according to that established by the Articles of the Confederation

Mass. ay. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Doc<sup>r</sup>. Johnson & M<sup>r</sup> Elseworth moved to postpone the residue of the clause, & take up y<sup>e</sup>. 8 Resol:

On question

Mas. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Elseworth moved that the rule of suffrage in the 2<sup>d</sup>. branch be the same with that established by the articles of Confederation. “He was not sorry on the whole he said that the vote just passed, had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the 2<sup>d</sup> branch. We were partly national; partly federal. The proportional representation in the first branch was conformable to the national principle & would secure the large States ag<sup>st</sup>. the small. An equality of voices was conformable to the federal principle and was necessary to secure the Small States ag<sup>st</sup>. the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other. And if no compromise should take place, our meeting would not only be in vain but worse than in vain. To the Eastward he was sure Mass<sup>ts</sup>. was the only State that would listen to a



proposition for excluding the States as equal political Societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it, was at once cutting the body of America in two, and as he supposed would be the case, somewhere about this part of it. The large States he conceived would notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted (by M<sup>r</sup>. Madison) had, notwithstanding a like equality in the Dutch Confederacy, a prevailing influence in the public measures. The power of self defence was essential to the small States. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large States. They will like individuals find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater if they were contiguous and had a more immediate common interest. A defensive combination of the small States was rendered more difficult by their great number. He would mention another consideration of great weight. The existing confederation was founded on the equality of the States in the article of suffrage: was it meant to pay no regard to this antecedent plighted faith. Let a strong Executive, a Judiciary & Legislative power be created, but Let not too much be attempted; by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced. [1](#)

M<sup>r</sup>. Baldwin [1](#) could have wished that the powers of the General Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of M<sup>r</sup>. Elseworth, tho. he did not like the Resolution as it stood in the Report of the Committee of the whole. He thought the second branch ought to be the representation of property, and that in forming it therefore some reference ought to be had to the relative wealth of their Constituents, and to the principles on which the Senate of Mass<sup>ts</sup>. was constituted. He concurred with those who thought it w<sup>d</sup>. be impossible for the Gen<sup>l</sup>. Legislature to extend its cares to the local matters of the States. [2](#) Adj<sup>d</sup>.

## Saturday June 30. 1787. In Convention

M<sup>r</sup> Brearly moved that the Presid<sup>t</sup>. write to the Executive of N. Hampshire, informing it that the business depending before the Convention was of such a nature as to require the immediate attendance of the deputies of that State. In support of his motion he observed that the difficulties of the subject and the diversity of opinions called for all the assistance we could possibly obtain. (it was well understood that the object was to add N. Hampshire to the n<sup>o</sup>. of States opposed to the doctrine of proportional representation, which it was presumed from her relative size she must be adverse to).

M<sup>r</sup>. Patterson seconded the motion.

M<sup>r</sup>. Rutledge could see neither the necessity nor propriety of such a measure. They are not unapprized of the meeting, and can attend if they choose. Rho. Island might as well be urged to appoint & send deputies. Are we to suspend the business until the



deputies arrive? if we proceed he hoped all the great points would be adjusted before the letter could produce its effect.

M<sup>r</sup>. King, said he had written more than once as a private correspondent, & the answers gave him every reason to expect that State would be represented very shortly, if it sh<sup>d</sup>. be so at all. Circumstances of a personal nature had hitherto prevented it. A letter c<sup>d</sup>. have no effect.

M<sup>r</sup>. Wilson wished to know whether it would be consistent with the rule or reason of secrecy, to communicate to N. Hampshire that the business was of such a nature as the motion described. It w<sup>d</sup>. spread a great alarm. Besides he doubted the propriety of soliciting any State on the subject; the meeting being merely voluntary—on motion of M<sup>r</sup>. Brearly Mas<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. ay. N. J. ay. P<sup>a</sup>. not on y<sup>e</sup>. floor. Del. not on floor. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup> no. N. C. no. S. C. no. Geo. not on floor.

The motion of M<sup>r</sup> Elseworth resumed for allowing each State an equal vote in y<sup>e</sup> 2<sup>d</sup>. branch.

M<sup>r</sup>. Wilson did not expect such a motion after the establishment of y<sup>e</sup>. contrary principle in the 1<sup>st</sup>. branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the 1<sup>st</sup>. branch. The Gentleman from Connecticut (M<sup>r</sup>. Elseworth) had pronounced that if the motion should not be acceded to, of all the States North of Pen<sup>a</sup>. one only would agree to any Gen<sup>l</sup>. Government. He entertained more favorable hopes of Conn<sup>t</sup>. and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a Country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds. The votes of yesterday ag<sup>st</sup> the just principle of representation, were as 22 to 90 of the people of America. Taking the opinions to be the same on this point, and he was sure if there was any room for change, it could not be on the side of the majority, the question will be shall less than  $\frac{1}{4}$  of the U. States withdraw themselves from the Union; or shall more than  $\frac{3}{4}$  renounce the inherent, indisputable and unalienable rights of men, in favor of the artificial systems of States. If issue must be joined, it was on this point he would chuse to join it. The Gentleman from Connecticut in supposing that the preponency secured to the majority in the 1<sup>st</sup> branch had removed the objections to an equality of votes in the 2<sup>d</sup>. branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to controul in all cases whatsoever, the sentiments and interests of the majority. Seven States will controul six: Seven States, according to the estimates that had been used, composed of the whole people. It would be in the power then of less than ? to overrule ? whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for *men*, or for the imaginary beings called *States*? Will our honest Constituents be satisfied with metaphysical distinctions? Will they, ought they to be satisfied with being told, that the one-third compose the greater number of States? The rule of suffrage ought on every principle to be the same in the 2<sup>d</sup> as in the 1<sup>st</sup>. branch. If the Government be not laid on this foundation, it can be

neither solid nor lasting. Any other principle will be local, confined & temporary. This will expand with the expansion, and grow with the growth of the U. States.—Much has been said of an imaginary combination of three States. Sometimes a danger of monarchy, sometimes of aristocracy has been charged on it. No explanation however of the danger has been vouchsafed. It would be easy to prove both from reason & history that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of (M<sup>r</sup>. Madison) on this subject. Should the Executive Magistrate be taken from one of the large States would not the other two be thereby thrown into the scale with the other States? Whence then the danger of monarchy? Are the people of the three large States more aristocratic than those of the small ones? Whence then the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of States, till we forget what they are composed of. Is a real & fair majority, the natural hot-bed of aristocracy? It is a part of the definition of this species of Gov<sup>t</sup>. or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the 2<sup>d</sup>. branch cannot carry a law ag<sup>st</sup>. a majority of the people in the 1<sup>st</sup>. But this removes half only of the objection. Bad Govern<sup>ts</sup>. are of two sorts. 1. that which does too little. 2. that which does too much: that which fails thro' weakness; and that which destroys thro' oppression. Under which of these evils do the U. States at present groan? Under the weakness and inefficiency of its Govern<sup>t</sup>.. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the U. S. fettered precisely as heretofore; with the additional mortification of seeing the good purposes of y<sup>e</sup>. fair representation of the people in the 1<sup>st</sup>. branch, defeated in the 2<sup>d</sup>.. Twenty four will still controul sixty six. He lamented that such a disagreement should prevail on the point of representation, as he did not foresee that it would happen on the other point most contested, the boundary between the Gen<sup>l</sup>. & the local authorities. He thought the States necessary & valuable parts of a good system.

M<sup>r</sup>. Elseworth. The capital objection of M<sup>r</sup>. Wilson, “that the minority will rule the majority” is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British Constitution the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws, as a necessary defence of their peculiar rights ag<sup>st</sup>. the encroachm<sup>ts</sup>. of the Commons. No instance of a Confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building, when we need only repair the roof. No salutary measure has been lost for want of *a majority of the States*, to favor it. If security be all that the great States wish for the 1<sup>st</sup>. branch secures them. The danger of combinations among them is not imaginary. Altho' no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose that in pursuance of some commercial treaty or arrangement, three or four free ports & no more were to be established would not combinations be formed in favor of Boston—Philad<sup>a</sup>. & some port of the Chesapeake? A like concert might be formed in the appointment of

the Great officers. He appealed again to the obligations of the federal pact which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each State small as well as great, held an equal right of suffrage in the general Councils. His remarks were not the result of partial or local views. The State he represented (Connecticut) held a middle rank.

M<sup>r</sup> Madison did justice to the able and close reasoning of M<sup>r</sup>. E. but must observe that it did not always accord with itself. On another occasion, the large States were described by him as the Aristocratic States, ready to oppress the small. Now the Small are the House of Lords requiring a negative to defend them ag<sup>st</sup>. the more numerous Commons. M<sup>r</sup>. E. had also erred in saying that no instance had existed in which confederated States had not retained to themselves a perfect equality of suffrage. Passing over the German system in which the K. of Prussia has nine voices, he reminded M<sup>r</sup> E. of the Lycian Confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of Government. Had the fact been as stated by M<sup>r</sup> E. it would have been of little avail to him, or rather would have strengthened the arguments ag<sup>st</sup>. him; the History & fate of the several confederacies modern as well as Antient, demonstrating some radical vice in their structure. In reply to the appeal of M<sup>r</sup>. E. to the faith plighted in the existing federal compact, he remarked that the party claiming from others an adherence to a common engagement ought at least to be guiltless itself of a violation. Of all the States however Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts from which no State was free, the Legislature of that State had by a pretty recent vote, *positively refused* to pass a law for complying with the Requisitions of Cong<sup>s</sup>., and had transmitted a copy of the vote to Cong<sup>s</sup>. It was urged, he said, continually that an equality of votes in the 2<sup>d</sup>. branch was not only necessary to secure the small, but would be perfectly safe to the large ones whose majority in the 1<sup>st</sup>. branch was an effectual bulwark. But notwithstanding this apparent defence, the majority of States might still injure the majority of people. 1. they could *obstruct* the wishes and interests of the majority. 2. they could *extort* measures repugnant to the wishes & interest of the Majority. 3. they could *impose* measures adverse thereto; as the 2<sup>d</sup>. branch will probl<sup>y</sup> exercise some great powers, in which the 1<sup>st</sup>. will not participate. He admitted that every peculiar interest whether in any class of Citizens, or any description of States, ought to be secured as far as possible. Wherever there is danger of attack there ought to be given a Constitutional power of defence. But he contended that the States were divided into different interests not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the U. States. It did not lie between the large & small States: It lay between the Northern & Southern. And if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was that instead of proportioning the votes of the States in both branches, to their respective numbers of inhabitants computing the slaves in the ratio of 5 to 3, they should be represented in one branch according to the number of free inhabitants

only; and in the other according to the whole n<sup>o</sup>. counting the slaves as free. By this arrangement the Southern Scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations: one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself—the other was, the inequality of powers that must be vested in the two branches, and which w<sup>d</sup>. destroy the equilibrium of interests.

M<sup>r</sup>. Elsworth assured the House that whatever might be thought of the Representatives of Connecticut the State was entirely federal in her disposition. He appealed to her great exertions during the war, in supplying both men & money. The muster rolls would show she had more troops in the field than Virg<sup>a</sup>. If she had been Delinquent, it had been from inability, and not more so than other States.

M<sup>r</sup>. Sherman. M<sup>r</sup>. Madison had animadverted on the delinquency of the States, when his object required him to prove that the Constitution of Cong<sup>s</sup>. was faulty. Cong<sup>s</sup>. is not to blame for the faults of the States. Their measures have been right, and the only thing wanting has been, a further power in Cong<sup>s</sup>. to render them effectual.

M<sup>r</sup>. Davy was much embarrassed and wished for explanations. The Report of the Committee allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will according to this rule be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the report as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors chosen by the people for that purpose was he conceived liable to an insuperable difficulty. The larger Counties or districts thrown into a general district, would certainly prevail over the smaller Counties or Districts, and merit in the latter would be excluded altogether. The report therefore seemed to be right in referring the appointment to the Legislatures, whose agency in the general System did not appear to him objectionable as it did to some others. The fact was that the local prejudices & interests which could not be denied to exist, would find their way into the national Councils whether the Representatives should be chosen by the Legislatures or by the people themselves. On the other hand if a proportional representation was attended with insuperable difficulties, the making the Senate the Representative of the States, looked like bringing us back to Cong<sup>s</sup>. again, and shutting out all the advantages expected from it. Under this view of the subject he could not vote for any plan for the Senate yet proposed. He thought that in general there were extremes on both sides. We were partly federal, partly national in our Union, and he did not see why the Gov<sup>t</sup>. might not in some respects operate on the States, in others on the people.

M<sup>r</sup>. Wilson admitted the question concerning the number of Senators, to be embarrassing. If the smallest States be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest States will contain 100,000 souls at least. Let there be then one Senator in each for every 100,000 souls and let the States not having that n<sup>o</sup>. of inhabitants be

allowed one. He was willing himself to submit to this temporary concession to the small States; and threw out the idea as a ground of compromise.

Doc<sup>f</sup>. Franklin. The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner here both sides must part with some of their demands, in order that they may join in some accommodating proposition. He had prepared one which he would read, that it might lie on the table for consideration. The proposition was in the words following

“That the Legislatures of the several States shall choose & send an equal number of Delegates, namely — who are to compose the 2<sup>d</sup>. branch of the General Legislature—

That in all cases or questions wherein the Sovereignty of individual States may be affected, or whereby their authority over their own Citizens may be diminished, or the authority of the General Government within the several States augmented, each State shall have equal suffrage.

That in the appointment of all Civil officers of y<sup>e</sup>. Gen<sup>l</sup>. Gov<sup>t</sup>. in the election of whom the 2<sup>d</sup>. branch may by the Constitution have part, each State shall have equal suffrage.

That in fixing the Salaries of such Officers, and in all allowances for public services, and generally in all appropriations & dispositions of money to be drawn out of the general Treasury; and in all laws for supplying that Treasury, the Delegates of the several States shall have suffrage in proportion to the Sums which their respective States do actually contribute to the Treasury.” Where a ship had many owners this was the rule of deciding on her expedition. He had been one of the Ministers from this Country to France during the joint war and w<sup>d</sup>. have been very glad if allowed a vote in distributing the money to carry it on.

M<sup>f</sup>. King observed that the simple question was whether each State should have an equal vote in the 2<sup>d</sup>. branch; that it must be apparent to those Gentlemen who liked neither the motion for this equality, nor the report as it stood, that the report was as susceptible of melioration as the motion; that a reform would be nugatory & nominal only if we should make another Congress of the proposed Senate: that if the adherence to an equality of votes was fixed & unalterable, there could not be less obstinacy on the other side, & that we were in fact cut asunder already, and it was in vain to shut our eyes against it: that he was however filled with astonishment that if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the Phantom of *State* sovereignty: that his feelings were more harrowed & his fears more agitated for his Country than he could express, that he conceived this to be the last opportunity of providing for its liberty & happiness: that he could not therefore but repeat his amazement that when a just govern<sup>t</sup>. founded on a fair representation of the *people* of America was within our reach, we should renounce the blessing, from an attachment to the ideal freedom & importance of *States*: that should this wonderful illusion continue to prevail, his mind

was prepared for every event, rather than to sit down under a Gov<sup>t</sup>. founded in a vicious principle of representation, and which must be as short lived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by M<sup>r</sup>. Wilson; but he never could listen to an equality of votes as proposed in the motion.

M<sup>r</sup>. Dayton. When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect however eloquently spoken. It should have been shewn that the evils we have experienced have proceeded from the equality now objected to; and that the seeds of dissolution for the State Governments are not sown in the Gen<sup>l</sup>. Government. He considered the system on the table as a novelty, an amphibious monster; and was persuaded that it never would be rec<sup>d</sup>. by the people. M<sup>r</sup>. Martin w<sup>d</sup>. never confederate if it could not be done on just principles.

M<sup>r</sup>. Madison would acquiesce in the concession hinted by M<sup>r</sup>. Wilson, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely dependent on the States. The Senate therefore is only another edition of Cong<sup>s</sup>. He knew the faults of that Body & had used a bold language ag<sup>st</sup>. it. Still he would preserve the State rights, as carefully as the trials by jury.

M<sup>r</sup>. Bedford, contended that there was no middle way between a perfect consolidation and a mere confederacy of the States. The first is out of the question, and in the latter they must continue if not perfectly, yet equally sovereign. If political Societies possess ambition avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? They think no doubt that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small State at present, she is actuated by the prospect of soon being a great one. S. Carolina is actuated both by present interest & future prospects. She hopes too to see the other States cut down to her own dimensions. N. Carolina has the same motives of present & future interest. Virg<sup>a</sup>. follows. Mary<sup>d</sup>. is not on that side of the Question. Pen<sup>a</sup>. has a direct and future interest. Mass<sup>ts</sup>. has a decided and palpable interest in the part she takes. Can it be expected that the small States will act from pure disinterestedness. Look at G. Britain. Is the Representation there less unequal? But we shall be told again that that is the rotten part of the Constitution. Have not the boroughs however held fast their constitutional rights? And are we to act with greater purity than the rest of mankind. An exact proportion in the Representation is not preserved in any one of the States. Will it be said that an inequality of power will not result from an inequality of votes. Give the opportunity, and ambition will not fail to abuse it. The whole History of mankind proves it. The three large States have a common interest to bind them together in commerce. But whether a combination as we suppose, or a competition as others suppose, shall take place among them, in either case, the small States must be ruined. We must like Solon make such a Govern<sup>t</sup>. as the people will approve. Will the smaller States ever agree to the proposed degradation of them. It is not true that the people will not agree to enlarge the powers of the present Cong<sup>s</sup>. The language of the people has been that

Cong<sup>s</sup>. ought to have the power of collecting an impost, and of coercing the States where it may be necessary. On The first point they have been explicit &, in a manner, unanimous in their declarations. And must they not agree to this & similar measures if they ever mean to discharge their engagements. The little States are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told with a dictatorial air that this is the last moment for a fair trial in favor of a Good Govern<sup>t</sup>.. It will be the last indeed if the propositions reported from the Committee go forth to the people. He was under no apprehensions. The Large States dare not dissolve the Confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice. He did not mean by this to intimidate or alarm. It was a natural consequence, which ought to be avoided by enlarging the federal powers not annihilating the federal system. This is what the people expect. All agree in the necessity of a more efficient Gov<sup>t</sup>. and why not make such an one as they desire.

M<sup>r</sup>. Elseworth. Under a National Gov<sup>t</sup>. he should participate in the National Security, as remarked by (M<sup>r</sup>. King) but that was all. What he wanted was domestic happiness. The Nat<sup>l</sup>. Gov<sup>t</sup>. could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes therefore for the preservation of his rights to the State Gov<sup>ts</sup>. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a new born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

M<sup>r</sup>. King was for preserving the States in a subordinate degree, and as far as they could be necessary for the purposes stated by M<sup>r</sup>. Elseh. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised as he conceived that would give them all the security the nature of things would admit of. In the establishm<sup>t</sup>. of Societies the Contstitution was to the Legislature what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the State Constitutions; why may not a like security be provided for the Rights of States in the National Constitution. The articles of Union between Engl<sup>d</sup>. & Scotland furnish an example of such a provision in favor of sundry rights of Scotland. When that Union was in agitation, the same language of apprehension which has been heard from the smaller States, was in the mouths of the Scotch patriots. The articles however have not been violated and the Scotch have found an increase of prosperity & happiness. He was aware that this will be called a mere *paper security*. He thought it a sufficient answer to say that if fundamental articles of compact, are no sufficient defence against physical power, neither will there be any safety ag<sup>st</sup>. it if there be no compact. He could not sit down, without taking some notice of the language of the honorable gentleman from Delaware (M<sup>r</sup>. Bedford). It was not he that had uttered a dictatorial language. This intemperance had marked the honor Gentleman himself. It was not he who with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common Country, and court the protection of some foreign hand. This too was the language of the Hon member himself. He was grieved that such a thought had entered into his heart. He was more grieved that such an expression had dropped from his lips. The gentleman c<sup>d</sup>. only excuse it to himself on

the score of passion. For himself whatever might be his distress, he w<sup>d</sup>. never court relief from a foreign power.

Adjourned

## Monday July 2<sup>D</sup>. In Convention.

On the question for allowing each State one vote in the second branch as moved by M<sup>r</sup> Elseworth, Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. M<sup>r</sup>. Jenifer being not present M<sup>r</sup>. Martin alone voted V<sup>a</sup>. no. N. C. no. S. C. no. Geo. div<sup>d</sup>. M<sup>r</sup>. Houston no. M<sup>r</sup>. Baldwin ay.

M<sup>r</sup>. Pinkney thought an equality of votes in the 2<sup>d</sup>. branch inadmissible. At the same time candor obliged him to admit that the large States would feel a partiality for their own Citizens & give them a preference, in appointments: that they might also find some common points in their Commercial interests, and promote treaties favorable to them. There is a real distinction [between] the Northern & South<sup>n</sup>. interests. N. Carol<sup>a</sup>. S. Carol: & Geo. in their Rice & Indigo had a peculiar interest which might be sacrificed. How then shall the larger States be prevented from administering the Gen<sup>l</sup>. Gov<sup>t</sup>. as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some but not a full, proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Cong<sup>s</sup>. have failed in almost every effort for an amendment of the federal System. Nothing has prevented a dissolution of it, but the appointm<sup>t</sup>. of this Convention; & he could not express his alarms for the consequence of such an event. He read his motion, to form the States into classes, with an apportionment of Senators among them (see Art: 4, of his plan).

General Pinkney. was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Doc<sup>r</sup>. Franklin (which see Saturday June 30). Some Compromise seemed to be necessary, the States being exactly divided on the question for an equality of votes in the 2<sup>d</sup>. branch. He proposed that a Committee consisting of a member from each State should be appointed to devise & report some compromise.

M<sup>r</sup>. L. Martin had no objection to a commitment, but no modifications whatever could reconcile the Smaller States to the least diminution of their equal Sovereignty.

M<sup>r</sup>. Sharman. We are now at a full stop, and nobody he supposed meant that we sh<sup>d</sup>. break up without doing something. A committee he thought most likely to hit on some expedient.

1 Mr. Gov<sup>r</sup>. Morris. thought a Com<sup>e</sup>. advisable as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the 2<sup>d</sup>. branch tended he was sure to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State Legislatures, precipitation—in Congress changeableness, in every department excesses ag<sup>st</sup>. personal liberty private property &



personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue*, are equally necessary in both branches. Something more then is now wanted. 1. the checking branch must have a personal interest in checking the other branch, one interest must be opposed to another interest. Vices as they exist, must be turned ag<sup>st</sup>. each other. 2. It must have great personal property, it must have the aristocratic spirit; it must love to lord it thro' pride. Pride is indeed the great principle that actuates both the poor & the rich. It is this principle which in the former resists, in the latter abuses authority. 3. It should be independent. In Religion the Creature is apt to forget its Creator. That it is otherwise in Political Affairs, the late debates here are an unhappy proof. The aristocratic body, should be as independent & as firm as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the Senatorial branches of the Legislatures from a servile complaisance to the democratic. If the 2<sup>d</sup>. branch is to be dependent we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; He hoped so. The Rich will strive to establish their dominion & enslave the rest. They always did. They always will. The proper security ag<sup>st</sup> them is to form them into a separate interest. The two forces will then controul each other. Let the rich mix with the poor and in a Commercial Country, they will establish an Oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men: and we are not to expect any particular interference of Heaven in our favor. By thus combining & setting apart, the aristocratic interest, the popular interest will be combined ag<sup>st</sup>. it. There will be a mutual check and mutual security. 4. An independence for life, involves the necessary permanency. If we change our measures nobody will trust us: and how avoid a change of measures, but by avoiding a change of men. Ask any man if he confides in Cong<sup>s</sup>. if he confides in the State of Pen<sup>a</sup>. if he will lend his money or enter into contract? He will tell you no. He sees no stability. He can repose no confidence. If G. B. were to explain her refusal to treat with us, the same reasoning would be employed.—He disliked the exclusion of the 2<sup>d</sup>. branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers during the war, from civil appointments. It deprives the Executive of the principal source of influence. If danger be apprehended from the Executive what a left-handed way is this of obviating it? If the son, the brother or the friend can be appointed, the danger may be even increased, as the disqualified father &c. can then boast of a disinterestedness which he does not possess. Besides shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also ag<sup>st</sup>. paying the Senators. They will pay themselves if they can. If they can not they will be rich and can do without it. Of such the 2<sup>d</sup>. branch ought to consist; and none but such can compose it if they are not to be paid—He contended that the Executive should appoint the Senate & fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please; it will come to the same thing. The members being independ<sup>t</sup>. & for life, may be taken as well from one place as from another.—It should be considered too how the scheme could be carried through the States. He hoped there was strength of mind eno' in this House to look truth in the face. He did not hesitate therefore to say that loaves & fishes must bribe the Demagogues. They must be made to expect higher offices under the general than the State Gov<sup>ts</sup>. A Senate for life will be a noble bait. Without such

captivating prospects, the popular leaders will oppose & defeat the plan. He perceived that the 1<sup>st</sup>. branch was to be chosen by the people of the States; the 2<sup>d</sup>. by those chosen by the people. Is not here a Gov<sup>t</sup>. by the States, a Govern<sup>t</sup>. by Compact between Virg<sup>a</sup>. in the 1<sup>st</sup>. & 2<sup>d</sup>. branch, Mass<sup>ts</sup>. in the 1<sup>st</sup>. & 2<sup>d</sup>. branch &c. This is going back to mere treaty. It is no Gov<sup>t</sup>. at all. It is altogether dependent on the States, and will act over again the part which Congs has acted. A firm Govern<sup>t</sup>. alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere if we do not by such a Gov<sup>t</sup>. keep them within their proper sphere. We should remember that the people never act from reason alone. The Rich will take the advantage of their passions & make these the instruments for oppressing them. The Result of the Contest will be a violent aristocracy, or a more violent despotism. The schemes of the Rich will be favored by the extent of the Country. The people in such distant parts cannot communicate & act in concert. They will be the dupes of those who have more knowledge & intercourse. The only security ag<sup>st</sup>. encroachments will be a select & sagacious body of men, instituted to watch ag<sup>st</sup>. them on all sides. He meant only to hint these observations, without grounding any motion on them.

M<sup>r</sup>. Randolph favored the commitment though he did not expect much benefit from the expedient. He animadverted on the warm & rash language of M<sup>r</sup>. Bedford on Saturday; reminded the small States that if the large States should combine some danger of which he did not deny there would be a check in the revisionary power of the Executive, and intimated that in order to render this still more effectual, he would agree that in the choice of an Executive each State should have an equal vote. He was persuaded that two such opposite bodies as M<sup>r</sup>. Morris had planned, could never long co-exist. Dissentions would arise, as has been seen even between the Senate and H. of Delegates in Maryland, appeals would be made to the people; and in a little time commotions would be the result—He was far from thinking the large States could subsist of themselves any more than the small; an avulsion would involve the whole in ruin, and he was determined to pursue such a scheme of Government as would secure us ag<sup>st</sup>. such a calamity.

M<sup>r</sup>. Strong was for the com?itment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures.

Doc<sup>r</sup>. Williamson. If we do not concede on both sides, our business must soon be at an end. He approved of the com?itment, supposing that as the Com<sup>e</sup>. w<sup>d</sup>. be a smaller body, a compromise would be pursued with more coolness.

M<sup>r</sup>. Wilson objected to the Committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Cong<sup>s</sup>. had also proved the inutility of Committees consisting of members from each State.

M<sup>r</sup>. Lansing w<sup>d</sup> not oppose the commitment, though expecting little advantage from it.

M<sup>r</sup>. Madison opposed the Com<sup>o</sup>mitment. He had rarely seen any other effect than delay from *such* Committees in Cong<sup>s</sup>. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee where it contained merely the *opinion* of the Com<sup>e</sup> would neither shorten the discussion, nor influence the decision of the House.

M<sup>r</sup>. Gerry was for the commitm<sup>t</sup>. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the State we should be thrown into by the failure of the Union. We should be without an Umpire to decide controversies and must be at the mercy of events. What too is to become of our treaties—what of our foreign debts, what of our domestic? We must make concessions on both sides. Without these the Constitutions of the several States would never have been formed.

On the question “for com<sup>o</sup>miting,” generally:

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. no. P. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

On the question for com<sup>o</sup>miting it “to a member from each State,”

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The Com<sup>o</sup>mittee elected by ballot, were M<sup>r</sup>. Gerry, M<sup>r</sup>. Elseworth, M<sup>r</sup>. Yates, M<sup>r</sup>. Patterson, D<sup>r</sup>. Franklin, M<sup>r</sup>. Bedford, M<sup>r</sup>. Martin, M<sup>r</sup>. Mason, M<sup>r</sup>. Davy, M<sup>r</sup>. Rutledge, Mr. Baldwin.

That time might be given to the Com<sup>o</sup>mittee, and to such as chose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday.1

## Thursday July 5<sup>Th</sup>. In Convention

M<sup>r</sup>. Gerry delivered in from the Committee appointed on Monday last the following Report.

“The Committee to whom was referred the 8<sup>th</sup>. Resol. of the Report from the Committee of the Whole House, and so much of the 7<sup>th</sup>. as has not been decided on, submit the following Report: That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted. I. that in the 1<sup>st</sup>. branch of the Legislature each of the States now in the Union shall be allowed 1 member for every 40,000 inhabitants of the description reported in the 7<sup>th</sup>. Resolution of the Com<sup>e</sup>. of the whole House: that each State not containing that number shall be allowed 1 member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the Govern<sup>t</sup>. of the U. States shall originate in the 1<sup>st</sup>. branch of the Legislature, and shall not be altered or amended by the 2<sup>d</sup>. branch; and that no money shall be drawn from the public Treasury but in pursuance of appropriations to

be originated in the 1<sup>st</sup>. branch. “II. That in the 2<sup>d</sup>. branch each State shall have an equal vote.”<sup>1</sup>

M<sup>r</sup>. Ghoram observed that as the report consisted of propositions mutually conditional he wished to hear some explanations touching the grounds on which the conditions were estimated.

M<sup>r</sup>. Gerry. The Committee were of different opinions as well as the Deputations from which the Com<sup>e</sup>. were taken, and agreed to the Report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree will not be under any obligation to support the Report.

Mr. Wilson thought the Committee had exceeded their powers.

M<sup>r</sup>. Martin was for taking the question on the whole report.

M<sup>r</sup> Wilson was for a division of the question; otherwise it w<sup>d</sup> be a leap in the dark.

M<sup>r</sup> Madison could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower branch who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other house. Bills could be negatived that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the 1<sup>st</sup>. branch the use of that body as a check would be lost. If the 1<sup>st</sup>. branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shewn both in G. B. and the States having a similar regulation that it was a source of frequent & obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion when judged by its own merits. It could not therefore be deemed any concession on the present, and left in force all the objections which had prevailed ag<sup>st</sup>. allowing each State an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller States, and the minority of the people of the U. S. or of displeasing these by justly gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention with justice & the majority of the people on their side, had nothing to fear. With injustice and the minority on their side they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their Constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused & supported by the enlightened and impartial part of America, & which they could themselves vindicate and urge. It should be considered that altho' at first many may judge of the system recom<sup>d</sup>ended, by their opinion of the Convention, yet finally all will judge of the Convention by the System. The merits of the System alone can finally & effectually obtain the public suffrage. He was not apprehensive that the people of the small States would obstinately refuse to accede to a Gov<sup>t</sup>. founded on just principles, and

promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States, rather than submit to such a Gov<sup>t</sup>.; much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives (M<sup>r</sup>. Bedford) had suggested, or if she sh<sup>d</sup>., that any foreign nation w<sup>d</sup>. be so rash as to hearken to the overture. As little could he suspect that the people of N. Jersey notwithstanding the decided tone of the gentlemen from that State, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the com<sup>er</sup>ce of the neighbouring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was no doubt much to be desired. Satisfaction to all the States, in the first instance still more so. But if the principal States comprehending a majority of the people of the U. S. should concur in a just & judicious plan, he had the firmest hopes, that all the other States would by degrees accede to it. 1

M<sup>r</sup>. Butler said he could not let down his idea of the people, of America so far as to believe they would from mere respect to the Convention adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the 2<sup>d</sup>. branch ought to represent the States according to their property.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, thought the form as well as the matter of the Report objectionable. It seemed in the first place to render amendments impracticable. In the next place, it seemed to involve a pledge to agree to the 2<sup>d</sup>. part if the 1<sup>st</sup>. sh<sup>d</sup>. be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He can not descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that if the plan we recommend be reasonable & right; all Who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger States shall agree; and that the smaller refuse; and let us trace the consequences. The opponents of the system in the smaller States will no doubt make a party, and a noise for a time, but the ties of interest, of kindred & of common habits which connect them with other States will be too strong to be easily broken. In N. Jersey particularly he was sure a great many would follow the sentiments of Pen<sup>a</sup>. & N. York. This Country must be united. If persuasion does not unite it, the sword will. He begged that this consideration might have its due weight. The scenes of horror attending Civil commotion cannot be described, and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traytors of the weaker; and the Gallows & Halter will finish the work of the sword. How far foreign powers

would be ready to take part in the confusions he would not say. Threats that they will be invited have it seems been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the History of Germany, & urged it as a standing lesson to other nations. He trusted that the Gentlemen who may have hazarded such expressions, did not entertain them till they reached their own lips. But returning to the Report he could not think it in any respect calculated for the Public good. As the 2<sup>d</sup>. branch is now constituted, there will be constant disputes & appeals to the States which will undermine the Gen<sup>l</sup>. Government & controul & annihilate the 1<sup>st</sup> branch. Suppose that the delegates from Mass<sup>ts</sup>. & Rho I. in the Upper House disagree, and that the former are outvoted. What Results? they will immediately declare that their State will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virg<sup>a</sup>. & other States. Of what avail then will be what is on paper. State attachments, and State importance have been the bane of this Country. We can not annihilate; but we may perhaps take out the teeth of the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular Spot. And after all how little can be the motive yielded by selfishness for such a policy. Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that State.

M<sup>r</sup>. Bedford. He found that what he had said as to the small States being taken by the hand, had been misunderstood; and he rose to explain. He did not mean that the small States would court the aid & interposition of foreign powers. He meant that they would not consider the federal compact as dissolved untill it should be so by the Acts of the large States. In this case The consequences of the breach of faith on their part, and the readiness of the small States to fulfill their engagements, would be that foreign Nations having demands on this Country would find it their interest to take the small States by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small States may be driven by oppression. He observed also in apology that some allowance ought to be made for the habits of his profession in which warmth was natural & sometimes necessary. But is there not an apology in what was said by (M<sup>r</sup> Gov<sup>r</sup>. Morris) that the sword is to unite: by M<sup>r</sup>. Ghorum that Delaware must be annexed to Penn<sup>a</sup>. and N. Jersey divided between Pen<sup>a</sup>. and N. York. To hear such language without emotion, would be to renounce the feelings of a man and the duty of a Citizen—As to the propositions of the Committee, the lesser States have thought it necessary to have a security somewhere. This has been thought necessary for the Executive Magistrate of the proposed Gov<sup>t</sup>. who has a sort of negative on the laws; and is it not of more importance that the States should be protected, than that the Executive branch of the Gov<sup>t</sup>. sh<sup>d</sup>. be protected. In order to obtain this, the smaller States have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions as to the 2<sup>d</sup>. branch is it to be supposed they will ever accede to the plan; and what will be the consequence if nothing should be done? The condition of the U. States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects might not be supplied with meetings 10, 15, or 20 years hence.

M<sup>r</sup>. Elseworth said he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

M<sup>r</sup>. Williamson hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their States which was not & could not be known. He hoped also that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (M<sup>r</sup>. Gov<sup>r</sup>. Morris) meant that the sword ought to be drawn ag<sup>st</sup>. the smaller States. He only pointed out the probable consequences of anarchy in the U. S. A similar exposition ought to be given of the expressions of (M<sup>r</sup> Ghorum). He was ready to hear the Report discussed; but thought the propositions contained in it, the most objectionable of any he had yet heard.

M<sup>r</sup>. Patterson said that he had when the Report was agreed to in the Com<sup>e</sup>. reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the Sword & the Gallows little calculated to produce conviction. He complained of the manner in which M<sup>r</sup>. M and M<sup>r</sup>. Gov<sup>r</sup>. Morris had treated the small States.

M<sup>r</sup>. Gerry. Tho' he had assented to the Report in the Committee, he had very material objections to it. We were however in a peculiar situation. We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely. If no compromise should take place what will be the consequence. A secession he foresaw would take place; for some gentlemen seem decided on it: two different plans will be proposed; and the result no man could foresee. If we do not come to some agreement among ourselves some foreign sword will probably do the work for us.

M<sup>r</sup>. Mason. The Report was meant not as specific propositions to be adopted; but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in the work. Accommodation was the object of the House in the appointment of the Committee; and of the Committee in the Report they had made. And however liable the Report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs, than it was for him; but he would bury his bones in this City rather than expose his Country to the Consequences of a dissolution of the Convention without any thing being done.

The 1<sup>st</sup>. proposition in the report for fixing the representation in the 1<sup>st</sup> branch, "one member for every 40,000 inhabitants," being taken up.

M<sup>r</sup>. Gov<sup>r</sup>. Morris objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life & liberty were generally said to be of more value than property. An accurate view of the matter would nevertheless prove that property was the main object of Society. The Savage State was more favorable to liberty than the Civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only

renounced for the sake of property which could only be secured by the restraints of regular Government. These ideas might appear to some new, but they were nevertheless just. If property then was the main object of Gov<sup>t</sup>. certainly it ought to be one measure of the influence due to those who were to be affected by the Govern<sup>t</sup>. He looked forward also to that range of New States which w<sup>d</sup>. soon be formed in the West. He thought the rule of representation ought to be so fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This w<sup>d</sup>. not be unjust, as the Western settlers w<sup>d</sup>. previously know the conditions on which they were to possess their lands. It would be politic as it would recom<sup>end</sup> the plan to the present as well as future interest of the States which must decide the fate of it.

M<sup>r</sup>. Rutledge. The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of Society. If numbers should be made the rule of representation, the Atlantic States will be subjected to the Western. He moved that the first proposition in the report be postponed in order to take up the following viz “that the suffrages of the several States be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each State respectively: that an apportionment of suffrages, according to the ratio aforesaid shall be made and regulated at the end of — years from the 1<sup>st</sup>. meeting of the Legislature of the U. S., and at the end of every — years but that for the present, and until the period above mentioned, the suffrages shall be for N. Hampshire — for Massach<sup>ts</sup>. — &c.

Col. Mason said the case of new States was not unnoticed in the Committee; but it was thought and he was himself decidedly of opinion that if they made a part of the Union, they ought to be subject to no unfavorable discriminations. Obvious considerations required it.

M<sup>r</sup>. Randolph concurred with Col. Mason.

On Question on M<sup>r</sup>. Rutlidges motion,

Mas<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. no. Mary<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. not on floor.

## Friday July 6<sup>Th</sup>. In Convention

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to commit so much of the Report as relates to “1 member for every 40,000 inhabitants.” His view was that they might absolutely fix the number for each State in the first instance; leaving the Legislature at liberty to provide for changes in the relative importance of the States, and for the case of new States.



M<sup>r</sup>. Wilson 2<sup>ded</sup>. the motion; but with a view of leaving the Committee under no implied shackles.

M<sup>r</sup>. Ghorum apprehended great inconveniency from fixing directly the number of Representatives to be allowed to each State. He thought the number of Inhabitants the true guide; tho' perhaps some departure might be expedient from the full proportion. The States also would vary in their relative extent by separations of parts of the largest States. A part of Virg<sup>a</sup>. is now on the point of a separation. In the province of Mayne a Convention is at this time deliberating on a separation from Mas<sup>ts</sup>. In such events the number of representatives ought certainly to be reduced. He hoped to see all the States made small by proper divisions, instead of their becoming formidable as was apprehended, to the Small States. He conceived that let the Gen<sup>l</sup>. Government be modified as it might, there would be a constant tendency in the State Govern<sup>ts</sup>. to encroach upon it: it was of importance therefore that the extent of the States sh<sup>d</sup>. be reduced as much & as fast as possible. The stronger the Gov<sup>t</sup>. shall be made in the first instance the more easily will these divisions be effected; as it will be of less consequence in the opinion of the States whether they be of great or small extent.

M<sup>r</sup>. Gerry did not think with his Colleague that the large States ought to be cut up. This policy has been inculcated by the middling and smaller States, ungenerously & contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the States be reduced to the size of Counties. If this policy should still actuate the small States, the large ones cou'd not confederate safely with them; but would be obliged to consult their safety by confederating only with one another. He favored the commitment and thought that Representation ought to be in the Combined ratio of numbers of Inhabitants and of wealth, and not of either singly.

M<sup>r</sup>. King wished the clause to be committed, chiefly in order to detach it from the Report with which it had no connection. He thought also that the Ratio of Representation proposed could not be safely fixed, since in a century & a half our computed increase of population would carry the number of representatives to an enormous excess; that y<sup>e</sup> number of inhabitants was not the proper index of ability & wealth; that property was the primary object of Society; and that in fixing a ratio this ought not to be excluded from the estimate.—With regard to new States, he observed that there was something peculiar in the business which had not been noticed. The U. S. were now admitted to be proprietors of the Country N. West of the Ohio. Cong<sup>s</sup>. by one of their ordinances have impolitically laid it out into ten States, and have made it a fundamental article of compact with those who may become settlers, that as soon as the number in any one state shall equal that of the smallest of the 13 original States, it may claim admission into the Union. Delaware does not contain it is computed more than 35,000 souls, and for obvious reasons will not increase much for a considerable time. It is possible then that if this plan be persisted in by Cong<sup>s</sup>. 10 new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pen<sup>a</sup>. The plan as it respects one of the new States is already irrevocable, the sale of the lands having commenced, and the purchasers & settlers will immediately become entitled to all the privileges of the compact.

M<sup>r</sup>. Butler agreed to the Commitment if the Committee were to be left at liberty. He was persuaded that the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old & the new States. He contended strenuously that property was the only just measure of representation. This was the great object of Govern<sup>t</sup>; the great cause of war; the great means of carrying it on.

M<sup>r</sup>. Pinkney saw no good reason for committing. The value of land had been found on full investigation to be an impracticable rule. The contributions of revenue including imports & exports must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just & practicable rule. He thought the blacks ought to stand on an equality with the whites: But w<sup>d</sup>. agree to the ratio settled by Cong<sup>s</sup>. He contended that Cong<sup>s</sup>. had no right under the articles of Confederation to authorize the admission of new States; no such case having been provided for.

M<sup>r</sup>. Davy was for committing the clause in order to get at the merits of the question arising on the Report. He seemed to think that wealth or property ought to be represented in the 2<sup>d</sup>. branch; and numbers in the 1<sup>st</sup> branch.

On the Motion for committing as made by M<sup>r</sup>. Gov<sup>r</sup>. Morris,

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The members app<sup>d</sup>. by Ballot were M<sup>r</sup>. Gov<sup>r</sup>. Morris, M<sup>r</sup>. Gorham, M<sup>r</sup>. Randolph, M<sup>r</sup>. Rutledge, M<sup>r</sup>. King.

M<sup>r</sup>. Wilson signified that his view in agreeing to the com<sup>it</sup>m<sup>t</sup>. was that the Com<sup>e</sup> might consider the propriety of adopting a scale similar to that established by the Constitution of Mass<sup>ts</sup>. which w<sup>d</sup>. give an advantage to y<sup>e</sup>. small States without substantially departing from the rule of proportion.

M<sup>r</sup>. Wilson & M<sup>r</sup>. Mason moved to postpone the clause relating to money bills in order to take up the clause relating to an equality of votes in the Second branch.

On the question Mass<sup>ts</sup>. no. Con<sup>t</sup> no. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. no. S. C. ay. Geo. ay.

The clause relating to equality of votes being under consideration,

Doc<sup>r</sup>. Franklin observed that this question could not be properly put by itself, the Com<sup>it</sup>tee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken, but should vote for the whole together.

Col. Mason perceived the difficulty & suggested a reference of the rest of the Report to y<sup>e</sup>. Committee just appointed, that the whole might be brought into one view.

M<sup>r</sup>. Randolph disliked y<sup>e</sup> reference to that Committee, as it consisted of members from States opposed to the wishes of the smaller States, and could not therefore be acceptable to the latter.

M<sup>r</sup>. Martin & M<sup>r</sup>. Jenifer moved to postpone the clause till the Com<sup>e</sup>. last appointed sh<sup>d</sup> report.

M<sup>r</sup>. Madison observed that if the uncommitted part of the Report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

On the question for postponing, moved by M<sup>r</sup>. Martin & M<sup>r</sup>. Jenifer,—Con<sup>t</sup> N. J. Del. M<sup>d</sup> V<sup>a</sup>. Geo. ay P<sup>a</sup>. N. C. S. C. no Mass. N. Y. divided.

The 1<sup>st</sup>. clause relating to the originating of money bills was then resumed.

M<sup>r</sup>. Govern<sup>r</sup>. Morris was opposed to a restriction of this right in either branch, considered merely in itself and as unconnected with the point of representation in the 2<sup>d</sup>. branch. It will disable the 2<sup>d</sup>. branch from proposing its own money plans, and giving the people an opportunity of judging by comparison of the merits of those proposed by the 1<sup>st</sup>. branch.

M<sup>r</sup>. Wilson could see nothing like a concession here on the part of the smaller States. If both branches were to say yes or no, it was of little consequence which should say yes or no first, which last. If either was indiscriminately to have the right of originating, the reverse of the Report, would he thought be most proper; since it was a maxim that the least numerous body was the fittest for deliberation; the most numerous for decision. He observed that this discrimination had been transcribed from the British into several American constitutions. But he was persuaded that on examination of the American experiments it would be found to be a trifle light as air. Nor could he ever discover the advantage of it in the Parliamentary history of G. Britain. He hoped if there was any advantage in the privilege, that it would be pointed out.

M<sup>r</sup>. Williamson thought that if the privilege were not common to both branches it ought rather to be confined to the 2<sup>d</sup>. as the bills in that case would be more narrowly watched, than if they originated with the branch having most of the popular confidence.

M<sup>r</sup>. Mason. The consideration which weighed with the Committee was that the 1<sup>st</sup>. branch would be the immediate representatives of the people, the 2<sup>d</sup>. would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy. He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches; but supposed that some points must be yielded for the sake of accomodation.

M<sup>r</sup>. Wilson. If he had proposed that the 2<sup>d</sup>. branch should have an independent disposal of public money, the observations of (Col. Mason) would have been a satisfactory answer. But nothing could be farther from what he had said. His question was how is the power of the 1<sup>st</sup>. branch increased or that of the 2<sup>d</sup> diminished by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must concur, in the end?

M<sup>r</sup>. Gerry would not say that the concession was a sufficient one on the part of the small States. But he could not but regard it in the light of a concession. It w<sup>d</sup>. make it a constitutional principle that the 2<sup>d</sup> branch were not possessed of the Confidence of the people in money matters, which w<sup>d</sup>. lessen their weight & influence. In the next place if the 2<sup>d</sup> branch were dispossessed of the privilege, they w<sup>d</sup>. be deprived of the opportunity which their continuance in office 3 times as long as the 1<sup>st</sup>. branch would give them of making three successive essays in favor of a particular point.

M<sup>r</sup>. Pinkney thought it evident that the Concession was wholly on one side, that of the large States, the privilege of originating money bills being of no account.

M<sup>r</sup>. Gov<sup>r</sup>. Morris had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was that there never was, nor ever will be a civilized Society without an aristocracy. His endeavor was to keep it as much as possible from doing mischief. The restriction if it has any real operation, will deprive us of the services of the 2<sup>d</sup>. branch in digesting & proposing money bills of which it will be more capable than the 1<sup>st</sup>. branch. It will take away the responsibility of the 2<sup>d</sup>. branch, the great security for good behavior. It will always leave a plea, as to an obnoxious money bill that it was disliked, but could not be constitutionally amended; nor safely rejected. It will be a dangerous source of disputes between the two Houses. We should either take the British Constitution altogether or make one for ourselves. The Executive there has dissolved two Houses as the only cure for such disputes. Will our Executive be able to apply such a remedy? Every law directly or indirectly takes money out of the pockets of the people. Again What use may be made of such a privilege in case of great emergency? Suppose an Enemy at the door, and money instantly & absolutely necessary for repelling him, may not the popular branch avail itself of this duress, to extort concessions from the Senate destructive of the Constitution itself. He illustrated this danger by the example of the Long Parliament's exped<sup>ts</sup>. for subverting the H. of Lords; concluding on the whole that the restriction would be either useless or pernicious.

Doc<sup>r</sup>. Franklin did not mean to go into a justification of the Report, but as it had been asked what would be the use of restraining the 2<sup>d</sup>. branch from meddling with money bills, he could not but remark that it was always of importance that the people should know who had disposed of their money, & how it had been disposed of. It was a maxim that those who feel, can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the report. As to the danger or difficulty that might arise from a Negative in the 2<sup>d</sup>. where the people w<sup>d</sup>. not be proportionately represented, it might easily be got over by declaring that there should

be no such negative; or if that will not do, by declaring that there shall be no such branch at all.

M<sup>r</sup>. Martin said that it was understood in the Committee that the difficulties and disputes which had been apprehended, should be guarded ag<sup>st</sup>. in the detailing of the plan.

M<sup>r</sup>. Wilson. The difficulties & disputes will increase with the attempts to define & obviate them. Queen Anne was obliged to dissolve her Parliam<sup>t</sup>. in order to terminate one of these obstinate disputes between the two Houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still sub judice in England. He approved of the principles laid down by the Hon President (Doct<sup>r</sup>. Franklin) his Colleague, as to the expediency of keeping the people informed of their money affairs. But thought they would know as much, and be as well satisfied, in one way as in the other.

Gen<sup>l</sup>. Pinkney was astonished that this point should have been considered as a concession. He remarked that the restriction to money bills had been rejected on the merits singly considered, by 8 States ag<sup>st</sup>. 3. and that the very States which now called it a concession, were then ag<sup>st</sup>. it as nugatory or improper in itself.

On the Question whether the clause relating to money bills in the Report of the Com<sup>e</sup>. consisting of a member from each State, sh<sup>d</sup>. stand as part of the Report.

Mass<sup>ts</sup>. divid<sup>d</sup>. Con<sup>t</sup>. ay. N. Y. divid<sup>d</sup>. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. divid<sup>d</sup>.

A Question was then raised whether the question was carried in the affirmative; there being but 5 ays out of 11. States present. The words of the rule are (see May 28).

On this question: Mas. Con<sup>t</sup>. N. J. P<sup>a</sup>. Del. M<sup>d</sup>. N. C. S. C. Geo. ay N. Y. V<sup>a</sup> no.

(In several preceding instances like votes had sub silentio been entered as decided in the affirmative.)

Adjourned

## Saturday, July 7. In Convention.

“Shall the clause allowing each State one vote in the 2<sup>d</sup>. branch, stand as part of the Report,”? being taken up—

M<sup>r</sup>. Gerry. This is the critical question. He had rather agree to it than have no accommodation. A Govern<sup>t</sup>. short of a proper national plan, if generally acceptable, would be preferable to a proper one which if it could be carried at all, would operate on discontented States. He thought it would be best to suspend the question till the Comm<sup>e</sup>. yesterday appointed, should make report.

M<sup>r</sup>. Sherman supposed that it was the wish of every one that some Gen<sup>l</sup>. Gov<sup>t</sup>. should be established. An equal vote in the 2<sup>d</sup>. branch would, he thought, be most likely to give it the necessary vigor. The small States have more vigor in their Gov<sup>ts</sup>. than the large ones, the more influence therefore the large ones have, the weaker will be the Gov<sup>t</sup>. In the large States it will be most difficult to collect the real & fair sense of the people. Fallacy & undue influence will be practised with most success; and improper men will most easily get into office. If they vote by States in the 2<sup>d</sup> branch, and each State has an equal vote, there must be always a majority of States as well as a majority of the people on the side of public measures, & the Gov<sup>t</sup>. will have decision and efficacy. If this be not the case in the 2<sup>d</sup>. branch there may be a majority of States ag<sup>st</sup>. public measures, and the difficulty of compelling them to abide by the public determination, will render the Government feebler than it has ever yet been.

M<sup>r</sup>. Wilson was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the Representatives, than among the Constituents; and it w<sup>d</sup>. be of little consequence if not established among the latter; and there could be little hope of its being established among them if the foundation should not be laid in justice and right.

On Question shall the words stand as part of the Report?

Mass<sup>ts</sup>. div<sup>d</sup>. Con<sup>t</sup> ay. N. Y. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. div<sup>d</sup>.

(Note. several votes were given here in the affirmative or were div<sup>d</sup>. because another final question was to be taken on the whole report.)

M<sup>r</sup>. Gerry<sup>1</sup> thought it would be proper to proceed to enumerate & define the powers to be vested in the Gen<sup>l</sup>. Gov<sup>t</sup>. before a question on the report should be taken as to the rule of representation in the 2<sup>d</sup>. branch.

M<sup>r</sup>. Madison, observed that it w<sup>d</sup> be impossible to say what powers could be safely & properly vested in the Gov<sup>t</sup>. before it was known, in what manner the States were to be represented in it. He was apprehensive that if a just representation were not the basis of the Gov<sup>t</sup>. it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the New Gov<sup>t</sup>. w<sup>d</sup>. be rendered as impotent and as shortlived as the old.

M<sup>r</sup>. Patterson would not decide whether the privilege concerning money bills were a valuable consideration or not: But he considered the mode & rule of representation in the 1<sup>st</sup>. branch as fully so; and that after the establishment of that point, the small States would never be able to defend themselves without an equality of votes in the 2<sup>d</sup>. branch. There was no other ground of accommodation. His resolution was fixt. He would meet the large States on that ground and no other. For himself he should vote ag<sup>st</sup>. the Report, because it yielded too much.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. He had no resolution unalterably fixed except to do what should finally appear to him right. He was ag<sup>st</sup>. the Report because it maintained the improper constitution of the 2<sup>d</sup>. branch. It made it another Congress, a mere whisp of straw. It had been s<sup>d</sup>. (by M<sup>r</sup>. Gerry) that the new Govern<sup>t</sup>. would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the States. But in what quality was it to protect the aggregate interest of the whole. Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American Empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interests of States had been sacrificed to those of the Counties. What is to be the check in the Senate? none; unless it be to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body. Suppose they should give themselves up to foreign influence. Ought they to be protected in such cases. They were originally nothing more than colonial corporations. On the declaration of Independence, a Govern<sup>t</sup>. was to be formed. The small States aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand under the new system greater rights as men, than their fellow Citizens of the large States. The proper answer to them is that the same necessity of which they formerly took advantage, does not now exist, and that the large States are at liberty now to consider what is right, rather than what may be expedient. We must have an efficient Gov<sup>t</sup>. and if there be an efficiency in the local Gov<sup>ts</sup>. the former is impossible. Germany alone proves it. Notwithstanding their common diet, notwithstanding the great prerogatives of the Emperor as head of the Empire, and his vast resources, as sovereign of his particular dominions, no union is maintained; foreign influence disturbs every internal operation, & there is no energy whatever in the General Govern<sup>t</sup>. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse, than the Happiness of the people of Germany. Do Gentlemen wish this to be y<sup>e</sup>. case here. Good God, Sir, is it possible they can so delude themselves. What if all the Charters & Constitutions of the States were thrown into the fire, and all their demagogues into the Ocean. What would it be to the happiness of America. And will not this be the case here if we pursue the train in w<sup>ch</sup> the business lies. We shall establish an Aulic Council without an Emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; Yet their local jurisdictions destroy every tie. The case was the same in the Grecian States. The United Netherlands are at this time torn in factions. With these examples before our eyes shall we form establishments which must necessarily produce the same effects. It is of no consequence from what districts the 2<sup>d</sup>. branch shall be drawn, if it be so constituted as to yield an asylum ag<sup>st</sup> these evils. As it is now constituted he must be ag<sup>st</sup>. its being drawn from the States in equal portions. But still he was ready to join in devising such an amendment of the plan, as will be most likely to secure our liberty & happiness.

M<sup>r</sup>. Sherman & M<sup>r</sup>. Elsworth moved to postpone the Question on the Report from the Committee of a member from each State, in order to wait for the Report from the Com<sup>e</sup>. of 5 last appointed,

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. Maryland ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

Adj<sup>d</sup>.

Monday July 9<sup>Th</sup>. In Convention.

M<sup>r</sup>. Daniel Carroll, from Maryland took his seat.

M<sup>r</sup>. Gov<sup>r</sup>. Morris delivered a report from the Com<sup>e</sup>. of 5 members to whom was committed the clause in the Report of the Com<sup>e</sup>. consisting of a member from each State, stating the proper ratio of Representatives in the 1<sup>st</sup>. branch, to be as 1 to every 40,000 inhabitants, as follows viz

“The Committee to whom was referred the 1<sup>st</sup> clause of the 1<sup>st</sup>. proposition reported from the grand Committee, beg leave to report:

I. that in the 1<sup>st</sup>. meeting of the Legislature the 1<sup>st</sup>. branch thereof consist of 56. members of which Number N. Hampshire shall have 2, Mass<sup>ts</sup>. 7, R. I<sup>d</sup>. 1, Con<sup>t</sup>. 4, N. Y. 5, N. J. 3, P<sup>a</sup>. 8, Del. 1, M<sup>d</sup>. 4, V<sup>a</sup>. 9, N. C. 5, S. C. 5, Geo. 2.

II. But as the present situation of the States may probably alter as well in point of wealth as in the number of their inhabitants, that the Legislature be authorized from time to time to augment y<sup>e</sup>. number of Representatives. And in case any of the States shall hereafter be divided, or any two or more States united, or any new States created within the limits of the United States, the Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants.”

M<sup>r</sup>. Sherman wished to know on what principles or calculations the Report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Cong<sup>s</sup>.

M<sup>r</sup>. Gorham. Some provision of this sort was necessary in the outset. The number of blacks & whites with some regard to supposed wealth was the general guide. Fractions could not be observed. The Legis<sup>l<sup>re</sup></sup>. is to make alterations from time to time as justice & propriety may require. Two objections prevailed ag<sup>st</sup> the rate of 1 member for every 40,000 inh<sup>ts</sup>. The 1<sup>st</sup>. was that the Representation would soon be too numerous: the 2<sup>d</sup>. that the West<sup>n</sup>. States who may have a different interest, might if admitted on that principle by degrees, outvote the Atlantic. Both these objections are removed. The number will be small in the first instance and may be continued so. And the Atlantic States having y<sup>e</sup>. Gov<sup>t</sup>. in their own hands, may take care of their own interest, by dealing out the right of Representation in safe proportions to the Western States. These were the views of the Committee.



M<sup>r</sup>. L. Martin wished to know whether the Com<sup>e</sup>. were guided in the ratio, by the wealth or number of inhabitants, of the States, or by both; noting its variations from former apportionments by Cong<sup>s</sup>.

M<sup>r</sup>. Gov<sup>r</sup>. Morris & M<sup>r</sup>. Rutlidge moved to postpone the 1<sup>st</sup>. paragraph relating to the number of members to be allowed each State in the first instance, and to take up the 2<sup>d</sup>. paragraph authorizing the Legisl<sup>re</sup>. to alter the number from time to time according to wealth & inhabitants. The motion was agreed to nem. con.

On Question on the 2<sup>d</sup>. parag<sup>h</sup>. taken without any debate

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Sherman moved to refer the 1<sup>st</sup>. part apportioning the Representatives, to a Comm<sup>e</sup>. of a member from each State.

M<sup>r</sup>. Gov<sup>r</sup>. Morris seconded the motion; observing that this was the only case in which such committees were useful.

M<sup>r</sup>. Williamson thought it would be necessary to return to the rule of numbers, but that the Western States stood on different footing. If their property shall be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion. Otherwise if their property was not to be equally rated.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. The Report is little more than a guess. Wealth was not altogether disregarded by the Com<sup>e</sup> Where it was apparently in favor of one State, whose n<sup>os</sup>. were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former: and so vice versa. The Committee meant little more than to bring the matter to a point for the consideration of the House.

M<sup>r</sup>. Reed asked why Georgia was allowed 2 members, when her number of inhabitants had stood below that of Delaware.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. Such is the rapidity of the population of that State, that before the plan takes effect, it will probably be entitled to 2 Representatives.

M<sup>r</sup>. Randolph, disliked the Report of the Com<sup>e</sup>. but had been unwilling to object to it. He was apprehensive that as the number was not be changed, till the Nat<sup>l</sup>. Legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the Commitm<sup>t</sup>. to a member from each State.

M<sup>r</sup>. Patterson considered the proposed estimate for the future according to the combined rules of numbers and wealth, as too vague. For this reason N. Jersey was ag<sup>st</sup>. it. He could regard negroes slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, & like other property entirely at the will of the Master. Has a man in Virg<sup>a</sup>. a number of votes in proportion to the number of his slaves? And if

negroes are not represented in the States to which they belong, why should they be represented in the Gen<sup>l</sup>. Gov<sup>t</sup>. What is the true principle of Representation? It is an expedient by which an assembly of certain individ<sup>ls</sup> chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then sh<sup>d</sup>. they be represented. He was also ag<sup>st</sup>. such an indirect encouragem<sup>t</sup>. of the slave trade; observing that Cong<sup>s</sup>. in their act relating to the change of the 8 art: of Confed<sup>n</sup>. had been ashamed to use the term “slaves” & had substituted a description.

M<sup>r</sup>. Madison reminded M<sup>r</sup>. Patterson that his doctrine of Representation which was in its principle the genuine one, must forever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their Citizens would do, if the people of all the States were collectively met. He suggested as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; And in the 2<sup>d</sup>. which had for one of its primary objects the guardianship of property, according to the whole number, including slaves.

M<sup>r</sup>. Butler urged warmly the justice & necessity of regarding wealth in the apportionment of Representation.

M<sup>r</sup>. King had always expected that as the Southern States are the richest, they would not league themselves with the North<sup>n</sup>. unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in Commerce, & other advantages which they will derive from the connexion they must not expect to receive them without allowing some advantages in return. Eleven out of 13 of the States had agreed to consider Slaves in the apportionment of taxation; and taxation and Representation ought to go together.

On the question for committing the first paragraph of the Report to a member from each State.

Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. Y. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

The Com<sup>e</sup>. appointed were M<sup>r</sup>. King, M<sup>r</sup>. Sherman, M<sup>r</sup>. Yates, M<sup>r</sup>. Brearly, M<sup>r</sup>. Gov<sup>r</sup>. Morris, M<sup>r</sup>. Reed, M<sup>r</sup>. Carrol, M<sup>r</sup>. Madison, M<sup>r</sup>. Williamson, M<sup>r</sup>. Rutlidge, M<sup>r</sup>. Houston.

Adj<sup>d</sup>.

Teusday, July 10. In Convention.

M<sup>r</sup>. King reported from the Com<sup>e</sup>. yesterday appointed that the States at the 1<sup>st</sup>. meeting of the General Legislature, should be represented by 65 members, in the following proportions, to wit N. Hamshire by 3, Mass<sup>ts</sup>. 8, R. Is<sup>d</sup>. 1, Con<sup>t</sup>. 5, N. Y. 6, N. J. 4, P<sup>a</sup>. 8, Del. 1, M<sup>d</sup>. 6, V<sup>a</sup>. 10, N. C. 5, S. C. 5, Georgia 3.

M<sup>r</sup>. Rutledge moved that N. Hampshire be reduced from 3 to 2. members. Her numbers did not entitle her to 3 and it was a poor State.

Gen<sup>l</sup>. Pinkney seconds the motion.

M<sup>r</sup>. King. N. Hampshire has probably more than 120,000 Inhab<sup>ts</sup>. and has an extensive Country of tolerable fertility. Its inha therefore may be expected to increase fast. He remarked that the four Eastern States, having 800,000 souls, have ? fewer representatives than the four Southern States, having not more than 700,000 souls, rating the blacks as 5 for 3. The Eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great & small States; but between the Southern & Eastern. For this reason he had been ready to yield something in the proportion of representatives for the security of the Southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

Gen<sup>l</sup>. Pinkney. The Report before it was committed was more favorable to the S. States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the Gen<sup>l</sup>. Government, they will be nothing more than overseers for the Northern States. He did not expect the S. States to be raised to a majority of representatives, but wished them to have something like an equality. At present by the alterations of the Com<sup>e</sup>. in favor of the N. States they are removed farther from it than they were before. One member indeed had been added to Virg<sup>a</sup>. which he was glad of as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

M<sup>r</sup>. Williamson was not for reducing N. Hampshire from 3 to 2, but for reducing some others. The South<sup>n</sup>. Interest must be extremely endangered by the present arrangement. The North<sup>n</sup>. States are to have a majority in the first instance and the means of perpetuating it.

M<sup>r</sup>. Dayton observed that the line between North<sup>n</sup>. & Southern interest had been improperly drawn; that P<sup>a</sup> was the dividing State, there being six on each side of her.

Gen<sup>l</sup>. Pinkney urged the reduction, dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

M<sup>r</sup>. Gov<sup>r</sup>. Morris regretted the turn of the debate. The States he found had many Representatives on the floor. Few he fears were to be deemed the Representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight, but not all the weight. If the South<sup>n</sup>. States are to supply money. The North<sup>n</sup>. States are to spill their blood. Besides, the probable Revenue to be expected from the S. States has been greatly overrated. He was ag<sup>st</sup>. reducing N. Hampshire.

M<sup>r</sup>. Randolph was opposed to a reduction of N. Hampshire, not because she had a full title to three members; but because it was in his contemplation 1. to make it the duty instead of leaving it in the discretion of the Legislature to regulate the representation by a periodical census. 2. to require more than a bare majority of votes in the Legislature in certain cases & particularly in commercial cases.

On the question for reducing N. Hampshire from 3 to 2 Represent<sup>s</sup>. it passed in the negative.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. no. 1

Gen<sup>l</sup>. Pinkney and M<sup>r</sup>. Alex<sup>r</sup>. Martin moved that 6 Rep<sup>s</sup>. instead of 5 be allowed to N. Carolina.

On the Question, it passed in the negative.

Mass<sup>ts</sup>. no. Con<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

Gen<sup>l</sup>. Pinkney & M<sup>r</sup>. Butler made the same motion in favor of S. Carolina.

On the Question it passed in the negative.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

Gen<sup>l</sup>. Pinckney & M<sup>r</sup>. Houston moved that Georgia be allowed 4 instead of 3 Rep<sup>a</sup>. urging the unexampled celerity of its population. On the Question, it passed in the Negative.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison, moved that the number allowed to each State be doubled. A *majority* of a *Quorum* of 65 members, was too small a number to represent the whole inhabitants of the U. States; They would not possess enough of the confidence of the people, and w<sup>d</sup>. be too sparsely taken from the people, to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from New States. The additional expence was too inconsiderable to be regarded in so important a case. And as far as the augmentation might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number of the popular candidates.

M<sup>r</sup>. Elseworth urged the objection of expence, & that the greater the number, the more slowly would the business proceed; and the less probably be decided as it ought, at last. He thought the number of Representatives too great in most of the State Legislatures; and that a large number was less necessary in the Gen<sup>l</sup>. Legislature than in those of the States, as its business would relate to a few great national Objects only.

M<sup>r</sup>. Sherman would have preferred 50 to 65. The great distance they will have to travel will render their attendance precarious and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from new States also deserved consideration.

M<sup>r</sup>. Gerry was for increasing the number beyond 65. The larger the number, the less the danger of their being corrupted. The people are accustomed to & fond of a numerous representation, and will consider their rights as better secured by it. The danger of excess in the number may be guarded ag<sup>st</sup>. by fixing a point within which the number shall always be kept.

Col. Mason admitted that the objection drawn from the consideration of expence, had weight both in itself, and as the people might be affected by it. But he thought it outweighed by the objections ag<sup>st</sup>. the smallness of the number. 38, will he supposes, as being a majority of 65. form a quorum. 20 will be a majority of 38. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account.

M<sup>r</sup>. Read was in favor of the Motion. Two of the States (Del. & R. I.) would have but a single member if the aggregate number should remain at 65. and in case of accident to either of these one State w<sup>d</sup>. have no representative present to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number. He hoped the objects of the Gen<sup>l</sup>. Gov<sup>t</sup>. would be much more numerous than seemed to be expected by some gentlemen, and that they would become more & more so. As to New States the highest number of Rep<sup>s</sup>. for the whole might be limited, and all danger of excess thereby prevented.

M<sup>r</sup>. Rutledge opposed the motion. The Representatives were too numerous in all the States. The full number allotted to the States may be expected to attend, & the lowest possible quorum sh<sup>d</sup>. not therefore be considered. The interests of their Constituents will urge their attendance too strongly for it to be omitted: and he supposed the Gen<sup>l</sup>. Legislature would not sit more than 6 or 8 weeks in the year.

On the Question for doubling the number, it passed in the negative.

Mas<sup>ts</sup>. no. Con<sup>t</sup> no. N. Y. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On the question for agreeing to the apportionment of Rep<sup>s</sup>. as amended by the last committee, it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. ay. N. Y. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. Broom gave notice to the House that he had concurred with a reserve to himself of an intention to claim for his State an equal voice in the 2<sup>d</sup>. branch; which he

thought could not be denied after this concession of the small States as to the first branch.

M<sup>r</sup>. Randolph moved as an amendment to the report of the Comm<sup>e</sup>. of five “that in order to ascertain the alterations in the population & wealth of the several States the Legislature should be required to cause a census, and estimate to be taken within one year after its first meeting; and every — years thereafter, and that the Legisl<sup>re</sup>. arrange the Representation accordingly.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed it as fettering the Legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new States to extort particular favors. If the mode was to be fixed for taking a Census, it might certainly be extremely inconvenient: if unfixed the Legislature may use such a mode as will defeat the object: and perpetuate the inequality. He was always ag<sup>st</sup>. such shackles on the Legisl<sup>re</sup>. They had been found very pernicious in most of the State Constitutions. He dwelt much on the danger of throwing such a preponderancy into the Western Scale, suggesting that in time the Western people w<sup>d</sup>. outnumber the Atlantic States. He wished therefore to put it in the power of the latter to keep a majority of votes in their own hands. It was objected he said that if the Legisl<sup>re</sup>. are left at liberty, they will never readjust the Representation. He admitted that this was possible; but he did not think it probable unless the reasons ag<sup>st</sup>. a revision of it were very urgent & in this case, it ought not to be done.

It was moved to postpone the proposition of M<sup>r</sup>. Randolph in order to take up the following, viz. “that the Committee of Eleven, to whom was referred the report of the Committee of five on the subject of Representation, be requested to furnish the Convention with the principles on which they grounded the Report,” which was disagreed to; S. C. alone voting in the affirmative.

Adjourned

## Wednesday July 11. In Convention.

M<sup>r</sup>. Randolph’s motion requiring the Legisl<sup>re</sup>. to take a periodical census for the purpose of redressing inequalities in the Representation was resumed.

M<sup>r</sup>. Sherman was ag<sup>st</sup>. Shackling the Legislature too much. We ought to choose wise & good men, and then confide in them.

M<sup>r</sup>. Mason. The greater the difficulty we find in fixing a proper rule of Representation, the more unwilling ought we to be, to throw the task from ourselves on the Gen<sup>l</sup>. Legisl<sup>re</sup>. He did not object to the conjectural ratio which was to prevail in the outset; but considered a Revision from time to time according to some permanent & precise standard as essential to y<sup>e</sup>. fair representation required in the 1<sup>st</sup>. branch. According to the present population of America, the North<sup>n</sup>. part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter when the reason no longer continued. From the nature of man we may be sure that those who have power in their hands will not give it up while they can retain it. On

the contrary we know that they will always when they can rather increase it. If the S. States therefore should have  $\frac{3}{4}$  of the people of America within their limits, the Northern will hold fast the majority of Representatives.  $\frac{1}{4}$  will govern the  $\frac{3}{4}$ . The S. States will complain; but they may complain from generation to generation without redress. Unless some principle therefore which will do justice to them hereafter shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it, in his State. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence. If the Western States are to be admitted into the Union, as they arise, they must, he w<sup>d</sup>. repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride & other passions which we have and will either not unite with or will speedily revolt from the Union, if they are not in all respects placed on an equal footing with their brethern. It has been said they will be poor, and unable to make equal contributions to the general Treasury. He did not know but that in time they would be both more numerous & more wealthy than their Atlantic brethren. The extent & fertility of their soil, made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants; though not always a precise standard of wealth was sufficiently so for every substantial purpose.

M<sup>r</sup>. Williamson was for making it a duty of the Legislature to do what was right & not leaving it at liberty to do or not to do it. He moved that M<sup>r</sup>. Randolph's propositions be postponed<sup>d</sup>. in order to consider the following "that in order to ascertain the alterations that may happen in the population & wealth of the several States, a census shall be taken of the free white inhabitants and ?<sup>ths</sup>. of those of other descriptions on the 1<sup>st</sup>. year after this Government shall have been adopted and every — year thereafter; and that the Representation be regulated accordingly."

M<sup>r</sup>. Randolph agreed that M<sup>r</sup>. Williamson's proposition should stand in the place of his. He observed that the ratio fixt for the 1<sup>st</sup>. meeting was a mere conjecture, that it placed the power in the hands of that part of America, which could not always be entitled to it, that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation when justice might so require; by some constitutional provisions. If equality between great & small States be inadmissible, because in that case unequal numbers of Constituents w<sup>d</sup>. be represented by equal number of votes; was it not equally inadmissible that a larger & more populous district of America should hereafter have less representation, than a smaller & less populous district. If a fair representation of the people be not secured, the injustice of the Gov<sup>t</sup>. will shake it to its foundations. What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican Gov<sup>t</sup>. If the danger suggested by M<sup>r</sup>. Gov<sup>r</sup>. Morris be real, of advantage being taken of the Legislature in pressing moments, it was an additional reason, for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Cong<sup>s</sup>. have pledged the public faith to New States, that they shall be admitted on equal terms. They never would or ought to accede on any other. The

census must be taken under the direction of the General Legislature. The States will be too much interested to take an impartial one for themselves.

M<sup>r</sup>. Butler & Gen<sup>l</sup>. Pinkney insisted that blacks be included in the rule of Representation *equally* with the whites; and for that purpose moved that the words “three-fifths” be struck out.

M<sup>r</sup>. Gerry thought that ? of them was to say the least the full proportion that could be admitted.

M<sup>r</sup>. Ghorum. This ratio was fixed by Cong<sup>s</sup>. as a rule of taxation. Then it was urged by the Delegates representing the States having slaves that the blacks were still more inferior to freemen. At present when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on y<sup>e</sup>. former occasion convinced him that ? was pretty near the just proportion and he should vote according to the same opinion now.

M<sup>r</sup>. Butler insisted that the labour of a slave in S. Carol<sup>a</sup>. was as productive & valuable as that of a freeman in Mass<sup>ts</sup>., that as wealth was the great means of defence and utility to the Nation they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a Government which was instituted principally for the protection of property, and was itself to be supported by property.

M<sup>r</sup>. Mason could not agree to the motion, notwithstanding it was favorable to Virg<sup>a</sup>. because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports & imports, and of course the revenue, would supply the means of feeding & supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the Community at large, they ought not to be excluded from the estimate of Representation. He could not however regard them as equal to freemen and could not vote for them as such. He added as worthy of remark, that the Southern States have this peculiar species of property over & above the other species of property common to all the States.

M<sup>r</sup>. Williamson reminded M<sup>r</sup>. Ghorum that if the South<sup>n</sup>. States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States on the same occasion contended for their equality. He did not however either then or now concur in either extreme, but approved of the ratio of ?.

On M<sup>r</sup>. Butler’s motion for considering blacks as equal to Whites in the apportionm<sup>t</sup>. of Representation.

Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. (N. Y. not on floor). N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup>. Morris said he had several objections to the proposition of M<sup>r</sup>. Williamson. 1. It fettered the Legislature too much. 2. it would exclude some States altogether who would not have a sufficient number to entitle them to a single Representative. 3. it



will not consist with the Resolution passed on Saturday last authorizing the Legislature to adjust the Representation from time to time on the principles of population & wealth or with the principles of equity. If slaves were to be considered as inhabitants, not as wealth then the s<sup>d</sup>. Resolution would not be pursued. If as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers & wealth of different countries, rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth, yet the late defence made by G. Britain, ag<sup>st</sup>. her numerous enemies proved in the clearest manner, that it is entirely fallacious even in this respect.

M<sup>r</sup>. King thought there was great force in the objections of M<sup>r</sup>. Gov<sup>r</sup>. Morris: he would however accede to the proposition for the sake of doing something.

M<sup>r</sup>. Rutledge contended for the admission of wealth in the estimate by which Representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they sh<sup>d</sup>. not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that “at the end of — years after the 1<sup>st</sup>. meeting of the Legislature, and of every — years thereafter, the Legislature shall proportion the Representation according to the principles of wealth & population.”

M<sup>r</sup>. Sherman thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observation of (M<sup>r</sup>. Randolph & M<sup>r</sup>. Mason), that the *periods* & the *rule*, of revising the Representation ought to be fixt by the Constitution.

M<sup>r</sup>. Reed thought the Legislature ought not to be too much shackled. It would make the Constitution like Religious Creeds, embarrassing to those bound to conform to them & more likely to produce dissatisfaction and scism, than harmony and union.

M<sup>r</sup>. Mason objected to M<sup>r</sup>. Rutledge’s motion, as requiring of the Legislature something too indefinite & impracticable, and leaving them a pretext for doing nothing.

M<sup>r</sup>. Wilson had himself no objection to leaving the Legislature entirely at liberty. But considered wealth as an impracticable rule.

M<sup>r</sup>. Ghorum. If the Convention who are comparatively so little biassed by local views are so much perplexed, How can it be expected that the Legislature hereafter under the full biass of those views, will be able to settle a standard. He was convinced by the arguments of others & his own reflections, that the Convention ought to fix some standard or other.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. The arg<sup>ts</sup>. of others & his own reflections had led him to a very different conclusion. If we can't agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come. Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (M<sup>r</sup>. Mason) relative to the Western Country had not changed his opinion on that head. Among other objections it must be apparent they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The Busy haunts of men not the remote wilderness, was the proper school of political Talents. If the Western people get the power into their hands they will ruin the Atlantic interests. The Back members are always most averse to the best measures. He mentioned the case of Pen<sup>a</sup>. formerly. The lower part of the State had y<sup>e</sup>. power in the first instance. They kept it in y<sup>r</sup>. own hands & the country was y<sup>e</sup>. better for it. Another objection with him ag<sup>st</sup>. admitting the blacks into the census, was that the people of Pen<sup>a</sup>. would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised ag<sup>st</sup> leaving the adjustment of the Representation from time, to time, to the discretion of the Legislature. The 1. was, they would be unwilling to revise it at all. The 2 that by referring to *wealth* they would be bound by a rule which if willing, they would be unable to execute. The 1<sup>st</sup>. obj<sup>n</sup>. distrusts their fidelity. But if their duty, their honor & their oaths will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no Gov<sup>t</sup>. at all. 2. If these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the Com<sup>e</sup>. in the apportionment of Representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the Representatives of the people.

M<sup>r</sup>. Madison was not a little surprised to hear this implicit confidence urged by a member who on all occasions, had inculcated so strongly, the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice & interest. If the Representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a Revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the Northern majority, he was still more zealous in exhorting all to a jealousy of a Western Majority. To reconcile the gentl<sup>n</sup>. with himself, it must be imagined that he determined the human character by the points of the compass. The truth was that all men having power ought to be distrusted to a certain degree. The case of Pen<sup>a</sup> had been mentioned where it was admitted that those who were possessed of the power in the original settlement, never admitted the new settle<sup>ts</sup> to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs, of the minority; who had opposed & defeated every reform which had been attempted. Virg<sup>a</sup>. was in a lesser degree another example. With regard to the Western States, he was clear & firm in opinion, that no unfavorable distinctions were admissible either in point of justice or policy. He thought also that the hope of contributions to the Treas<sup>y</sup>. from them had been much underrated. Future contributions it seemed to be understood on all hands would be principally levied on imports & exports. The extent and fertility of the Western Soil would for a long time

give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Missi should be opened to them, which would of necessity be y<sup>e</sup>. case as soon as their population would subject them to any considerable share of the Public burden, imposts on their trade could be collected with less expence & greater certainty, than on that of the Atlantic States. In the mean time, as their supplies must pass through the *Atlantic States*, their contributions would be levied in the same manner with those of the Atlantic States. He could not agree that any substantial objection lay ag<sup>st</sup>. fix<sup>g</sup>. numbers for the perpetual standard of Representation. It was said that Representation & taxation were to go together; that taxation and wealth ought to go together, that population & wealth were not measures of each other. He admitted that in different climates, under different forms of Gov<sup>t</sup>. and in different stages of civilization the inference was perfectly just. He would admit that in no situation, numbers of inhabitants were an accurate measure of wealth. He contended however that in the U. States it was sufficiently so for the object in contemplation. Altho' their climate varied considerably, yet as the Gov<sup>ts</sup>. the laws, and the manners of all were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labour, would constantly tend to equalize themselves. The value of labour might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places where the intercourse should be easy & free, with as much certainty as the value of money or any other thing. Wherever labour would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places—from Europe to Am<sup>a</sup>.—from the North<sup>n</sup>. & Middle parts of the U. S. to the Southern & Western. They go where land is cheaper, because there labour is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value, than on the Delaware, it is also true that the same labor will raise twice or thrice, the quantity in the former, that it will raise in the latter situation.

Col. Mason. Agreed with M<sup>r</sup>. Gov<sup>r</sup>. Morris that we ought to leave the interests of the people to the Representatives of the people; but the objection was that the Legislature would cease to be the Representatives of the people. It would continue so no longer than the States now containing a majority of the people should retain that majority. As soon as the Southern & Western population should predominate, which must happen in a few years, the power w<sup>d</sup>. be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution.

On the Question for postponing M<sup>r</sup>. Williamson's motion, in order to consider that of M<sup>r</sup>. Rutledge, it passed in the negative, Mass<sup>ts</sup>. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

On the question on the first clause of M<sup>r</sup>. Williamson's motion as to taking a census of the *free* inhabitants, it passed in the affirmative; Mass<sup>ts</sup>. ay. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

the next clause as to ? of the negroes considered

M<sup>r</sup>. King being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with Whites at all, would excite great discontents among the States having no slaves. He had never said as to any particular point that he would in no event acquiesce in & support it; but he w<sup>d</sup>. say that if any in case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of Representatives made by the Committee, the Southern States had received more than the number of their white & Three fifths of their black inhabitants entitled them to.

M<sup>r</sup>. Sherman. S. Carol<sup>a</sup>. had not more beyond her proportion than N. York & N. Hampshire, nor either of them more than was necessary in order to avoid fractions or reducing them below their proportions. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances, he was satisfied with it.

M<sup>r</sup>. Ghorum. supported the propriety of establishing numbers as the rule. He said that in Mass<sup>ts</sup>. estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found even including Boston, that the most exact proportion prevailed between numbers & property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that when the proposition of Cong<sup>s</sup>. for changing the 8<sup>th</sup>. art. of the Confed<sup>n</sup>. was before the Legislature of Mass<sup>ts</sup>. the only difficulty then was to satisfy them that the negroes ought not to have been counted equally with whites instead of being counted in ratio of three-fifths only. [1](#)

M<sup>r</sup>. Wilson did not well see on what principle the admission of blacks in the proportion of three fifths could be explained. Are they admitted as Citizens? then why are they not admitted on an equality with White Citizens? are they admitted as property? then why is not other property admitted into the computation? These were difficulties however which he thought must be overruled by the necessity of compromise. He had some apprehensions also from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pen<sup>a</sup>., as had been intimated by his Colleague (M<sup>r</sup>. Gov<sup>r</sup>. Morris). But he differed from him in thinking numbers of inhab<sup>ts</sup>. so incorrect a measure of wealth. He had seen the Western settle<sup>ts</sup>. of P<sup>a</sup>. and on a comparison of them with the City of Philad<sup>a</sup>. could discover little other difference, than that property was more unequally divided among individuals here than there. Taking the same number in the aggregate in the two situations he believed there would be little difference in their wealth and ability to contribute to the public wants.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States or to human nature, and he must therefore do it to the former. For he could never agree to give such encouragement to the Slave Trade as would be given by allowing them a representation for their negroes, and he did not believe those States would ever confederate on terms that would deprive them of that trade.

On Question for agreeing to include ? of the blacks Mass<sup>ts</sup>. no. Con<sup>t</sup>. ay. N. J. no. P<sup>a</sup> no. Del. no. Mard<sup>l</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. ay.

On the question as to taking census “the first year after the meeting of the Legislature”

Mass<sup>ts</sup> ay. Con<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. ay. Geo. no.

On filling the blank for the periodical census, with 15 years. Agreed to nem. con.

M<sup>r</sup>. Madison moved to add, after “15 years,” the words “at least” that the Legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion for adding “at least,” it passed in the negative the States being equally divided.

Mas. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

A Change of the phraseology of the other clause so as to read, “and the Legislature shall alter or augment the representation accordingly,” was agreed to nem. con.

On the question on the whole resolution of M<sup>r</sup>. Williamson as amended,

Mas. no. Con<sup>t</sup> no. N. J. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

## Thursday, July 12. In Convention.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to add to the clause empowering the Legislature to vary the Representation according to the principles of wealth & numbers of inhab<sup>ts</sup>. a “proviso that taxation shall be in proportion to Representation.”

M<sup>r</sup>. Butler contended again that Representation s<sup>d</sup>. be according to the full number of inhab<sup>ts</sup>. including all the blacks; admitting the justice of M<sup>r</sup>. Gov<sup>r</sup>. Morris’s motion.

M<sup>r</sup>. Mason also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the Legislature by it. It might drive the Legislature to the plan of Requisitions.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, admitted that some objections lay ag<sup>st</sup>. his Motion, but supposed they would be removed by restraining the rule to *direct* taxation. With regard to indirect taxes on *exports* & imports & on consumption the rule would be inapplicable. Notwithstanding what had been said to the contrary he was persuaded that the imports & consumption were pretty nearly equal throughout the Union.

General Pinkney liked the idea. He thought it so just that it could not be objected to. But foresaw that if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said [1](#)

yesterday, concerning the Negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. S. Carol<sup>a</sup>. has in one year exported to the amount of £600,000 Sterling all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the Legislature from taxing Exports.

M<sup>r</sup>. Wilson approved the principle, but could not see how it could be carried into execution; unless restrained to direct taxation.

M<sup>r</sup>. Gov<sup>r</sup>. Morris having so varied his Motion by inserting the word “direct.” It pass<sup>d</sup>. nem. con. as follows—“provided always that direct taxation ought to be proportioned to representation.”

M<sup>r</sup>. Davie said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of Representation for their blacks. He was sure that N. Carol<sup>a</sup>. would never confederate on any terms that did not rate them at least as ?. If the Eastern States meant therefore to exclude them altogether the business was at an end.

D<sup>r</sup>. Johnson, thought that wealth and population were the true, equitable rule of representation; but he conceived that these two principles resolved themselves into one; population being the best measure of wealth. He concluded therefore that y<sup>e</sup>. number of people ought to be established as the rule, and that all descriptions including blacks *equally* with the Whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a Committee might be appointed to take them into consideration and report thereon.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. It has been said that it is high time to speak out, as one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped & believed that all would enter into such a Compact. If they would not he was ready to join with any States that would. But as the Compact was to be voluntary, it is in vain for the Eastern States to insist on what the South<sup>n</sup>. States will never agree to. It is equally vain for the latter to require what the other States can never admit; and he verily believed the people of Pen<sup>a</sup> will never agree to a representation of Negroes. What can be desired by these States more than has been already proposed; that the Legislature shall from time to time regulate Representation according to population & wealth.

Gen<sup>l</sup>. Pinkney desired that the rule of wealth should be ascertained and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger under a Gov<sup>t</sup>. instituted for the protection of property.

The first clause in the Report of the first Grand Committee was postponed.

M<sup>r</sup>. Elseworth. In order to carry into effect the principle established, moved that to add to the last clause adopted by the House the words following, “and that the rule of contribution by direct taxation for the support of the Government of the U. States

shall be the number of white inhabitants, and three fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States can be devised and adopted by the Legislature.”

M<sup>r</sup>. Butler seconded the motion in order that it might be committed.

M<sup>r</sup>. Randolph was not satisfied with the motion. The danger will be revived that the ingenuity of the Legislature may evade or pervert the rule so as to perpetuate the power where it shall be lodged in the first instance. He proposed in lieu of M<sup>r</sup>. Elseworth’s motion, “that in order to ascertain the alterations in Representation that may be required from time to time by changes in the relative circumstances of the States, a Census shall be taken within two years from the 1<sup>st</sup>. meeting of the Gen<sup>l</sup>. Legislature of the U. S. and once within the term of every — year afterwards, of all the inhabitants in the manner & according to the ratio recommended by Congress in their resolution of the 18<sup>th</sup>. day of Ap<sup>l</sup>. 1783, (rating the blacks at  $\frac{3}{5}$  of their number) and that the Legislature of the U. S. shall arrange the Representation accordingly.” He urged strenuously that express security ought to be provided for including slaves in the ratio of Representation. He lamented that such a species of property existed. But as it did exist the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

M<sup>r</sup>. Elseworth withdraws his motion & seconds that of M<sup>r</sup>. Randolph.

M<sup>r</sup>. Wilson observed that less umbrage would perhaps be taken ag<sup>st</sup> an admission of the slaves into the Rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained. He accordingly moved & was 2<sup>ded</sup>. so to alter the last clause adopted by the House, that together with the amendment proposed the whole should read as follows—provided always that the representation ought to be proportioned according to direct taxation, and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States, Resolved that a census be taken within two years from the first meeting of the Legislature of the U. States, and once within the term of every — years afterwards of all the inhabitants of the U. S. in the manner and according to the ratio recommended by Congress in their Resolution of April 18. 1783; and that the Legislature of the U. S. shall proportion the direct taxation accordingly.

M<sup>r</sup>. King. Altho’ this amendment varies the aspect somewhat, he had still two powerful objections ag<sup>st</sup> tying down the Legislature to the rule of numbers. 1. they were at this time an uncertain index of the relative wealth of the States. 2. if they were a just index at this time it can not be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection it could not be of long duration. He must be shortsighted indeed who does not foresee that whenever the Southern States shall be more numerous than the Northern, they can & will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will

their threats be less urgent or effectual, when force shall back their demands. Even in the intervening period, there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every Gov<sup>t</sup>. and did not conceive that the proposed confidence as to a periodical readjustment of the representation exceeded that degree.

M<sup>r</sup>. Pinkney moved to amend M<sup>r</sup>. Randolph's motion so as to make "blacks equal to the whites in the ratio of representation." This he urged was nothing more than justice. The blacks are the labourers, the peasants of the Southern States: they are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and considering money as the sinew of war, to the strength of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with Representation.

Gen<sup>l</sup>. Pinkney moves to insert 6 years instead of two, as the period computing from the 1<sup>st</sup>. meeting of y<sup>e</sup>. Legis<sup>e</sup>. within which the first census should be taken. On this question for inserting six, instead of "two" in the proposition of M<sup>r</sup>. Wilson, it passed in the affirmative.

Mass<sup>ts</sup>. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. div<sup>d</sup>. May<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

On a question for filling the blank for y<sup>e</sup>. periodical census with 20 years, it passed in the negative.

Mass<sup>ts</sup>. no. C<sup>t</sup>. ay. N. J. ay. P. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On a question for 10 years, it passed in the affirmative.

Mass. ay. Con<sup>t</sup>. no. N. J. no. P. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

On M<sup>r</sup>. Pinkney's motion for rating blacks as equal to Whites instead of as ?

Mass. no. Con<sup>t</sup>. no. (D<sup>r</sup>. Johnson ay) N. J. no. P<sup>a</sup>. no. (3 ag<sup>st</sup>. 2.) Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo—ay.

M<sup>r</sup>. Randolph's proposition as varied by M<sup>r</sup>. Wilson being read for question on the whole—

M<sup>r</sup>. Gerry, urged that the principle of it could not be carried into execution as the States were not to be taxed as States. With regard to taxes in imposts, he conceived they would be more productive Where there were no slaves than where there were; the consumption being greater—

M<sup>r</sup>. Elseworth. In case of a poll tax there w<sup>d</sup>. be no difficulty. But there w<sup>d</sup>. probably be none. The sum allotted to a State may be levied without difficulty according to the plan used by the State in raising its own supplies. On the question of y<sup>e</sup>. whole proposition; as proportioning representation to direct taxation & both to the white & ?



of black inhabitants, & requiring a Census within six years—& within every ten years afterwards.

Mass. div<sup>d</sup>. Con<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. div<sup>d</sup>.  
Geo. ay.

### Friday, July 13. In Convention.

It being moved to postpone the clause in the Report of the Committee of Eleven as to the originating of money bills in *the first* branch, in order to take up the following—“that in the 2<sup>d</sup>. branch each State shall have an equal voice,”

M<sup>r</sup>. Gerry, moved to add as an amendment to the last clause agreed to by the House, “that from the first meeting of the Legislature of the U. S. till a census shall be taken all monies to be raised for supplying the public Treasury by direct taxation shall be assessed on the inhabitants of the several States according to the number of their Representatives respectively in the 1<sup>st</sup>. branch.” He said this would be as just before as after the Census; according to the general principle that taxation & Representation ought to go together.

M<sup>r</sup>. Williamson feared that N. Hamshire will have reason to complain. 3 members were allotted to her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would chuse to retain the number on the condition, of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on M<sup>r</sup>. G’s motion.

M<sup>r</sup>. Read could not approve of the proposition. He had observed he said in the Committee a backwardness in some of the members from the large States, to take their full proportion of Representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just & accurate adjustment of Representation & taxation to each other.

M<sup>r</sup>. Gov<sup>r</sup>. Morris & M<sup>r</sup>. Madison answered that the charge itself involved an acquittal; since notwithstanding the augmentation of the number of members allotted to Mass<sup>ts</sup>. & V<sup>a</sup>. the motion for proportioning the burdens thereto was made by a member from the former State & was approved by M<sup>r</sup>. M. from the latter who was on the Com<sup>e</sup>.. M<sup>r</sup> Gov<sup>r</sup>. Morris said that he thought P<sup>a</sup>. had her due share in 8 members; and he could not in candor ask for more. M<sup>r</sup>. M. said that having always conceived that the difference of interest in the U. States lay not between the large & small, but the N. & South<sup>n</sup>. States, and finding that the number of members allotted to the N. States was greatly superior, he should have preferred, an addition of two members to the S. States, to wit one to N. & 1 to S. Carl<sup>a</sup>. rather than of one member to Virg<sup>a</sup>. He liked the present motion, because it tended to moderate the views both of the opponents & advocates for rating very high, the negroes.

M<sup>r</sup>. Elsworth hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions can not be regarded in apportioning the *N<sup>o</sup>. of representatives*, the rule will be unjust, until an actual census shall be made. After that taxation may be precisely proportioned according to the principle established, to the *number of inhabitants*.

M<sup>r</sup>. Wilson hoped the motion would not be withdrawn. If it sh<sup>d</sup>. it will be made from another quarter. The rule will be as reasonable & just before, as after a Census. As to fractional numbers, the Census will not destroy, but ascertain them. And they will have the same effect after as before the Census; for as he understands the rule, it is to be adjusted not to the number of *inhabitants*, but of *Representatives*.

M<sup>r</sup>. Sherman opposed the motion. He thought the Legislature ought to be left at liberty: in which case they would probably conform to the principles observed by Cong<sup>s</sup>.

M<sup>r</sup>. Mason did not know that Virg<sup>a</sup>. would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the Census, would be as just, as it would be rendered by an actual census.

M<sup>r</sup>. Elsworth & M<sup>r</sup>. Sherman moved to postpone the motion of M<sup>r</sup>. Gerry. On y<sup>e</sup>. question, it passed in the negative. Mass. no. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

Question on M<sup>r</sup>. Gerry's motion, it passed in the negative, the States being equally divided.

Mass. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gerry finding that the loss of the question had proceeded from an objection with some, to the proposed assessment of direct taxes on the *inhabitants* of the States, which might restrain the Legislature to a poll tax, moved his proposition again, but so varied as to authorize the assessment on the *States*, which leaves the mode to the Legislature, viz "that from the 1<sup>st</sup>. meeting of the Legislature of the U. S. untill a census shall be taken, all monies for supplying the public Treasury by direct taxation shall be raised from the said several States according to the number of their representatives respectively in the 1<sup>st</sup>. branch."

On this varied question, it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. div<sup>d</sup> Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay N. C. ay. S. C. ay. Geo. ay.

On the motion of M<sup>r</sup>. Randolph, the vote of saturday last authorizing the Legis<sup>l<sup>re</sup></sup>. to adjust from time to time, the representation upon the principles of *wealth* & numbers of inhabitants, was reconsidered by common consent in order to strike out "Wealth" and adjust the resolution to that requiring periodical revisions, according to the

number of whites & three fifths of the blacks: the motion was in the words following:—"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the U. S. be authorized from time to time to apportion the number of representatives; and in case any of the States shall hereafter be divided or any two or more States united or new States created within the limits of the U. S. the Legislature of U. S. shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants; according to the provisions hereafter mentioned."

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed the alteration as leaving still incoherence. If Negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhab<sup>ts</sup>. they ought to be added in their entire number, and not in the proportion of ?. If as property, the word wealth was right, and striking it out would produce the very inconsistency which it was meant to get rid of.—The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He w<sup>d</sup>. candidly state the result. A distinction had been set up & urged, between the N<sup>n</sup>. and South<sup>n</sup>. States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in, and the South<sup>n</sup>. Gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public Councils. The consequence of such a transfer of power from the maritime to the interior & landed interest will he foresees be such an oppression of commerce that he shall be obliged to vote for y<sup>e</sup>. vicious principle of equality in the 2<sup>d</sup>. branch in order to provide some defence for the N. States ag<sup>st</sup>. it. But to come more to the point; either this distinction is fictitious or real; if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the South<sup>n</sup>. States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the middle States in point of policy to take: to join their Eastern brethren according to his ideas. If the South<sup>n</sup>. States get the power into their hands, and be joined as they will be with the interior Country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior Country having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the North<sup>n</sup>. & middle States will have ag<sup>st</sup>. this danger. It has been said that N. C. S. C., and Georgia only will in a little time have a majority of the people of America. They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.

M<sup>r</sup>. Butler. The security the South<sup>n</sup>. States want is that their negroes may not be taken from them, which some gentlemen within or without doors, have a very good mind to do. It was not supposed that N. C. S. C. & Geo. would have more people than all the other States, but many more relatively to the other States than they now have. The people & strength of America are evidently bearing Southwardly & S. westw<sup>dly</sup>..

M<sup>r</sup>. Wilson. If a general declaration would satisfy any gentleman he had no indisposition to declare his sentiments. Conceiving that all men wherever placed have

equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people wherever found ought in all questions to govern the minority. If the interior Country should acquire this majority, it will not only have the right, but will avail itself of it whether we will or no. This jealousy misled the policy of G. Britain with regard to America. The fatal maxims espoused by her were that the Colonies were growing too fast, and that their growth must be stunted in time. What were the consequences?, first, enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy & policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out. No one has yet ventured to attempt it. Cong<sup>s</sup>. have never been able to discover a better. No State as far as he had heard, had suggested any other. In 1783, after elaborate discussion of a measure of wealth all were satisfied then as they are now that the rule of numbers, does not differ much from the combined rule of numbers & wealth. Again he could not agree that property was the sole or primary object of Gov<sup>t</sup>. & society. The cultivation & improvement of the human mind was the most noble object. With respect to this object, as well as to other *personal* rights, numbers were surely the natural & precise measure of Representation. And with respect to property, they could not vary much from the precise measure. In no point of view however could the establishm<sup>t</sup>. of numbers as the rule of representation in the 1<sup>st</sup>. branch vary his opinion as to the impropriety of letting a vicious principle into the 2<sup>d</sup>. branch.—On the Question to strike out *Wealth*, & to make the change as moved by M<sup>r</sup>. Randolph, it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del div<sup>d</sup>. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Reed moved to insert after the word “divided,” “or enlarged by addition of territory” which was agreed to nem con. (his object probably was to provide for such cases as an enlargem<sup>t</sup>. of Delaware by annexing to it the Peninsula on the East side of the Chesapeake.)

Adjourned.

## Saturday, July 14. In Convention.

M<sup>r</sup>. L. Martin called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the 2<sup>d</sup>. branch.

M<sup>r</sup>. Gerry, wished before the question should be put, that the attention of the House might be turned to the dangers apprehended from Western States. He was for admitting them on liberal terms, but not for putting ourselves in their hands. They will if they acquire power like all men, abuse it. They will oppress commerce, and drain our wealth into the Western Country. To guard ag<sup>st</sup>. these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic States. He accordingly moved “that in order to secure the liberties of the States already confederated, the number of Representatives in the 1<sup>st</sup> branch, of the States which

shall hereafter be established, shall never exceed in number, the Representatives from such of the States as shall accede to this Confederation.

M<sup>r</sup>. King, seconded the motion.

M<sup>r</sup>. Sherman, thought there was no probability that the number of future States would exceed that of the Existing States. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides We are providing for our posterity, for our children & our grand Children; who would be as likely to be citizens of new Western States, as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

M<sup>r</sup>. Gerry. If some of our children should remove, others will stay behind, and he thought it incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the Western Country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides foreigners are resorting to that Country, and it is uncertain what turn things may take there.—On the question for agreeing to the Motion of M<sup>r</sup>. Gerry, it passed in the negative.

Mass. ay. Con<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. div<sup>d</sup>. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Rutledge proposed to reconsider the two propositions touching the originating of money bills in the first & the equality of votes in the second branch.

M<sup>r</sup>. Sherman was for the question on the whole at once. It was he said a conciliatory plan, it had been considered in all its parts, a great deal of time had been spent upon it, and if any part should now be altered, it would be necessary to go over the whole ground again.

M<sup>r</sup>. L. Martin urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the 1<sup>st</sup>. branch. He was willing however to make trial of the plan, rather than do nothing.

M<sup>r</sup>. Wilson traced the progress of the report through its several stages, remarking y<sup>t</sup>. when on the question concerning an equality of votes, the House was divided, our Constituents had they voted as their representatives did, would have stood as ? ag<sup>st</sup>. the equality, and ? only in favor of it. This fact would ere long be known, and it will appear that this fundamental point has been carried by ? ag<sup>st</sup>. ?. What hopes will our Constituents entertain when they find that the essential principles of justice have been violated in the outset of the Govern<sup>t</sup>. As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses w<sup>d</sup>. be reconsidered. The equality of votes was a point of such critical importance, that every opportunity ought to be allowed, for discussing and collecting the mind of the Convention upon it.

M<sup>r</sup>. L. Martin denies that there were ? ag<sup>st</sup>. the equality of votes. The States that please to call themselves large, are the weakest in the Union. Look at Mas<sup>ts</sup> Look at Virg<sup>a</sup>. Are they efficient States? He was for letting a separation take place if they

desired it. He had rather there should be two Confederacies, than one founded on any other principle than an equality of votes in the 2<sup>d</sup>. branch at least.

M<sup>r</sup>. Wilson was not surprised that those who say that a minority is more than a majority should say the minority is stronger than the majority. He supposed the next assertion will be that they are richer also; though he hardly expected it would be persisted in when the States shall be called on for taxes & troops.

M<sup>r</sup>. Gerry also animadverted on M<sup>r</sup>. L. Martins remarks on the weakness of Mas<sup>ts</sup>. He favored the reconsideration with a view not of destroying the equality of votes; but of providing that the States should vote per Capita, which he said would prevent the delays & inconveniences that had been experienced in Cong<sup>s</sup>. and would give a national aspect & Spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner stone of the accommodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members. The Report was not altogether to his mind. But he would agree to it as it stood rather than throw it out altogether.

The reconsideration being tacitly agreed to

M<sup>r</sup>. Pinkney moved that instead of an equality of votes, the States should be represented in the 2<sup>d</sup>. branch as follows: N. H. by 2 members. Mass. 4. R. I. 1. Con<sup>t</sup>. 3. N. Y. 3. N. J. 2. P<sup>a</sup>. 4. Del. 1; M<sup>d</sup>. 3. Virg<sup>a</sup>. 5. N. C. 3. S. C. 3. Geo. 2. making in the whole 36.

M<sup>r</sup>. Wilson seconds the motion

M<sup>r</sup>. Dayton. The smaller States can never give up their equality. For himself he would in no event yield that security for their rights.

M<sup>r</sup>. Sherman, urged the equality of votes not so much as a Security for the small States; as for the State Gov<sup>ts</sup>. which could not be preserved unless they were represented & had a negative in the Gen<sup>l</sup> Government. He had no objection to the members in the 2<sup>d</sup>. b. voting per capita, as had been suggested by (M<sup>r</sup>. Gerry).

M<sup>r</sup>. Madison concurred in this motion of M<sup>r</sup>. Pinkney as a reasonable compromise.

M<sup>r</sup>. Gerry said he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede, as had been intimated.

M<sup>r</sup>. King said it was always with regret that he differed from his colleagues, but it was his duty to differ from (M<sup>r</sup>. Gerry) on this occasion. He considered the proposed Government as substantially and formally, a General and National Government over the people of America. There never will be a case in which it will act as a federal Government on the States and not on the individual Citizens. And is it not a clear principle that in a free Gov<sup>t</sup>. those who are to be the objects of a Gov<sup>t</sup>. ought to

influence the operations of it? What reason can be assigned why the same rule of representation s<sup>d</sup>. not prevail in the 2<sup>d</sup>. branch as in the 1<sup>st</sup>.? He could conceive none. On the contrary, every view of the subject that presented itself, seemed to require it. Two objections had been raised ag<sup>st</sup>. it, drawn 1. from the terms of the existing compact. 2. from a supposed danger to the smaller States.—As to the first objection he thought it inapplicable. According to the existing Confederation, the rule by which the public burdens is to be apportioned is *fixed*, and must be pursued. In the proposed Govern<sup>t</sup>. it cannot be fixed, because indirect taxation is to be substituted. The Legislature therefore will have full discretion to impose taxes in such modes & proportions as they may judge expedient. As to the 2<sup>d</sup>. objection, he thought it of as little weight. The Gen<sup>l</sup> Govern<sup>t</sup>. can never wish to intrude on the State Govern<sup>ts</sup>. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the State debts into the federal debt, making one aggregate debt of about 70,000,000 of dollars, and leaving it to be discharged by the Gen<sup>l</sup>. Gov<sup>t</sup>. According to the idea of securing the State Gov<sup>ts</sup>. there ought to be three distinct legislative branches. The 2<sup>d</sup>. was admitted to be necessary, and was actually meant, to check the 1<sup>st</sup> branch, to give more wisdom, system, & stability to the Gov<sup>t</sup>. and ought clearly as it was to operate on the people, to be proportioned to them. For the third purpose of securing the States, there ought then to be a 3<sup>d</sup>. branch, representing the States as such, and guarding by equal votes their rights & dignities. He would not pretend to be as thoroughly acquainted with his immediate Constituents as his colleagues, but it was his firm belief that Mas<sup>ts</sup>. would never be prevailed on to yield to an equality of votes. In N. York, (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required it), in N. York he had seen that the most powerful argument used by the considerate opponents to the grant of the Impost to Congress, was pointed ag<sup>st</sup>. the vicious constitution of Cong<sup>s</sup>. with regard to representation & suffrage. He was sure that no Gov<sup>t</sup>. could last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the States. It would be better he thought to submit to a little more confusion & convulsion, than to submit to such an evil. It was difficult to say what the views of different Gentlemen might be. Perhaps there might be some who thought no Govern<sup>t</sup>. co-extensive with the U. States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid that Gentlemen should speak out that we might understand one another.

M<sup>r</sup>. Strong. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A Committee had been appointed: and though some of the members of it were averse to an equality of votes, a Report had been made in favor of it. It is agreed on all hands that Congress are nearly at an end. If no Accommodation takes place, the Union itself must soon be dissolved. It has been suggested that if we cannot come to any general agreement, the principal States may form & recommend a Scheme of Government. But will the small States in that case ever accede it. Is it probable that the large States themselves will under such circumstances embrace and ratify it. He thought the small States had made a considerable concession in the article of money bills, and that they might naturally

expect some concessions on the other side. From this view of the matter he was compelled to give his vote for the Report taken altogether.

M<sup>t</sup>. Madison expressed his apprehensions that if the proper foundation of Govern<sup>t</sup>. was destroyed, by substituting an equality in place of a proportional Representation, no proper superstructure would be raised. If the small States really wish for a Government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves he could not help thinking them extremely mistaken in their means. He reminded them of the consequences of laying the existing Confederation on improper principles. All the principal parties to its compilation joined immediately in mutilating & fettering the Govern<sup>t</sup>. in such a manner that it has disappointed every hope placed in it. He appealed to the doctrine & arguments used by themselves on a former occasion. It had been very properly observed by (M<sup>t</sup>. Patterson) that Representation was an expedient by which the meeting of the people themselves was rendered unnecessary; And that the representatives ought therefore to bear a proportion to the votes which their constituents if convened would respectively have. Was not this remark as applicable to one branch of the Representation as to the other? But it had been said that the Govern<sup>t</sup>. would in its operation be partly federal, partly national; that altho' in the latter respect the Representatives of the people ought to be in proportion to the people; yet in the former it ought to be according to the number of States. If there was any solidity in this distinction he was ready to abide by it, if there was none it ought to be abandoned. In all cases where the Gen<sup>l</sup>. Govern<sup>t</sup> is to act on the people, let the people be represented and the votes be proportional. In all cases where the Govern<sup>t</sup>. is to act on the States as such in like manner as Cong<sup>s</sup>. now acts on them, let the States be represented & the votes be equal. This was the true ground of compromise if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the Gen<sup>l</sup>. Gov<sup>t</sup>. was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the States as Political bodies, had been exploded on all hands. He observed that the people of the large States would in some way or other secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Gov<sup>t</sup>. they would probably accede to no Gov<sup>t</sup>. which did not in a great measure depend for its efficacy on their voluntary cooperation; in which case they would indirectly secure their object. The existing confederacy proved that where the Acts of the Gen<sup>l</sup>. Gov<sup>t</sup>. were to be executed by the particular Gov<sup>ts</sup>. the latter had a weight in proportion to their importance. No one would say that either in Cong<sup>s</sup>. or out of Cong<sup>s</sup>. Delaware had equal weight with Pennsylv<sup>a</sup>. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch confederacy the votes of the Provinces were equal. But Holland which supplies about half the money, governed the whole republic. He enumerated the objections ag<sup>st</sup>. an equality of votes in the 2<sup>d</sup>. branch, notwithstanding the proportional representation in the first. 1. the minority could negative the will of the majority of the people. 2. they could extort measures by making them a condition of their assent to other necessary measures. 3. they could obtrude measures on the majority by virtue of the peculiar powers which would be vested in the Senate. 4. the evil instead of being cured by time, would increase with



every new State that should be admitted, as they must all be admitted on the principle of equality. 5. the perpetuity it would give to the preponderance of the North<sup>n</sup>. ag<sup>st</sup> the South<sup>n</sup>. Scale was a serious consideration. It seemed now to be pretty well understood that the real difference of interests lay, not between the large & small but between the N. & South<sup>n</sup>. States. The institution of slavery & its consequences formed the line of discrimination. There were 5 States on the South, 8 on the North<sup>n</sup>. side of this line. Should a proport<sup>l</sup>. representation take place it was true, the N. side would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

M<sup>r</sup>. Wilson would add a few words only. If equality in the 2<sup>d</sup>. branch was an error that time would correct, he should be less anxious to exclude it being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the Representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not in argument at least been yet contradicted. But it is said that a departure from it so far as to give the States an equal vote in one branch of the Legislature is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved he admitted. But does it follow that an equality of votes is necessary for the purpose? Is there any reason to suppose that if their preservation should depend more on the large than on the small States the security of the States ag<sup>st</sup> the Gen<sup>l</sup> Government would be diminished? Are the large States less attached to their existence more likely to commit suicide, than the small? An equal vote then is not necessary as far as he can conceive: and is liable among other objections to this insuperable one: The great fault of the existing confederacy is its inactivity. It has never been a complaint ag<sup>st</sup>. Cong<sup>s</sup>. that they governed over much. The complaint has been that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes as is proposed? no: this very equality carries us directly to Congress; to the system which it is our duty to rectify. The small States cannot indeed act, by virtue of this equality, but they may controul the Gov<sup>t</sup>. as they have done in Cong<sup>s</sup>. This very measure is here prosecuted by a minority of the people of America. Is then the object of the Convention likely to be accomplished in this way? Will not our Constituents say? we sent you to form an efficient Gov<sup>t</sup>. and you have given us one more complex indeed, but having all the weakness of the former govern<sup>t</sup>. He was anxious for uniting all the States under one Govern<sup>t</sup>. He knew there were some respectable men who preferred three confederacies, united by offensive & defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not however concur in it himself; but he thought nothing so pernicious as bad first principles.

M<sup>r</sup>. Elseworth asked two questions, one of M<sup>r</sup>. Wilson, whether he had ever seen a good measure fail in Cong<sup>s</sup>. for want of a majority of States in its favor? He had himself never known such an instance: the other of M<sup>r</sup>. Madison whether a negative lodged with the majority of the States even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single Executive Magistrate, who must be taken from some one State?

M<sup>r</sup>. Sherman, signified that his expectation was that the Gen<sup>l</sup>. Legislature would in some cases act on the *federal principle*, of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the States should fail to supply their respective quotas.

On the question for agreeing to M<sup>r</sup>. Pinkney's motion for allowing N. H. 2. Mas. 4. &c—it passed in the negative,

Mass. no. M<sup>r</sup>. King ay. M<sup>r</sup>. Ghorum absent. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. ay. Geo. no.

Adjourned.[1](#)

## Monday, July 16. In Convention.

On the question for agreeing to the whole Report as amended & including the equality of votes in the 2<sup>d</sup> branch, it passed in the affirmative.

Mass. divided M<sup>r</sup>. Gerry, M<sup>r</sup>. Strong. ay. M<sup>r</sup>. King, M<sup>r</sup>. Ghorum no. Con<sup>t</sup>. ay. N. J. ay. Pen<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. M<sup>r</sup>. Spraight no. S. C. no. Geo. no.

The whole thus passed is in the words following, viz. “Resolved, that in the original formation of the Legislature of the U. S. the first branch thereof shall consist of sixty five members, of which number N. Hampshire shall send 3. Mass<sup>ts</sup>. 8. Rh. I. 1. Conn<sup>t</sup>. 5. N. Y. 6. N. J. 4. Pen<sup>a</sup> 8. Del. 1. Mary<sup>d</sup>. 6. Virg<sup>a</sup>. 10. N. C. 5. S. C. 5. Geo. 3.—But as the present situation of the States may probably alter in the number of their inhabitants, the Legislature of the U. S. shall be authorized from time to time to apportion the number of Rep<sup>s</sup>. and in case any of the States shall hereafter be divided, or enlarged by addition of territory, or any two or more States united, or any new States created within the limits of the U. S. the Legislature of the U. S. shall possess authority to regulate the number of Rep<sup>s</sup>. in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned. namely—provided always that representation ought to be proportioned according to direct taxation; and in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the States—

Resolved, that a Census be taken within six years from the 1<sup>st</sup>. meeting of the Legislature of the U. S., and once within the term of every 10 years afterwards of all the inhabitants of the U. S. in the manner and according to the ratio recommended by Congress in their Resolution of April 18. 1783, and that the Legislature of the U. S. shall proportion the direct taxation accordingly—

Resolved, that all bills for raising or appropriating money, and for fixing the salaries of officers of the Gov<sup>t</sup>. of the U. S. shall originate in the first branch of the Legislature of the U. S. and shall not be altered or amended in the 2<sup>d</sup>. branch: and that no money shall be drawn from the Public Treasury, but in pursuance of appropriations to be originated in the 1<sup>st</sup>. branch.

*Resolv<sup>d</sup>*, that in the 2<sup>d</sup>. branch of the Legislature of the U. S., each State shall have an equal vote.

The 6<sup>th</sup>. Resol: in the Report from the Com<sup>e</sup>. of the whole House, which had been postponed in order to consider the 7 & 8<sup>th</sup>. Resol<sup>ns</sup>.; was now resumed. see the Resol<sup>n</sup>.:

The 1<sup>st</sup>. member “That the Nat<sup>l</sup>. Legislature ought to possess the Legislative Rights vested in Cong<sup>s</sup>. by the Confederation” was agreed to nem. con.

The next, “And moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the U. S. may be interrupted by the exercise of individual legislation,” being read for a question.

M<sup>f</sup>. Butler calls for some explanation of the extent of this power; particularly of the word *incompetent*. The vagueness of the terms rendered it impossible for any precise judgment to be formed.

M<sup>f</sup>. Ghorum. The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details which will be precise & explicit.

M<sup>f</sup>. Rutledge, urged the objection started by M<sup>f</sup>. Butler and moved that the clause should be committed to the end that a specification of the powers comprised in the general terms, might be reported.

On the question for commitment, the States were equally divided.

Mas. no. Con<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. ay. Geo. ay: So it was lost.

M<sup>f</sup>. Randolph. The vote of this morning (involving an equality of suffrage in 2<sup>d</sup>. branch) had embarrassed the business extremely. All the powers given in the Report from the Com<sup>e</sup>. of the whole, were founded on the supposition that a Proportional representation was to prevail in both branches of the Legislature. When he came here this morning his purpose was to have offered some propositions that might if possible have united a great majority of votes, and particularly might provide ag<sup>st</sup>. the danger suspected on the part of the smaller States, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases. 1 But finding from the Preceding vote that they persist in demanding an equal vote in all cases, that they have succeeded in obtaining it, and that N. York, if present would probably be on the same side, he could not but think we were unprepared to discuss this subject further. It will probably be in vain to come to any final decision with a bare majority on either side. For these reasons he wished the Convention might adjourn, that the large States might consider the steps proper to be taken in the present solemn crisis of the business, and that the small States might also deliberate on the means of conciliation.

M<sup>f</sup>. Patterson, thought with M<sup>f</sup>. R. that it was high time for the Convention to adjourn that the rule of secrecy ought to be rescinded, and that our Constituents should be

consulted. No conciliation could be admissible on the part of the smaller States on any other ground than that of an equality of votes in the 2<sup>d</sup>. branch. If M<sup>r</sup>. Randolph would reduce to form his motion for an adjournment sine die, he would second it with all his heart.

Gen<sup>l</sup>. Pinkney wished to know of M<sup>r</sup>. R. whether he meant an adjournment sine die, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to S. Carolina and returning again to this place. Besides it was chimerical to suppose that the States if consulted would ever accord separately, and beforehand.

M<sup>r</sup>. Randolph, had never entertained an idea of an adjournment sine die; & was sorry that his meaning had been so readily & strangely misinterpreted. He had in view merely an adjournment till to-morrow, in order that some conciliatory experiment might if possible be devised, and that in case the smaller States should continue to hold back, the larger might then take such measures, he would not say what, as might be necessary.

M<sup>r</sup>. Patterson seconded the adjournment till tomorrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients.

On the question for adjourning till tomorrow, the States were equally divided,

Mas. no. Con<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no, so it was lost.

M<sup>r</sup>. Broome thought it his duty to declare his opinion ag<sup>st</sup>. an adjournment sine die, as had been urged by M<sup>r</sup>. Patterson. Such a measure he thought would be fatal. Something must be done by the Convention, tho' it should be by a bare majority.

M<sup>r</sup>. Gerry observed that Mas<sup>ts</sup>. was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many States that a trial sh<sup>d</sup>. be made, the State would now concur in the adjournm<sup>t</sup>.

M<sup>r</sup>. Rutledge could see no need of an adjourn<sup>t</sup>. because he could see no chance of a compromise. The little States were fixt. They had repeatedly & solemnly declared themselves to be so. All that the large States then had to do was to decide whether they would yield or not. For his part he conceived that altho' we could not do what we thought best, in itself, we ought to do something. Had we not better keep the Gov<sup>t</sup>. up a little longer, hoping that another Convention will supply our omissions, than abandon every thing to hazard. Our Constituents will be very little satisfied with us if we take the latter course.

M<sup>r</sup>. Randolph & M<sup>r</sup>. King renewed the motion to adjourn till tomorrow.

On the question. Mas. ay. Con<sup>t</sup>. no. N. J. ay. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. div<sup>d</sup>.

Adjourned

On the morning following before the hour of the Convention a number of the members from the larger States, by common agreement met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal Representation in the 2<sup>d</sup> branch, and the apparent inflexibility of the smaller states on that point. Several members from the latter States also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared indeed that the opinions of the members who disliked the equality of votes differed much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them supposing that no good Govern<sup>t</sup>. could or would be built on that foundation, and that as a division of the convention into two opinions was unavoidable; it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of Gov<sup>t</sup>. to the States, than that a scheme should be proposed on the other side, would have concurred in a firm opposition to the smaller States, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller States, and to concur in such an Act however imperfect & exceptionable, as might be agreed on by the Convention as a body, tho' decided by a bare majority of States and by a minority of the people of the U. States. It is probable that the result of this consultation satisfied the smaller States that they had nothing to apprehend from a Union of the larger, in any plan whatever ag<sup>st</sup>. the equality of votes in the 2<sup>d</sup>. branch.

## Tuesday July 17. In Convention.

M<sup>r</sup>. Govern<sup>r</sup>. Morris. moved to reconsider the whole Resolution agreed to yesterday concerning the constitution of the 2 branches of the Legislature. His object was to bring the House to a consideration in the abstract of the powers necessary to be vested in the general Government. It had been said, Let us know how the Gov<sup>t</sup>. is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the Govern<sup>t</sup>. as that it might be justly & properly enabled to administer them. He feared if we proceeded to a consideration of the powers, whilst the vote of yesterday including an equality of the States in the 2<sup>d</sup>. branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers.—This motion was not seconded. (It was probably approved by several members who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller States.)

The 6<sup>th</sup>. Resol<sup>n</sup>. in the Report of the Com<sup>e</sup>. of the Whole relating to the powers, which had been postponed in order to consider the 7 & 8<sup>th</sup>. relating to the constitution of the Nat<sup>l</sup>. Legislature, was now resumed.

M<sup>r</sup>. Sherman observed that it would be difficult to draw the line between the powers of the Gen<sup>l</sup>. Legislature, and those to be left with the States; that he did not like the definition contained in the Resolution, and proposed in place of the words “individual legislation” line 4. inclusive, to insert “to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the Government of the individual States in any matters of internal

police which respect the Gov<sup>t</sup>. of such States only, and wherein the general welfare of the U. States is not concerned.”

M<sup>r</sup>. Wilson 2<sup>ded</sup>. the amendment as better expressing the general principle.

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed it. The internal police, as it would be called & understood by the States ought to be infringed in many cases, as in the case of paper money & other tricks by which Citizens of other States may be affected.

M<sup>r</sup>. Sherman, in explanation of his idea read an enumeration of powers, including the power of levying taxes on trade, but not the power of *direct taxation*.

M<sup>r</sup>. Gov<sup>r</sup>. Morris remarked the omission, and inferred that for the deficiencies of taxes on consumption, it must have been the meaning of Mr. Sherman, that the Gen<sup>l</sup>. Gov<sup>t</sup>. should recur to quotas & requisitions, which are subversive of the idea of Gov<sup>t</sup>.

M<sup>r</sup>. Sherman acknowledged that his enumeration did not include direct taxation. Some provision he supposed must be made for supplying the deficiency of other taxation, but he had not formed any.

On Question on M<sup>r</sup>. Sherman’s motion it passed in the negative.

Mas. no. Con<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Bedford moved that the 2<sup>d</sup>. member of Resolution 6. be so altered as to read, “and moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, “or in which the harmony of the U. States may be interrupted by the exercise of individual Legislation.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ds</sup>. the motion.

M<sup>r</sup>. Randolph. This is a formidable idea indeed. It involves the power of violating all the laws and constitutions of the States, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

M<sup>r</sup>. Bedford. It is not more extensive or formidable than the clause as it stands: *no State* being *separately* competent to legislate for the *general interest* of the Union.

On question for agreeing to M<sup>r</sup>. Bedford’s motion it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

On the sentence as amended, it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

The next. "To negative all laws passed by the several States contravening in the opinion of the Nat: Legislature the articles of Union, or any treaties subsisting under the authority of y<sup>e</sup> Union."

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed this power as likely to be terrible to the States, and not necessary, if sufficient Legislative authority should be given to the Gen<sup>l</sup>. Government.

M<sup>r</sup>. Sherman thought it unnecessary; as the Courts of the States would not consider as valid any law contravening the Authority of the Union, and which the legislature would wish to be negated.

M<sup>r</sup>. L. Martin considered the power as improper & inadmissible. Shall all the laws of the States be sent up to the Gen<sup>l</sup>. Legislature before they shall be permitted to operate?

M<sup>r</sup>. Madison, considered the negative on the laws of the States as essential to the efficacy & security of the Gen<sup>l</sup>. Gov<sup>t</sup>. The necessity of a general Gov<sup>t</sup>. proceeds from the propensity of the States to pursue their particular interests in opposition to the general interest. This propensity will continue to disturb the system, unless effectually controuled. Nothing short of a negative on their laws will controul it. They will pass laws which will accomplish their injurious objects before they can be repealed by the Gen<sup>l</sup>. Legisl<sup>re</sup>. or be set aside by the National Tribunals. Confidence can not be put in the State Tribunals as guardians of the National authority and interests. In all the States these are more or less depend<sup>t</sup>. on the Legislatures. In Georgia they are appointed annually by the Legislature. In R. Island the Judges who refused to execute an unconstitutional law were displaced, and others substituted, by the Legislature who would be the willing instruments of the wicked & arbitrary plans of their masters. A power of negating the improper laws of the States is at once the most mild & certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system. Nothing could maintain the harmony & subordination of the various parts of the empire, but the prerogative by which the Crown, stifles in the birth every Act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied thro' ignorance or a partiality to one particular part of y<sup>e</sup>. empire; but we have not the same reason to fear such misapplications in our System. As to the sending all laws up to the Nat<sup>l</sup>. Legisl: that might be rendered unnecessary by some emanation of the power into the States, so far at least as to give a temporary effect to laws of immediate necessity.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was more & more opposed to the negative. The proposal of it would disgust all the States. A law that ought to be negated will be set aside in the Judiciary departm<sup>t</sup>. and if that security should fail; may be repealed by a Nation<sup>l</sup>. law.

M<sup>r</sup>. Sherman. Such a power involves a wrong principle, to wit, that a law of a State contrary to the articles of the Union would if not negated, be valid & operative.

M<sup>r</sup>. Pinkney urged the necessity of the Negative.

On the question for agreeing to the power of negating laws of States &c. it passed in the negative.

Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. Luther Martin moved the following resolution “that the Legislative acts of the U. S. made by virtue & in pursuance of the articles of Union, and all Treaties made & ratified under the authority of the U. S. shall be the supreme law of the respective States, as far as those acts or treaties shall relate to the said States, or their Citizens and inhabitants—& that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding” which was agreed to nem: con:

9<sup>th</sup>. Resol: “that Nat<sup>l</sup>. Executive consist of a single person,” Ag<sup>d</sup>. to nem. con.

“To be chosen by the National Legisl:”

M<sup>r</sup>. Govern<sup>r</sup>. Morris was pointedly ag<sup>st</sup>. his being so chosen. He will be the mere creature of the Legisl: if appointed & impeachable by that body. He ought to be elected by the people at large, by the freeholders of the Country. That difficulties attend this mode, he admits. But they have been found superable in N. Y. & in Con<sup>t</sup>. and would he believed be found so, in the case of an Executive for the U. States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation. If the Legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out “National Legislature,” & insert “citizens of the U. S.”

M<sup>r</sup>. Sherman thought that the sense of the Nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legisl<sup>re</sup>. a majority of voices may be made necessary to constitute an election.

M<sup>r</sup>. Wilson. Two arguments have been urged ag<sup>st</sup>. an election of the Executive Magistrate by the people. 1 the example of Poland where an Election of the supreme Magistrate is attended with the most dangerous commotions. The cases he observed were totally dissimilar. The Polish nobles have resources & dependants which enable them to appear in force, and to threaten the Republic as well as each other. In the next place the electors all assemble in one place; which would not be the case with us. The 2<sup>d</sup>. arg<sup>t</sup>. is that a *majority* of the people would never concur. It might be answered that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the States. But allowing the objection all its force, it may be obviated by the expedient used in Mass<sup>ts</sup>., where the Legislature by majority of voices, decide in case a majority of people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent



in a great degree intrigue & cabal. A particular objection with him ag<sup>st</sup>. an absolute election by the Legisl<sup>te</sup>. was that the Exec: in that case would be too dependent to stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people.

M<sup>r</sup>. Pinkney did not expect this question would again have been brought forward: An Election by the people being liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The Nat<sup>l</sup>. Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. It is said that in case of an election by the people the populous States will combine & elect whom they please. Just the reverse. The people of such States cannot combine. If there be any combination it must be among their representatives in the Legislature. It is said the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a Gov<sup>r</sup>. of N. York, it sometimes is the case in particular spots, that the activity & intrigues of little partizans are successful, but the general voice of the State is never influenced by such artifices. It is said the multitude will be uninformed. It is true they would be uninformed of what passed in the Legislative Conclave, if the election were to be made there; but they will not be uninformed of those great & illustrious characters which have merited their esteem & confidence. If the Executive be chosen by the Nat<sup>l</sup> Legislature, he will not be independent on it; and if not independent, usurpation & tyranny on the part of the Legislature will be the consequence. This was the case in England in the last Century. It has been the case in Holland, where their Senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the polish election of the first Magistrate. An election by the Legislature will bear a real likeness to the election by the Diet of Poland. The great must be the electors in both cases, and the corruption & cabal w<sup>ch</sup>. are known to characterize the one would soon find their way into the other. Appointments made by numerous bodies, are always worse than those made by single responsible individuals, or by the people at large.

Col. Mason. It is curious to remark the different language held at different times. At one moment we are told that the Legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue & corruption, and cannot be trusted at all. But not to dwell on this inconsistency he would observe that a Government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large. He conceived it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would, to refer a trial of colours to a blind man. The extent of the Country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the Candidates.

M<sup>r</sup>. Wilson, could not see the contrariety stated (by Col. Mason.) The Legisl<sup>te</sup>. might deserve confidence in some respects, and distrust in others. In acts which were to

affect them & y<sup>r</sup>. Constituents precisely alike confidence was due. In others jealousy was warranted. The appointment to great offices, where the Legis<sup>l</sup><sup>e</sup>. might feel many motives, not common to the public confidence was surely misplaced. This branch of business it was notorious, was the most corruptly managed of any that had been committed to legislative bodies.

M<sup>r</sup>. Williamson, conceived that there was the same difference between an election in this case, by the people and by the legislature, as between an app<sup>t</sup>. by lot, and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own State, and the largest State will be sure to succeed. This will not be Virg<sup>a</sup> however. Her slaves will have no suffrage. As the Salary of the Executive will be fixed, and he will not be eligible a 2<sup>d</sup>. time, there will not be such a dependence on the Legislature as has been imagined.

Question on an election by the people instead of the Legislature, which passed in the negative.

Mas. no. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. L. Martin moved that the Executive be chosen by Electors appointed by the several Legislatures of the individual States.

M<sup>r</sup>. Broome 2<sup>ds</sup>. On the Question, it passed in the negative.

Mas. no. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On the question on the words, “to be chosen by the Nation<sup>l</sup>. Legislature” it passed unanimously in the affirmative.

“For the term of seven years”—postponed nem. con. on motion of M<sup>r</sup>. Houston and Gov. Morris.

“to carry into execution the nation<sup>l</sup>. laws”—agreed to nem. con.

“to appoint to offices in cases not otherwise provided for,”—agreed to nem. con.

“to be ineligible a second time”—M<sup>r</sup>. Houston moved to strike out this clause.

M<sup>r</sup>. Sherman 2<sup>ds</sup>. the motion.

M<sup>r</sup>. Gov<sup>r</sup>. Morris espoused the motion. The ineligibility proposed by the clause as it stood tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment. It was saying to him, make hay while the sun shines.

On the question for striking out, as moved by M<sup>r</sup>. Houston, it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. ay.

“For the term of 7 years,” resumed.

M<sup>r</sup>. Broom was for a shorter term since the Executive Magistrate was now to be re-eligible. Had he remained ineligible a 2<sup>d</sup>. time, he should have preferred a longer term.

Doc<sup>r</sup>. M<sup>c</sup>Clurg moved 1 to strike out 7 years, and insert “during good behavior.” By striking out the words declaring him not re-eligible, he was put into a situation that would keep him dependent forever on the Legislature; and he conceived the independence of the Executive to be equally essential with that of the Judiciary department.

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup>. the motion. He expressed great pleasure in hearing it. This was the way to get a good Government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the Executive should be chosen, provided he held his place by this tenure.

M<sup>r</sup>. Broome highly approved the motion. It obviated all his difficulties.

M<sup>r</sup>. Sherman considered such a tenure as by no means safe or admissible. As the Executive Magistrate is now re-eligible, he will be on good behavior as far as will be necessary. If he behaves well he will be continued; if otherwise, displaced, on a succeeding election.

M<sup>r</sup>. Madison. 1 If it be essential to the preservation of liberty that the Legisl: Execut: & Judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. The Executive could not be independent of the Legire, if dependent on the pleasure of that branch for a re-appointment. Why was it determined that the Judges should not hold their places by such a tenure? Because they might be tempted to cultivate the Legislature, by an undue complaisance, and thus render the Legislature the virtual expositor, as well as the maker of the laws. In like manner a dependence of the Executive on the Legislature, would render it the Executor as well as the maker of laws; & then according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the Executive & Judiciary departments in several respects. The latter executed the laws in certain cases as the former did in others. The former expounded & applied them for certain purposes, as the latter did for others. The difference between them seemed to consist chiefly in two circumstances—1. the collective interest & security were much more in the power belonging to the Executive than to the Judiciary department. 2. in the administration of the former much greater latitude is left to opinion and discretion than in the administration of the latter. But if the 2<sup>d</sup>. consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the Execut: than the Judges, & forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a Union between the Executive & Legisl: powers,

than between the Judiciary & Legislative powers. He conceived it to be absolutely necessary to a well constituted Republic that the two first sh<sup>d</sup>. be kept distinct & independent of each other. Whether the plan proposed by the motion was a proper one was another question, as it depended on the practicability of instituting a tribunal for impeachm<sup>ts</sup>. as certain & as adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing & discussion, until a less objectionable expedient should be applied for guarding ag<sup>st</sup>. a dangerous union of the Legislative & Executive departments.

Col. Mason. This motion was made some time ago & negated by a very large majority. He trusted that it w<sup>d</sup>. be again negated. It w<sup>d</sup>. be impossible to define the misbehaviour in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high an offender holding his office by such a tenure to submit to a trial. He considered an Executive during good behavior as a softer name only for an Executive for life. And that the next would be an easy step to hereditary Monarchy. If the motion should finally succeed, he might himself live to see such a Revolution. If he did not it was probable his children or grand children would. He trusted there were few men in that House who wished for it. No state he was sure had so far revolted from Republican principles as to have the least bias in its favor.

M<sup>r</sup>. Madison, was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our governments to throw all power into the Legislative vortex. The Executives of the States are in general little more than Cyphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability & encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of Republican Gov<sup>t</sup>. therefore required some expedient for the purpose, but required evidently at the same time that in devising it, the genuine principles of that form should be kept in view.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was as little a friend to monarchy as any gentleman. He concurred in the opinion that the way to keep out monarchical Gov<sup>t</sup>. was to establish such a Repub. Gov<sup>t</sup>. as w<sup>d</sup>. make the people happy and prevent a desire of change.

Doc<sup>r</sup>. McClurg was not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to Republican Gov<sup>t</sup>. as not to be sensible of the tyrannies that had been & may be exercised under that form. It was an essential object with him to make the Executive independent of the Legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behavior.

On the question for inserting “during good behavior” in place of “7 years (with a re-eligibility)” it passed in the negative,

Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no. [1](#)

On the motion “to strike out seven years” it passed in the negative,

Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no. [2](#)

It was now unanimously agreed that the vote which had struck out the words “to be ineligible a second time” should be reconsidered to-morrow.

Adj<sup>d</sup>.

## Wednesday July 18. In Convention.

On motion of M<sup>r</sup>. L. Martin to fix tomorrow for reconsidering the vote concerning “eligibility of the Exec<sup>tive</sup>. a 2<sup>d</sup>. time” it passed in the affirmative.

Mas. ay. Con<sup>t</sup>. ay. N. J. absent. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. absent.

The residue of the Resol. 9. concerning the Executive was postp<sup>d</sup>. till tomorrow.

Resol. 10. that Executive sh<sup>l</sup>. have a right to negative legislative acts not afterwards passed by ? of each branch, agreed to nem. con.

Resol. 11. “that a Nat<sup>l</sup>. Judiciary shall be estab<sup>d</sup>. to consist of one supreme tribunal,” ag<sup>d</sup>. to nem. con.

“The judges of which to be appoint<sup>d</sup>. by the 2<sup>d</sup>. branch of the Nat<sup>l</sup>. Legislature,”

M<sup>r</sup>. Ghorum, w<sup>d</sup>. prefer an appointment by the 2<sup>d</sup>. branch to an appointm<sup>t</sup>. by the whole Legislature; but he thought even that branch too numerous, and too little personally responsible, to ensure a good choice. He suggested that the Judges be appointed by the Execu<sup>ve</sup>. with the advice & consent of the 2<sup>d</sup>. branch, in the mode prescribed by the constitution of Mas<sup>ts</sup>. This mode had been long practised in that country, & was found to answer perfectly well.

M<sup>r</sup>. Wilson, still w<sup>d</sup>. prefer an appointm<sup>t</sup>. by the Executive; but if that could not be attained, w<sup>d</sup>. prefer in the next place, the mode suggested by M<sup>r</sup>. Ghorum. He thought it his duty however to move in the first instance “that the Judges be appointed by the Executive.” M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup>. the motion.

M<sup>r</sup>. L. Martin was strenuous for an app<sup>t</sup>. by the 2<sup>d</sup>. branch. Being taken from all the States it w<sup>d</sup>. be best informed of characters & most capable of making a fit choice.

M<sup>r</sup>. Sherman concurred in the observations of M<sup>r</sup>. Martin, adding that the Judges ought to be diffused, which would be more likely to be attended to by the 2<sup>d</sup>. branch, than by the Executive.

M<sup>r</sup>. Mason. The mode of appointing the Judges may depend in some degree on the mode of trying impeachments of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive. There were insuperable objections besides ag<sup>st</sup>. referring the appointment to the Executive. He

mentioned as one, that as the Seat of Gov<sup>t</sup>. must be in some one State, and as the Executive would remain in office for a considerable time, for 4. 5. or 6 years at least, he would insensibly form local & personal attachments within the particular State that would deprive equal merit elsewhere, of an equal chance of promotion.

M<sup>r</sup>. Ghorum. As the Executive will be responsible in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the States for proper characters. The Senators will be as likely to form their attachments at the seat of Gov<sup>t</sup>. where they reside, as the Executive. If they cannot get the man of the particular State to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue & cabal. Rh. Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a Public body may carry wickedness & cabal.

M<sup>r</sup>. Gov<sup>r</sup>. Morris supposed it would be improper for an impeachm<sup>t</sup>. of the Executive to be tried before the Judges. The latter would in such case be drawn into intrigues with the Legislature and an impartial trial would be frustrated. As they w<sup>d</sup>. be much about the Seat of Gov<sup>t</sup>. they might even be previously consulted & arrangements might be made for a prosecution of the Executive. He thought therefore that no argument could be drawn from the probability of such a plan of impeachments ag<sup>st</sup>. the motion before the House.

M<sup>r</sup>. Madison suggested that the Judges might be appointed by the Executive, with the concurrence of ? at least, of the 2<sup>d</sup>. branch. This would unite the advantage of responsibility in the Executive with the security afforded in the 2<sup>d</sup>. branch ag<sup>st</sup>. any incautious or corrupt nomination by the Executive.

M<sup>r</sup>. Sherman, was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate than in the Executive.

M<sup>r</sup>. Randolph. It is true that when the app<sup>t</sup>. of the Judges was vested in the 2<sup>d</sup>. branch an equality of votes had not been given to it. Yet he had rather leave the appointm<sup>t</sup>. there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate by requiring the respective votes of the members to be entered on the Journal. He thought too that the hope of receiving app<sup>ts</sup>. would be more diffusive if they depended on the Senate, the members of which w<sup>d</sup>. be diffusively known, than if they depended on a single man who could not be personally known to a very great extent; and consequently that opposition to the System, would be so far weakened.

M<sup>r</sup>. Bedford thought there were solid reasons ag<sup>st</sup>. leaving the appointment to the Executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger States, by gratifying them with a preference of their

Citizens. The responsibility of the Executive so much talked of was chimerical. He could not be punished for mistakes.

M<sup>r</sup>. Ghorum remarked that the Senate could have no better information than the Executive. They must like him, trust to information from the members belonging to the particular State where the candidate resided. The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the Judges to the Executive, instead of the 2<sup>d</sup>. branch

Mas. ay. Con<sup>t</sup>. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. absent.

M<sup>r</sup>. Ghorum moved “that the Judges be nominated and appointed by the Executive, by & with the advice & consent of the 2<sup>d</sup>. branch & every such nomination shall be made at least — days prior to such appointment.” This mode he said had been ratified by the experience of a 140 years in Massachus<sup>ts</sup>. If the app<sup>t</sup>. should be left to either branch of the Legislature, it will be a mere piece of jobbing.

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup>. & supported the motion.

M<sup>r</sup>. Sherman thought it less objectionable than an absolute appointment by the Executive; but disliked it, as too much fettering the Senate.

Question on M<sup>r</sup>. Ghorum’s motion.

Mas. ay. Con<sup>t</sup>. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. absent.

M<sup>r</sup>. Madison moved that the Judges should be nominated by the Executive & such nomination should become an appointment if not disagreed to within — days by ? of the 2<sup>d</sup>. branch.

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup>. the motion. By com?on consent the consideration of it was postponed till tomorrow.

“To hold their offices during good behavior” & “to receive fixed salaries” agreed to nem: con:.

“In which (salaries of Judges) no increase or diminution shall be made so as to affect the persons at the time in office.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out “or increase.” He thought the Legislature ought to be at liberty to increase salaries as circumstances might require, and that this would not create any improper dependence in the Judges.

Doc<sup>r</sup>. Franklin was in favor of the motion. Money may not only become plentier, but the business of the department may increase as the Country becomes more populous.

M<sup>r</sup>. Madison. The dependence will be less if the *increase alone* should be permitted, but it will be improper even so far to permit a dependence. Whenever an increase is wished by the Judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in Court suits to which leading members of the Legislature may be parties, the Judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money, may be guarded ag<sup>st</sup>. by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. The value of money may not only alter but the State of Society may alter. In this event the same quantity of wheat, the same value would not be the same compensation. The Amount of salaries must always be regulated by the manners & the style of living in a Country. The increase of business can not be provided for in the supreme tribunal in the way that has been mentioned. All the business of a certain description whether more or less must be done in that single tribunal. Additional labor alone in the Judges can provide for additional business. Additional compensation therefore ought not to be prohibited.

On the question for striking out “or increase”

Mas. ay. Con<sup>t</sup>. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. absent.

The whole clause as amended was then agreed to nem: con:

12. Resol: “that Nat<sup>l</sup> Legislature be empowered to appoint inferior tribunals.”

M<sup>r</sup>. Butler could see no necessity for such tribunals. The State Tribunals might do the business.

M<sup>r</sup>. L. Martin concurred. They will create jealousies & oppositions in the State tribunals, with the jurisdiction of which they will interfere.

M<sup>r</sup>. Ghorum. There are in the States already federal Courts with jurisdiction for trial of piracies &c. committed on the Seas. No complaints have been made by the States or the Courts of the States. Inferior tribunals are essential to render the authority of the Nat<sup>l</sup>. Legislature effectual.

M<sup>r</sup>. Randolph observed that the Courts of the States can not be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the General & local policy at variance.

M<sup>r</sup>. Gov<sup>r</sup>. Morris urged also the necessity of such a provision.

M<sup>r</sup>. Sherman was willing to give the power to the Legislature but wished them to make use of the State Tribunals whenever it could be done with safety to the general interest.



Col. Mason thought many circumstances might arise not now to be foreseen, which might render such a power absolutely necessary.

On question for agreeing to 12. Resol: empowering the National Legislature to appoint “inferior tribunals,” Ag<sup>d</sup>. to nem. con.

“Impeachments of national officers,” were struck out on motion for the purpose.

13. Resol: “The jurisdiction of the Nat<sup>l</sup>. Judiciary.” Several criticisms having been made on the definition; it was proposed by M<sup>r</sup>. Madison so to alter it as to read thus—“that the jurisdiction shall extend to all cases arising under the Nat<sup>l</sup>. laws; And to such other questions as may involve the Nat<sup>l</sup>. peace & harmony,” which was agreed to, nem. con.

Resol. 14. providing for the admission of new States agreed to, nem. con.

Resol. 15. that provision ought to be made for the continuance of Cong<sup>s</sup>. &c. & for the completion of their engagements.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris thought the assumption of their engagements might as well be omitted; and that Cong<sup>s</sup>. ought not to be continued till all the States should adopt the reform; since it may become expedient to give effect to it whenever a certain number of States shall adopt it.

M<sup>r</sup>. Madison the clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist in the interval between the adoption of the New Gov<sup>t</sup>. and the commencement of its operation, if the old Gov<sup>t</sup>. should cease on the first of these events.

M<sup>r</sup>. Wilson did not entirely approve of the manner in which the clause relating to the engagements of Cong<sup>s</sup>. was expressed; but he thought some provision on the subject would be proper in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the Govern<sup>t</sup>. under which they were contracted.

On the question on the 1<sup>st</sup>. part—relating to the continuance of Cong<sup>s</sup>.

Mas. no. Con<sup>t</sup>. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. 1 ay. Geo. no.

The 2<sup>d</sup>. part as to completion of their engagements, disag<sup>d</sup>. to, nem. con.

Resol. 16. “That a Republican Constitution & its existing laws ought to be guaranteed to each State by the U. States.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris, thought the Resol: very objectionable. He should be very unwilling that such laws as exist in R. Island should be guaranteed.

M<sup>r</sup>. Wilson. The object is merely to secure the States ag<sup>st</sup>. dangerous commotions, insurrections and rebellions.

Col. Mason. If the Gen<sup>l</sup>. Gov<sup>t</sup>. should have no right to suppress rebellions ag<sup>st</sup>. particular States, it will be in a bad situation indeed. As Rebellions ag<sup>st</sup>. itself originate in & ag<sup>st</sup>. individual States, it must remain a passive Spectator of its own subversion.

M<sup>r</sup>. Randolph. The Resol<sup>n</sup>. has 2. objects. 1. to secure a Republican Government. 2. to suppress domestic commotions. He urged the necessity of both these provisions.

M<sup>r</sup>. Madison moved to substitute “that the Constitutional authority of the States shall be guaranteed to them respectively ag<sup>st</sup>. domestic as well as foreign violence.”

Doc<sup>r</sup>. McClurg seconded the motion.

M<sup>r</sup>. Houston was afraid of perpetuating the existing Constitutions of the States. That of Georgia was a very bad one, and he hoped would be revised & amended. It may also be difficult for the Gen<sup>l</sup>. Gov<sup>t</sup>. to decide between contending parties each of which claim the sanction of the Constitution.

M<sup>r</sup>. L. Martin was for leaving the States to suppress Rebellions themselves.

M<sup>r</sup>. Ghorum thought it strange that a Rebellion should be known to exist in the Empire, and the Gen<sup>l</sup>. Gov<sup>t</sup>. sh<sup>d</sup>. be restrained from interposing to subdue it. At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Gen<sup>l</sup>. Gov<sup>t</sup>. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words, they will be harmless to the Gen<sup>l</sup>. Gov<sup>t</sup>. & to each other. If they appeal to the sword, it will then be necessary for the Gen<sup>l</sup>. Gov<sup>t</sup>., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

M<sup>r</sup>. Carrol. Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at present. And no room ought to be left for such a doubt hereafter.

M<sup>r</sup>. Randolph moved to add as an amend<sup>t</sup>. to the motion; “and that no State be at liberty to form any other than a Republican Gov<sup>t</sup>.” M<sup>r</sup>. Madison seconded the motion.

M<sup>r</sup>. Rutledge thought it unnecessary to insert any guarantee. No doubt could be entertained but that Cong<sup>s</sup>. had the authority if they had the means to co-operate with any State in subduing a rebellion. It was & would be involved in the nature of the thing.

M<sup>r</sup>. Wilson moved as a better expression of the idea, “that a Republican form of Governm<sup>t</sup>. shall be guaranteed to each State & that each State shall be protected ag<sup>st</sup>. foreign & domestic violence.

This seeming to be well received, M<sup>r</sup>. Madison & M<sup>r</sup>. Randolph withdrew their propositions & on the Question for agreeing to M<sup>r</sup>. Wilson's motion, it passed nem. con.

Adj<sup>d</sup>.

end of vol. iii.

[1] Madison to Randolph, April 21, 1789.

[2] Mrs. Madison's brother.

[1] Orange County, Va., MSS. records.

[1] Volume iii of *The Documentary History of the United States* (Department of State, 1894) is a presentation of a literal print of the original journal, indicating by the use of larger and smaller type and by explanatory words the portions which are interlined or stricken out.

[1] See p. 25, n.

[1] See P. L. Ford's *Pamphlets on the Constitution*, 419.

[1] See p. 22, n.

[1] William Pierce, delegate from Georgia, made an estimate of each member of the convention, the only contemporary estimate thus far brought to light. Yates did not speak in the Convention.

“Mr Yates is said to be an able Judge. He is a Man of great legal abilities, but not distinguished as an Orator. Some of his Enemies say he is an anti-federal Man, but I discovered no such disposition in him. He is about 45 years old, and enjoys a great share of health.”—Pierce's Notes, *Am. Hist. Rev.*, iii., 327. For more about Pierce's notes, see p. 45, n.

[1] “Mr. Bassett is a religious enthusiast, lately turned Methodist, and serves his Country because it is the will of the people that he should do so. He is a Man of plain sense, and has modesty enough to hold his Tongue. He is Gentlemanly Man and is in high estimation among the Methodists. Mr. Bassett is about 36 years old.”—Pierce's notes, *Id.*, iii., 330. He did not speak in the Convention.

[2] “Mr. Blair is one of the most respectable Men in Virginia, both on account of his Family as well as fortune. He is one of the Judges of the Supreme Court in Virginia, and acknowledged to have a very extensive knowledge of the Laws. Mr. Blair is however, no Orator, but his good sense, and most excellent principles, compensate for other deficiencies. He is about 50 years of age.”—Pierce's Notes, *Id.*, iii., 331. He did not speak in the Convention.

[3]“Mr. Few possesses a strong natural Genius, and from application has acquired some knowledge of legal matters,—he practises at the bar of Georgia, and speaks tolerably well in the Legislature. He has been twice a Member of Congress, and served in that capacity with fidelity to his State, and honor to himself. Mr. Few is about 35 years of age.”—Pierce’s Notes, *Id.*, iii., 333. He did not speak in the Convention.

The credentials of Connecticut and Maryland required but one deputy to represent the state; of New York, South Carolina, Georgia, and New Hampshire, two deputies; of Massachusetts, New Jersey, Delaware, Virginia, and North Carolina, three, of Pennsylvania, four.—*Journal of the Federal Convention*, 16 *et seq.*; *Documentary History of the Constitution*, i., 10 *et seq.*

[4]“Robert Morris is a merchant of great eminence and wealth; an able Financier, and a worthy Patriot. He has an understanding equal to any public object, and possesses an energy of mind that few Men can boast of. Although he is not learned, yet he is as great as those who are. I am told that when he speaks in the Assembly of Pennsylvania, that he bears down all before him. What could have been his reason for not Speaking in the Convention I know not,—but he never once spoke on any point. This Gentleman is about 50 years old.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 328.

[1]“Genl. Washington is well known as the Commander in chief of the late American Army. Having conducted these States to independence and peace, he now appears to assist in framing a Government to make the People happy. Like Gustavus Vasa, he may be said to be the deliverer of his Country;—like Peter the great he appears as the politician and the States-man; and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen, after enjoying the highest honor of the confederacy,—and now only seeks for the approbation of his Country-men by being virtuous and useful. The General was conducted to the Chair as President of the Convention by the unanimous voice of its Members. He is in the 52d. year of his age.”—Pierce’s Notes, *Id.*, iii., 331.

[1]“Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning. He is about 45 years old.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 329.

[2]“Colo Hamilton is deservedly celebrated for his talents. He is a practitioner of the Law, and reputed to be a finished Scholar. To a clear and strong judgment he unites the ornaments of fancy, and whilst he is able, convincing, and engaging in his eloquence the Heart and Head sympathize in approving him. Yet there is something too feeble in his voice to be equal to the strains of oratory;—it is my opinion he is rather a convincing Speaker, that [than] a blazing Orator. Colo. Hamilton requires

time to think,—he enquires into every part of his subject with the searchings of philosophy, and when he comes forward he comes highly charged with interesting matter, there is no skimming over the surface of a subject with him, he must sink to the bottom to see what foundation it rests on.—His language is not always equal, sometimes didactic like Bolingbroke's, at others light and tripping like Stern's. His eloquence is not so defusive as to trifle with the senses, but he rambles just enough to strike and keep up the attention. He is about 33 years old, of small stature, and lean. His manners are tinged with stiffness, and sometimes with a degree of vanity that is highly disagreeable.”—Pierce's Notes, *Am. Hist. Rev.*, iii., 327.

[1] “. . . So also and Provided, that such Alterations or further Provisions, or any of them, do not extend to that part of the Fifth Article of the Confederation of the said States, finally ratified on the first day March, in the Year One thousand seven hundred and eighty one, which declares that ‘In determining Questions in the United States in Congress Assembled each State shall have one Vote.’ ”—*Documentary History of the Constitution* (Dept. of State), i., 24.

[2] “Entre nous. I believe the Eastern people have taken ground they will not depart from respecting the Convention.—One legislature composed of a lower-house triennially elected and an *Executive & Senate* for a good number of years.—I shall see Gerry & Johnson, as they pass & may perhaps give you a hint.”—William Grayson to Madison, New York, May 24, 1787, *Mad. MSS*.

[1] “Mr. Wythe is the famous Professor of Law at the University of William and Mary. He is confessedly one of the most learned legal Characters of the present age. From his close attention to the study of general learning he has acquired a compleat knowledge of the dead languages and all the sciences. He is remarked for his exemplary life, and universally esteemed for his good principles. No Man it is said understands the history of Government better than Mr. Wythe,—nor any one who understands the fluctuating condition to which all societies are liable better than he does, yet from his too favorable opinion of Men, he is no great politician. He is a neat and pleasing Speaker, and a most correct and able Writer. Mr. Wythe is about 55 years of age.”—Pierce's Notes, *Am. Hist. Rev.*, iii., 331.

[2] “Mr. King is a Man much distinguished for his eloquence and great parliamentary talents. He was educated in Massachusetts, and is said to have good classical as well as legal knowledge. He has served for three years in the Congress of the United States with great and deserved applause, and is at this time high in the confidence and approbation of his Country-men. This Gentleman is about thirty three years of age, about five feet ten inches high, well formed, an handsome face, with a strong expressive Eye, and a sweet high toned voice. In his public speaking there is something peculiarly strong and rich in his expression, clear, and convincing in his arguments, rapid and irresistible at times in his eloquence but he is not always equal. His action is natural, swimming, and graceful, but there is a rudeness of manner sometimes accompanying it. But take him *tout en semble*, he may with propriety be ranked among the luminaries of the present Age.”—Pierce's Notes, *Id.*, iii., 325.

[1] “Mr. Mason is a Gentleman of remarkable strong powers, and possesses a clear and copious understanding. He is able and convincing in debate, steady and firm in his principles, and undoubtedly one of the best politicians in America. Mr. Mason is about 60 years old, with a fine strong constitution.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 331.

[2] Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small states an equal vote, as unreasonable, and as enabling the small States to negative every good system of Government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large & small States, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective Government, than on taking the field of discussion to disarm themselves of the right & thereby throw themselves on the mercy of the larger States, discountenanced and stifled the project.—Madison’s Note.

[3] In the MS. Madison adds: “[See the Journal & copy here the printed rules],” and they were copied by him from the *Journal of the Federal Convention (1819)*. They have been compared with the MS. journal and found to be correct.

[1] An undecided line is drawn through the page in the MS. from here to the end of the rules; but not, as it would appear, to strike them out, as they were actually adopted by the Convention.

[1] “Mr. Gouverneur Morris is one of those Genius’s in whom every species of talents combine to render him conspicuous and flourishing in public debate:—He winds through all the mazes of rhetoric, and throws around him such a glare that he charms, captivates, and leads away the senses of all who hear him. With an infinite stretch of fancy he brings to view things when he is engaged in deep argumentation, that render all the labor of reasoning easy and pleasing. But with all these powers he is fickle and inconstant,—never pursuing one train of thinking,—nor ever regular. He has gone through a very extensive course of reading, and is acquainted with all the sciences. No Man has more wit,—nor can any one engage the attention more than Mr. Morris. He was bred to the Law, but I am told he disliked the profession, and turned Merchant. He is engaged in some great mercantile matters with his namesake, Mr. Robt. Morris. This Gentleman is about 38 years old, he has been unfortunate in losing one of his Legs, and getting all the flesh taken off his right arm by a scald, when a youth.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 329.

[2]

“Newport June 18th 1787

“Sir—

“The inclosed address, of which I presume your Excellency has received a duplicate, was returned to me from New York after my arrival in this State. I flattered myself that our Legislature, which convened on monday last, would have receded from the resolution therein refer'd to, and have complied with the recommendation of Congress in sending deligates to the federal convention. The upper house, or Governor, & Council, embraced the measure, but it was negatived in the house of Assembly by a large majority, notwithstanding the greatest exertions were made to support it.

“Being disappointed in their expectations, the minority in the administration and all the worthy citizens of this State, whose minds are well informd regretting the peculiarities of their Situation place their fullest confidence in the wisdom & moderation of the national council, and indulge the warmest hopes of being favorably consider'd in their deliberations. From these deliberations they anticipate a political System which must finally be adopted & from which will result the Safety, the honour, & the happiness of the United States.

“Permit me, Sir, to observe, that the measures of our present Legislature do not exhibit the real character of the State. They are equally reprobated, & abhorred by Gentlemen of the learned professions, by the whole mercantile body, & by most of the respectable farmers and mechanicks. The majority of the administration is composed of a licentious number of men, destitute of education, and many of them, Void of principle. From anarchy and confusion they derive their temporary consequence, and this they endeavor to prolong by debauching the minds of the common people, whose attention is wholly directed to the Abolition of debts both public & private. With these are associated the disaffected of every description, particularly those who were unfriendly during the war. Their paper money System, founded in oppression & fraud, they are determined to Support at every hazard. And rather than relinquish their favorite pursuit they trample upon the most sacred obligations. As a proof of this they refused to comply with a requisition of Congress for repealing all laws repugnant to the treaty of peace with Great Britain, and urged as their principal reason, that it would be calling in question the propriety of their former measures.

“These evils may be attributed, partly to the extreme freedom of our own constitution, and partly to the want of energy in the federal Union: And it is greatly to be apprehended that they cannot Speedily be removed but by uncommon and very serious exertions. It is fortunate however that the wealth and resources of this State are chiefly in possession of the well Affected, & that they are intirely devoted to the public good.

“I Have The Honor Of Being Sir, With The Greatest Veneration & Esteem, Your Excellencys Very Obedient & Most Humble Servant—

[“J. M. Varnum.]

“His excellency“Genl. Washington.” The letter was inadvertently unsigned, but it was well known to come from General Varnum. The enclosure was as follows:

“Providence, May 11. 1787.

“Gentlemen:

“Since the Legislature of this State have finally declined sending Delegates to Meet you in Convention for the purposes mentioned in the Resolve of Congress of the 21<sup>st</sup> February 1787, the Merchants Tradesmen and others of this place, deeply affected with the evils of the present unhappy times, have thought proper to Communicate in writing their approbation of your Meeting, And their regret that it will fall short of a Compleat Representation of the Federal Union.—

“The failure of this State was owing to the Nonconcurrence of the Upper House of Assembly with a Vote passed in the Lower House, for appointing Delegates to attend the said Convention, at their Session holden at Newport on the first Wednesday of the present Month.—

“It is the general Opinion here and we believe of the well informed throughout this State, that full power for the Regulation of the Commerce of the United States, both Foreign & Domestick ought to be vested in the National Council.

“And that Effectual Arrangements should also be made for giving Operation to the present powers of Congress in thier Requisitions upon the States for National purposes.—

“As the Object of this Letter is chiefly to prevent any impressions unfavorable to the Commercial Interest of this State, from taking place in our Sister States from the Circumstance of our being unrepresented in the present National Convention, we shall not presume to enter into any detail of the objects we hope your deliberations will embrace and provide for being convinced they will be such as have a tendency to strengthen the Union, promote Commerce, increase the power & Establish the Credit of the United States.

“The result of your deliberations tending to these desirable purposes we still hope may finally be Approved and Adopted by this State, for which we pledge our Influence and best exertions.—

“In behalf of the Merchants, Tradesmen &c



“We have the Honour to be with perfect Consideration & Respect

“Your Most Obedient & Most Humble Servant’S

“JOHN BROWN	JABEZ BOWEN }
THO <sup>S</sup> . LLOYD HALSEY	NICHO <sup>S</sup> BROWN }
JOS. NIGHTINGALE	JOHN JENCKES }
LEVI HALL	WELCOME ARNOLD } Comtee.
PHILIP ALLEN	WILLIAM RUSSELL }
PAUL ALLEN	JEREMIAH OLMY }
	WILLIAM BARTON }

“The Honble. the Chairman of the General Convention

“Philadelphia”

—*Const. MSS.* Both letters are printed in the *Documentary History of the Constitution*, i., 277 and 275.

[1] “Mr. Butler is a character much respected for the many excellent virtues which he possesses. But as a politician or an Orator, he has no pretensions to either. He is a Gentleman of fortune, and takes rank among the first in South Carolina. He has been appointed to Congress, and is now a Member of the Legislature of South Carolina. Mr. Butler is about 40 years of age; an Irishman by birth.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 333.

[1] “Mr. Spaight is a worthy Man, of some abilities, and fortune. Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. He is about 31 years of age.”—Pierce’s Notes, *Id.*, iii., 332.

[1] “Mr. Charles Pinckney is a young Gentleman of the most promising talents. He is, altho’ only 24 ys. of age, in possession of a very great variety of knowledge. Government, Law, History, and Phylosophy are his favorite studies, but he is intimately acquainted with every species of polite learning, and has a spirit of application and industry beyond most Men. He speaks with great neatness and perspicuity, and treats every subject as fully, without running into prolixity, as it requires. He has been a Member of Congress, and served in that Body with ability and eclat.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 333.

[1] “Mr. Randolph is Governor of Virginia,—a young Gentleman in whom unite all the accomplishments of the Scholar, and the Statesman. He came forward with the postulata, or first principles, on which the Convention acted, and he supported them with a force of eloquence and reasoning that did him great honor. He has a most harmonious voice, a fine person and striking manners. Mr. Randolph is about 32 years of age.”—Pierce’s Notes, *Id.*, iii., 332.

[2] In the MS. in Randolph's hand: "[here insert his speech including his resolutions]." The speech also is in Randolph's hand, having been furnished by him.

[1] This abstract of the speech was furnished to J. M. by Mr. Randolph and is in his handwriting. As a report of it from him had been relied on, it was omitted by J. M.—*Madison's Note*. The fifteen resolutions, constituting the "Virginia Plan," are in Madison's handwriting.

[1] Robert Yates, delegate from New York, kept notes of the proceedings of the Convention, until he left July 5th, with his colleague, John Lansing. They wrote a joint letter to Governor Clinton afterwards, giving their reasons: "We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety."—*Secret Proceedings of the Federal Convention*, 10. Yates's notes are quoted here, whenever they are at variance with Madison's. He gives Pinckney's motion as follows: "Mr. C. Pinckney, a member from South Carolina, then added, that he had reduced his ideas of a new government to a system, which he read, and confessed that it was grounded on the same principle as of the above [the Randolph] resolutions."—*Id.*, 97.

[2] Charles Pinckney wrote to John Quincy Adams:  
"Wingaw near Georgetown December 12 1818

"Sir

"I have just had the honour to receive your favour—Being at present absent from Charleston on a visit to my planting interest in this neighbourhood I shall in consequence of your letter shorten my stay here considerably & return to Town for the purpose of complying with your request as soon as possible—From an inspection of my old papers not long ago I know it was then easily in my power to have complied with your request—I still hope it is & as soon as I return to my residence in Charleston will again, or as quickly as I can write you on it to prevent delay.

"The Draught of the Constitution proposed by me was divided into a number of articles & was in complete detail—the resolutions offered by Mr Randolph were merely general ones & as far as I recollect they were both referred to the same Committee.

"With Great Respect & Esteem" &C. —*Dept. Of State MSS., Miscellaneous Letters.*

Three weeks later he wrote again:

“Sir

“On my return to this City as I promised I examined carefully all the numerous notes & papers which I had retained relating to the federal Convention—among them I found several rough draughts of the Constitution I proposed to the Convention—although they differed in some measure from each other in the wording & arrangement of the articles—yet they were all substantially the same—they all proceeded upon the idea of throwing out of view the attempt to amend the existing Confederation (then a very favorite idea of a number) & proceeding de novo—of a Division of the Powers of Government into legislative executive & judicial & of making the Government to operate directly upon the People & not upon the States. My Plan was substantially adopted in the sequel except as to the Senate & giving more power to the Executive than I intended—the force of vote which the small & middling states had in the Convention prevented our obtaining a proportional representation in more than one branch & the great powers given to the President were never intended to have been given to him while the Convention continued in that patient & coolly deliberative situation in which they had been for nearly the whole of the preceding five months of their session nor was it until within the last week or ten days that almost the whole of the Executive Department was altered—I can assure you as a fact that for more than Four months & a half out of five the power of exclusively making treaties, appointing for the Ministers & judges of the Supreme Court was given to the Senate after numerous debates & consideration of the subject both in Committee of the whole & in the house—this I not only aver but can prove by printed Documents in my possession to have been the case—& should I ever have the pleasure to see you & converse on the subject will state to you some things relative to this business that may be new & perhaps surprising to you—the veil of secrecy from the Proceedings of the Convention being removed by Congress & but very few of the members alive would make disclosures now of the secrets there acted less improper than before—With the aid of the journal & the numerous notes & memorandums I have preserved should now be in my power to give a View of the almost insuperable difficulties the Convention had to encounter & of the conflicting opinions of the members I believe should have attempted it had I not always understood Mr Madison intended it—he alone I believe possessed & retained more numerous & particular notes of their proceedings than myself. I will thank you sir to do me the honour to send me or to get the President to direct a copy of the Journal of the Convention to be sent me as also of the Secret Journals of Congress should it be considered not improper in me to make the request.

“I have already informed you I have several rough draughts of the Constitution I proposed & that they are all substantially the same differing only in words & the arrangement of the Articles—at the distance of nearly thirty two years it is impossible for me now to say which of the 4 or 5 draughts I have was the one but enclosed I send you the one I believe was it—I repeat however that they are substantially the same differing only in form & unessentials—It may be necessary to remark that very soon after the Convention met I changed & avowed candidly the change of my opinion on giving the power to Congress to revise the State Laws in certain cases & in giving the exclusive Power to the Senate to declare War thinking it safer to refuse the first

altogether & to vest the latter in Congress—I will thank you to acknowledge by a line the receipt of the Draught & this.

“With Very Great Respect & Esteem “I Have The Honour To Be Your Most “Obedient Servant

“Charles Pinckney.

“December 30 1818

“In Charleston.”—*Const. MSS.*

The plan is written upon paper of the same size as the letter, and with the same ink. It is undoubtedly contemporaneous with the letter.

Madison wrote the following note to accompany his journal:

“The length of the Document laid before the Convention, and other circumstances having prevented the taking of a copy at the time, that which is here inserted was taken from the paper furnished to the Secretary of State, and contained in the Journal of the Convention published in 1819. On comparing the paper with the Constitution in its final form, or in some of its Stages; and with the propositions, and speeches of Mr. Pinckney in the Convention, it would seem that considerable error must have crept into the paper; occasioned possibly by the loss of the Document laid before the convention (neither that nor the Resolutions offered by Mr Patterson being among the preserved papers) and by a consequent resort for a copy to the rough draught, in which erasures and interlineations following what passed in the convention, might be confounded with the original text, and after a lapse of more than thirty years, confounded also in the memory of the author.

“There is in the paper a similarity in some cases, and an identity in others, with details, expressions, and definitions, the results of critical discussions and modifications that can not be ascribed to accident or anticipation.

“Examples may be noticed in Article VIII of the paper; which is remarkable also for the circumstance, that whilst it specifies the functions of the President, no provision is contained in the paper for the election of such an officer, nor indeed for the appointment of any executive magistracy; notwithstanding the evident purpose of the author to provide an *entire* plan of a Federal Government.

“Again, in several instances where the paper corresponds with the Constitution, it is at variance with the ideas of M. Pinckney, as decidedly expressed in his propositions, and in his arguments, the former in the Journal of the Convention, the latter in the report of its debates: Thus in Art: VIII of the paper, provision is made for removing the President by impeachment; when it appears that in the convention, July 20. he was opposed to any impeachability of the Executive magistrate: In Art: III, it is required that all money-bills shall originate in the first Branch of the Legislature; which he strenuously opposed Aug: 8 and again Aug: 11: In Art: V members of each House are

made ineligible to, as well as incapable of holding, any office under the union &c. as was the case at one Stage of the Constitution; a disqualification highly disapproved and opposed by him Aug: 14.

“A still more conclusive evidence of error in the paper is seen in Art: III, which provides, as the Constitution does, that the first Branch of the Legislature shall be chosen by the people of the several States; whilst it appears that on the 6th. of June, a few days only after the Draft was laid before the convention, its author opposed that mode of choice, urging & proposing in place of it, an election by the Legislatures of the several States.

“The remarks here made tho’ not material in themselves, were due to the authenticity and accuracy aimed at, in this Record of the proceedings of a Publick Body, so much an object, sometimes, of curious research, as at all times, of profound interest.”—*Mad. MSS.*

This note, as given in Gilpin’s *Madison Papers (1840)*, is freely edited. The Pinckney plan is given here as Pinckney sent it to Adams. Chief-Justice Charles C. Nott, of the U. S. Court of Claims, informs the editor that correspondence with Pinckney’s descendants reveals the fact that some of the notes to which he alludes in his letters are extant.

The letter of December 30, 1818, and plan, are printed in *The Documentary History of the Constitution*, i., 309 *et seq.*

[1] “. . . What will be the result of their meeting I cannot with any certainty determine, but I hardly think much good can come of it; the people of America don’t appear to me to be ripe for any great innovations & it seems they are ultimately to ratify or reject: the weight of Genl. Washington as you justly observe is very great in America, but I hardly think it is sufficient to induce the people to pay money or part with power.

“The delegates from the Eastwd. are for a very strong government, & wish to prostrate all ye. State legislatures, & form a general system out of ye whole; but I don’t learn that the people are with them, on ye. contrary in Massachusetts they think that government too strong, & are about rebelling again, for the purpose of making it more democratical: In Connecticut they have rejected the requisition for ye present year decidedly, & no Man there would be elected to the office of a constable if he was to declare that he meant to pay a copper towards the domestic debt:—R. Island has refused to send members—the cry there is for a good government after they have paid their debts in depreciated paper:—first demolish the Philistines (i. e. their creditors) then for *propiety*.

“N. Hampshire has not paid a shilling, since peace, & does not ever mean to pay on to all eternity:—if it was attempted to tax the people for ye domestic debt 500 Shays would arise in a fortnight.—In N. York they pay well because they can do it by plundering N. Jersey & Connecticut.—Jersey will go great lengths from motives of revenge and Interest: Pensylvania will join provided you let the sessions of the

Executive of America be fixed in Philada. & give her other advantages in trade to compensate for the loss of State power. I shall make no observations on the Southern States, but I think they will be (perhaps from different motives) as little disposed to part with efficient power as any in the Union. . . .”—William Grayson to James Monroe, New York, May 29, 1787. *Monroe MSS*.

[1]“Mr. Chs. Cotesworth Pinckney is a Gentleman of Family and fortune in his own State. He has received the advantage of a liberal education, and possesses a very extensive degree of legal knowledge. When warm in a debate he sometimes speaks well,—but he is generally considered an indifferent Orator. Mr. Pinckney was an Officer of high rank in the American Army, and served with great reputation through the War. He is now about 40 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 333.

[1]“Mr. Gerry’s character is marked for integrity and perseverance. He is a hesitating and laborious speaker;—possesses a great degree of confidence and goes extensively into all subjects that he speaks on, without respect to elegance or flower of diction. He is connected and sometimes clear in his arguments, conceives well, and cherishes as his first virtue, a love for his Country. Mr. Gerry is very much of a Gentleman in his principles and manners;—he has been engaged in the mercantile line and is a Man of property. He is about 37 years of age.”—Pierce’s Notes, *Id.*, iii., 325.

[1]“Mr. Sherman exhibits the oddest shaped character I ever remember to have met with. He is awkward, un-meaning, and unaccountably strange in his manner. But in his train of thinking there is something regular, deep, and comprehensive; yet the oddity of his address, the vulgarisms that accompany his public speaking, and that strange new England cant which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable;—and yet he deserves infinite praise,—no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician and extremely artful in accomplishing any particular object;—it is remarked that he seldom fails. I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions. In the early part of his life he was a Shoemaker;—but despising the lowness of his condition, he turned Almanack maker, and so progressed upwards to a Judge. He has been several years a Member of Congress, and discharged the duties of his Office with honor and credit to himself, and advantage to the State he represented. He is about 60.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 326.

[2]“Mr. Read is a Lawyer and a Judge;—his legal abilities are said to be very great, but his powers of Oratory are fatiguing and tiresome to the last degree;—his voice is feeble and his articulation so bad that few can have patience to attend to him. He is a very good Man, and bears an amiable character with those who know him. Mr. Read is about 50, of a low stature, and a weak constitution.”—Pierce’s Notes, *Id.*, iii., 330.

[1]“Mr. Maddison is a character who has long been in public life; and what is very remarkable every Person seems to acknowledge his greatness. He blends together the profound politician, with the Scholar. In the management of every great question he evidently took the lead in the Convention, and tho’ he cannot be called an Orator, he

is a most agreeable, eloquent, and convincing Speaker. From a spirit of industry and application which he possesses in a most eminent degree, he always comes forward the best informed Man of any point in debate. The affairs of the United States, he perhaps, has the most correct knowledge of, of any Man in the Union. He has been twice a Member of Congress, and was always thought one of the ablest Members that ever sat in that Council. Mr. Maddison is about 37 years of age, a Gentleman of great modesty,—with a remarkable sweet temper. He is easy and unreserved among his acquaintance, and has a most agreeable style of conversation.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 331.

[1]“This day the state of New Jersey was represented, so that there were now ten states in Convention.”—Yates, *Secret Proceedings*, etc., 99. But in the *Journal of the Federal Convention* (1819), as in Madison’s account, New Jersey is entered as present May 25th. On May 30 two votes are recorded by Madison and in the *Journal* without New Jersey. It is probable that an error was made in the *Journal* and that Madison followed it.

[2]Rufus King kept a few notes of the proceedings of the convention from May 31st to August 8th. They are meagre, but corroborate Madison’s report. See King’s *Life and Correspondence of Rufus King*, i., 587.

Pierce also kept a few rough notes of the proceedings which were printed in the *Savannah Georgian* April 19, 21, 22, 23, 24, 25, 26, and 28, 1828, and reprinted in *The American Historical Review*, iii., 317 *et seq.* They throw little additional light on the debates, but wherever they do are quoted here, as are King’s.

[1]“Mr. Strong would agree to the principle, provided it would undergo a certain modification, but pointed out nothing.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 318.

[1]“Mr. King observed that the Question called for was premature, and out of order,—that unless we go on regularly from one principle to the other we shall draw out our proceedings to an endless length.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 318.

[1]“Butler said that until the number of the Senate could be known it would be impossible for him to give a vote on it.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 318.

[1]“Mr. Butler moved to have the proposition relating to the first branch postponed, in order to take up another,—which was that the second branch of the Legislature consist of blank.

“Mr. King objected to the postponement for the reasons which he had offered before.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 319.

[2]According to Pierce, Mason spoke after Sherman, and Pinckney’s motion is given more fully by Pierce than by Madison.

“Mr. Mason was of opinion that it would be highly improper to draw the Senate out of the first branch; that it would occasion vacancies which would cost much time,



trouble, and expense to have filled up,—besides which it would make the members too dependent on the first branch.

“Mr. Chs. Pinckney said he meant to propose to divide the Continent into four Divisions, out of which a certain number of persons shd. be nominated, and out of that nomination to appoint a senate.”—Pierce’s Notes, *Id.*, iii., 319.

[3] This question is omitted in the printed Journal, & the votes applied to the succeeding one, instead of the votes as here stated.—Madison’s note.

[1] “Mr. Rutledge is one of those characters who was highly mounted at the commencement of the late revolution;—his reputation in the first Congress gave him a distinguished rank among the American Worthies. He was bred to the Law, and now acts as one of the Chancellors of South Carolina. This Gentleman is much famed in his own State as an Orator, but in my opinion he is too rapid in his public speaking to be denominated an agreeable Orator. He is undoubtedly a man of abilities, and a Gentleman of distinction and fortune. Mr. Rutledge was once Governor of South Carolina. He is about 48 years of age.”—Pierce’s Notes, *Amer. Hist. Rev.*, iii., 333.

[1] According to Pierce:

“Mr Sherman was of opinion that it would be too indefinitely expressed,—and yet it would be hard to define all the powers by detail. It appeared to him that it would be improper for the national Legislature to negative all the Laws that were connected with the States themselves.

“Mr. Maddison said it was necessary to adopt some general principles on which we should act,—that we were wandering from one thing to another without seeming to be settled in any one principle.

“Mr. Wythe observed that it would be right to establish general principles before we go into detail, or very shortly Gentlemen would find themselves in confusion, and would be obliged to have recurrence to the point from whence they sat out.

“Mr. King was of opinion that the principles ought first to be established before we proceed to the framing of the Act. He apprehends that the principles only go so far as to embrace all the power that is given up by the people to the Legislature, and to the federal Government, but no farther.

“Mr. Randolph was of opinion that it would be impossible to define the powers and the length to which the federal Legislature ought to extend just at this time.

“Mr. Wilson observed that it would be impossible to enumerate the powers which the federal Legislature ought to have.”—Pierce’s Notes, *Amer. Hist. Rev.*, iii., 319, 320.

[1] “When the Convention first opened at Philadelphia, there were a number of propositions brought forward as great leading principles for the new Government to be established for the United States. A copy of these propositions was given to each



Member with an injunction to keep everything a profound secret. One morning, by accident, one of the Members dropt his copy of the propositions, which being luckily picked up by General Mifflin was presented to General Washington, our President, who put it in his pocket. After the debates of the Day were over, and the question for adjournment was called for, the General arose from his seat, and previous to his putting the question addressed the Convention in the following manner,—

“ ‘Gentlemen

“ ‘I am sorry to find that some one Member of this Body, has been so neglectful of the secrets of the Convention as to drop in the State House, a copy of their proceedings, which by accident was picked up and delivered to me this Morning. I must entreat Gentlemen to be more careful, lest our transactions get into the News Papers, and disturb the public repose by premature speculations. I know not whose Paper it is, but there it is [throwing it down on the table,] let him who owns it take it.’ At the same time he bowed, picked up his Hat, and quitted the room with a dignity so severe that every Person seemed alarmed; for my part I was extremely so, for putting my hand in my pocket I missed my copy of the same Paper, but advancing up to the Table my fears soon dissipated; I found it to be in the hand writing of another Person. When I went to my lodgings at the Indian Queen, I found my copy in a coat pocket which I had pulled off that Morning. It is something remarkable that no Person ever owned the Paper.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 324.

[1]“Dr Franklin is well known to be the greatest phylosopher of the present age;—all the operations of nature he seems to understand,—the very heavens obey him, and the Clouds yield up their Lightning to be imprisoned in his rod. But what claim he has to the politician, posterity must determine. It is certain that he does not shine much in public Council,—he is no Speaker, nor does he seem to let politics engage his attention. He is, however, a most extraordinary Man, and he tells a story in a style more engaging than anything I ever heard. Let his Biographer finish his character. He is 82 years old, and possesses an activity of mind equal to a youth of 25 years of age.”—Pierce’s Notes, *Amer. Hist. Rev.*, iii., 328.

[1]According to King, Madison followed Wilson: “Madison agreed with Wilson in the Definition of Executive power. *Ex vi termini*. Executive power does not include the Power of War and Peace. Executive Power shd. be limited and defined. If large, we shall have the Evils of Elective Monarchies. Perhaps the best plan will be a single Executive of long duration, with a Council and with Liberty to dissent on his personal Responsibility.”—King’s *Life and Correspondence of Rufus King*, i., 588.

According to Pierce:

“Mr. Maddison was of opinion that an Executive formed of one Man would answer the purpose when aided by a Council, who should have the right to advise and record their proceedings, but not to control his authority.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 320.

[2] King gives Gerry's remarks: "*Gerry*. I am in favor of a Council to advise the Executive: they will be organs of information respecting Persons qualified for various offices. Their opinions may be recorded, so as to be liable to be called to account & impeached—in this way, their Responsibility will be certain, and for misconduct their Punishment sure."

Dickinson followed Gerry: "*Dickinson*. A limited yet vigorous Executive is not republican, but peculiar to monarchy—the royal Executive has vigour, not only by power, but by popular Attachment & Report—an Equivalent to popular Attachment may be derived from the Veto on the Legislative acts. We cannot have a limited monarchy—our condition does not permit it. Republics are in the beginning and for a time industrious, but they finally destroy themselves because they are badly constituted. I dread the consolidation of the States, & hope for a good national Govt. from the present Division of the States with a feeble Executive.

"We are to have a Legislature of two branches, or two Legislatures, as the sovereign of the nation—this will work a change unless you provide that the judiciary shall aid and correct the Executive. The first Branch of the Legislature, the H. of Representatives, must be on another plan. The second Branch or Senate may be on the present scheme of representing *the States*—the Representatives to be apportioned according to the Quotas of the States paid into the general Treasury. The Executive to be removed from office by the national Legislature, on the Petition of seven States."—King's *Life and Correspondence of Rufus King*, i., 588 *et seq.*

[1] Williamson followed Wilson, according to King: "*Williamson*—There is no true difference between an Executive composed of a single person, with a Council, and an Executive composed of three or more persons."—King's *Life and Correspondence of Rufus King*, i., 590.

[1] "Mr. Bedford was educated for the Bar, and in his profession I am told, has merit. He is a bold and nervous Speaker, and has a very commanding and striking manner;—but he is warm and impetuous in his temper, and precipitate in his judgment. Mr. Bedford is about 32 years old, and very corpulent."—Pierce's Notes, *Am. Hist. Rev.*, iii., 330.

[1] "Mr. Williamonis a Gentleman of education and talents. He enters freely into public debate from his close attention to most subjects, but he is no Orator. There is a great degree of good humour and pleasantry in his character; and in his manners there is a strong trait of the Gentleman. He is about 48 years of age."—Pierce's Notes, *Amer. Hist. Rev.*, iii., 332.

[2] New York, in the printed Journal, divided —Madison's note.

[1] "Mr. Dickinson has been famed through all America for his Farmers Letters; he is a Scholar, and said to be a Man of very extensive information. When I saw him in the Convention I was induced to pay the greatest attention to him whenever he spoke. I had often heard that he was a great Orator, but I found him an indifferent Speaker. With an affected air of wisdom he labors to produce a trifle,—his language is

irregular and incorrect,—his flourishes, (for he sometimes attempts them,) are like expiring flames, they just shew themselves and go out;—no traces of them are left on the mind to cheer or animate it. He is, however, a good writer and will be ever considered one of the most important characters in the United States. He is about 55 years old, and was bred a Quaker.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 329.

[1] According to Pierce: “Mr. Maddison said it was far from being his wish that every executive Officer should remain in Office, without being amenable to some Body for his conduct.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 321.

[1] In printed Journal Geo. ay —Madison’s note.

[2] “Mr. Davey is a Lawyer of some eminence in his State. He is said to have a good classical education, and is a Gentleman of considerable literary talents. He was silent in the Convention, but his opinion was always respected. Mr. Davy is about 30 years of age.”—Pierce’s Notes, *Id.*, iii., 332.

[1] According to Pierce, King followed Wilson:

“Mr. King was of opinion that the Judicial ought not to join in the negative of a Law, because the Judges will have the expounding of those Laws when they come before them; and they will no doubt stop the operation of such as shall appear repugnant to the Constitution.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 322.

[1] Before the motion, according to King’s notes.

“*Madison*—The judiciary ought to be introduced in the business of Legislation—they will protect their department, and united with the Executive make its negatives more strong. There is weight in the objections to this measure—but a check on the Legislature is necessary, Experience proves it to be so, and teaches us that what has been thought a calumny on a republican Govt. is nevertheless true—In all Countries are diversity of Interests, the Rich & the Poor, the Dr. & Cr., the followers of different Demagogues, the Diversity of religious Sects—the Effects of these Divisions in Ancient Govts. are well known, and the like causes will now produce like effects. We must therefore introduce in our system Provisions against the measures of an interested majority—a check is not only necessary to protect the Executive power, but the minority in the Legislature. The independence of the Executive, having the Eyes of all upon him will make him an impartial judge—add the Judiciary, and you greatly increase his respectability.”

After the motion: “Dickinson opposed — You shd separate the Departments—you have given the Executive a share in Legislation; and it is asked why not give a share to the judicial power. Because the Judges are to interpret the Laws, and therefore shd. have no share in making them—not so with the Executive whose causing the Laws to be Executed is a ministerial office only. Besides we have experienced in the Br. Constitution which confers the Power of a negative on the Executive.”—King’s *Life and Correspondence of Rufus King*, ., 592.

[1] “Mr. Patterson is one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,—but he is a Classic, a Lawyer, and an Orator;—and of a disposition so favorable to his advancement that every one seemed ready to exalt him with their praises. He is very happy in the choice of time and manner of engaging in a debate, and never speaks but when he understands his subject well. This Gentleman is about 34 y. of age, of a very low stature.”—Pierce’s Notes, *Amer. Hist. Rev.*, iii., 328.

[2] Note in Madison’s writing. New Jersey omitted in printed Journal.

[1] (This hint was probably meant in terrorem to the smaller States of N. Jersey & Delaware. Nothing was said in reply to it.)—Madison’s Note.

[1] In printed Journals N. Jersey, no.—Madison’s Note.

[2] “Mr. Gerry.—If the national legislature are appointed by the state legislatures, demagogues and corrupt members will creep in.”—Yates’s *Secret Debates in Forming the Constitution*, 105.

[1] “My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety; and my services in Congress and the Convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, that gave me a seat in the wisest Council in the World, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it.”—Pierce’s Notes, *Amer. Hist. Rev.*, iii., 334.

[1] It will throw light on this discussion to remark that an election by the State Legislatures involved a surrender of the principle insisted on by the large States & dreaded by the small ones, namely that of a proportional representation in the Senate. Such a rule wd. make the body too numerous, as the smallest State must elect one member at least.—Madison’s Note.

[1] Edward Carrington wrote to Jefferson from New York, June 9, 1787:

“The debates and proceedings of the Convention are kept in profound secrecy—opinions of the probable result of their deliberations can only be formed from the prevailing impressions of men of reflection and understanding—these are reducible to two schemes—the first, a consolidation of the whole Empire into one republic, leaving in the States nothing more than subordinate courts for facilitating the administration of the Laws—the second an investiture of the foederal sovereignty with full and independent authority as to the Trade, Revenues, and forces of the union, and the rights of peace and war, together with a negative upon all the acts of the State legislatures. The first idea, I apprehend, would be impracticable, and

therefore do not suppose it can be adopted—general Laws through a Country embracing so many climates, productions, and manners as the United States, would operate many oppressions & a general legislature would be found incompetent to the formation of local ones, as a majority would in every instance, be ignorant of, and unaffected by the objects of legislation. . . . Something like the second will probably be formed—indeed I am certain that nothing less than what will give the foederal sovereignty a compleat controul over the state Governments, will be thought worthy of discussion—such a scheme constructed upon well adjusted principles would certainly give us stability and importance as a nation, and if the Executive powers can be sufficiently checked, must be eligible—unless the whole has a decided influence over the parts, the constant effort will be to resume the delegated powers, and there cannot be an inducement in the foederal sovereignty to refuse its assent to an innocent act of a State. . . . The Eastern opinions are for a total surrender of the state Sovereignties, and indeed some amongst them go to a monarchy at once—they have verged to anarchy, while to the southward we have only felt an inconvenience, and their proportionate disposition to an opposite extreme is a natural consequence.”—*Jeff. MSS.*

[1]“Carried against the motion, 10 noes, and Delaware divided.”—Yates, *Secret Proceedings*, etc., 111. The Journal also includes North Carolina among the noes.—*Journal of the Federal Convention*, 110.

[2]“Mr. Brearly is a man of good, rather than of brilliant parts. He is a Judge of the Supreme Court of New Jersey, and is very much in the esteem of the people. As an Orator he has little to boast of, but as a Man he has every virtue to recommend him. Mr. Brearly is about 40 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 327.

[1]In the printed Journal Mr. Rutledge is named as the seconder of the motion.—Madison’s note.

[1]After Gerry spoke, according to Yates, “Mr. Madison was of opinion at present, to fix the standard of representation, and let the detail be the business of a sub-committee.”—*Secret Proceedings*, p. 116.

[1]“Mr. Elsworth is a Judge of the Supreme Court in Connecticut;—he is Gentleman of a clear, deep, and copius understanding; eloquent, and connected in public debate; and always attentive to his duty. He is very happy in a reply, and choice in selecting such parts of his adversary’s arguments as he finds make the strongest impressions,—in order to take off the force of them, so as to admit the power of his own. Mr. Elsworth is about 37 years of age, a Man much respected for his integrity, and venerated for his abilities.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 326.

[1]Yates attributes this amendment to Madison. “Mr. Madison moved an amendment, to add to or alter the resolution as follows: The republican constitutions and the existing laws of each state, to be guaranteed by the United States.”—*Secret Proceedings*, etc., 116.

[1]“Mr. Williamson. This resolve will be unnecessary, as the union will become the law of the land.”—Yates, *Secret Proceedings*, etc., 117.

[1]Pennsylvania omitted in the printed Journal. The vote is there entered as of June 11th.—Madison’s Note.

[1]“Mr Jenifer is a Gentleman of fortune in Maryland;—he is always in good humour, and never fails to make his company pleased with him. He sits silent in the Senate, and seems to be conscious that he is no politician. From his long continuance in single life, no doubt but he has made the vow of celibacy. He speaks warmly of the Ladies notwithstanding. Mr. Jenifer is about 55 years of Age, and once served as Aid de Camp to Major Genl. Lee.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 330.

[1](It is probable ye votes here turned chiefly on the idea that if the salaries were not here provided for, the members would be paid by their respective States). This note for the bottom margin.—Madison’s Note.

[1]Edward Carrington wrote to Madison from New York, June 13, 1787:

“The public mind is now on the point of a favourable turn to the objects of your meeting, and, being fairly met with the result, will, I am persuaded, eventually embrace it—being calculated for the permanent fitness, and not the momentary habits of the country, it may at first be viewed with hesitation, but derived and patronized as it will be, its influence must extend into an adoption as the present fabric gives way—the work once well done will be done forever, but patched up in accommodation to the whim of the day, it will soon require the hand of the cobbler again, and in every unfortunate experiment the materials are rendered the less fit for that monument of civil liberty which we wish to erect.—Constitute a federal Government, invigorate & check it well—give it then independent powers over the Trade the Revenues, and force of the Union, and all things that involve any relationship to foreign powers—give it also the revisal of all State acts—unless it possesses a compleat controul over the State Governments, the constant effort will be to resume the delegated powers,—nor do I see what inducement the federal sovereignty can have to negative an innocent act of a State—Constitute it in such shape that, its first principles being preserved, it will be a good republic—I wish to see that system have a fair experiment—but let the liability to encroachment be rather from the federal, than the State, governments—in the first case we shall insensibly glide into a monarchy: in the latter nothing but anarchy can be the consequence.

“Some Gentlemen think of a total surrender of the State Sovereignty—I see not the necessity of that measure for giving us national stability in consequence—the negative of the federal sovereignty will effectually prevent the existence of any licentious or inconsiderate act—and I believe that even under a new monarchy it would be found necessary thus to continue the local administration—general Laws would operate many particular [undecipherable] and a general legislature would be found incompetent to the formation of local ones—the interest of the United States may be well combined for the common good—but the affairs of so extensive a country are not to be thrown into one mass—an attempt to confederate upon terms



materially opposed to the particular Interests would in all probability occasion a dismemberment, and in that event, within a long time yet to come, the prospects of commerce will be at an end as to any degree of national importance, let her fate be what it may as to freedom or vassalage.”—*Mad. MSS.*

[1] According to the Journal (121) Pennsylvania was among the noes.

[1] “Mr. Lansing is a practising Attorney at Albany, and Mayor of that Corporation. He has a hisitation in his speech, that will prevent his being an Orator of any eminence;—his legal knowledge I am told is not extensive, nor his education a good one. He is however a Man of good sense, plain in his manners, and sincere in his friendships. He is about 32 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 327.

[2] (This plan had been concerted among the deputations or members thereof, from Cont N. Y. N. J. Del. and perhaps Mr. Martin from Maryd who made with them a common cause though on different principles. Cont & N. Y. were agst. a departure from the principle of the Confederation, wishing rather to add a few new powers to Congs. than to substitute, a National Govt. The States of N. J. & Del. were opposed to a National Govt. because its patrons considered a proportional representation of the States as the basis of it. The eagerness displayed by the members opposed to a Natl. Govt. from these different motives began now to produce serious anxiety for the result of the Convention. Mr. Dickenson said to Mr. Madison You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a good National Government; but we would sooner submit to foreign power, than submit to be deprived of an equality of suffrage in both branches of the legislature, and thereby be thrown under the domination of the large States.)—Madison Note.

“Mr. Madison moved for the report of the committee, and the question may then come on whether the convention will postpone it in order to take into consideration the system now offered.

“Mr. Lansing is of opinion that the two systems are fairly contrasted. The one now offered is on the basis of amending the federal government, and the other to be reported as a national government, on propositions which exclude the propriety of amendment. Considering therefore its importance, and that justice may be done to its weighty consideration, he is for postponing it a day.

“Col. Hamilton cannot say he is in sentiment with either plan—supposes both might again be considered as federal plans, and by this means they will be fairly in committee, and be contrasted so as to make a comparative estimate of the two.”—Yates, *Secret Proceedings*, etc., 121, 122.

[1] This copy of Mr. Patterson’s propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearley a colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct is shewn by the ensuing speech of Mr. Wilson (June 16) in which he refers to the mode of removing the Executive by impeachment &

conviction as a feature in the Virga. plan forming one of its contrasts to that of Mr Patterson, which proposed a removal on the application of a majority of the Executives of the States. In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment, does not appear.—Madison’s Note.

The Journal contains: “6. Resolved, that the legislative, executive, and judiciary powers within the several states, ought to be bound, by oath, to support the articles of union,” and “9. Resolved, that provision ought to be made for hearing and deciding upon all disputes arising between the United States and an individual state, respecting territory.”—*Journal of the Federal Convention*, 126.

[1] Yates states it was C. C. Pinckney who said this.—*Secret Proceedings*, etc., 123.

[1] Hamilton happened to call upon Madison while the latter was putting the last touches to this speech and “acknowledged its fidelity, without suggesting more than a few verbal alterations which were made.”—*Ante*, vol. ii. A brief of the speech from the Hamilton Papers is given in Lodge’s *Works of Hamilton*, i., 353, where (i., 375) Yates’s report also is quoted.

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## Article X

This Constitution shall be submitted to the consideration of Conventions in the several States, the members whereof shall be chosen by the people of such States respectively under the direction of their respective Legislatures. Each Convention which shall ratify the same, shall appoint the first representatives and Senators from such State according to the rule prescribed in the — § of the — article. The representatives so appointed shall continue in office for one year only. Each Convention so ratifying shall give notice thereof to the Congress of the United States, transmitting at the same time a list of the Representatives and Senators chosen. When the Constitution shall have been duly ratified, Congress shall give notice of a day and place for the meeting of the Senators and Representatives from the several States; and when these or a majority of them shall have assembled according to such notice, they shall by joint ballot, by plurality of votes, elect a President of the United States; and the Constitution thus organized shall be carried into effect —*Mad. MSS.*

“Col: Hamilton did not propose in the Convention any plan of a Constitution. He had sketched an outline which he read as part of a speech; observing that he did not mean it as a proposition, but only to give a more correct view of his ideas.

“Mr. Patterson regularly proposed a plan which was discussed & voted on.”—Madison to John Quincy Adams, Montpelier, Nov. 2, 1818, *Dept. of State MSS.*, Miscellaneous Letters.



[1] This was the last session of the Convention in Committee of the Whole.

[1] “Mr. Dickinson supposed that there were good regulations in both. Let us therefore contrast the one with the other, and consolidate such parts of them as the committee approve.”—Yates, *Secret Proceedings*, etc., 140.

[1] King, in his notes, gives a résumé of his speech. It illustrates the accuracy of Madison’s reporting:

“Answer (R. King). The States under the confed. are not sovereign States they can do no act but such as are of a subordinate nature or such as terminate in themselves—and even these are restrained—coinage, P. office &c they are wholly incompetent to the exercise of any of the gt. & distinguishing acts of sovereignty—They can neither make nor receive (embassies) to or from any other sovereign—they have not the powers of injuring another or of defending themselves from an Injury offered from one another—they are deaf, dumb and impotent—these Faculties are yielded up and the U. S. in C. Assd. hold and possess them, and they alone can exercise them—they are so far out of the controul of the separate States yt. if every State in the Union was to instruct yr. Deleg., and those Delegates within ye powers of the Arts. of Union shd. do an act in violation of their Instructions it wd. nevertheless be valid. If they declared a war, any giving aid or comfort to the enemy wd. be Treason; if peace, any capture on the high seas wd. be piracy. This remark proves yt. the States are now subordinate corporations or societies and not sovereigns—these imperfect States are the confederates and they are the electors of the magistrates who exercise the national sovereignty. The Articles of Confedr. and perpetual Union, are partly federal & partly of the nature of a constitution or form of Govt. arising from and applying to the Citizens of the U. S. & not from the individual States.

“The only criterion of determining what is federal & what is national is this, those acts which are for the government of the States only are purely federal, those which are for the government of the Citizens of the individual States are national and not federal.

“If then the articles of Confedr. & perpetual union have this twofold capacity, and if they provide for an alteration in a certain mode, why may not they be so altered as that the federal article may be changed to a national one, and the national to a federal? I see no argument that can be objected to the authority. The 5th article regulates the influence of the several States and makes them equal—does not the confed. authorize this alteration, that instead of this Equality, one state may have double the Influence of another—I conceive it does—and so of every Article except that wh. destroys the Idea of a confedy. I think it may be proved that every article may be totally altered provided you have one guarantying to each State the right of regulating its private & internal affairs in the manner of a subordinate corporation.

“But admitting that the Arts. of Confed. & perpet. Union, or the powers of the Legis. did not extend to the proposed Reform; yet the public Deputations & the public Danger require it—the system proposed to be adopted is no scheme of a day, calculated to postpone the hour of Danger, & thus leave it to fall with double ruin on our successors—It is no crude and undigested plan; the child of narrow and

unextensive views, brought forward under the Auspices of Cowardice & Irresolution—It is a measure of Decision, it is the foundation of Freedom & of national Glory. It will draw on itself and be able to support the severest scrutiny & Examination. It is no idle experiment, no romantic speculation—the measure forces itself upon wise men, and if they have not firmness to look it in the face and protect it—Farewell to the Freedom of our Government—our military glory will be tarnished and our boasts of Freedom will be the scorn of the Enemies of Liberty.”—*Life and Correspondence of Rufus King*, i., 602, n.

[1]“Mr. Martin was educated for the Bar, and is Attorney general for the State of Maryland. This Gentleman possesses a good deal of information, but he has a very bad delivery, and so extremely prolix, that he never speaks without tiring the patience of all who hear him. He is about 34 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 330.

[1]From June 21 to July 18 inclusive not copied by Mr. Eppes.—Madison’s Note. This applies evidently to notes he permitted Hon. George W. Eppes, Jefferson’s son-in-law, to take.

[1]“Dr. Johnson is a character much celebrated for his legal knowledge; he is said to be one of the first classics in America, and certainly possesses a very strong and enlightened understanding.

“As an Orator in my opinion, there is nothing in him that warrants the high reputation which he has for public speaking. There is something in the tone of his voice not pleasing to the Ear,—but he is eloquent and clear,—always abounding with information and instruction. He was once employed as an Agent for the State of Connecticut to state her claims to certain landed territory before the British House of Commons; this Office he discharged with so much dignity, and made such an ingenious display of his powers, that he laid the foundation of a reputation which will probably last much longer than his own life. Dr. Johnson is about sixty years of age, possesses the manners of a Gentleman, and engages the Hearts of Men by the sweetness of his temper, and that affectionate style of address with which he accosts his acquaintance.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 326.

[1]After Martin’s second, according to Yates:

“Mr. Madison. I oppose the motion—there are no difficulties, but they may be obviated in the details connected with the subject.”—Yates, *Secret Proceedings*, etc., 149.

[1]“Mr. Strong is a Lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a speaker he is feeble, and without confidence. This Gentr. is about thirty five years of age, and greatly in the esteem of his Colleagues.”—Pierce’s Notes, *Amer. Hist. Rev.* iii., 326.

[1]“M. Gorham is a merchant in Boston, high in reputation, and much in the esteem of his country-men. He is a man of very good sense, but not much improved in his

education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style;—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no man is more perspicuous and full. He has been President of Congress, and three years a Member of that Body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 325.

[1] According to Yates, Wilson followed Ellsworth:

“Mr. Wilson. I am not for submitting the national government to the approbation of the state legislatures. I know that they and the state officers will oppose it. I am for carrying it to the people of each state.”—Yates, *Secret Proceedings*, etc., 153.

[2] (It appeared that Massts concurred, not because they thought the State Treasury ought to be substituted; but because they thought nothing should be said on the subject, in which case it wd. silently devolve on the Natl. Treasury to support the National Legislature.)—Madison’s Note.

[1] According to Yates, Madison followed Wilson:

“Mr. Madison. Some gentlemen give too much weight and others too little to this subject. If you have no exclusive clause, there may be danger of creating offices or augmenting the stipends of those already created, in order to gratify some members if they were not excluded. Such an instance has fallen within my own observation. I am therefore of opinion, that no office ought to be open to a member, which may be created or augmented while he is in the legislature.”—Yates, *Secret Proceedings*, etc., 155. Yates gives the rest of the debate as follows:

“Mr. Mason. It seems as if it was taken for granted, that all offices will be filled by the executive, while I think many will remain in the gift of the legislature. In either case, it is necessary to shut the door against corruption. If otherwise, they may make or multiply offices, in order to fill them. Are gentlemen in earnest when they suppose that this exclusion will prevent the first characters from coming forward? Are we not struck at seeing the luxury and venality which has already crept in among us? If not checked we shall have ambassadors to every petty state in Europe—the little republic of *St. Marino* not excepted. We must in the present system remove the temptation. I admire many parts of the British constitution and government, but I detest their corruption.—Why has the power of the crown so remarkably increased the last century? A stranger, by reading their laws, would suppose it considerably diminished; and yet, by the sole power of appointing the increased officers of government, corruption pervades every town and village in the kingdom. If such a restriction should abridge the right of election, it is still necessary, as it will prevent the people from ruining themselves; and will not the same causes here produce the same effects? I consider this clause as the corner-stone on which our liberties depend—and if we strike it out we are erecting a fabric for our destruction.

“Mr. Gorham. The corruption of the English government cannot be applied to America. This evil exists there in the venality of their boroughs; but even this

corruption has its advantage, as it gives stability to their government. We do not know what the effect would be if members of parliament were excluded from offices. The great bulwark of our liberty is the frequency of elections, and the great danger is the septennial parliaments.

“Mr. Hamilton. In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Take mankind in general, they are vicious—their passions may be operated upon. We have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it was necessary to support a good government. We have taken up many ideas on trust, and at last, pleased with their own opinions, establish them as undoubted truths. Hume’s opinion of the British constitution confirms the remark, that there is always a body of firm patriots, who often shake a corrupt administration. Take mankind as they are, and what are they governed by? Their passions. There may be in every government a few choice spirits, who may act from more worthy motives. One great error is that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it will ever be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good—for these ever induce us to action. Perhaps a few men in a state, may, from patriotic motives, or to display their talents, or to reap the advantage of public applause, step forward; but if we adopt the clause, we destroy the motive. I am therefore against all exclusions and refinements, except only in this case; that when a member takes his seat, he should vacate every other office. It is difficult to put any exclusive regulation into effect. We must in some degree submit to the inconvenience.”—Yates, *Secret Proceedings, etc.*, 155, 156.

[1] According to Yates Wilson followed Pinckney:

“Mr. Wilson. I perceive that some gentlemen are of opinion to give a bias in favor of state governments. This question ought to stand on the same footing.”—Yates, *Secret Proceedings, etc.*, 157.

[1] “Mr. Martin was lately Governor of North Carolina, which office he filled with credit. He is a man of sense, and undoubtedly is a good politician, but he is not formed to shine in public debate, being no speaker. Mr. Martin was once a Colonel in the American Army, but proved unfit for the field. He is about 40 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 332.

[1] Yates gives Mason’s speech more fully and a speech by Madison omitted here:

“Mr. Mason. I differ from my colleague in his proposed amendment. Let me state the practice in the state where we came from. There, all officers are appointed by the legislature. Need I add, that many of their appointments are most shameful. Nor will the check proposed by this amendment be sufficient. It will soon cease to be any check at all. It is asserted that it will be very difficult to find men sufficiently qualified as legislators without the inducement of emolument. I do believe that men of genius will be deterred unless possessed of great virtues. We may well dispense with the first

characters when destitute of virtue—I should wish them never to come forward—But if we do not provide against corruption, our government will soon be at an end; nor would I wish to put a man of virtue in the way of temptation. Evasions and caballing would evade the amendment. Nor would the danger be less, if the executive has the appointment of officers. The first three or four years we might go on well enough; but what would be the case afterwards? I will add, that such a government ought to be refused by the people—and it will be refused.

“Mr. Madison. My wish is that the national legislature be as uncorrupt as possible. I believe all public bodies are inclined, from various motives, to support its members; but it is not always done from the base motives of venality. Friendship, and a knowledge of the abilities of those with whom they associate, may produce it. If you bar the door against such attachments, you deprive the government of its greatest strength and support. Can you always rely on the patriotism of the members? If this be the only inducement, you will find a great indifferency in filling your legislative body. If we expect to call forth useful characters, we must hold out allurements; nor can any great inconveniency arise from such inducements. The legislative body must be the road to public honor; and the advantage will be greater to adopt my motion, than any possible inconvenience.”—Yates, *Secret Proceedings*, etc., 158.

[1] Yates gives Gerry’s remarks:

“This amendment is of great weight, and its consequences ought to be well considered. At the beginning of the war, we possessed more than Roman virtue. It appears to me it is now the reverse. We have more land and stock-jobbers than any place on earth. It appears to me that we have constantly endeavored to keep distinct the three great branches of government; but if we agree to this motion, it must be destroyed by admitting the legislators to share in the executive, or to be too much influenced by the executive, in looking up to them for offices.”—Yates, *Secret Proceedings*, etc., 160.

[1] Pinckney furnished Madison with a copy of this speech which he transcribed, but apparently not with the whole of it, as Madison’s note at the end indicates. The original Pinckney draft is among the Madison papers, and shows Madison’s copying to have been accurate.

[1] The residue of this speech was not furnished, like the above, by Mr. Pinckney.—Madison’s Note.

Yates’ report of the speech is meagre. The closing paragraph, apparently the part lacking in Madison’s report, is:

“While we were dependent on the crown of Great Britain, it was in contemplation to form the whole into one; but it was found impracticable. No legislature could make good laws for the whole, nor can it now be done. It would necessarily place the power in the hands of the few nearest the seat of government. State governments must therefore remain, if you mean to prevent confusion. The general negative powers will support the general government. Upon these considerations, I am led to form the

second branch differently from the report. These powers are important, and the number not too large, upon the principle of proportion. I have considered the subject with great attention; and I propose this plan (reads it), and if no better plan is proposed, I will then move its adoption.”—Yates, *Secret Proceedings*, etc., 163.

[1] Madison’s Note:

It must be kept in view that the largest States particularly Pennsylvania & Virginia always considered the choice of the 2d. Branch by the State Legislatures as opposed to a proportional representation to which they were attached as a fundamental principle of just Government. The smaller States who had opposite views, were reinforced by the members from the large States most anxious to secure the importance of the State Governments.

[1] According to Yates, Madison followed Pinckney:

“Mr. Madison. We are proceeding in the same manner that was done when the Confederation was first formed. Its original draft was excellent, but in its progress and completion it became so insufficient as to give rise to the present Convention. By the vote already taken, will not the temper of the state legislatures transfuse itself into the Senate? Do we create a free government?”—Yates, *Secret Proceedings*, etc., 168.

[1] Yates has the question on *five* years, but this is obviously a mistake.—Yates, *Secret Proceedings*, etc., 172.

[2] Quer. whether Connecticut should not be, no, & Delaware, ay—Madison’s Note.

[1] “Cap. Dayton is a young Gentleman of talents, with ambition to exert them. He possesses a good education and some reading; he speaks well, and seems desirous of improving himself in Oratory. There is an impetuosity in his temper that is injurious to him; but there is an honest rectitude about him that makes him a valuable Member of Society, and secures to him the esteem of all good Men. He is about 30 years old, served with me a Brother Aid to General Sullivan in the Western Expedition of ’79.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 328.

[1] According to Yates, before Wilson spoke:

“Mr. Madison. Congress heretofore depended on state interests; we are now going to pursue the same plan.”—Yates, *Secret Proceedings*, etc., 173.

[2] After Wilson, according to Yates:

“Mr. Butler. This second branch I consider as the aristocratic part of our government; and they must be controlled by the states, or they will be too independent.”—Yates, *Secret Proceedings*, etc., 173.

[1] “Mr. Martin, the Attorney-General from Maryland, spoke on this subject upwards of three hours. As his arguments were too diffuse, and in many instances desultory, it



was not possible to trace him through the whole, or to methodize his ideas into a systematic or argumentative arrangement.”—Yates, *Secret Proceedings*, etc., 174.

[1] Yates gives Martin’s speech more fully:

“On federal grounds, it is said, that a minority will govern a majority—but on the Virginia plan a minority would tax a majority. In a federal government, a majority of states must and ought to tax. In the local government of states, counties may be unequal—still numbers, not property, govern. What is the government now forming, over states or persons? As to the latter, their rights cannot be the object of a general government. These are already secured by their guardians, the state governments. The general government is therefore intended only to protect and guard the rights of the states as states.

“This general government, I believe, is the first upon earth which gives checks against democracies or aristocracies. The only necessary check in a general government ought to be a restraint to prevent its absorbing the powers of the state governments. Representation on federal principles can only flow from state societies. Representation and taxation are ever inseparable—not according to the quantum of property, but the quantum of freedom.

“Will the representatives of a state forget state interests? The mode of election cannot change it. These prejudices cannot be eradicated—Your general government cannot be just or equal upon the Virginia plan, unless you abolish state interests. If this cannot be done, you must go back to principles purely federal.

“On this latter ground, the state legislatures and their constituents will have no interests to pursue different from the general government, and both will be interested to support each other. Under these ideas can it be expected that the people can approve the Virginia plan? But it is said, the people, not the state legislatures, will be called upon for approbation—with an evident design to separate the interests of the governors from the governed. What must be the consequence? Anarchy and confusion. We lose the ideas of the powers with which we are intrusted. The legislatures must approve. By them it must, on your own plan, be laid before the people. How will such a government, over so many great states, operate. Wherever new settlements have been formed in large states, they immediately want to shake off their independency. Why? Because the government is too remote for their good. The people want it nearer home.

“The basis of all ancient and modern confederacies is the freedom and the independency of the states composing it. The states forming the amphictionic council were equal, though Lacedemon, one of the greatest states, attempted the exclusion of three of the lesser states from this right. The plan reported, it is true, only intends to diminish those rights, not to annihilate them—It was the ambition and power of the great Grecian states which at last ruined this respectable council. The states as societies are ever respectful. Has Holland or Switzerland ever complained of the equality of the states which compose their respective confederacies? Bern and Zurich are larger than the remaining eleven cantons—so of many of the states of Germany;

and yet their governments are not complained of. Bern alone might usurp the whole power of the Helvetic confederacy, but she is contented still with being equal.

“The admission of the larger states into the confederation, on the principle of equality, is dangerous—But on the Virginia system it is ruinous and destructive. Still it is the true interest of all the states to confederate—It is their joint efforts which must protect and secure us from foreign danger, and give us peace and harmony at home.

“(Here Mr. Martin entered into a detail of the comparative powers of each state, and stated their probable weakness and strength.)

“At the beginning of our troubles with Great Britain, the smaller states were attempted to be cajoled to submit to the views of that nation, lest the larger states should usurp their rights. We then answered them—your present plan is slavery, which on the remote prospect of a distant evil, we will not submit to.

“I would rather confederate with any single state, than submit to the Virginia plan. But we are already confederated, and no power on earth can dissolve it but by the consent of *all* the contracting powers—and four states, on this floor, have already declared their opposition to annihilate it. Is the old confederation dissolved, because some of the states wish a new confederation?”—Yates, *Secret Proceedings*, etc., 177.

[1] According to King’s Notes, Charles Pinckney spoke after Madison:

“*Charles Pinckney*. The Honors & offices may become the objects of strong desire and of combination to acquire them. If Representatives be apportioned among the States in the Ratio of numbers, the Citizens will be free and equal but the States will be unequal, and their sovereignty will be degraded.”—King’s *Life and Correspondence of Rufus King*, i., 610.

[1] According to Yates, Madison followed Sherman: “Mr. Madison. There is danger in the idea of the gentleman from Connecticut. Unjust representation will ever produce it. In the United Netherlands, Holland governs the whole, although she has only one vote. The counties in Virginia are exceedingly disproportionate, and yet the smaller has an equal vote with the greater, and no inconvenience arises.”—Yates, *Secret Proceedings*, etc., 182.

[1] From this date he was absent till the — of —.—Madison’s Note.

[1] In King’s Notes another speech of Madison’s is given after Ellsworth’s: “*Madison*. One Gentleman from Connecticut has proposed doing as much as is prudent now, leaving future amendments to Posterity,—this is a dangerous doctrine. The Defects of the Amphictionic League were acknowledged, but were reformed. The Netherlands have four times attempted to make amendments in their Confederation, but have failed in each attempt. The Fear of innovation, the hue & Cry in favour of the Liberty of the People will as they have done prevent the necessary Reforms. If the States have equal Votes & influence in the Senate we shall be in the utmost danger, the minority of the People will govern the majority. Delaware during the late war



opposed and defeated an Embargo, to which twelve States had agreed, and continued to supply the enemy with Provisions in time of war.”—King’s *Life and Times of Rufus King*, i., 612.

[1] “Mr. Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the foundation of a compleat classical education at Harvard College, he pursues every other study with ease. He is well acquainted with Books and Characters, and has an accommodating turn of mind, which enables him to gain the confidence of Men, and to understand them. He is a practising Attorney in Georgia, and has been twice a Member of Congress. Mr. Baldwin is about 38 years of age.”—Pierce’s Notes *Am. Hist. Rev.*, iii., 333.

[2] According to Yates, after Baldwin spoke:

“Mr. Madison. I would always exclude inconsistent principles in framing a system of government. The difficulty of getting its defects amended are great and sometimes insurmountable. The Virginia state government was the first which was made, and though its defects are evident to every person, we cannot get it amended. The Dutch have made four several attempts to amend their system without success. The few alterations made in it were by tumult and faction, and for the worse. If there was real danger, I would give the smaller states the defensive weapons—But there is none from that quarter. The great danger to our general government is the great southern and northern interests of the continent, being opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, not according to the size of the states.

“Suppose the first branch granted money, may not the second branch, from state views, counteract the first? In congress, the single state of Delaware prevented an embargo, at the time that all the other states thought it absolutely necessary for the support of the army. Other powers, and those very essential, besides the legislative, will be given to the second branch—such as the negating all state laws. I would compromise on this question, if I could do it on correct principles, but otherwise not—if the old fabric of the confederation must be the groundwork of the new, we must fall.”—Yates, *Secret Proceedings*, etc., 189.

[1] He had just returned from N. Y. havg. left ye. Convention a few days after it commenced business.—Madison’s Note.

[1]

“Tuesday, *July 3*, 1787.

“The *grand committee* met. Mr. Gerry was chosen chairman.

“The committee proceeded to consider in what manner they should discharge the business with which they were intrusted. By the proceedings in the Convention, they were so equally divided on the important question of *representation in the two branches*, that the idea of a conciliatory adjustment must have been in contemplation

of the house in the appointment of this committee. But still, how to effect this salutary purpose was the question. Many of the members, impressed with the utility of a general government, connected with it the indispensable necessity of a representation from the states according to their numbers and wealth; while others, equally tenacious of the rights of the states, would admit of no other representation but such as *was strictly federal*, or, in other words, *equality of suffrage*. This brought on a discussion of the principles on which the house had divided, and a lengthy recapitulation of the arguments advanced in the house in support of these opposite propositions. As I had not openly explained my sentiments on any former occasion on this question, but constantly, in giving my vote, *showed my attachment to the national government on federal principles*, I took this occasion to explain my motives.

“These remarks gave rise to a motion of Dr. Franklin, which after some modification was agreed to, and made the basis of the following report of the Committee.”—Yates, *Secret Proceedings*, etc., 205. The report is given by Madison.

Hamilton, who had gone to New York, wrote to Washington under date of July 3d:

“In my passage through the Jerseys, and since my arrival here, I have taken particular pains to discover the public sentiment, and I am more and more convinced that this is the critical opportunity for establishing the prosperity of this country on a solid foundation. I have conversed with men of information, not only in this city, but from different parts of the State, and they agree that there has been an astonishing revolution for the better in the minds of the people.

“The prevailing apprehension among thinking men is, that the Convention, from the fear of shocking the popular opinion, will not go far enough. They seem to be convinced that a strong, well-mounted government will better suit the popular palate than one of a different complexion. Men in office are indeed taking all possible pains to give an unfavorable impression of the Convention, but the current seems to be moving strongly the other way.

“A plain but sensible man, in a conversation I had with him yesterday, expressed himself nearly in this manner: The people begin to be convinced that ‘their excellent form of government,’ as they have been used to call it, will not answer their purpose, and that they must substitute something not very remote from that which they have lately quitted.

“These appearances, though they will not warrant a conclusion that the people are yet ripe for such a plan as I advocate, yet serve to prove that there is no reason to despair of their adopting one equally energetic, if the Convention should think proper to propose it. They serve to prove that we ought not to allow too much weight to objections drawn from the supposed repugnance of the people to an efficient constitution. I confess I am more and more inclined to believe that former habits of thinking are regaining their influence with more rapidity than is generally imagined.

“Not having compared ideas with you, sir, I cannot judge how far our sentiments agree; but, as I persuade myself the genuineness of my representations will receive

credit with you, my anxiety for the event of the deliberations of the Convention induces me to make this communication of what appears to be the tendency of the public mind.

“I own to you, sir, that I am seriously and deeply distressed at the aspect of the counsels which prevailed when I left Philadelphia. I fear we shall let slip the golden opportunity of rescuing the American empire from disunion, anarchy, and misery.

“No motley or feeble measure can answer the end, or will finally receive the public support. Decision is true wisdom, and will not be less reputable to the Convention than salutary to the community.

“I shall of necessity remain here ten or twelve days. If I have reason to believe that my attendance at Philadelphia will not be mere waste of time, I shall, after that period, rejoin the Convention.”—*Hamilton’s Works* (Lodge).

[1] This report was founded on a motion in the Committee made by Dr. Franklin. It was barely acquiesced in by the members from the States opposed to an equality of votes in the 2d. branch and was evidently considered by the members on the other side, as a gaining of their point. A motion was made by Mr. Sherman. He acted in the place of Mr. Elseworth who was kept away by indisposition, in the Committee to the following effect “that each State should have an equal vote in the 2d. branch; provided that no decision therein should prevail unless the majority of States concurring should also comprise a majority of the inhabitants of the U. States.” This motion was not much deliberated on nor approved in the Committee. A similar proviso had been proposed in the debates on the articles of Confederation in 1777, to the articles giving certain powers to “nine States.” See Journals of Congs. for 1777, p. 462.—Madison Note.

[1] Yates, and his colleague, Lansing, left the Convention July 5, despairing of the result of its labors being satisfactory to them. Madison’s speech is the last one reported by Yates.—Yates, *Secret Proceedings*, etc.

[1] King gives the three speeches of Gerry, Madison and Patterson as follows:

“*Gerry*. I agree to the measure, provided that the first Br. (H. of Reps) shall originate money bills and money appropriations. The prejudices as well as the interest of our Constituents must be regarded—two or three thousand men are in office in the States—their influence will be in favor of an Equality of votes among the States.

“*Madison*. Equality in the Senate will enable a minority to hold a majority, and to oblige them to submit to their interests, or they will withdraw their assent to measures essential and necessary to the general Good. I have known one man, when the State was represented by only two, and they were divided, oppose six States in Congress on an important occasion for three days, and finally compel them to gratify his caprice in order to obtain his suffrage. The Senate will possess certain exclusive Powers, such as the appointments to office, if the States have equal votes; a minority of People will appoint the Great Offices. Besides the small States may be near the Seat of Govt.—a

bare Quorum of the H. of R. may be easily assembled, and carry a bill against the sense of a majority if all were present, and the Senate, tho' all were present, might confirm such Bill. Virginia has objected to every addition of the powers of Congress, because she has only of the Power when she ought to have one sixth.

“*Paterson*. I hope the question will be taken: if we do not give equal votes in the Senate to the States, the small States agreeing that money Bills and appropriations shall originate in the H. of Reps., elected according to numbers, it must not be expected that the small States will agree to the amendments of the Confederation. Let us decide this question and lose no more time. I think that I shall vote against the provision, because I think that the exclusive originating of money Bills & appropriations by the H. of Reps. is giving up too much on the part of the small States.”—*King’s Life and Correspondence of Rufus King*, I., 613.

[1] In printed Journal. N. C. no. Geo. ay. Note in Madison’s hand.

[1] They were then to have been a rule of taxation only. Note in Madison’s handwriting.

[1] (Mr Carrol sd. in explanation of the vote of Md. that he wished the phraseology to be so altered as to obviate if possible the danger which had been expressed of giving umbrage to the Eastern & Middle States.) Note in Madison’s hand.

[1] By Mr. Govr. Morris. Note in Madison’s handwriting.

[1] “Memorandum.

“July 15, ’87.

“About twelve days since the Convention appointed a Grand Comee, consisting of Gerry, Ellsworth, Yates, Paterson, Franklin, Bedford, Martin, Mason, Rutledge & Baldwin to adjust the Representation in the two Brs. of the Legislature of the U. S. They reported yt. every 40,000 Inhabs. taken agreeably to the Resolution of Cong. of ye 18 Ap. 1783, shd. send one member to the first Br. of the Legislature, yt. this Br. shd. originate exclusively Money Bills, & also originate ye appropriations of money; and that in ye Senate or upper Br. each State shd. have one vote & no more. The Representation as to the first Br. was twice recommitted altho’ not to the same Committee; finally it was agreed yt Taxation of the direct sort & Representation shd. be in direct proportion with each other—that the first Br. shd. consist of 65 members, viz. N. H. 3, M. 8, R. I. 1, C. 5, N. Y. 6, N. J. 4, P. 8, D. 1, M. 6, V. 10, N. C. 5, S. C. 5, G. 3,—and that the origination of money Bills and the Appropriations of money shd. belong in the first instance to yt. Br., but yt in the Senate or 2nd Br. each State shd. have an equal Vote. In this situation of the Report it was moved by S. Car. that in the formation of the 2nd Br., instead of an equality of Votes among the States, that N. H. shd. have 2, M. 4, R. I. 1, C. 3, N. Y. 3, N. J. 2, P. 4, D. 1, M. 3, V. 5, N. C. 3, S. C. 3, G. 2 = total 36.

“On the question to agree to this apportionment, instead of the equality (Mr. Gorham

being absent) Mass., Con., N. Jer., Del., N. Car., & Georg—No. Penn., Mar., Virg. & S. Car. Aye.

“This Question was taken and to my mortification by the vote of Mass. lost on the 14th July.

“(endorsed ‘inequality lost by vote of Mass.’)”—King’s note, *King’s Life and Correspondence of Rufus King*, I., 615.

[1] See the paper, in the appendix, communicated by Mr. R. to J. M. July 10. Note in Madison’s hand.

[1] The probable object of this motion was merely to enforce the argument against the re-eligibility of the Executive magistrate by holding out a tenure during good behaviour as the alternate for keeping him independent of the legislature.—Note in Madison’s handwriting.

[1] The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of Dr. Mc. Clurg, for whom J. M. had a particular regard. The Doctr. though possessing talents of the highest order was modest & unaccustomed to exert them in public debate.—Note in Madison’s handwriting.

[1] (This vote is not considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the Executive on the Legislature, & thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an Executive, during good behaviour were not more than three or four, nor is it certain they would finally have adhered to such a tenure, an independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community seemed to be generally admitted as the true basis of a well constructed government.)—Note in Madison’s hand, except from the words “nor is it certain” &c. which is in the hand of his wife’s nephew, John C. Payne

[2] (There was no debate on this motion. The apparent object of many in the affirmative was to secure the re-eligibility by shortening the term, and of many in the negative to embarrass the plan of referring the appointment and dependence of the Executive to the Legislature.)—Note in Madison’s hand.

[1] In the printed Journal, S. Carolina—no. Note in Madison’s hand.

[1]

## Article X

This Constitution shall be submitted to the consideration of Conventions in the several States, the members whereof shall be chosen by the people of such States respectively

under the direction of their respective Legislatures. Each Convention which shall ratify the same, shall appoint the first representatives and Senators from such State according to the rule prescribed in the — § of the — article. The representatives so appointed shall continue in office for one year only. Each Convention so ratifying shall give notice thereof to the Congress of the United States, transmitting at the same time a list of the Representatives and Senators chosen. When the Constitution shall have been duly ratified, Congress shall give notice of a day and place for the meeting of the Senators and Representatives from the several States; and when these or a majority of them shall have assembled according to such notice, they shall by joint ballot, by plurality of votes, elect a President of the United States; and the Constitution thus organized shall be carried into effect —*Mad. MSS.*

“Col: Hamilton did not propose in the Convention any plan of a Constitution. He had sketched an outline which he read as part of a speech; observing that he did not mean it as a proposition, but only to give a more correct view of his ideas.

“Mr. Patterson regularly proposed a plan which was discussed & voted on.”—Madison to John Quincy Adams, Montpelier, Nov. 2, 1818, *Dept. of State MSS.*, Miscellaneous Letters.

[\*] Quere, ? (to provide for distant States).—Note in Madison’s hand.

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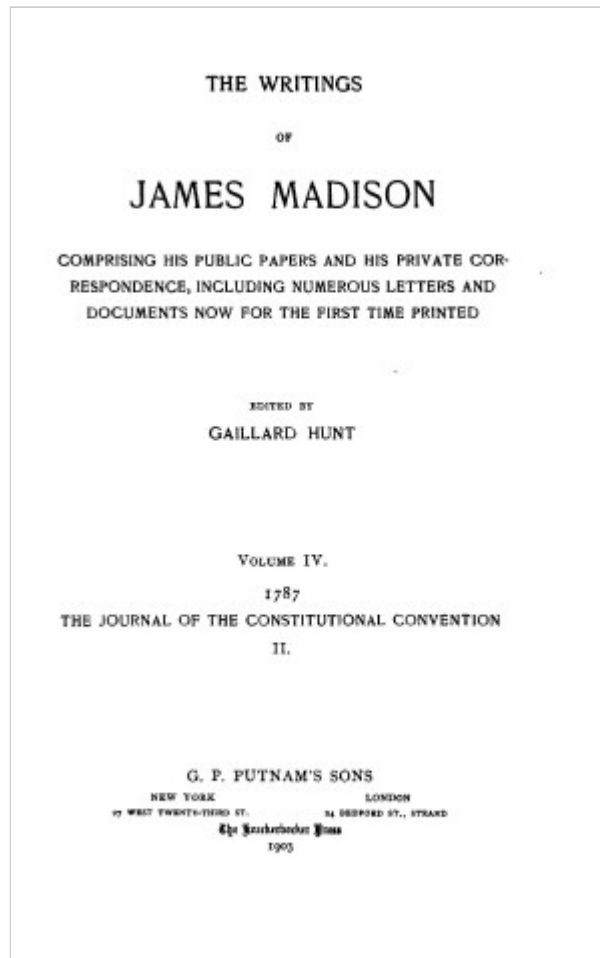
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## Edition Used:

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CONTENTS OF VOLUME IV.

	PAGE
Note . . . . .	vii
Chronology . . . . .	ix
Journal of the Constitutional Convention . . . . .	i
Index . . . . .	507

FACSIMILE.

	FACSIMILE PAGE
First Page of the Constitution, reduced . . . . .	505



v

## Table Of Contents

[Note.](#)

[Chronology of James Madison. 1787.](#)

[The Writings of James Madison.](#)

[Journal of the Constitutional Convention of 1787.— Continued.](#)

The Knickerbocker Press, New York

[\[Back to Table of Contents\]](#)

## FACSIMILE.

### FACING PAGE

First Page of the Constitution, reduced 505

## NOTE.

In photographing the first page of the Journal (Vol. III., facing p. 2) it was found to be impossible to reproduce the note, which is on a separate slip of paper. It contained, as the text (p. 1) indicates, a list of the members of the convention.

In the note on page 25 (Vol. III.), the sentence stating Chief-Justice Nott has informed the editor that “*some*” of Pinckney’s notes are extant is a misprint, and for “*some*” the word *none* should be substituted.

Pierce’s sketches of the members of the convention omit John Francis Mercer of Maryland and William Churchill Houstoun of New Jersey. The editor has inadvertently omitted the brief sketch of Thomas Fitzsimons of Pennsylvania. It should have been a note on page 116 (Vol. IV.), and is: “Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old.” (*Am. Hist. Rev.*, iii., 328.)

The student should consult Professor John Franklin Jameson’s paper on “Studies in the History of the Federal Convention of 1787,” to appear in the report of the American Historical Association for 1903, for an exhaustive discussion and identification of contemporaneous writings, besides Madison’s, throwing light on the proceedings of the constitutional convention.

G. H.

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1787.

1787.

- July  
19. Advocates election of the Executive by the people.
- July  
20. Speaks in favor of making the Executive impeachable.
- July  
21. Seconds proposition to include the Judiciary with the Executive in power to revise laws.  
Moves that judges be appointed by the Executive with concurrence of two-thirds of Senate.
- July  
25. Shows the difficulty of devising satisfactory mode of selecting Executive.
- August  
7. Advocates liberal suffrage.
- August  
8. Moves that basis of representation in House of Representatives be one to not more than 40,000 inhabitants.  
Opposes proposition that money bills originate only in House of Representatives.
- August  
9. Opposes incorporation in constitution of provision against persons of foreign birth holding office.
- August  
10. Moves that legislature have power to compel attendance of members.
- August  
11. Moves that Congress publish its journals, except such parts of Senate proceedings as may be ordered kept secret.  
Advocates a centrally located capital.
- August  
13. Seconds motion in favor of liberal treatment of foreigners.  
Speaks in favor of participation of Senate in making appropriations.
- August  
15. Moves that all bills be passed upon by the Executive and Judiciary before becoming laws.
- August  
16. Advocates national power to tax exports.
- August  
17. Moves that legislature have power to declare war.  
Submits propositions for national power over public lands, to form governments for new States, over Indian affairs, over seat of government, to
- August  
18. grant charters of incorporation, copyrights, to establish a university, grant patents, acquire forts, magazines, etc.  
Speaks in favor of national control of militia.
- August  
22. Appointed on committee to consider navigation acts.  
Moves that States have power to appoint militia officers under rank of general officers.  
Moves to commit question of negative of State laws.  
Moves to include the Executive in treaty-making power.

- August  
25. Declares it is wrong to admit the idea of property in men in constitution.
- August  
27. Suggests that in case of death of President his council may act.  
Moves form of oath for President.  
Moves that judges' salaries be fixed.  
Expresses doubt whether Judiciary should have power over cases arising under constitution.
- August  
28. Moves that States be forbidden to lay embargoes, export and import duties.
- August  
29. Speaks in favor of navigation acts.
- August  
31. Moves that ratification of constitution be by a majority of States and people.  
Advocates ratification by State conventions.  
Appointed on committee to consider parts of constitution and propositions not yet acted upon.
- Sept.  
3. Thinks eventual election of President by legislature should be made difficult.
- Sept.  
7. Moves that Senate have power to make treaties of peace without President.
- Sept.  
8. Moves that quorum of Senate be two-thirds of all the members.  
Seconds motion to increase representation.
- Sept.  
14. Suggests that legislature should have power to grant charters of incorporation.
- Sept.  
17. Signs constitution.

[\[Back to Table of Contents\]](#)

***THE WRITINGS OF JAMES MADISON.***

**JOURNAL OF THE CONSTITUTIONAL CONVENTION OF  
1787.—*Continued.***

Thursday July 19. In Convention.

On reconsideration of the vote rendering the Executive re-eligible a 2<sup>d</sup>. time, M<sup>r</sup>. Martin moved to re-instate the words, “to be ineligible a 2<sup>d</sup>. time.”

M<sup>r</sup>. Gouverneur Morris. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy & utility of the Union among the present and future States. It has been a maxim in Political Science that Republican Government is not adapted to a large extent of Country, because the energy of the Executive Magistracy can not reach the extreme parts of it. Our Country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object of the Executive is to controul the Legislature. The Legislature will continually seek to aggrandize & perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, ag<sup>st</sup>. Legislative tyranny, against the Great & the wealthy who in the course of things will necessarily compose the Legislative body. Wealth tends to corrupt the mind to nourish its love of power, and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the 2<sup>d</sup>. branch was not meant as a check on Legislative usurpations of power, but on the abuse of lawful powers, on the propensity in the 1<sup>st</sup>. branch to legislate too much to run into projects of paper money & similar expedients. It is no check on Legislative tyranny. On the contrary it may favor it, and if the 1<sup>st</sup>. branch can be seduced may find the means of success. The Executive therefore ought to be so constituted as to be the great protector of the Mass of the people.—It is the duty of the Executive to appoint the officers & to command the forces of the Republic: to appoint 1. ministerial officers for the administration of public affairs. 2. officers for the dispensation of Justice. Who will be the best Judges whether these appointments be well made? The people at large, who will know, will see, will feel the effects of them. Again who can judge so well of the discharge of military duties for the protection & security of the people, as the people themselves who are to be protected & secured? He finds too that the Executive is not to be re-eligible. What effect will this have? 1. it will destroy the great incitement to merit public esteem by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble & illustrious actions. Shut the Civil road to Glory & he may be compelled to seek it by the sword. 2. It will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. 3. It



will produce violations of the very constitution it is meant to secure. In moments of pressing danger the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These then are the faults of the Executive establishment as now proposed. Can no better establishment<sup>t</sup>. be devised? If he is to be the Guardian of the people let him be appointed by the people? If he is to be a check on the Legislature let him not be impeachable. Let him be of short duration, that he may with propriety be reeligible. It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of Character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust without having his character proclaimed by fame throughout the Empire. As to the danger from an Unimpeachable magistrate he could not regard it as formidable. There must be certain great Officers of State; a minister of finance, of war, of foreign affairs &c. These he presumes will exercise their functions in subordination to the Executive, and will be amenable by impeachment to the Public Justice. Without these ministers the Executive can do nothing of consequence. He suggested a biennial election of the Executive at the time of electing the 1<sup>st</sup>. branch, and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large throughout so great an extent of country could not be influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably, be objected that the election will be influenced by the members of the Legislature; particularly of the 1<sup>st</sup>. branch, and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered that as the Legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another; that if the administration of the Executive were good, it would be unpopular to oppose his re-election, if bad it ought to be opposed & a reappointm<sup>t</sup>. prevented; and lastly that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature but either to give him his office for life, or make him eligible by the people. Again, it might be objected that two years would be too short a duration. But he believes that as long as he should behave himself well, he would be continued in his place. The extent of the Country would secure his re-election ag<sup>st</sup>. the factions & discontents of particular States. It deserved consideration also that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish & move that the whole constitution of the Executive might undergo reconsideration.

M<sup>t</sup>. Randolph urged the motion of M<sup>t</sup>. L. Martin for restoring the words making the Executive ineligible a 2<sup>d</sup>. time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought & contended as he still did that the danger apprehended by the

little States was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the Executive be appointed, as has been determined, by the Legislature, he will probably be appointed either by joint ballot of both houses, or be nominated by the 1<sup>st</sup>. and appointed by the 2<sup>d</sup>. branch. In either case the large States will preponderate. If he is to court the same influence for his re-appointment, will he not make his revisionary power, and all the other functions of his administration subservient to the views of the large States. Besides, is there not great reason to apprehend that in case he should be reeligible, a false complaisance in the Legislature might lead them to continue an unfit man in office in preference to a fit one. It has been said that a constitutional bar to re-appointment will inspire unconstitutional endeavours to perpetuate himself. It may be answered that his endeavours can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless; to which may be added that this argument supposes him to be more powerful & dangerous, than other arguments which have been used, admit, and consequently calls for stronger fetters on his authority. He thought an election by the Legislature with an incapacity to be elected a second time would be more acceptable to the people than the plan suggested by M<sup>r</sup>. Gov<sup>r</sup>. Morris.

M<sup>r</sup>. King did not like the ineligibility. He thought there was great force in the remark of M<sup>r</sup>. Sherman, that he who has proved himself most fit for an Office, ought not to be excluded by the constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think that in such cases the people at large would chuse wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole he was of opinion that an appointment by electors chosen by the people for the purpose, would be liable to fewest objections.

M<sup>r</sup>. Patterson's ideas nearly coincided he said with those of M<sup>r</sup>. King. He proposed that the Executive should be appointed by Electors to be chosen by the States in a ratio that would allow one elector to the smallest and three to the largest States.

M<sup>r</sup>. Wilson. It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered in-eligible a 2<sup>d</sup>. time: he perceived with pleasure that the idea was gaining ground, of an election mediately or immediately by the people.

M<sup>r</sup>. Madison. If it be a fundamental principle of free Gov<sup>t</sup>. that the Legislative, Executive & Judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same & perhaps greater reason why the Executive sh<sup>d</sup>. be independent of the Legislature, than why the Judiciary should. A coalition of the two former powers would be more immediately & certainly dangerous to public liberty. It is essential then that the appointment of the Executive should either be drawn from some source, or held by some tenure that will give him a free agency with regard to the Legislature. This could not be if he was to be appointable from time to time by the Legislature. It was not clear that an appointment in the 1<sup>st</sup>. instance even with an ineligibility afterwards would not establish an improper connection between the two departments. Certain it was that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily

admitted. He was disposed for these reasons to refer the appointment to some other source. The people at large was in his opinion the fittest in itself. It would be as likely as any that could be devised to produce an Executive Magistrate of distinguished Character. The people generally could only know & vote for some Citizen whose merits had rendered him an object of general attention & esteem. There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty and seemed on the whole to be liable to fewest objections.

M<sup>r</sup>. Gerry. If the Executive is to be elected by the Legislature he certainly ought not to be re-eligible. This would make him absolutely dependent. He was ag<sup>st</sup>. a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive by Electors to be chosen by the State Executives. The people of the States will then choose the 1<sup>st</sup>. branch; the legislatures of the States the 2<sup>d</sup>. branch of the National Legislature, and the Executives of the States, the National Executive. This he thought would form a strong attachm<sup>t</sup>. in the States to the National System. The popular mode of electing the chief Magistrate would certainly be the worst of all. If he should be so elected & should do his duty, he will be turned out for it like Gov<sup>r</sup>. Bowdoin in Mass<sup>ts</sup>. & President Sullivan in N. Hamshire.

On the question on M<sup>r</sup>. Gov<sup>r</sup>. Morris motion to reconsider generally the Constitution of the Executive

Mas. ay. C<sup>t</sup>. ay. N. J. ay. & all the others ay.

M<sup>r</sup>. Elsworth moved to strike out the appointm<sup>t</sup>. by the Nat<sup>l</sup>. Legislature, and to insert, to be chosen by electors appointed by the Legislatures of the States in the following ratio; to wit—one for each State not exceeding 200,000<sup>1</sup> inhab<sup>ts</sup>. two for each above y<sup>t</sup>. number & not exceeding 300,000. and three for each State exceeding 300,000.—M<sup>r</sup>. Broome 2<sup>ded</sup>. the motion.<sup>2</sup>

M<sup>r</sup>. Rutledge was opposed to all the modes, except the appointm<sup>t</sup>. by the Nat<sup>l</sup>. Legislature. He will be sufficiently independent, if he be not re-eligible.

M<sup>r</sup>. Gerry preferred the motion of M<sup>r</sup>. Elsworth to an appointm<sup>t</sup>. by the Nat<sup>l</sup>. Legislature, or by the people; tho' not to an app<sup>t</sup>. by the State Executives. He moved that the electors proposed by M<sup>r</sup>. E. should be 25 in number, and allotted in the following proportion. to N. H. 1. to Mas. 3. to R. I. 1. to Con<sup>t</sup>. 2. to N. Y. 2. N. J. 2. P<sup>a</sup>. 3. Del. 1. M<sup>d</sup>. 2. V<sup>a</sup>. 3. N. C. 2. S. C. 2. Geo. 1.

The question as moved by M<sup>r</sup>. Elsworth being divided, on the 1<sup>st</sup>. part shall y<sup>e</sup>. Nat<sup>l</sup>. Executive be appointed by Electors?

Mas. div<sup>d</sup> Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On 2<sup>d</sup>. part shall the Electors be chosen by the State Legislatures?

Mas. ay. Con<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. ay.

The part relating to the ratio in which the States s<sup>d</sup>. chuse electors was postponed nem. con.

M<sup>r</sup>. L. Martin moved that the Executive be ineligible a 2<sup>d</sup>. time.

M<sup>r</sup>. Williamson, 2<sup>ds</sup>. the motion. He had no great confidence in Electors to be chosen for the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of Gov<sup>t</sup>. They would be liable to undue influence, which might the more readily be practised as some of them will probably be in appointment 6 or 8 months before the object of it comes on.

M<sup>r</sup>. Elseworth supposed any persons might be appointed Electors, excepting, solely, members of the Nat<sup>l</sup> Legislature.

On the question Shall he be ineligible a 2<sup>d</sup>. time?

Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. no.

On the question Shall the Executive continue for 7 years? It passed in the negative.

Mas. div<sup>d</sup>.. Con<sup>t</sup>. ay. 1 N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. div<sup>d</sup>.. S. C. ay. Geo. ay.

M<sup>r</sup>. King was afraid we sh<sup>d</sup>. shorten the term too much.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was for a short term, in order to avoid impeach<sup>ts</sup>. which w<sup>d</sup>. be otherwise necessary.

M<sup>r</sup>. Butler was ag<sup>st</sup>. the frequency of the elections. Geo. & S. C. were too distant to send electors often.

M<sup>r</sup>. Elseworth was for 6. years. If the elections be too frequent, the Executive will not be firm eno. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration therefore will be attacked and misrepresented.

M<sup>r</sup>. Williamson was for 6 years. The expence will be considerable & ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.

On the question for 6 years?

Mas. ay. Con<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned

## Friday July 20. In Convention.

The postponed Ratio of Electors for appointing the Executive; to wit 1 for each State whose inhabitants do not exceed 100.000. &c. being taken up.

M<sup>r</sup>. Madison observed that this would make in time all or nearly all the States equal. Since there were few that would not in time contain the number of inhabitants intitling them to 3 Electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

M<sup>r</sup>. Gerry moved that in the 1<sup>st</sup>. instance the Electors should be allotted to the States in the following ratio: to N. H. 1. Mass. 3. R. I. 1. Con<sup>t</sup>. 2. N. Y. 2. N. J. 2. P<sup>a</sup> 3. Del. 1. M<sup>d</sup>. 2. V<sup>a</sup>. 3. N. C. 2. S. C. 2. Geo. 1.

On the question to postpone in order to take up this motion of M<sup>r</sup>. Gerry. It passed in the affirmative.

Mass. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Elsworth moved that 2 Electors be allotted to N. H. Some rule ought to be pursued; and N. H. has more than 100,000 inhabitants. He thought it would be proper also to allot 2. to Georgia.

M<sup>r</sup>. Broom & M<sup>r</sup>. Martin moved to postpone M<sup>r</sup>. Gerry's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

On this motion,

Mass. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Houston 2<sup>ded</sup>. the motion of M<sup>r</sup>. Elsworth to add another Elector to N. H. & Georgia. On the Question;

Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup>. Williamson moved as an amendment to M<sup>r</sup>. Gerry's allotment of Electors in the 1<sup>st</sup>. instance that in future elections of the Nat<sup>l</sup>. Executive, the number of Electors to be appointed by the several States shall be regulated by their respective numbers of Representatives in the 1<sup>st</sup>. branch pursuing as nearly as may be the present proportions.

On question on M<sup>r</sup>. Gerry's ratio of Electors.

Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

“to be removable on impeachment and conviction for malpractice or neglect of duty,” see Resol. 9.

M<sup>r</sup>. Pinkney & M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out this part of the Resolution. M<sup>r</sup>. P. observ<sup>d</sup>. he ought not to be impeachable whilst in office.

M<sup>r</sup>. Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

M<sup>r</sup>. Wilson concurred in the necessity of making the Executive impeachable whilst in office.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

Col. Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the Nat<sup>l</sup>. Legislature. One objection ag<sup>st</sup>. Electors was the danger of their being corrupted by the Candidates, & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

Doc<sup>r</sup>. Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out ag<sup>st</sup>. this as unconstitutional. What was the practice before this in cases where the Chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in w<sup>ch</sup>. he was not only deprived of his life but of the opportunity of vindicating his character. It w<sup>d</sup>. be the best way therefore to provide in the Constitution for the regular punishment of the Executive where his misconduct should deserve it, and for his honorable acquittal where he should be unjustly accused.

M<sup>r</sup>. Gov<sup>r</sup>. Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined.

M<sup>r</sup>. Madison thought it indispensable that some provision should be made for defending the Community ag<sup>st</sup>. the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the Legislature or any other public body, holding offices of limited duration. It could not

be presumed that all or even a majority of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity & honor, the difficulty of acting in concert for purposes of corruption was a security to the Public. And if one or a few members only should be seduced, the soundness of the remaining members, would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

M<sup>r</sup>. Pinkney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

M<sup>r</sup>. Gerry urged the necessity of impeachments. A good Magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the chief magistrate could do no wrong.

M<sup>r</sup>. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Gov<sup>ts</sup>. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case, if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary therefore that a form should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Executive was to hold his place for a limited term like the members of the Legislature. Like them, particularly the Senate whose members would continue in appointm<sup>t</sup>. the same term of 6 years he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

M<sup>r</sup>. Randolph. The propriety of impeachments was a favorite principle with him. Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the Public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col. Hamilton) of composing a forum

out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just ground of impeachment existed.

Doct<sup>r</sup>. Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France & Holland; by which their two fleets were to unite at a certain time & place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more & more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable enquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the Public.

M<sup>r</sup>. King remarked that the case of the Statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behaviour. In the latter they are unnecessary; the periodical responsibility to the electors being an equivalent security.

M<sup>r</sup>. Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment & removal.

M<sup>r</sup>. Pinkney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

M<sup>r</sup>. Gov<sup>r</sup>. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard ag<sup>st</sup>. it by displacing him. One would think the King of England well secured ag<sup>st</sup>. bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II. was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery: Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

It was moved & 2<sup>d</sup>. to postpone the question of impeachments which was negatived, Mas. & S. Carolina only being ay.

On y<sup>e</sup>. Question, Shall the Executive be removable on impeachments &c.?



Mass. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

“Executive to receive fixed compensation.” Agreed to nem. con.

“to be paid out of the national Treasury” agreed to, N. Jersey only in the negative.

M<sup>r</sup>. Gerry & Gov<sup>r</sup>. Morris moved that the Electors of the Executive shall not be members of the Nat<sup>l</sup>. Legislature, nor officers of the U. States, nor shall the Electors themselves be eligible to the supreme magistracy. Agreed to nem. con.

Doc<sup>r</sup>. McClurg<sup>1</sup> asked whether it would not be necessary, before a Committee for detailing the Constitution should be appointed, to determine on the means by which the Executive, is to carry the laws into effect, and to resist combinations ag<sup>st</sup>. them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Resolutions now stand the Committee will have no determinate directions on this great point.

M<sup>r</sup>. Wilson thought that some additional directions to the Committee w<sup>d</sup>. be necessary.

M<sup>r</sup>. King. The Committee are to provide for the end. Their discretionary power to provide for the means is involved according to an established axiom.

Adjourned

## Saturday July 21 In Convention

M<sup>r</sup>. Williamson moved that the Electors of the Executive should be paid out of the National Treasury for the Service to be performed by them. Justice required this: as it was a national service they were to render. The motion was agreed to Nem. Con.

M<sup>r</sup>. Wilson moved as an amendment to Resol<sup>n</sup>: 10. that the supreme Nat<sup>l</sup>. Judiciary should be associated with the Executive in the Revisionary power. This proposition had been before made and failed: but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating ag<sup>st</sup>. projected encroachments on the people as well as on themselves. It had been said that the Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the improper views of the Legislature.—M<sup>r</sup>. Madison 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Ghorum did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional

rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on Judges for their opinions.

M<sup>r</sup>. Elseworth approved heartily of the motion. The aid of the Judges will give more wisdom & firmness to the Executive. They will possess a systematic and accurate knowledge of the Laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

M<sup>r</sup>. Madison considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary department<sup>t</sup>. by giving it an additional opportunity of defending itself ag<sup>st</sup>. Legislative encroachments: It would be useful to the Executive, by inspiring additional confidence & firmness in exerting the revisionary power: It would be useful to the Legislature by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity & technical propriety in the laws, qualities peculiarly necessary; & yet shamefully wanting in our republican Codes. It would moreover be useful to the Community at large as an additional check ag<sup>st</sup>. a pursuit of those unwise & unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged ag<sup>st</sup>. the motion, it must be on the supposition that it tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended that notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; & suggested the necessity of giving every defensive authority to the other departments that was consistent with Republican principles.

M<sup>r</sup> Mason said he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the Revisionary power would be of little avail.

M<sup>r</sup>. Gerry did not expect to see this point which had undergone full discussion, again revived. The object he conceived of the Revisionary power was merely to secure the Executive department ag<sup>st</sup>. legislative encroachment. The Executive therefore who will best know and be ready to defend his rights ought alone to have the defence of them. The motion was liable to strong objections. It was combining & mixing together the Legislative & the other departments. It was establishing an improper coalition between the Executive & Judiciary departments. It was making statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. A better expedient for correcting the laws, would be to appoint as had been done in Pen<sup>a</sup>., a person or persons of proper skill, to draw bills for the Legislature.

M<sup>r</sup>. Strong thought with M<sup>r</sup>. Gerry that the power of making ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in framing the laws.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. Some check being necessary on the Legislature, the question is in what hands it should be lodged. On one side it was contended that the Executive alone ought to exercise it. He did not think that an Executive appointed for 6 years, and impeachable whilst in office w<sup>d</sup> be a very effectual check. On the other side it was urged that he ought to be reinforced by the Judiciary department. Ag<sup>st</sup>. this it was objected that Expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was that the Judges in England had a great share in y<sup>e</sup>. Legislation. They are consulted in difficult & doubtful cases. They may be & some of them are members of the Legislature. They are or may be members of the privy Council, and can there advise the Executive as they will do with us if the motion succeeds. The influence the English Judges may have in the latter capacity in strengthening the Executive check can not be ascertained, as the King by his influence in a manner dictates the laws. There is one difference in the two cases however which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives and such powerful means of defending them that he will never yield any part of them. The interest of our Executive is so inconsiderable & so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting incroachments. He was extremely apprehensive that the auxiliary firmness & weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations than from any other source. It had been said that the Legislature ought to be relied on as the proper Guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed or not. On the latter supposition no check will be wanted. On the former a strong check will be necessary: and this is the proper supposition. Emissions of paper money, largesses to the people—a remission of debts and similar measures, will at some times be popular, and will be pushed for that reason. At other times such measures will coincide with the interests of the Legislature themselves, & that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil, yet it is found to be unable to prevent it altogether.

M<sup>r</sup>. L. Martin, considered the association of the Judges with the Executive as a dangerous innovation; as well as one which could not produce the particular advantage expected from it. A knowledge of Mankind, and of Legislative affairs cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the Constitutionality of laws, that point will come before the Judges in their proper official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating ag<sup>st</sup>. popular

measures of the Legislature. Besides in what mode & proportion are they to vote in the Council of Revision?

M<sup>r</sup>. Madison could not discover in the proposed association of the Judges with the Executive in the Revisionary check on the Legislature any violation of the maxim which requires the great departments of power to be kept separate & distinct. On the contrary he thought it an auxiliary precaution in favor of the maxim. If a Constitutional discrimination of the departments on paper were a sufficient security to each ag<sup>st</sup>. encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead therefore of contenting ourselves with laying down the Theory in the Constitution that each department ought to be separate & distinct, it was proposed to add a defensive power to each which should maintain the Theory in practice. In so doing we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which had been universally regarded as calculated for the preservation of the whole. The objection ag<sup>st</sup>. a union of the Judiciary & Executive branches in the revision of the laws, had either no foundation or was not carried far enough. If such a Union was an improper mixture of powers, or such a Judiciary check on the laws, was inconsistent with the Theory of a free Constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Col. Mason observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It has been said (by M<sup>r</sup>. L. Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

M<sup>r</sup>. Wilson. The separation of the departments does not require that they should have separate objects but that they should act separately tho' on the same objects. It is

necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

M<sup>r</sup>. Gerry had rather give the Executive an absolute negative for its own defence than thus to blend together the Judiciary & Executive departments. It will bind them together in an offensive and defensive alliance ag<sup>st</sup>. the Legislature, and render the latter unwilling to enter into a contest with them.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers, were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that as a security ag<sup>st</sup>. legislative acts of the former which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence, or at least to have an opportunity of stating their objections ag<sup>st</sup>. acts of encroachment? And would any one pretend that such a right tended to blend & confound powers that ought to be separately exercised? As well might it be said that If three neighbours had three distinct farms, a right in each to defend his farm ag<sup>st</sup>. his neighbours, tended to blend the farms together.

M<sup>r</sup>. Ghorum. All agree that a check on the Legislature is necessary. But there are two objections ag<sup>st</sup>. admitting the Judges to share in it which no observations on the other side seem to obviate, the 1<sup>st</sup>. is that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them. 2<sup>d</sup>. that as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and instead of enabling him to defend himself, would enable the Judges to sacrifice him.

M<sup>r</sup>. Wilson. The proposition is certainly not liable to all the objections which have been urged ag<sup>st</sup>. it. According (to M<sup>r</sup>. Gerry) it will unite the Executive & Judiciary in an offensive & defensive alliance ag<sup>st</sup>. the Legislature. According to M<sup>r</sup>. Ghorum it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two departments was necessary to balance the single weight of the Legislature. To the 1<sup>st</sup>. objection stated by the other Gentleman it might be answered that supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the expedient. To the 2<sup>d</sup>. objection, that such a rule of voting might be provided in the detail as would guard ag<sup>st</sup>. it.

M<sup>r</sup>. Rutledge thought the Judges of all men the most unfit to be concerned in the revisionary Council. The Judges ought never to give their opinion on a law till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of State, as of war, finance &c. and avail himself of their information & opinions.

On Question on M<sup>r</sup>. Wilson's motion for joining the Judiciary in the Revision of laws it passed in the negative—

Mass. no. Con<sup>t</sup>. ay. N. J. not present. P<sup>a</sup>. div<sup>d</sup>.. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. div<sup>d</sup>..

Resol. 10, giving the Ex a qualified veto, without the amend<sup>t</sup>. was then ag<sup>d</sup>. to nem. con.

The motion made by M<sup>r</sup>. Madison July 18. & then postponed, "that the Judges sh<sup>d</sup>. be nominated by the Executive & such nominations become appointments unless disagreed to by ? of the 2<sup>d</sup>. branch of the Legislature," was now resumed.

M<sup>r</sup>. Madison stated as his reasons for the motion. 1. that it secured the responsibility of the Executive who would in general be more capable & likely to select fit characters than the Legislature, or even the 2<sup>d</sup>. b. of it, who might hide their selfish motives under the number concerned in the appointment. 2 that in case of any flagrant partiality or error, in the nomination it might be fairly presumed that ? of the 2<sup>d</sup>. branch would join in putting a negative on it. 3. that as the 2<sup>d</sup>. b. was very differently constituted when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle of compromise which had prevailed in other instances required in this that there sh<sup>d</sup>. be a concurrence of two authorities, in one of which the people, in the other the States should be represented. The Executive Magistrate w<sup>d</sup>. be considered as a national officer, acting for and equally sympathizing with every part of the U. States. If the 2<sup>d</sup>. branch alone should have this power, the Judges might be appointed by a minority of the people, tho' by a majority, of the States, which could not be justified on any principle as their proceedings were to relate to the people, rather than to the States: and as it would moreover throw the appointments entirely into the hands of y<sup>e</sup>. Northern States, a perpetual ground of jealousy & discontent would be furnished to the Southern States.

M<sup>r</sup>. Pinkney was for placing the appointm<sup>t</sup>. in the 2<sup>d</sup>. b. exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust.

M<sup>r</sup>. Randolph w<sup>d</sup>. have preferred the mode of appointm<sup>t</sup>. proposed formerly by M<sup>r</sup>. Ghorum, as adopted in the Constitution of Mass<sup>ts</sup>. but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the Executive as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail if the appointments be referred to either branch of the Legislature or to any other authority administered by a number of individuals.

M<sup>r</sup>. Elsworth would prefer a negative in the Executive on a nomination by the 2<sup>d</sup>. branch, the negative to be overruled by a concurrence of ? of the 2<sup>d</sup>. b. to the mode proposed by the motion; but preferred an absolute appointment by the 2<sup>d</sup>. branch to

either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses & intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

M<sup>r</sup>. Gov<sup>r</sup>. Morris supported the motion. 1. The States in their corporate capacity will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote the Judges ought not to be appointed by the Senate. Next to the impropriety of being Judge in one's own cause, is the appointment of the Judge. 2. It had been said the Executive would be uninformed of characters. The reverse was y<sup>e</sup>. truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive in the necessary intercourse with every part of the U. S. required by the nature of his administration, will or may have the best possible information. 3. It had been said that a jealousy would be entertained of the Executive. If the Executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of Jealousy in the present case. He added that if the Objections ag<sup>st</sup>. an appointment of the Executive by the Legislature, had the weight that had been allowed there must be some weight in the objection to an appointment of the Judges by the Legislature or by any part of it.

M<sup>r</sup>. Gerry. The appointment of the Judges like every other part of the Constitution sh<sup>d</sup>. be so modelled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him also a strong objection that 2/3 of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress. And the appointments of Congress have been generally good.

M<sup>r</sup>. Madison, observed that he was not anxious that 2/3 should be necessary to disagree to a nomination. He had given this form to his motion chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. Mason found it his duty to differ from his colleagues in their opinions & reasonings on this subject. Notwithstanding the form of the proposition by which the appointment seemed to be divided between the Executive & Senate, the appointment was Substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate & require some precautions in the case of regulating navigation, commerce & imposts; but he could not see that it had any connection with the Judiciary department.

On the question, the motion now being “that the executive should nominate & such nominations should become appointments unless disagreed to by the Senate.”

Mass. ay. C<sup>t</sup>. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On question for agreeing to the clause as it stands by which the Judges are to be appointed by the 2<sup>d</sup>. branch.

Mass. no. C<sup>t</sup>. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

Adjourned

## Monday July 23. In Convention

M<sup>r</sup>. John Langdon & M<sup>r</sup>. Nicholas Gilman<sup>1</sup> from N. Hampshire,<sup>2</sup> took their seats.

Resol:<sup>n</sup> 17. that provision ought to be made for future amendments of the Articles of Union, agreed to, nem. con.

Resol<sup>n</sup>. 18. “requiring the Legis: Execut: & Jud<sup>y</sup>. of the States to be bound by oath to support the articles of Union,” taken into consideration.

M<sup>r</sup>. Williamson suggests that a reciprocal oath should be required from the National officers, to support the Governments of the States.

M<sup>r</sup>. Gerry moved to insert as an amendm<sup>t</sup>. that the oath of the officers of the National Government also should extend to the support of the Nat<sup>l</sup>. Gov<sup>t</sup>. which was agreed to nem. con.

M<sup>r</sup>. Wilson said he was never fond of oaths, considering them as a left handed security only. A good Gov<sup>t</sup>. did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing Gov<sup>t</sup>. in case future alterations should be necessary; and prove an obstacle to Resol: 17. just ag<sup>d</sup>. to.

M<sup>r</sup>. Ghorum did not know that oaths would be of much use; but could see no inconsistency between them and the 17. Resol. or any regular amend<sup>t</sup>. of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution, could never be regarded as a breach of the Constitution, or of any oath to support it.

M<sup>r</sup>. Gerry thought with M<sup>r</sup>. Ghorum there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side he thought one good effect would be produced by it. Hitherto the officers of the two Governments had considered them as distinct from, and not as parts of the General System, & had in all cases of interference given a preference to the State Gov<sup>ts</sup>. The proposed oath will cure that error.



The Resol<sup>n</sup>. (18) was agreed to nem. con.

Resol: 19. referring the new Constitution to Assemblies to be chosen by the people for the express purpose of ratifying it was next taken into consideration.

M<sup>r</sup>. Elseworth moved that it be referred to the Legislatures of the States for ratification. M<sup>r</sup>. Patterson 2<sup>d</sup><sup>ed</sup>. the motion.

Col. Mason considered a reference of the plan to the authority of the people as one of the most important and essential of the Resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions, he knew there was no power in some of them, that could be competent to this object. Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them. It was of great moment he observed that this doctrine should be cherished as the basis of free Government. Another strong reason was that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures having equal authority could undo the acts of their predecessors; and the National Gov<sup>t</sup>. would stand in each State on the weak and tottering foundation of an Act of Assembly. There was a remaining consideration of some weight. In some of the States the Gov<sup>ts</sup>. were not derived from the clear & undisputed authority of the people. This was the case in Virginia Some of the best & wisest citizens considered the Constitution as established by an assumed authority. A national Constitution derived from such a source would be exposed to the severest criticisms.

M<sup>r</sup>. Randolph. One idea has pervaded all our proceedings, to wit, that opposition as well from the States as from individuals, will be made to the System to be proposed. Will it not then be highly imprudent, to furnish any unnecessary pretext by the mode of ratifying it. Added to other objections ag<sup>st</sup>. a ratification by the Legislative authority only, it may be remarked that there have been instances in which the authority of the Common law has been set up in particular States ag<sup>st</sup> that of the Confederation which has had no higher sanction than Legislative ratification.—Whose opposition will be most likely to be excited ag<sup>st</sup> the System? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those brought with him into the Convention. It is of great importance therefore that the consideration of this subject should be transferred from the Legislatures where this class of men, have their full influence to a field in which their efforts can be less mischievous. It is moreover worthy of consideration that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon to refer the question to the people.

M<sup>r</sup>. Gerry. The arguments of Col. Mason & M<sup>r</sup>. Randolph prove too much. They prove an unconstitutionality in the present federal system & even in some of the State Gov<sup>ts</sup>. Inferences drawn from such a source must be inadmissible. Both the State

Gov<sup>ts</sup>. & the federal Gov<sup>t</sup> have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The last article of it authorizing alterations must consequently be so as well as the others, and every thing done in pursuance of the article must have the same high authority with the article. Great confusion he was confident would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

M<sup>r</sup>. Ghorum was ag<sup>st</sup>. referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose, will discuss the subject more candidly than members of the Legislature who are to lose the power which is to be given up to the Gen<sup>l</sup>. Gov<sup>t</sup>. 2. Some of the Legislatures are composed of several branches. It will consequently be more difficult in these cases to get the plan through the Legislatures, than thro' a Convention. 3. in the States many of the ablest men are excluded from the Legislatures, but may be elected into a convention. Among these may be ranked many of the Clergy who are generally friends to good Government. Their services were found to be valuable in the formation & establishment of the Constitution of Massach<sup>ts</sup>. 4. the Legislatures will be interrupted with a variety of little business, by artfully pressing which designing men will find means to delay from year to year, if not to frustrate altogether the national system. 5. If the last art: of the Confederation is to be pursued the unanimous concurrence of the States will be necessary. But will any one say, that all the States are to suffer themselves to be ruined, if Rho. Island should persist in her opposition to general measures. Some other States might also tread in her steps. The present advantage which N. York seems to be so much attached to, of taxing her neighbours by the regulation of her trade, makes it very probable, that she will be of the number. It would therefore deserve serious consideration whether provision ought not to be made for giving effect to the System without waiting for the unanimous concurrence of the States.

M<sup>r</sup>. Elseworth. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as w<sup>d</sup>. be competent. He thought more was to be expected from the Legislatures than from the people. The prevailing wish of the people in the Eastern States is to get rid of the public debt; and the idea of strengthening the Nat<sup>l</sup>. Gov<sup>t</sup>. carries with it that of strengthening the public debt. It was said by Col. Mason 1. that the Legislatures have no authority in this case. 2. that their successors having equal authority could rescind their acts. As to the 2<sup>d</sup>. point he could not admit it to be well founded. An Act to which the States by their Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the 1<sup>st</sup>. point, he observed that a new sett of ideas seemed to have crept in since the articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Cong<sup>s</sup>. applied on subsequent occasions for further powers? To the Legislatures; not to the people. The fact is that we exist at present, and we need not enquire how, as a federal Society, united by a charter one article of which is that alterations therein may be made by the Legislative authority of the States. It has been

said that if the confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer that if such were the urgency & necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be equally valid in favor of a partial compact, founded on the consent of the Legislatures.

M<sup>r</sup>. Williamson thought the Resol:<sup>n</sup> (19) so expressed as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought too that Conventions were to be preferred as more likely to be composed of the ablest men in the States.

M<sup>r</sup>. Gov<sup>r</sup>. Morris considered the inference of M<sup>r</sup>. Elseworth from the plea of necessity as applied to the establishment of a new System on y<sup>e</sup>. consent of the people of a part of the States, in favor of a like establishm<sup>t</sup>. on the consent of a part of the Legislatures, as a non sequitur. If the Confederation is to be pursued no alteration can be made without the unanimous consent of the Legislatures: Legislative alterations not conformable to the federal compact, would clearly not be valid. The Judges would consider them as null & void. Whereas in case of an appeal to the people of the U. S., the supreme authority, the federal compact may be altered by a *majority of them*; in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendm<sup>t</sup> moved by M<sup>r</sup>. Elseworth erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

M<sup>r</sup>. King thought with M<sup>r</sup>. Elseworth that the Legislatures had a competent authority, the acquiescence of the people of America in the Confederation, being equivalent to a formal ratification by the people. He thought with M<sup>r</sup>. E. also that the plea of necessity was as valid in the one case as the other. At the same time he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes & doubts concerning the legitimacy of the new Constitution; as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections made in the State of N. York to granting powers to Cong<sup>s</sup>. one had been that such powers as would operate within the State, could not be reconciled to the Constitution; and therefore were not grantible by the Legislative authority. He considered it as of some consequence also to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support & maintain the existing Constitutions.

M<sup>r</sup>. Madison thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions, and it would be a novel & dangerous doctrine that a Legislature could change the constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given a power to the Legislature to concur in alterations of the federal Compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legislatures only, and

one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*. The former in point of *moral obligation* might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. 1. A law violating a treaty ratified by a pre-existing law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as null & void. 2. The doctrine laid down by the law of Nations in the case of treaties is that a breach of any one article by any of the parties, frees the other parties from their engagements. In the case of a union of people under one Constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes in point of expediency he thought all the considerations which recommended this Convention in preference to Congress for proposing the reform were in favor of State Conventions in preference to the Legislatures for examining and adopting it.

On question on M<sup>f</sup>. Elsworth's motion to refer the plan to the Legislatures of the States.

N. H. no. Mass. no. C<sup>t</sup>. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>f</sup>. Gov<sup>r</sup>. Morris moved that the reference of the plan be made to one general Convention, chosen & authorized by the people to consider, *amend*, & establish the same.—Not seconded.

On question for agreeing to Resolution 19. touching the mode of Ratification as reported from the Committee of the Whole; viz, to refer the Const<sup>n</sup>., after the approbation of Cong<sup>s</sup>. to assemblies chosen by the people;

N. H. ay. Mass. ay. C<sup>t</sup>. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup>. Gov<sup>r</sup>. Morris & M<sup>f</sup>. King moved that the representation in the second branch consist of — members from each State, who shall vote per capita.

M<sup>f</sup>. Elsworth said he had always approved of voting in that mode.

M<sup>f</sup>. Gov<sup>r</sup>. Morris moved to fill the *blank* with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum, the power would be lodged in 14 members, which was too small a number for such a trust.

M<sup>f</sup>. Ghorum preferred two to three members for the blank. A small number was most convenient for deciding on peace & war &c. which he expected would be vested in the 2<sup>d</sup>. branch. The number of States will also increase. Kentucky, Vermont, the Province of Mayne & Franklin will probably soon be added to the present number. He presumed also that some of the largest States would be divided. The strength of the General Gov<sup>t</sup>. will lie not in the largeness, but in the smallness of the States.

Col. Mason thought 3 from each State including new States would make the 2<sup>d</sup>. branch too numerous. Besides other objections, the additional expence ought always to form one, where it was not absolutely necessary.

M<sup>r</sup>. Williamson. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send & support their ablest Citizens. He approved of the voting per capita.

On the question for filling the blank with “*three*”

N. H. no. Mass. no. Con<sup>t</sup>. no. P<sup>a</sup>. ay. Del. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On question for filling it with “two.” Agreed to nem. con.

M<sup>r</sup>. L Martin was opposed to voting per Capita, as departing from the idea of the *States* being represented in the 2<sup>d</sup>. branch.

M<sup>r</sup>. Carroll,1 was not struck with any particular objection ag<sup>st</sup>. the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion viz. the 2<sup>d</sup>. b. to consist of 2 members from each State and to vote per Capita,

N. H. ay. Mass. ay. C<sup>t</sup>. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Houston2 & M<sup>r</sup>. Spaight moved “that the appointment of the Executive by Electors chosen by the Legislatures of the States, be reconsidered.” M<sup>r</sup> Houston urged the extreme inconveniency & the considerable expence, of drawing together men from all the States for the single purpose of electing the Chief Magistrate.

On the question which was put without any debate

N. H. ay. Mass. ay. C<sup>t</sup>. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. Virg<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

Ordered that tomorrow be assigned for the reconsideration, Con<sup>t</sup>. & Pen<sup>a</sup>. no—all the rest ay.

M<sup>r</sup>. Gerry moved that the proceedings of the Convention for the establishment of a Nat<sup>l</sup>. Gov<sup>t</sup>. (except the part relating to the Executive), be referred to a Committee to prepare & report a Constitution conformable thereto.

Gen<sup>l</sup>. Pinkney reminded the Convention that if the Committee should fail to insert some security to the Southern States ag<sup>st</sup>. an emancipation of slaves, and taxes on exports, he sh<sup>d</sup>. be bound by duty to his State to vote ag<sup>st</sup>. their Report. The app<sup>t</sup>. of a Com<sup>e</sup>. as moved by M<sup>r</sup>. Gerry. Ag<sup>d</sup>. to nem. con.

Shall the Com<sup>e</sup>. consist of 10 members one from each State pres<sup>t</sup>.—All the States were *no*, except Delaware, *ay*.

Shall it consist of 7. members

N. H. ay. Mas. ay. C<sup>t</sup>. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.  
The question being lost by an equal division of Votes

It was agreed, nem-con- that the Committee consist of 5 members to be appointed tomorrow.

Adjourned

## Tuesday July 24. In Convention

The appointment of the Executive by Electors reconsidered.

M<sup>r</sup>. Houston moved that he be appointed by the “Nat<sup>l</sup>. Legislature,” instead of “Electors appointed by the State Legislatures” according to the last decision of the mode. He dwelt chiefly on the improbability, that capable men would undertake the service of Electors from the more distant States.

M<sup>r</sup>. Spaight seconded the motion.

M<sup>r</sup>. Gerry opposed it. He thought there was no ground to apprehend the danger urged by M<sup>r</sup>. Houston. The election of the Executive Magistrate will be considered as of vast importance and will create great earnestness. The best men, the Governours of the States will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a 2<sup>d</sup> time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

M<sup>r</sup>. Strong supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a 2<sup>d</sup> time; as new elections of the Legislature will have intervened; and he will not depend for his 2<sup>d</sup>. appointment on the same sett of men as his first was rec<sup>d</sup>. from. It had been suggested that *gratitude* for his past appointment w<sup>d</sup>. produce the same effect as dependence for his future appointment. He thought very differently. Besides this objection would lie ag<sup>st</sup>. the Electors who would be objects of gratitude as well as the Legislature. It was of great importance not to make the Gov<sup>t</sup>. too complex which would be the case if a new sett of men like the Electors should be introduced into it. He thought also that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

M<sup>r</sup>. Williamson was for going back to the original ground; to elect the Executive for 7 years and render him ineligible a 2<sup>d</sup>. time. The proposed Electors would certainly not be men of the 1<sup>st</sup>. nor even of the 2<sup>d</sup>. grade in the States. These would all prefer a seat either in the Senate or the other branch of the Legislature. He did not like the Unity in the Executive. He had wished the Executive power to be lodged in three men taken from three districts into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interests

between the N. & S. States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the Kingdom. Another objection ag<sup>st</sup>. a single Magistrate is that he will be an elective King, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible.—Ineligibility a 2<sup>d</sup>. time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than 7 years. He would go as far as 10 or 12 years.

M<sup>r</sup>. Gerry moved that the Legislatures of the States should vote by ballot for the Executive in the same proportions as it had been proposed they should chuse electors; and that in case a majority of the votes should not centre on the same person, the 1<sup>st</sup>. branch of the Nat<sup>l</sup>. Legislature should chuse two out of the 4 candidates having most votes, and out of these two, the 2<sup>d</sup>. branch should chuse the Executive.

M<sup>r</sup>. King seconded the motion—and on the Question to postpone in order to take it into consideration. The *noes* were so predominant, that the States were not counted.

Question on M<sup>r</sup>. Houston's motion that the Executive be app<sup>d</sup>. by the Na<sup>l</sup> Legislature.

N. H. ay. Mass. ay. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. L. Martin & M<sup>r</sup>. Gerry moved to re-instate the ineligibility of the Executive a 2<sup>d</sup>. time.

M<sup>r</sup>. Elseworth. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be reelected if his conduct proved him worthy of it. And he will be more likely to render himself, worthy of it if he be rewardable with it. The most eminent characters also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixt period.

M<sup>r</sup>. Gerry. That the Executive sh<sup>d</sup>. be independent of the Legislature is a clear point. The longer the duration of his appointment the more will his dependence be diminished. It will be better then for him to continue 10. 15. or even 20. years and be ineligible afterwards.

M<sup>r</sup>. King was for making him re-eligible. This is too great an advantage to be given up for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

M<sup>r</sup>. L. Martin, suspending his motion as to the ineligibility, moved “that the appointm<sup>t</sup>. of the Executive shall continue for Eleven years.

M<sup>r</sup>. Gerry suggested fifteen years.

M<sup>r</sup>. King twenty years. This is the medium life of princes. [1](#)

M<sup>r</sup>. Davie eight years.

M<sup>r</sup>. Wilson. The difficulties & perplexities into which the House is thrown proceed from the election by the Legislature which he was sorry had been reinstated. The inconveniency of this mode was such that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance of life, a continuance in office would cease to be agreeable to the officer, as well as desirable to the public. Experience had shewn in a variety of instances that both a capacity & inclination for public service existed in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was 80 years of age. The Popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at 35 years of age, which he presumes may happen & his continuance should be fixt at 15 years, at the age of 50. in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British Jurisprudence have sustained, had the age of 50. been fixt there as the ultimate limit of capacity or readiness to serve the public. The great luminary (L<sup>d</sup>. Mansfield) held his seat for thirty years after his arrival at that age. Notwithstanding what had been done he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation he w<sup>d</sup>. move that the present question be postponed till tomorrow.

M<sup>r</sup>. Broom seconded the motion to postpone.

M<sup>r</sup>. Gerry. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the Executive to the Committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

M<sup>r</sup>. Wilson. As the great difficulty seems to spring from the mode of election, he w<sup>d</sup>. suggest a mode which had not been mentioned. It was that the Executive be elected for 6 years by a small number, not more than 15 of the Nat<sup>l</sup>. Legislature, to be drawn from it, not by ballot, but by lot and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not he said a digested idea and might be liable to strong objections.

M<sup>r</sup>. Gov<sup>r</sup> Morris. Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment but was now convinced that impeachments must be provided for, if the app<sup>t</sup>. was to be of any duration. No man w<sup>d</sup>. say, that an Executive known to be in the pay of an Enemy, should not be removable in some way or other. He had been



charged heretofore (by Col. Mason) with inconsistency in pleading for confidence in the Legislature on some occasions, & urging a distrust on others. The charge was not well founded. The Legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their Constituents, as happens in many of their Acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature cannot be too much distrusted. In all public bodies there are two parties. The Executive will necessarily be more connected with one than with the other. There will be a personal interest therefore in one of the parties to oppose as well as in the other to support him. Much had been said of the intrigues, that will be practised by the Executive to get into office. Nothing had been said on the other side of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real King, the Minister. This was the way in which Pitt (L<sup>d</sup>. Chatham) forced himself into place. Fox was for pushing the matter still farther. If he had carried his India bill, which he was very near doing, he would have made the Minister, the King in form almost as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something had been said of the danger of Monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineligible a 2<sup>d</sup>. time had been devised. This was as much as to say we sh<sup>d</sup>. give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a 2<sup>d</sup>. time—and prolong his duration even to 15 years, will he by any wonderful interposition of providence at that period cease to be a man? No he will be unwilling to quit his exaltation, the road to his object thro' the Constitution will be shut; he will be in possession of the sword, a civil war will ensue, and the Com<sup>and</sup>er of the victorious army on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system be curable. It is the most difficult of all rightly to balance the Executive. Make him too weak: The Legislature will usurp his powers. Make him too strong. He will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan: it ought to do so. He sh<sup>d</sup>. himself be afraid to trust it. He was not prepared to decide on M<sup>r</sup>. Wilson's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance sh<sup>d</sup>. decide than intrigue.

On a question to postpone the consideration of the Resolution on the subject of the Executive.

N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. div<sup>d</sup>. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Wilson then moved that the Executive be chosen every — years by — Electors to be taken by lot from the Nat<sup>l</sup>. Legislature who shall proceed immediately to the choice of the Executive and not separate until it be made.”

M<sup>r</sup> Carrol 2<sup>ds</sup>. the motion.

M<sup>r</sup> Gerry. this is committing too much to chance. If the lot should fall on a sett of unworthy men, an unworthy Executive must be saddled on the Country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

M<sup>r</sup>. King. The lot might fall on a majority from the same State which w<sup>d</sup>. ensure the election of a man from that State. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

M<sup>r</sup>. Wilson did not move this as the best mode. His opinion remained unshaken that we ought to resort to the people for the election. He seconded the postponement.

M<sup>r</sup>. Gov<sup>r</sup> Morris observed that the chances were almost infinite ag<sup>st</sup>. a majority of Electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative: 7. ays. 4 noes.

On the question of postponem<sup>t</sup>. it was agreed to nem. con.

M<sup>r</sup>. Carrol took occasion to observe that he considered the clause declaring that direct taxation on the States should be in proportion to representation, previous to the obtaining an actual census, as very objectionable, and that he reserved to himself the right of opposing it, if the Report of the Committee of detail should leave it in the plan.

M<sup>r</sup>. Gov<sup>r</sup>. Morris hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge 1 to assist us over a certain gulph; having passed the gulph the bridge may be removed. He thought the principle laid down with so much strictness, liable to strong objections.

On a ballot for a Committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were

M<sup>r</sup>. Rutledge, M<sup>r</sup>. Randolph, M<sup>r</sup>. Ghorum, M<sup>r</sup>. Elseworth, M<sup>r</sup>. Wilson—

On motion to discharge the Com<sup>e</sup>. of the whole from the propositions submitted to the Convention by M<sup>r</sup>. C. Pinkney as the basis of a constitution, and to refer them to the Committee of detail just appointed, it was ag<sup>d</sup>. to nem: con.

A like motion was then made & agreed to nem: con: with respect to the propositions of M<sup>r</sup>. Patterson.

Adjourned.

## Wednesday July 25. In Convention

Clause relating to the Executive being again under consideration.[1](#)

M<sup>r</sup>. Elsworth moved “that the Executive be appointed by the Legislature,” except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, & be reeligible, in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose. By this means a deserving magistrate may be reelected without making him dependent on the Legislature.

M<sup>r</sup>. Gerry repeated his remark that an election at all by the Nat<sup>l</sup> Legislature was radically and incurably wrong; and moved that the Executive be appointed by the Governours & Presidents of the States, with advice of their Councils, and where there are no Councils by Electors chosen by the Legislatures. The executives to vote in the following proportions: viz —

M<sup>r</sup>. Madison. There are objections ag<sup>st</sup>. every mode that has been, or perhaps can be proposed. The election must be made either by some existing authority under the Nat<sup>l</sup>. or State Constitutions—or by some special authority derived from the people—or by the people themselves.—The two Existing authorities under the Nat<sup>l</sup>. Constitution w<sup>d</sup>. be the Legislative & Judiciary. The latter he presumed was out of the question. The former was in his Judgment liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, 1. the election of the Chief Magistrate would agitate & divide the legislature so much that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. 2. the candidate would intrigue with the Legislature, would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. 3. The Ministers of foreign powers would have and would make use of, the opportunity to mix their intrigues & influence with the Election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our Governm<sup>t</sup>. a man attached to their respective politics & interests. No pains, nor perhaps expence, will be spared, to gain from the Legislature an appointm<sup>t</sup>. favorable to their wishes. Germany & Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, altho’ the elective Magistrate has very little real power, his election has at all times produced the most eager interference of forign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive & Judiciary. The appointment of the Nat<sup>l</sup>. Executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the Nat<sup>l</sup>. Legis<sup>l</sup><sup>re</sup>. was to controul this propensity. One object of the Nat<sup>l</sup> Executive, so far as it would have a negative on the laws, was to controul the Nat<sup>l</sup> Legislature so far as

it might be infected with a similar propensity. Refer the appoint<sup>t</sup>. of the Nat<sup>l</sup>. Executive to the State Legislatures, and this controuling purpose may be defeated. The Legislatures can & will act with some kind of regular plan, and will promote the appoint<sup>t</sup> of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures at the time of election have the same object, or different objects of the same kind, The Nat<sup>l</sup>. Executive would be rendered subservient to them.—An appointment by the State Executives, was liable among other objections to this insuperable one, that being standing bodies, they could & would be courted, and intrigued with by the Candidates, by their partizans, and by the Ministers of foreign powers. The State Judiciary had not & he presumed w<sup>d</sup>. not be proposed as a proper source of appointment. The option before us then lay between an appointment by Electors chosen by the people—and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged ag<sup>st</sup>. it, and greatly preferable to an appointment by the Nat<sup>l</sup>. Legislature. As the electors would be chosen for the occasion, would meet at once, & proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption. As a further precaution, it might be required that they should meet at some place, distinct from the seat of Gov<sup>t</sup>. and even that no person within a certain distance of the place at the time sh<sup>d</sup>. be eligible. This Mode however had been rejected so recently & by so great a majority that it probably would not be proposed anew. The remaining mode was an election by the people or rather by the qualified part of them, at large: With all its imperfections he liked this best. He would not repeat either the general argum<sup>ts</sup> for or the objections ag<sup>st</sup>. this mode. He would only take notice of two difficulties which he admitted to have weight. The first arose from the disposition in the people to prefer a Citizen of their own State, and the disadvantage this w<sup>d</sup>. throw on the smaller States. Great as this objection might be he did not think it equal to such as lay ag<sup>st</sup>. every other mode which had been proposed. He thought too that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the N. & S. States, and the disadvantages which this mode would throw on the latter. The answer to this objection was 1. that this disproportion would be continually decreasing under the influence of the Republican laws introduced in the S. States, and the more rapid increase of their population. 2. That local considerations must give way to the general interest. As an individual from the S. States, he was willing to make the sacrifice.

M<sup>r</sup>. Elsworth. The objection drawn from the different sizes of the States, is unanswerable. The Citizens of the largest States would invariably prefer the candidate within the State; and the largest States w<sup>d</sup> invariably have the man.

Question on M<sup>r</sup>. Elsworth's motion as above.

N. H. ay. Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Pinkney moved that the election by the Legislature be qualified with a proviso that no person be eligible for more than 6 years in any twelve years. He thought this would have all the advantage & at the same time avoid in some degree the inconveniency, of an absolute ineligibility a 2<sup>d</sup>. time.

Col. Mason approved the idea. It had the sanction of experience in the instance of Cong<sup>s</sup>. and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election, and opened the way at the same time for the advantage of his future services. He preferred on the whole the election by the Nat<sup>l</sup>. Legislature: Tho' Candor obliged him to admit, that there was great danger of foreign influence, as had been suggested. This was the most serious objection with him that had been urged.

M<sup>r</sup>. Butler. The two great evils to be avoided are cabal at home, & influence from abroad. It will be difficult to avoid either if the Election be made by the Nat<sup>l</sup>. Legislature. On the other hand. The Gov<sup>t</sup>. should not be made so complex & unwieldy as to disgust the States. This would be the case, if the election sh<sup>d</sup>. be referred to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was ag<sup>st</sup>. a re-eligibility at all events. He was also ag<sup>st</sup>. a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive as in that of the Legislature.

M<sup>r</sup>. Gerry approved of M<sup>r</sup>. Pinkney's motion as lessening the evil.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was ag<sup>st</sup>. a rotation in every case. It formed a political School, in w<sup>ch</sup>. we were always governed by the scholars, and not by the Masters. The evils to be guarded ag<sup>st</sup>. in this case are. 1. the undue influence of the Legislature. 2. instability of Councils. 3. misconduct in office. To guard ag<sup>st</sup>. the first, we run into the second evil. We adopt a rotation which produces instability of Councils. To avoid Sylla we fall into Charibdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pen<sup>a</sup>. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Soloman. 2. the Rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life will be no obstacle. Such is the nature of man, formed by his benevolent author no doubt for wise ends, that altho' he knows his existence to be limited to a span, he takes his measures as if he were to live for ever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. 3. To avoid the third evil, impeachments will be essential. And hence an additional reason ag<sup>st</sup> an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of M<sup>r</sup> Wilson, of introducing a mixture of lot. It will diminish, if not destroy both cabal & dependence.

M<sup>r</sup>. Williamson was sensible that strong objections lay ag<sup>st</sup> an election of the Executive by the Legislature, and that it opened a door for foreign influence. The

principal objection ag<sup>st</sup>. an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for 3 candidates, one of them he observed would be probably of his own State, the other 2. of some other States; and as probably of a small as a large one.

M<sup>r</sup>. Gov<sup>r</sup>. Morris liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own State.

M<sup>r</sup>. Madison also thought something valuable might be made of the suggestion with the proposed amendment of it. The second best man in this case would probably be the first, in fact. The only objection which occurred was that each Citizen after hav<sup>g</sup> given his vote for his favorite fellow Citizen, w<sup>d</sup>. throw away his second on some obscure Citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might moreover be provided in favor of the smaller States that the Executive should not be eligible more than — times in — years from the same State.

M<sup>r</sup>. Gerry. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union & acting in Concert to delude them into any appointment. He observed that such a Society of men existed in the Order of the Cincinnati. They are respectable, united, and influential. They will in fact elect the chief Magistrate in every instance, if the election be referred to the people. His respect for the characters composing this Society could not blind him to the danger & impropriety of throwing such a power into their hands.

M<sup>r</sup> Dickinson. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay ag<sup>st</sup>. an election of the Executive by the Nat<sup>l</sup> Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people which he regarded as the best & purest source. Objections he was aware lay ag<sup>st</sup> this mode, but not so great he thought as ag<sup>st</sup> the other modes. The greatest difficulty in the opinion of the House seemed to arise from the partiality of the States to their respective Citizens. But might not this very partiality be turned to a useful purpose. Let the people of each State chuse its best Citizen. The people will know the most eminent characters of their own States, and the people of different States will feel an emulation in selecting those of which they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the Nat<sup>l</sup> Legislature, or by Electors appointed by it.

On a Question which was moved for postponing M<sup>r</sup>. Pinkney's motion, in order to make way for some such proposition as had been hinted by M<sup>r</sup>. Williamson & others, it passed in the negative.

N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On M<sup>r</sup>. Pinkney's motion that no person shall serve in the Executive more than 6 years in 12. years, it passed in the negative.

N. H. ay. Mass. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

On a motion that the members of the Committee be furnished with copies of the proceedings it was so determined; S. Carolina alone being in the negative.

It was then moved that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative.

N. H. no. Mas. no. Con. ay. N. J. ay. P<sup>a</sup> no. Del. ay. Mary<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no—Geo. no.

M<sup>r</sup>. Gerry & M<sup>r</sup>. Butler moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Committee of detail.

M<sup>r</sup>. Wilson hoped that so important a branch of the System w<sup>d</sup> not be committed until a general principle sh<sup>d</sup>. be fixed by a vote of the House.

M<sup>r</sup>. Langdon. was for the commitment—Adj<sup>d</sup>.

## Thursday July. 26. In Convention. 1

Col. Mason. In every stage of the Question relative to the Executive, the difficulty of the subject and the diversity of the opinions concerning it have appeared. Nor have any of the modes of constituting that department been satisfactory. 1. It has been proposed that the election should be made by the people at large; that is that an act which ought to be performed by those who know most of Eminent characters, & qualifications, should be performed by those who know least. 2. that the election should be made by the Legislatures of the States. 3. by the Executives of the States. Ag<sup>st</sup> these modes also strong objections have been urged. 4. It has been proposed that the election should be made by Electors chosen by the people for that purpose. This was at first agreed to: But on further consideration has been rejected. 5. Since which, the mode of M<sup>r</sup> Williamson, requiring each freeholder to vote for several candidates has been proposed. This seemed like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as M<sup>r</sup>. Gerry has observed, would throw the appointment into the hands of the Cincinnati, a Society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the Gov<sup>t</sup>. 6. Another expedient was proposed by M<sup>r</sup>. Dickinson, which is liable to so palpable & material an inconvenience that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own State; tho' the causes of his local unpopularity might be of such a nature as to recommend him to

the States at large. 7. Among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will probably, not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the Nat<sup>l</sup> Legislature as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived at the same time that a second election ought to be absolutely prohibited. Having for his primary object for the pole-star of his political conduct, the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the Great officers of State, and particularly the Executive should at fixed periods return to that mass from which they were at first taken, in order that they may feel & respect those rights & interests, Which are again to be personally valuable to them. He concluded with moving that the constitution of the Executive as reported by the Com<sup>e</sup>. of the whole be reinstated, viz. “that the Executive be appointed for seven years, & be ineligible a 2<sup>d</sup> time.”

M<sup>r</sup> Davie seconded the motion.

Doc<sup>r</sup> Franklin. It seems to have been imagined by some that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free Governments the rulers are the servants, and the people their superiors & sovereigns. For the former therefore to return among the latter was not to *degrade* but to *promote* them. And it would be imposing an unreasonable burden on them, to keep them always in a State of servitude, and not allow them to become again one of the Masters.

Question on Col. Masons motion as above; which passed in the affirmative.

N. H. ay. Mass<sup>ts</sup> not on floor. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Gov<sup>r</sup>. Morris was now ag<sup>st</sup> the whole paragraph. In answer to Col. Mason’s position that a periodical return of the great officers of the State into the mass of the people, was the palladium of Civil liberty he w<sup>d</sup>. observe that on the same principle the Judiciary ought to be periodically degraded; certain it was that the Legislature ought on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Doc<sup>r</sup>. Franklin, that a return into the mass of the people would be a promotion, instead of a degradation, he had no doubt that our Executive like most others would have too much patriotism to shrink from the burthen of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole resolution as amended in the words following—“that a National Executive be instituted—to consist of a single person—to be chosen by the Nat<sup>l</sup>. legislature—for the term of seven years—to be ineligible a 2<sup>d</sup> time—with power to carry into execution the nat<sup>l</sup>. laws—to appoint to offices in cases not otherwise provided for—to be removable on impeachment & conviction of mal-practice or neglect of duty—to receive a fixt compensation for the devotion of his time to the public service, to be paid out of the Nat<sup>l</sup> treasury”—it passed in the affirmative.



N. H. ay. Mass. not on floor. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. div<sup>d</sup>. M<sup>r</sup> Blair & Col. Mason ay. Gen<sup>l</sup>. Washington & M<sup>r</sup> Madison no. M<sup>r</sup>. Randolph happened to be out of the House. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Mason moved “that the Com<sup>itee</sup> of detail be instructed to receive a clause requiring certain qualifications of landed property & citizenship of the U. States, in members of the Legislature, and disqualifying persons having unsettled Acc<sup>ts</sup> with or being indebted to the U. S., from being members of the Nat<sup>l</sup>. Legislature.”—He observed that persons of the latter descriptions had frequently got into the State Legislatures, in order to promote laws that might shelter their delinquencies; and that this evil had crept into Cong<sup>s</sup>. if Report was to be regarded.

M<sup>r</sup>. Pinckney seconded the motion.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. If qualifications are proper, he w<sup>d</sup> prefer them in the electors rather than the elected. As to debtors of the U. S. they are but few. As to persons having unsettled accounts he believed them to be pretty many. He thought however that such a discrimination would be both odious & useless, and in many instances, unjust & cruel. The delay of settle<sup>mt</sup> had been more the fault of the Public than of the individuals. What will be done with those patriotic Citizens who have lent money, or services or property to their Country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

M<sup>r</sup> Ghorum was for leaving to the Legislature the providing ag<sup>st</sup>. such abuses as had been mentioned.

Col. Mason mentioned the parliamentary qualifications adopted in the Reign of Queen Anne, which he said had met with universal approbation.

M<sup>r</sup> Madison had witnessed the zeal of men having acc<sup>ts</sup> with the public, to get into the Legislatures for sinister purposes. He thought however that if any precaution were taken for excluding them, the one proposed by Col. Mason ought to be new modelled. It might be well to limit the exclusion to persons who had rec<sup>d</sup> money from the public, and had not accounted for it.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. It was a precept of great antiquity as well as of high authority that we should not be righteous overmuch. He thought we ought to be equally on our guard ag<sup>st</sup>. being wise overmuch. The proposed regulation would enable the Govern<sup>t</sup>. to exclude particular persons from office as long as they pleased. He mentioned the case of the Com<sup>ander</sup> in Chief<sup>s</sup> presenting his account for secret services, which he said was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet had the Auditor been disposed to delay the settlement, how easily he might have effected it, & how cruel w<sup>d</sup>. it be in such a case to keep a distinguished & meritorious Citizen under a temporary disability & disfranchisement. He mentioned this case merely to illustrate the objectionable nature of the proposition. He was opposed to such minutious regulations in a Constitution. The parliamentary qualifications quoted by Col. Mason, had been disregarded in practice; and was but a scheme of the landed ag<sup>st</sup> the monied interest.

M<sup>r</sup>. Pinckney & Gen<sup>l</sup> Pinckney moved to insert by way of amendm<sup>t</sup>. the words Judiciary & Executive so as to extend the qualifications to those departments which was agreed to nem con.

M<sup>r</sup>. Gerry thought the inconveniency of excluding a few worthy individuals who might be public debtors or have unsettled acc<sup>ts</sup> ought not to be put in the scale ag<sup>st</sup>. the public advantages of the regulation, and that the motion did not go far enough.

M<sup>r</sup> King observed that there might be great danger in requiring landed property as a qualification since it would exclude the monied interest, whose aids may be essential in particular emergencies to the public safety.

M<sup>r</sup> Dickinson, was ag<sup>st</sup>. any recital of qualifications in the Constitution. It was impossible to make a compleat one, and a partial one w<sup>d</sup> by implication tie up the hands of the Legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the Legislature. Whilst this Source should remain pure, the Public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a Republican constitution a veneration for wealth. He had always understood that a veneration for poverty & virtue, were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a Republic where merit was understood to form the great title to public trust, honors & rewards.

M<sup>r</sup> Gerry if property be one object of Government, provisions to secure it cannot be improper.

M<sup>r</sup> Madison moved to strike out the word *landed*, before the word “qualifications.” If the proposition s<sup>d</sup> be agreed to he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust Laws of the States had proceeded more from this class of men, than any others. It had often happened that men who had acquired landed property on credit, got into the Legislatures with a view of promoting an unjust protection ag<sup>st</sup>. their Creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of Citizens who were not landholders. It was politic as well as just that the interests & rights of every class should be duly represented & understood in the public Councils. It was a provision every where established that the Country should be divided into districts & representatives taken from each, in order that the Legislative Assembly might equally understand & sympathize with the rights of the people in every part of the Community. It was not less proper that every class of Citizens should have an opportunity of making their rights be felt & understood in the public Councils. The three principal classes into which our citizens were divisible, were the landed the commercial, & the manufacturing. The 2<sup>d</sup>. & 3<sup>d</sup>. class, bear as yet a small proportion to the first. The proportion however will daily increase. We see in the populous Countries in Europe now, what we shall be hereafter. These classes understand much less of each others interests & affairs, than men of the same class inhabiting different districts. It is particularly requisite therefore that the interests of

one or two of them should not be left entirely to the care, or impartiality of the third. This must be the case if landed qualifications should be required; few of the mercantile, & scarcely any of the manufacturing class chusing whilst they continue in business to turn any part of their Stock into landed property. For these reasons he wished if it were possible that some other criterion than the mere possession of land should be devised. He concurred with M<sup>r</sup>. Gov<sup>r</sup>. Morris in thinking that qualifications in the Electors would be much more effectual than in the elected. The former would discriminate between real & ostensible property in the latter; But he was aware of the difficulty of forming any uniform standard that would suit the different circumstances & opinions prevailing in the different States.

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup> the motion.

On the Question for striking out “landed”

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

On Question on 1<sup>st</sup>. part of Col. Masons proposition as to qualification of property & citizenship,” as so amended.

N. H. ay. Mas<sup>ts</sup>. ay. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

“The 2<sup>d</sup>. part, for disqualifying debtors, and persons having unsettled accounts,” being under consideration.

M<sup>r</sup>. Carrol moved to strike out “having unsettled accounts.”

M<sup>r</sup>. Ghorum seconded the motion; observing that it would put the commercial & manufacturing part of the people on a worse footing than others as they would be most likely to have dealings with the public.

M<sup>r</sup>. L. Martin. if these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

M<sup>r</sup>. Wilson was for striking them out. They put too much power in the hands of the Auditors, who might combine with rivals in delaying settlements in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals which will necessarily open acc<sup>ts</sup> with the public, and when such acc<sup>ts</sup>. will be a characteristic of patriotism. Besides a partial enumeration of cases will disable the Legislature from disqualifying odious & dangerous characters.

M<sup>r</sup>. Langdon<sup>1</sup> was for striking out the whole clause for the reasons given by M<sup>r</sup>. Wilson. So many exclusions he thought too would render the system unacceptable to the people.

M<sup>r</sup>. Gerry. If the argum<sup>ts</sup>. used today were to prevail, we might have a Legislature composed of Public debtors, pensioners, placemen & contractors. He thought the proposed qualifications would be pleasing to the people. They will be considered as a security ag<sup>st</sup>. unnecessary or undue burdens being imposed on them. He moved to add “pensioners” to the disqualified characters which was negatived.

N. H. no. Mas. ay. Con. no. N. J. no. P<sup>a</sup>. no. Del. no. Mary<sup>d</sup> ay. V<sup>a</sup> no. N. C. divided. S. C. no. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup> Morris. The last clause, relating to public debtors will exclude every importing merchant. Revenue will be drawn it is foreseen as much as possible, from trade. Duties of course will be bonded, and the Merch<sup>ts</sup> will remain debtors to the public. He repeated that it had not been so much the fault of individuals as of the public that transactions between them had not been more generally liquidated & adjusted. At all events to draw from our short & scanty experience rules that are to operate through succeeding ages, does not savour much of real wisdom.

On question for striking out, “persons having unsettled accounts with the U. States.”

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

M<sup>r</sup> Elseworth was for disagreeing to the remainder of the clause disqualifying Public debtors; and for leaving to the wisdom of the Legislature and the virtue of the Citizens, the task of providing ag<sup>st</sup> such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides how is it to be known to the people when they elect who are or are not public debtors. The exclusion of pensioners & placemen in Engl<sup>d</sup>. is founded on a consideration not existing here. As persons of that sort are dependent on the Crown, they tend to increase its influence.

M<sup>r</sup>. Pinkney s<sup>d</sup> he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors; it went too far. It w<sup>d</sup>. exclude persons who had purchased confiscated property or should purchase Western territory of the public, and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors.

N. H. no. Mass. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. ay.

Col. Mason, observed that it would be proper, as he thought, that some provision should be made in the Constitution ag<sup>st</sup> choosing for the Seat of the Gen<sup>l</sup>. Gov<sup>t</sup>. the City or place at which the Seat of any State Gov<sup>t</sup>. might be fixt. There were 2

objections ag<sup>st</sup>. having them at the same place, which without mentioning others, required some precaution on the subject. The 1<sup>st</sup> was that it tended to produce disputes concerning jurisdiction. The 2<sup>d</sup> & principal one was that the intermixture of the two Legislatures tended to give a provincial tincture to y<sup>e</sup> Nat<sup>l</sup> deliberations. He moved that the Com<sup>e</sup>. be instructed to receive a clause to prevent the seat of the Nat<sup>l</sup>. Gov<sup>t</sup>. being in the same City or town with the Seat of the Gov<sup>t</sup>. of any State longer than untill the necessary public buildings could be erected.

M<sup>r</sup>. Alex. Martin 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Gov<sup>r</sup>. Morris did not dislike the idea, but was apprehensive that such a clause might make enemies of Philad<sup>a</sup>. & N. York which had expectations of becoming the Seat of the Gen<sup>l</sup>. Gov<sup>t</sup>.

M<sup>r</sup>. Langdon approved the idea also: but suggested the case of a State moving its seat of Gov<sup>t</sup>. to the nat<sup>l</sup> Seat after the erection of the Public buildings.

M<sup>r</sup>. Ghorum. The precaution may be evaded by the Nat<sup>l</sup>. Legisl<sup>re</sup>. by delaying to erect the Public buildings.

M<sup>r</sup> Gerry conceived it to be the gen<sup>l</sup> sense of America, that neither the Seat of a State Gov<sup>t</sup> nor any large commercial City should be the seat of the Gen<sup>l</sup>. Gov<sup>t</sup>.

M<sup>r</sup>. Williamson liked the idea, but knowing how much the passions of men were agitated by this matter, was apprehensive of turning them ag<sup>st</sup>. the System. He apprehended also that an evasion, might be practised in the way hinted by M<sup>r</sup> Ghorum.

M<sup>r</sup>. Pinkney thought the Seat of a State Gov<sup>t</sup>. ought to be avoided; but that a large town or its vicinity would be proper for the Seat of the Gen<sup>l</sup>. Gov<sup>t</sup>.

Col. Mason did not mean to press the motion at this time, nor to excite any hostile passions ag<sup>st</sup>. the system. He was content to withdraw the motion for the present.

M<sup>r</sup>. Butler was for fixing by the Constitution the place, & a central one, for the seat of the Nat<sup>l</sup>. Gov<sup>t</sup>.

The proceedings since Monday last were referred unanimously to the Com<sup>e</sup>. of detail, and the Convention then unanimously adjourned till Monday, Aug<sup>st</sup>. 6. that the Com<sup>e</sup>. of detail might have time to prepare & report the Constitution. The whole proceedings as referred are as follow [1](#) :

- June 20. I. RESOLVED, That the Government of the United States ought to consist of a supreme legislative, judiciary, and executive.
- June 21. II. RESOLVED, That the legislature consist of two branches.
- June 22. III. RESOLVED, That the members of the first branch of the legislature ought to be elected by the people of the several states, for the term of two years; to be paid out of the publick treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.
- June 23.
- June 25. IV. RESOLVED, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one third to go out biennially; to receive a compensation for the devotion of their time to the publick service; to be ineligible to and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.
- June 26.
- V. RESOLVED, That each branch ought to possess the right of originating acts.
- VI. RESOLVED, That the national legislature ought to possess the legislative rights vested in Congress by the confederation; and moreover, to legislate in all cases for the general interests of the union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.
- Postponed 27. VII. RESOLVED, That the legislative acts of the United States, made by virtue and in pursuance of the articles of union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary, notwithstanding.
- July 16. VIII. RESOLVED, That in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number.
- July 16.
- July 17.
- July 17.

New Hampshire shall send three,  
Massachusetts            eight,  
Rhode Island            one,  
Connecticut            five,  
New York            six,  
New Jersey            four,  
Pennsylvania            eight,  
Delaware            one,  
Maryland            six,  
Virginia            ten,  
North Carolina            five,  
South Carolina            five,  
Georgia            three.

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely—Provided always, that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the states—

IX. RESOLVED, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

X. RESOLVED, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the publick treasury, but in pursuance of appropriations to be originated by the first branch.

XI. RESOLVED, That in the second branch of the legislature of the United States, each state shall have an equal vote.

July 26. XII. RESOLVED, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of mal-practice or neglect or duty; to receive a fixed compensation for the devotion of his time to the publick service; to be paid out of the publick treasury.

July 21. XIII. RESOLVED, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

July 18. XIV. RESOLVED, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behaviour; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made, so as to affect the persons actually in office at the time of such diminution.

July 18. XV. RESOLVED, That the national legislature be empowered to appoint inferior tribunals.



- RESOLVED, That the jurisdiction of the national judiciary shall extend to
- XVI. cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.
- RESOLVED, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a
- XVII. voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.
- RESOLVED, That a republican form of government shall be guarantied to
- XVIII. each state; and that each state shall be protected against foreign and domestick violence.
- July 23. XIX. RESOLVED, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.
- XX. RESOLVED, That the legislative, executive, and judiciary powers within the several states, and of the national government, ought to be bound, by oath, to support the articles of union.
- RESOLVED, That the amendments which shall be offered to the confederation by the convention ought, at a proper time or times after the
- XXI. approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.
- RESOLVED, That the representation in the second branch of the legislature
- XXII. of the United States consist of two members from each state, who shall vote per capita.
- RESOLVED, That it be an instruction to the committee, to whom were referred the proceedings of the convention for the establishment of a
- July 26. XXIII. national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

With the above resolutions were referred the propositions offered by M<sup>r</sup> C. Pinckney on the 29<sup>th</sup>. of May, & by M<sup>r</sup>. Patterson on the 15<sup>th</sup>. of June.[1](#)

## Monday August 6<sup>Th</sup>. In Convention

M<sup>r</sup>. John Francis Mercer from Maryland took his seat.

M<sup>r</sup> Rutledge delivered in the Report of the Committee of detail as follows: a printed copy being at the same time furnished to each member[1](#) :

“We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

## Article I

The stile of the Government shall be, "The United States of America."

### II

The Government shall consist of supreme legislative, executive, and judicial powers.

### III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

### IV

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five Members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by addition of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions herein after made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of Government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the Public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

## V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall chuse two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two and three. The seats of the members of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, of the third class at the expiration of the sixth year, so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall chuse its own President and other officers.

## VI

Sect. 1. The times and places and manner of holding the elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any Court or place out of the Legislature; and the members of each House shall, in all cases, except treason felony and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings, and shall, from time to time, publish them: and the yeas and nays of the members of each House, on any question, shall at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate, when it shall exercise the powers mentioned in the — article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State, in which they shall be chosen.

Sect. 11. The enacting stile of the laws of the United States shall be, “Be it enacted by the Senate and Representatives in Congress assembled.”

Sect. 12. Each House shall possess the right of originating bills, except in the cases beforementioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States for his revision: if, upon such revision, he approve of it, he shall signify his approbation by signing it: But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider the bill. But if after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

## VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof;

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the

testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes) which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the Census hereinbefore directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of Nobility.

## VIII

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States shall be the supreme law of the several States, and of the citizens and inhabitants; and the judges in the several States shall be bound thereby in their decisions; any thing in the Constitutions or laws of the several States to the contrary notwithstanding.

## IX

Sect 1. The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court.

Sect 2. In all disputes and controversies now subsisting, or that may hereafter subsist between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers. Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing; notice of such memorial and application shall be given by order of the Senate, to the Legislature or the Executive authority of the other State in Controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before the House. The Agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a Court for hearing and determining the matter in question. But if the Agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons each party shall alternately strike out one, until the number

shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as the Senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them shall be commissioners or Judges to hear and finally determine the controversy; provided a majority of the Judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned, without shewing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such Court; or shall not appear to prosecute or defend their claim or cause, the Court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every Commissioner shall, before he sit in judgment, take an oath, to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, “well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward.”

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

## X

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be, “The President of the United States of America;” and his title shall be, “His Excellency.” He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary, and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme Executives of the several States. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, “I — solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America.” He shall be removed from his

office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

## XI

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers and Consuls; to the trial of impeachments of officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard Territory or Jurisdiction) between a State and Citizens of another State, between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases beforementioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction abovementioned (except the trial of the President of the United States) in the manner, and under the limitations which it shall think proper, to such Inferior Courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachments) shall be in the State where they shall be committed; and shall be by Jury.

Sect. 5. Judgment, in cases of Impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

## XII

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any Treaty, alliance, or confederation; nor grant any title of Nobility.



### XIII

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of a delay, until the Legislature of the United States can be consulted.

### XIV

The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

### XV

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

### XVI

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and magistrates of every other State.

### XVII

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new States, concerning the Public debt which shall be then subsisting.

### XVIII

The United States shall guaranty to each State a Republican form of Government; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

## XIX

On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

## XX

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

## XXI

The ratification of the Conventions of — States shall be sufficient for organizing this Constitution.

## XXII

This Constitution shall be laid before the United States in Congress Assembled, for their approbation: and it is the opinion of this Convention, that it should be afterwards submitted to a Convention chosen, under the recommendation of its legislature, in order to receive the ratification of such Convention.

## XXIII

To introduce this government, it is the opinion of this Convention, that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of — States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate, and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution.”

A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the negative—N. H. no. Mas. no. C<sup>t</sup>. no. P<sup>a</sup> ay. M<sup>d</sup>. ay. Virg. ay. N. C. no. S. C. no.

The House then adjourned till to-morrow 11 OC.

Tuesday August 7<sup>Th</sup>1In Convention

The Report of the Committee of detail being taken up,

M<sup>r</sup> Pinkney moved that it be referred to a Committee of the whole. This was strongly opposed by M<sup>r</sup>. Ghorum & several others, as likely to produce unnecessary delay; and was negated, Delaware Mary<sup>d</sup>. & Virg<sup>a</sup> only being in the affirmative.

The preamble of the Report was agreed to *nem. con.* So were Art: I & II.

Art: III considered. Col. Mason doubted the propriety of giving each branch a negative on the other “in all cases.” There were some cases in which it was he supposed not intended to be given as in the case of balloting for appointments.

M<sup>r</sup> Gov<sup>r</sup>. Morris moved to insert “legislative acts” instead of “all cases.”

M<sup>r</sup>. Williamson 2<sup>ds</sup> him.

M<sup>r</sup>. Sherman. This will restrain the operation of the clause too much. It will particularly exclude a mutual negative in the case of ballots, which he hoped would take place.

M<sup>r</sup>. Ghorum contended that elections ought to be made by *joint ballot*. If separate ballots should be made for the President, and the two branches should be each attached to a favorite, great delay contention & confusion may ensue. These inconveniences have been felt in Mas<sup>ts</sup> in the election of officers of little importance compared with the Executive of the U. States. The only objection ag<sup>st</sup>. a joint ballot is that it may deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquility & welfare.

M<sup>r</sup> Wilson was for a joint ballot in several cases at least; particularly in the choice of the President, and was therefore for the amendment. Disputes between the two Houses during & concern<sup>g</sup> the vacancy of the Executive might have dangerous consequences.

Col. Mason thought the amendment of M<sup>r</sup>. Gov<sup>r</sup>. Morris extended too far. Treaties are in a subsequent part declared to be laws, they will therefore be subjected to a negative; altho’ they are to be made as proposed by the Senate alone. He proposed that the mutual negative should be restrained to “cases requiring the distinct assent” of the two Houses.

M<sup>r</sup> Gov<sup>r</sup>. Morris thought this but a repetition of the same thing; the mutual negative and distinct assent, being equivalent expressions. Treaties he thought were not laws.

M<sup>r</sup> Madison moved to strike out the words “each of which shall in all cases, have a negative on the other; the idea being sufficiently expressed in the preceding member of the article; vesting the “legislative power” in “distinct bodies,” especially as the respective powers and mode of exercising them were fully delineated in a subsequent article.

Gen<sup>l</sup> Pinkney 2<sup>ded</sup> the motion.

On question for inserting legislative Acts as moved by M<sup>r</sup>. Gov<sup>r</sup>. Morris

N. H. ay. Mas. ay. C<sup>t</sup>. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

On question for agreeing to M<sup>f</sup>. M's motion to strike out &c.—

N. H. ay. Mas. ay. C<sup>t</sup>. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. ay.

M<sup>f</sup>. Madison wished to know the reasons of the Com<sup>e</sup>. for fixing by y<sup>e</sup>. Constitution the time of Meeting for the Legislature; and suggested, that it be required only that one meeting at least should be held every year leaving the time to be fixed or varied by law.

M<sup>f</sup>. Gov<sup>f</sup>. Morris moved to strike out the sentence. It was improper to tie down the Legislature to a particular time, or even to require a meeting every year. The public business might not require it.

M<sup>f</sup>. Pinkney concurred with M<sup>f</sup> Madison.

M<sup>f</sup>. Ghorum. If the time be not fixed by the Constitution, disputes will arise in the Legislature; and the States will be at a loss to adjust thereto, the times of their elections. In the N. England States the annual time of meeting had been long fixed by their Charters & Constitutions, and no inconveniency had resulted. He thought it necessary that there should be one meeting at least every year as a check on the Executive department.

M<sup>f</sup>. Elseworth was ag<sup>st</sup>. striking out the words. The Legislature will not know till they are met whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the Legislature.

M<sup>f</sup>. Wilson thought on the whole it would be best to fix the day.

M<sup>f</sup>. King could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the States. Those of the Nat<sup>l</sup>. Legislature were but few. The chief of them were commerce & revenue. When these should be once settled alterations would be rarely necessary & easily made.

M<sup>f</sup> Madison thought if the time of meeting should be fixed by a law it w<sup>d</sup>. be sufficiently fixed & there would be no difficulty then as had been suggested, on the part of the States in adjusting their elections to it. One consideration appeared to him to militate strongly ag<sup>st</sup> fixing a time by the Constitution. It might happen that the Legislature might be called together by the public exigencies & finish their Session but a short time before the annual period. In this case it would be extremely inconvenient to reassemble so quickly & without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Col. Mason thought the objections against fixing the time insuperable: but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the Country will supply business. And if it should not, the

Legislature, besides *legislative*, is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

M<sup>r</sup>. Sherman was decided for fixing the time, as well as for frequent meetings of the Legislative body. Disputes and difficulties will arise between the two Houses, & between both & the States, if the time be changeable—frequent meetings of Parliament were required at the Revolution in England as an essential safeguard of liberty. So also are annual meetings in most of the American charters & constitutions. There will be business eno<sup>t</sup> to require it. The Western Country, and the great extent and varying state of our affairs in general will supply objects.

M<sup>r</sup>. Randolph was ag<sup>st</sup>. fixing any day irrevocably; but as there was no provision made any where in the Constitution for regulating the periods of meeting, and some precise time must be fixed, untill the Legislature shall make provision, he could not agree to strike out the words altogether. Instead of which he moved to add the words following—“unless a different day shall be appointed by law.”

M<sup>r</sup>. Madison 2<sup>ded</sup>. the motion, & on the question.

N. H. no. Mass. ay. C<sup>t</sup>. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out Dec<sup>r</sup> & insert May. It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the Winter and of which intelligence would arrive in the Spring.

M<sup>r</sup> Madison 2<sup>ded</sup>. the motion, he preferred May to Dec<sup>r</sup>. because the latter would require the travelling to & from the seat of Gov<sup>t</sup>. in the most inconvenient seasons of the year.

M<sup>r</sup>. Wilson. The Winter is the most convenient season for business.

M<sup>r</sup>. Elseworth. The summer will interfere too much with private business, that of almost all the probable members of the Legislature being more or less connected with agriculture.

M<sup>r</sup> Randolph. The time is of no great moment now, as the Legislature can vary it. On looking into the Constitutions of the States, he found that the times of their elections with which the election of the Nat<sup>l</sup> Representatives would no doubt be made to coincide, would suit better with Dec<sup>r</sup>. than May. And it was advisable to render our innovations as little incommodious as possible.

On the question for “May” instead of “Dec<sup>r</sup>”

N. H. no. Mass. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup> Read moved to insert after the word “Senate,” the words, “subject to the Negative to be hereafter provided.” His object was to give an absolute Negative to the

Executive—He considered this as so essential to the Constitution, to the preservation of liberty, & to the public welfare, that his duty compelled him to make the Motion.

M<sup>r</sup> Gov<sup>r</sup> Morris 2<sup>ded</sup> him. And on the question

N. H. no. Mass. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Rutledge. Altho' it is agreed on all hands that an annual meeting of the Legislature should be made necessary, yet that point seems not to be free from doubt as the clause stands. On this suggestion, "Once at least in every year," were inserted, nem. con.

Art. III with the foregoing alterations was ag<sup>d</sup>. to nem. con., and is as follows: "The Legislative power shall be vested in a Congress to consist of 2 separate & distinct bodies of men; a House of Rep<sup>s</sup>. & a Senate. The Legislature shall meet at least once in every year, and such meeting shall be on the 1<sup>st</sup>. Monday in Dec<sup>r</sup>. unless a different day shall be appointed by law."

"Article IV. Sect. 1. taken up."

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out the last member of the section beginning with the words "qualifications of Electors," in order that some other provision might be substituted which w<sup>d</sup>. restrain the right of suffrage to freeholders.

M<sup>r</sup>. Fitzsimons 2<sup>ded</sup>. the motion

M<sup>r</sup>. Williamson was opposed to it.

M<sup>r</sup>. Wilson. This part of the Report was well considered by the Committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations he thought too should be avoided. It would be very hard & disagreeable for the same persons at the same time, to vote for representatives in the State Legislature and to be excluded from a vote for those in the Nat<sup>l</sup>. Legislature.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. Such a hardship would be neither great nor novel. The people are accustomed to it and not dissatisfied with it, in several of the States. In some the qualifications are different for the choice of the Gov<sup>r</sup>. & Representatives; In others for different Houses of the Legislature. Another objection ag<sup>st</sup>. the clause as it stands is that it makes the qualifications of the Nat<sup>l</sup> Legislature depend on the will of the States, which he thought not proper.

M<sup>r</sup> Elseworth. thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State Constitutions. The people will not readily subscribe to the Nat<sup>l</sup>. Constitution if it should subject them to be disfranchised. The States are the best Judges of the circumstances & temper of their own people.

Col. Mason. The force of habit is certainly not attended to by those Gentlemen who wish for innovations on this point. Eight or nine States have extended the right of

suffrage beyond the freeholders. What will the people there say, if they should be disfranchised. A power to alter the qualifications would be a dangerous power in the hands of the Legislature.

M<sup>r</sup>. Butler. There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland where they have at length thrown all power into the hands of the Senates, who fill up vacancies themselves, and form a rank aristocracy.

M<sup>r</sup>. Dickinson. had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the Country. He considered them as the best guardians of liberty; And the restriction of the right to them as a necessary defence ag<sup>st</sup>. the dangerous influence of those multitudes without property & without principle with which our Country like all others, will in time abound. As to the unpopularity of the innovation it was in his opinion chimerical. The great mass of our Citizens is composed at this time of freeholders, and will be pleased with it.

M<sup>r</sup> Elseworth. How shall the freehold be defined? Ought not every man who pays a tax, to vote for the representative who is to levy & dispose of his money? Shall the wealthy merchants & manufacturers, who will bear a full share of the public burthens be not allowed a voice in the imposition of them. Taxation & representation ought to go together.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. He had long learned not to be the dupe of words. The sound of aristocracy therefore had no effect on him. It was the thing, not the name, to which he was opposed, and one of his principal objections to the Constitution as it is now before us, is that it threatens this Country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this Country will abound with mechanics & manufacturers who will receive their bread from their employers. Will such men be the secure & faithful guardians of liberty? Will they be the impregnable barrier ag<sup>st</sup>. aristocracy?—He was as little duped by the association of the words, “taxation & Representation.” The man who does not give his vote freely is not represented. It is the man who dictates the vote. Children do not vote. Why? because they want prudence, because they have no will of their own. The ignorant & the dependant can be as little trusted with the public interest. He did not conceive the difficulty of defining “freeholders” to be insuperable. Still less that the restriction could be unpopular. of the people are at present freeholders and these will certainly be pleased with it. As to Merch<sup>ts</sup>. &c. if they have wealth & value the right they can acquire it. If not they don’t deserve it.

Col. Mason. We all feel too strongly the remains of antient prejudices, and view things too much through a British medium. A Freehold is the qualification in England, & hence it is imagined to be the only proper one. The true idea in his opinion was that every man having evidence of attachment to & permanent common interest with the Society ought to share in all its rights & privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in

the proprietor? does nothing besides property mark a permanent attachment. Ought the merchant, the monied man, the parent of a number of children whose fortunes are to be pursued in his own Country to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow Citizens.

M<sup>r</sup>. Madison. the right of suffrage is certainly one of the fundamental articles of republican Government, and ought not to be left to be regulated by the Legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the Constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in States where the right was now exercised by every description of people. In several of the States a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation: in which case, the rights of property & the public liberty, will not be secure in their hands: or which is more probable, they will become the tools of opulence & ambition, in which case there will be equal danger on another side. The example of England has been misconceived (by Col. Mason.) A very small proportion of the Representatives are there chosen by freeholders. The greatest part are chosen by the Cities & boroughs, in many of which the qualification of suffrage is as low as it is in any one of the U. S. and it was in the boroughs & Cities rather than the Counties, that bribery most prevailed, & the influence of the Crown on elections was most dangerously exerted. [1](#)

Doc<sup>t</sup>. Franklin. It is of great consequence that we sh<sup>d</sup> not depress the virtue & public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen who were carried in great numbers into the British Prisons during the war, to redeem themselves from misery or to seek their fortunes, by entering on board the Ships of the Enemies to their Country; contrasting their patriotism with a contemporary instance in which the British seamen made prisoners by the Americans, readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own Country. This proceeded he said from the different manner in which the common people were treated in America & G. Britain. He did not think that the elected had any right in any case to narrow the privileges of the electors. He quoted as arbitrary the British Statute setting forth the danger of tumultuous meetings, and under that pretext narrowing the right of suffrage to persons having freeholds of a certain value; observing that this Statute was soon followed by another under the succeeding Parliam<sup>t</sup> subjecting the people who had no votes to peculiar labors & hardships. He was persuaded also that such a restriction as was proposed would give great uneasiness in the populous States. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

M<sup>r</sup> Mercer. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people can not know & judge



of the characters of Candidates. The worse possible choice will be made. He quoted the case of the Senate in Virg<sup>a</sup>. as an example in point. The people in Towns can unite their votes in favor of one favorite; & by that means always prevail over the people of the Country, who being dispersed will scatter their votes among a variety of candidates.

M<sup>r</sup> Rutledge thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people & make enemies of all those who should be excluded.

On the question for striking out as moved by M<sup>r</sup> Gov<sup>r</sup>. Morris, from the word “qualifications” to the end of the III article.

N. H. no. Mass. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. not pres<sup>t</sup>.

Adjourned

## Wednesday Aug<sup>St</sup> 8. In Convention

Art: IV. sect. 1.—M<sup>r</sup> Mercer expressed his dislike of the whole plan, and his opinion that it never could succeed.

M<sup>r</sup>. Ghorum. he had never seen any inconveniency from allowing such as were not freeholders to vote, though it had long been tried. The elections in Phil<sup>a</sup>, N. York & Boston where the Merchants & Mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by M<sup>r</sup>. Madison). The Cities & large towns are not the seat of Crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America. and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

M<sup>r</sup>. Mercer did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that Candidates ought to be nominated by the State Legislatures.

On the question for agreeing to Art: IV—Sect. 1 it pass<sup>d</sup>. nem. con.

Art. IV. Sect. 2. taken up.

Col. Mason was for opening a wide door for emigrants; but did not chuse to let foreigners and adventurers make laws for us & govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the Representative. This was the principal ground of his objection to so short a term. It might also happen that a rich foreign Nation, for example Great Britain, might send

over her tools who might bribe their way into the Legislature for insidious purposes. He moved that “seven” years instead of “three,” be inserted.

M<sup>r</sup> Gov<sup>r</sup>. Morris 2<sup>ded</sup>. the Motion, & on the question, all the States agreed to it except Connecticut.

M<sup>r</sup> Sherman moved to strike out the word “resident” and insert “inhabitant,” as less liable to misconstruction.

M<sup>r</sup>. Madison 2<sup>ded</sup> the motion, both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virg<sup>a</sup>. concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question, than to any fixt interpretation of the word.

M<sup>r</sup>. Wilson preferred “inhabitant.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris. was opposed to both and for requiring nothing more than a freehold. He quoted great disputes in N. York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely chuse a nonresident—It is improper as in the 1<sup>st</sup>. branch, *the people at large*, not the *States*, are represented.

M<sup>r</sup>. Rutledge urged & moved, that a residence of 7 years sh<sup>d</sup>. be required in the State Wherein the Member sh<sup>d</sup>. be elected. An emigrant from N. England to S. C. or Georgia would know little of its affairs and could not be supposed to acquire a thorough knowledge in less time.

M<sup>r</sup>. Read reminded him that we were now forming a *Nat<sup>l</sup>. Gov<sup>t</sup>*. and such a regulation would correspond little with the idea that we were one people.

M<sup>r</sup>. Wilson. enforced the same consideration.

M<sup>r</sup>. Madison suggested the case of new States in the West, which could have perhaps no representation on that plan.

M<sup>r</sup>. Mercer. Such a regulation would present a greater alienship among the States than existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term “residence.”

M<sup>r</sup>. Elseworth thought seven years of residence was by far too long a term: but that some fixt term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

M<sup>r</sup>. Dickinson proposed that it should read “inhabitant actually resident for — years.” This would render the meaning less indeterminate.

M<sup>r</sup>. Wilson. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States whilst at the Seat of the Gen<sup>l</sup>. Government.

M<sup>r</sup>. Mercer. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State; although a want of the necessary knowledge could not in such cases be presumed.

M<sup>r</sup> Mason thought 7 years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, Rich men of neighbouring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State. This is the practice in the boroughs of England.

On the question for postponing in order to consider M<sup>r</sup>. Dickinsons motion

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

On the question for inserting “inhabitant” in place of “resident”—ag<sup>d</sup>. to nem. con.

M<sup>r</sup>. Elseworth & Col. Mason move to insert “one year” for previous inhabitancy.

M<sup>r</sup>. Williamson liked the Report as it stood. He thought “resident” a good eno’ term. He was ag<sup>st</sup>. requiring any period of previous residence. New residents if elected will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

M<sup>r</sup>. Butler & M<sup>r</sup>. Rutlidge moved “three years” instead of “one year” for previous inhabitancy.

On the question for 3 years,

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

On the question for “1 year”

N. H. no—Mass. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sect. 2. as amended in manner preceding, was agreed to nem. con.

Art. IV. Sect. 3. taken up.

Gen<sup>l</sup>. Pinkney & M<sup>r</sup>. Pinkney moved that the number of Representatives allotted to S. Carol<sup>a</sup>. be “six.” On the question,

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Delaware ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

The 3. Sect of Art: IV, was then agreed to.

Art: IV. Sect. 4. taken up.

M<sup>f</sup>. Williamson moved to strike out “according to the provisions hereinafter made” and to insert the words “according to the rule hereafter to be provided for direct taxation.”—See Art. VII. Sect. 3.

On the question for agreeing to M<sup>f</sup>. Williamson’s amendment.

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup>. King wished to know what influence the vote just passed was meant to have on the succeeding part of the Report, concerning the admission of Slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Gen<sup>l</sup>. Gov<sup>t</sup>. and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all those hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited—exports could not be taxed. Is this reasonable? What are the great objects of the Gen<sup>l</sup>. System? 1. defence ag<sup>st</sup>. foreign invasion. 2. ag<sup>st</sup>. internal sedition. Shall all the States then be bound to defend each; & shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the U. S. be bound to defend another part, and that other part be at liberty not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported shall not the exports produced by their labor, supply a revenue the better to enable the Gen<sup>l</sup>. Gov<sup>t</sup>. to defend their Masters? There was so much inequality & unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation w<sup>d</sup>. have taken place on this subject; that at least a time w<sup>d</sup>. have been limited for the importation of slaves. He never could agree to let them be imported without limitation & then be represented in the Nat<sup>l</sup>. Legislature. Indeed he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

M<sup>f</sup>. Sherman regarded the slave trade as iniquitous; but the point of representation having been settled after much difficulty & deliberation, he did not think himself bound to make opposition; especially as the present article as amended did not preclude any arrangement whatever on that point in another place of the Report.

M<sup>r</sup>. Madison objected to 1 for every 40.000 inhabitants as a perpetual rule. The future increase of population if the Union sh<sup>d</sup> be permanent, will render the number of Representatives excessive.

M<sup>r</sup>. Ghorum. It is not to be supposed that the Gov<sup>t</sup>. will last so long as to produce this effect. Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?

M<sup>r</sup> Elseworth. If the Gov<sup>t</sup>. should continue so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

M<sup>r</sup>. Sherman & M<sup>r</sup>. Madison moved to insert the words “not exceeding,” before the words “1 for every 40.000. which was agreed to nem. con.

M<sup>r</sup> Gov<sup>r</sup> Morris moved to insert “free” before the word inhabitants. Much he said would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich & noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of V<sup>a</sup> Mayr<sup>d</sup>. & the other States having slaves. Travel thro’ y<sup>e</sup>. whole Continent & you behold the prospect continually varying with the appearance & disappearance of slavery. The moment you leave y<sup>e</sup> E. States & enter N. York, the effects of the institution become visible, passing thro’ the Jerseys & entering P<sup>a</sup>. every criterion of superior improvement witnesses the change. Proceed southw<sup>dly</sup> & every step you take thro’ y<sup>e</sup>. great regions of slaves presents a desert increasing, with y<sup>e</sup>. increasing [word is illegible] proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens and let them vote. Are they property? Why then is no other property included? The Houses in this city (Philad<sup>a</sup>.) are worth more than all the wretched Slaves which cover the rice swamps of South Carolina. The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S. C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Gov<sup>t</sup>. instituted for protection of the rights of mankind, than the Citizen of P<sup>a</sup>. or N. Jersey who views with a laudable horror, so nefarious a practice. He would add that Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of Aristocracy. And What is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity. They are to bind themselves to march their militia for the defence of the S. States; for their defence ag<sup>st</sup>. those very slaves of whom they complain. They must supply vessels & seamen in case of foreign Attack. The Legislature will have indefinite power to tax them by excises, and duties on imports: both of which will fall heavier on them than on the Southern inhabitants; for the bohae tea used by a Northern freeman, will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched

Africans, at once to increase the danger of attack, and the difficulty of defence; nay they are to be encouraged to it by an assurance of having their votes in the Nat<sup>l</sup>. Gov<sup>t</sup>. increased in proportion, and are at the same time to have their exports & their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the Gen<sup>l</sup>. Gov<sup>t</sup>. can stretch its hand directly into the pockets of the people scattered over so vast a Country. They can only do it through the medium of exports imports & excises. For What then are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the U. States, than saddle posterity with such a Constitution.

M<sup>r</sup>. Dayton 2<sup>ded</sup>. the motion. He did it he said that his sentiments on the subject might appear whatever might be the fate of the amendment.

M<sup>r</sup>. Sherman, did not regard the admission of the Negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the South<sup>n</sup>. States who were in fact to be represented according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

M<sup>r</sup>. Pinkney, considered the fisheries & the Western frontier as more burthensome to the U. S. than the slaves. He thought this could be demonstrated if the occasion were a proper one.

M<sup>r</sup>. Wilson, thought the motion premature. An agreement to the clause would be no bar to the object of it.

Question On motion to insert “free” before “inhabitants,

N. H. no. Mass. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

On the suggestion of M<sup>r</sup>. Dickinson the words, “provided that each State shall have one representative at least,”—were added nem. con.

Art. IV. Sect. 4. as amended was agreed to con. nem.

Art. IV. Sect. 5. taken up

M<sup>r</sup>. Pinkney moved to strike out Sect. 5. As giving no peculiar advantage to the House of Representatives, and as clogging the Gov<sup>t</sup>. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

M<sup>r</sup>. Ghorum. was ag<sup>st</sup>. allowing the Senate to *originate*; but only to *amend*.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. It is particularly proper that the Senate sh<sup>d</sup>. have the right of originating money bills. They will sit constantly, will consist of a smaller number, and

will be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House.

Col. Mason was unwilling to travel over this ground again. To strike out the Section, was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the Contrary he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an Aristocracy was that it was the govern<sup>t</sup> of the few over the many. An aristocratic body, like the screw in mechanics, work<sup>g</sup>. its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

M<sup>r</sup>. Mercer, considered the exclusive power of originating Money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal & of no consequence.

M<sup>r</sup>. Butler was for adhering to the principle which had been settled.

M<sup>r</sup>. Wilson was opposed to it on its merits without regard to the compromise.

M<sup>r</sup>. Elsworth did not think the clause of any consequence, but as it was thought of consequence by some members from the larger States, he was willing it should stand.

M<sup>r</sup>. Madison was for striking it out; considering it as of no advantage to the large States as fettering the Gov<sup>t</sup>. and as a source of injurious altercations between the two Houses.

On the question for striking out "Sect. 5, Art. IV"

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. ay. Geo. ay.

Adj<sup>d</sup>.

## Thursday, Aug<sup>St</sup>. 9. In Convention

Art: IV. Sect. 6. M<sup>r</sup>. Randolph expressed his dissatisfaction at the disagreement yesterday to Sect. 5. concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

M<sup>r</sup>. Williamson said he had formed a like intention.

M<sup>r</sup>. Wilson, gave notice that he sh<sup>d</sup>. move to reconsider the vote, requiring seven instead of three years of Citizenship as a qualification of candidates for the House of Representatives.

Art. IV. Sec. 6. & 7. Agreed to nem. con.

Art. V. Sect. 1. taken up.

M<sup>r</sup>. Wilson objected to vacancies in the Senate being supplied by the Executives of the States. It was unnecessary as the Legislatures will meet so frequently. It removes the appointment too far from the people; the Executives in most of the States being elected by the Legislatures. As he had always thought the appointment of the Executives by the Legislative department wrong; so it was still more so that the Executive should elect into the Legislative department.

M<sup>r</sup>. Randolph thought it necessary in order to prevent inconvenient chasms in the Senate. In some States the Legislatures meet but once a year. As the Senate will have more power & consist of a smaller number than the other House, vacancies there will be of more consequence. The Executives might be safely trusted he thought with the appointment for so short a time.

M<sup>r</sup>. Elseworth. It is only said that the Executive *may* supply vacancies. When the Legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a State vacancies may be of great moment.

M<sup>r</sup>. Williamson. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out “vacancies shall be supplied by the Executives

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. M<sup>d</sup> div<sup>d</sup>. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Williamson moved to insert after “vacancies shall be supplied by the Executives,” the following words “unless other provision shall be made by the Legislature” (of the State).

M<sup>r</sup>. Elseworth. He was willing to trust the Legislature, or the Executive of a State, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

Question on M<sup>r</sup>. Williamson’s motion.

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. M<sup>d</sup> ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after “vacancies,” & insert the words “happening by refusals to accept, resignations or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the Executive thereof until the next meeting of the Legislature.”



M<sup>r</sup> Gov<sup>r</sup>. Morris this is absolutely necessary, otherwise, as members chosen into the Senate are disqualified from being appointed to any office by Sect. 9. of this art: it will be in the power of a Legislature by appointing a man a Senator ag<sup>st</sup> his consent, to deprive the U. S. of his services.

The motion of M<sup>r</sup>. Madison was agreed to nem. con.

M<sup>r</sup>. Randolph called for division of the Section, so as to leave a distinct question on the last words “each member shall have one vote.” He wished this last sentence to be postponed until the reconsideration should have taken place on Sect. 5. Art. IV. concerning money bills. If that section should not be reinstated his plan would be to vary the representation in the Senate.

M<sup>r</sup>. Strong concurred in M<sup>r</sup>. Randolph’s ideas on this point.

M<sup>r</sup>. Read did not consider the section as to money bills of any advantage to the larger States and had voted for striking it out as being viewed in the same light by the larger States. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being re-instated.

M<sup>r</sup>. Wilson—M<sup>r</sup>. Elsworth & M<sup>r</sup>. Madison urged that it was of no advantage to the larger States, and that it might be a dangerous source of contention between the two Houses. All the principal powers of the Nat<sup>l</sup>. Legislature had some relation to money.

Doc<sup>t</sup>. Franklin, considered the two clauses, the originating of money bills, and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Col. Mason said this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives the immediate choice of the people.

M<sup>r</sup>. Williamson. The State of N. C. had agreed to an equality in the Senate, merely in consideration that money bills should be confined to the other House: and he was surprised to see the smaller States forsaking the condition on which they had received their equality.

Question on the section 1. down to the last sentence.

N. H. ay. Mass. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>1 no. Del. ay. M<sup>d</sup>. ay. Virg<sup>a</sup>. ay. N. C. no. S. C. div<sup>d</sup>. Geo. ay.

M<sup>r</sup>. Randolph moved that the last sentence “each member shall have one vote,” be postponed.

It was observed that this could not be necessary; as in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it w<sup>d</sup>. still be proper that the members should vote per Capita. A

postponement of the preceding sentence allowing to each State 2 members w<sup>d</sup>. have been more proper.

M<sup>r</sup>. Mason, did not mean to propose a change of this mode of voting per capita in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each State may have two members, and yet may have unequal votes. He said that unless the exclusive originating of money bills should be restored to the House of Representatives, he should, not from obstinacy but duty and conscience, oppose throughout the equality of Representation in the Senate.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. Such declarations were he supposed, addressed to the smaller States in order to alarm them for their equality in the Senate, and induce them ag<sup>st</sup> their judgments, to concur in restoring the section concerning money bills. He would declare in his turn that as he saw no prospect of amending the Constitution of the Senate & considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality at all events.

M<sup>r</sup>. Wilson. It seems to have been supposed by some that the section concerning money bills is desirable to the large States. The fact was that two of those States (P<sup>a</sup>. & V<sup>a</sup>) had uniformly voted, ag<sup>st</sup>. it without reference to any other part of the system.

M<sup>r</sup>. Randolph, urged as Col. Mason had done that the sentence under consideration was connected with that relating to Money bills, and might possibly be affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

Question for postponing “each member shall have one vote,”

N. H. div<sup>d</sup>. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

The words were then agreed to as part of the section.

M<sup>r</sup>. Randolph then gave notice that he should move to reconsider this whole Sect: 1. Art. V. as connected with the 5. Sect. Art. IV. as to which he had already given such notice.

Art. V. Sect. 2<sup>d</sup>. taken up.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to insert after the words, “immediately after,” the following “they shall be assembled in consequence of,” which was agreed to nem. con. as was then the whole sect. 2.

Art: V. Sect. 3. taken up.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to insert 14 instead of 4 years citizenship as a qualification for Senators: urging the danger of admitting strangers into our public Councils. M<sup>r</sup>. Pinkney 2<sup>d</sup>. him.

M<sup>r</sup> Elseworth, was opposed to the motion as discouraging meritorious aliens from emigrating to this Country.

M<sup>r</sup>. Pinkney. As the Senate is to have the power of making treaties & managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject who made it death for any stranger to intrude his voice into their Legislative proceedings.

Col. Mason highly approved of the policy of the motion. Were it not that many not natives of this Country had acquired great merit during the revolution, he should be for restraining the eligibility into the Senate, to natives.

M<sup>r</sup>. Madison was not averse to some restrictions on this subject; but could never agree to the proposed amendment. He thought any restriction however in the *Constitution* unnecessary, and improper, unnecessary; because the Nat<sup>l</sup>. Legisl<sup>re</sup>. is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence or conditions of enjoying different privileges of Citizenship: Improper; because it will give a tincture of illiberality to the Constitution: because it will put it out of the power of the Nat<sup>l</sup>. Legislature even by special acts of naturalization to confer the full rank of Citizens on meritorious strangers & because it will discourage the most desirable class of people from emigrating to the U. S. Should the proposed Constitution have the intended effect of giving stability & reputation to our Gov<sup>ts</sup>. great numbers of respectable Europeans; men who love liberty and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations though they s<sup>d</sup>. not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the State Legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy & watchfulness in the public.

M<sup>r</sup>. Butler was decidedly opposed to the admission of foreigners without a long residence in the Country. They bring with them, not only attachments to other Countries; but ideas of Gov<sup>t</sup>. so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits opinions & attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Doc<sup>t</sup>. Franklin was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this Country. Even in the Country with which we have been lately at war, we have now & had during the war, a great many friends not only among the people at large but in both houses of Parliament. In every other Country in Europe all the people are our friends. We found in the course of the Revolution, that many strangers served us faithfully, and that many natives took part ag<sup>st</sup>. their Country. When foreigners after looking about for some other Country in which they can obtain more happiness, give

a preference to ours, it is a proof of attachment which ought to excite our confidence & affection.

M<sup>r</sup> Randolph did not know but it might be problematical whether emigrations to this Country were on the whole useful or not: but he could never agree to the motion for disabling them for 14 years to participate in the public honours. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American Constitutions. Many foreigners may have fixed their fortunes among us under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed System. He would go as far as seven years, but no further.

M<sup>r</sup>. Wilson said he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution, which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the System & the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement & mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire & would not have accepted the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed, in a circumstance grating and mortifying.

M<sup>r</sup> Gov<sup>r</sup> Morris. The lesson we are taught is that we should be governed as much by our reason, and as little by our feelings as possible. What is the language of Reason on this subject? That we should not be polite at the expence of prudence. There was a moderation in all things. It is said that some tribes of Indians, carried their hospitality so far as to offer to strangers their wives & daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings; but would not carry the complaisance so far as, to bed them with his wife. He would let them worship at the same altar, but did not choose to make Priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of Government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every Society from a great nation down to a club had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those Citizens of the World as they called themselves, He owned he did not wish to see any of them in our public Councils. He would not trust them. The men who can shake off their attachments to their own Country can never love any other. These attachments are the wholesome prejudices which uphold all Governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, he will feel an equal bias in favor of that of England. It has been said that The Legislatures will not chuse foreigners, at least improper ones. There was no knowing what

Legislatures would do. Some appointments made by them, proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this State in disgrace, and worked himself into an appointment from another to Congress.

Question on the motion of M<sup>f</sup>. Gov<sup>f</sup>. Morris to insert 14 in place of 4 years.

N. H. ay. Mass. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

On 13 years, moved by M<sup>f</sup> Gov<sup>f</sup>. Morris.

N. H. ay. Mass. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. ay.

On 10 years moved by Gen<sup>l</sup> Pinkney.

N. H. ay. Mass. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

D<sup>f</sup> Franklin reminded the Convention that it did not follow from an omission to insert the restriction in the Constitution that the persons in question w<sup>d</sup> be actually chosen into the Legislature.

M<sup>f</sup>. Rutledge. 7 years of Citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

M<sup>f</sup> Williamson. It is more necessary to guard the Senate in this case than the other House. Bribery & cabal can be more easily practised in the choice of the Senate which is to be made by the Legislatures composed of a few men, than of the House of Represent<sup>s</sup>. who will be chosen by the people.

M<sup>f</sup> Randolph will agree to 9 years with the expectation that it will be reduced to seven if M<sup>f</sup> Wilson's motion to reconsider the vote fixing 7 years for the House of Representatives should produce a reduction of that period.

On a question for 9 years.

N. H. ay. Mass. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. div<sup>d</sup> S. C. ay. Geo. ay.

The term "Resident" was struck out, & "inhabitant" inserted nem. con.

1 Art. V. Sect. 3. as amended agreed to nem. con.

Sect. 4. agreed to nem. con.

Article VI. Sect. 1. taken up.

M<sup>r</sup>. Madison & M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out “each House” & to insert “the House of Representatives;” the right of the Legislatures to regulate the times & places &c in the election of Senators being involved in the right of appointing them, which was disagreed to.

Division of the question being called, it was taken on the first part down to “but their provisions concerning &c.”

The first part was agreed to nem. con.

M<sup>r</sup>. Pinkney & M<sup>r</sup> Rutledge moved to strike out the remaining part viz but their provisions concerning them may at any time be altered by the Legislature of the United States. The States they contended could & must be relied on in such cases.

M<sup>r</sup>. Ghorum. It would be as improper take this power from the Nat<sup>l</sup>. Legislature, as to Restrain the British Parliament from regulating the circumstances of elections, leaving this business to the Counties themselves—

M<sup>r</sup>. Madison. The necessity of a Gen<sup>l</sup>. Gov<sup>t</sup> supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expence of their local conveniency or prejudices. The policy of referring the appointment of the House of Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the Legislatures of the States ought not to have the uncontroled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, sh<sup>d</sup> all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures, and might materially affect the appointments. Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Nat<sup>l</sup> Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controuling power to the Nat<sup>l</sup>. Legislature? Of whom was it to consist? 1. of a Senate to be chosen by the State Legislatures. If the latter therefore could be trusted, their representatives could not be dangerous. 2. of Representatives elected by the same people who elect the State Legislatures; Surely then if confidence is due to the latter, it must be due to the former. It seemed as improper in principle, though it might be less inconvenient in practice, to give to the State Legislatures this great authority over the election of the Representatives of the people in the Gen<sup>l</sup>. Legislature, as it would be to give to the latter a like power over the election of their Representatives in the State Legislatures.

M<sup>r</sup>. King. If this power be not given to the Nat<sup>l</sup> Legislature, their right of judging of the returns of their members may be frustrated. No probability has been suggested of

its being abused by them. Altho this scheme of erecting the Gen<sup>l</sup> Gov<sup>t</sup>. on the authority of the State Legislatures has been fatal to the federal establishment, it would seem as if many gentlemen, still foster the dangerous idea.

M<sup>r</sup>. Gov<sup>r</sup>. Morris observed that the States might make false returns and then make no provisions for new elections.

M<sup>r</sup>. Sherman did not know but it might be best to retain the clause, though he had himself sufficient confidence in the State Legislatures. The motion of M<sup>r</sup>. P. & M<sup>r</sup> R. did not prevail.

The word “respectively” was inserted after the word “State.”

On the motion of M<sup>r</sup>. Read the word “their” was struck out, & “regulations in such cases” inserted in place of “provisions concerning them” the clause then reading—“but regulations in each of the foregoing cases may at any time, be made or altered by the Legislature of the U. S.” This was meant to give the Nat<sup>l</sup> Legislature a power not only to alter the provisions of the States, but to make regulations in case the States should fail or refuse altogether.

Art. VI. Sect. 1. as thus amended was agreed to nem. con.

Adjourned.

## Friday Aug<sup>St</sup>. 10. In Convention

Art. VI. Sect. 2. taken up.

M<sup>r</sup>. Pinkney. The Committee as he had conceived were instructed to report the proper qualifications of property for the members of the Nat<sup>l</sup> Legislature; instead of which they have referred the task to the Nat<sup>l</sup>. Legislature itself. Should it be left on this footing, the first Legislature will meet without any particular qualifications of property; and if it should happen to consist of rich men they might fix such qualifications as may be too favorable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristocratic influence in the Constitution but he thought it essential that the members of the Legislature, the Executive, and the Judges, should be possessed of competent property to make them independent & respectable. It was prudent when such great powers were to be trusted to connect the tie of property with that of reputation in securing a faithful administration. The Legislature would have the fate of the Nation put into their hands. The President would also have a very great influence on it. The Judges would have not only important causes between Citizen & Citizen but also where foreigners are concerned. They will even be the Umpires between the U. States and individual States as well as between one State & another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the Judges, and in like proportion for the members of the Nat<sup>l</sup> Legislature. He would however leave the sums blank. His motion was that the President of the U. S. the Judges, and members of the

Legislature should be required to swear that they were respectively possessed of a cleared unincumbered Estate to the amount of — in the case of the President &c &c.

M<sup>r</sup>. Rutledge seconded the motion, observing that the Committee had reported no qualifications because they could not agree on any among themselves, being embarrassed by the danger on one side of displeasing the people by making them high, and on the other of rendering them nugatory by making them low.

M<sup>r</sup>. Elseworth. The different circumstances of different parts of the U. S. and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the S. States, and they will be inapplicable to the E. States. Suit them to the latter, and they will serve no purpose in the former. In like manner what may be accommodated to the existing State of things among us, may be very inconvenient in some future state of them. He thought for these reasons that it was better to leave this matter to the Legislative discretion than to attempt a provision for it in the Constitution.

Doct<sup>r</sup>. Franklin expressed his dislike of every thing that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with, were the richest rogues. We should remember the character which the Scripture requires in Rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe, and if it should betray a great partiality to the rich will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this Country.

The Motion of M<sup>r</sup>. Pinkney was rejected by so general a *no*, that the States were not called.

M<sup>r</sup>. Madison was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Gov<sup>t</sup> and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also which might be made subservient to the views of one faction ag<sup>st</sup>. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction.



M<sup>r</sup>. Elseworth, admitted that the power was not unexceptionable; but he could not view it as dangerous. Such a power with regard to the electors would be dangerous because it would be much more liable to abuse.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out “with regard to property” in order to leave the Legislature entirely at large.

M<sup>r</sup>. Williamson. This would surely never be admitted. Should a majority of the Legislature be composed of any particular description of men, of lawyers for example, which is no improbable supposition, the future elections might be secured to their own body.

M<sup>r</sup>. Madison observed that the British Parliam<sup>t</sup> possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views, or to the views of political or Religious parties.

Question on the motion to strike out with regard to property.

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. 1 no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. ay.

M<sup>r</sup>. Rutledge was opposed to leaving the power to the Legislature—He proposed that the qualifications should be the same as for members of the State Legislatures.

M<sup>r</sup>. Wilson thought it would be best on the whole to let the Section go out. A uniform rule would probably never be fixed by the Legislature, and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to Art. VI. Sect. 2<sup>d</sup>.

N. H. ay. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. ay.

On motion of M<sup>r</sup> Wilson to reconsider Art: IV. Sect. 2; so as to restore 3 in place of seven years of citizenship as a qualification for being elected into the House of Represent<sup>s</sup>.

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. no.

Monday next was then assigned for the reconsideration; all the States being ay. except Mass<sup>ts</sup>. & Georgia.

Art: VI. Sect. 3. taken up.

M<sup>r</sup>. Ghorum contended that less than a majority in each House should be made a Quorum, otherwise great delay might happen in business, and great inconvenience from the future increase of numbers.

M<sup>r</sup> Mercer was also for less than a majority. So great a number will put it in the power of a few by seceding at a critical moment to introduce convulsions, and endanger the Governm<sup>t</sup>. Examples of secession have already happened in some of the States. He was for leaving it to the Legislature to fix the Quorum, as in Great Britain, where the requisite number is small & no inconveniency has been experienced.

Col. Mason. This is a valuable & necessary part of the plan. In this extended Country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The Central States could always take care to be on the Spot and by meeting earlier than the distant ones, or wearying their patience, and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; But he had also known good produced by an apprehension, of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution as now moulded was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard ag<sup>st</sup> abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased & the U. States might be governed by a Juncto—A majority of the number which had been agreed on, was so few that he feared it would be made an objection ag<sup>st</sup> the plan.

M<sup>r</sup>. King admitted there might be some danger of giving an advantage to the Central States; but he was of opinion that the public inconveniency on the other side was more to be dreaded.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to fix the quorum at 33 members in the H. of Rep<sup>s</sup> & 14 in the Senate. This is a majority of the present number, and will be a bar to the Legislature: fix the number low and they will generally attend knowing that advantage may be taken of their absence, the Secession of a small number ought not to be suffered to break a quorum. Such events in the States may have been of little consequence. In the national Councils they may be fatal. Besides other mischiefs, if a few can break up a quorum, they may seize a moment when a particular part of the Continent may be in need of immediate aid, to extort, by threatening a secession, some unjust & selfish measure.

M<sup>r</sup>. Mercer 2<sup>ded</sup>. the motion.

M<sup>r</sup>. King said he had just prepared a motion which instead of fixing the numbers proposed by M<sup>r</sup> Gov<sup>r</sup>. Morris as Quorums, made those the lowest numbers, leaving the Legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

M<sup>r</sup>. Mercer agreed to substitute M<sup>r</sup>. King's motion in place of M<sup>r</sup>. Morris's.

M<sup>r</sup>. Elseworth was opposed to it. It would be a pleasing ground of confidence to the people that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion with regard to the number of Representatives that a very inconvenient number was not to be

apprehended. The inconveniency of secessions may be guarded ag<sup>st</sup> by giving to each House an authority to require the attendance of absent members.

M<sup>r</sup>. Wilson concurred in the sentiments of M<sup>r</sup> Elseworth.

M<sup>r</sup>. Gerry seemed to think that some further precautions than merely fixing the quorum might be necessary. He observed that as 17 w<sup>d</sup>. be a majority of a quorum of 33, and 8 of 14, questions might by possibility be carried in the H. of Rep<sup>s</sup> by 2 large States, and in the Senate by the same States with the aid of two small ones.—He proposed that the number for a quorum in the H. of Rep<sup>s</sup> should not exceed 50, nor be less than 33, leaving the intermediate discretion to the Legislature.

M<sup>r</sup>. King. As the quorum could not be altered with<sup>t</sup>. the concurrence of the President by less than ? of each House, he thought there could be no danger in trusting the Legislature.

M<sup>r</sup>. Carrol. This would be no security ag<sup>st</sup>. a continuance of the quorums at 33 & 14. when they ought to be increased.

On question on M<sup>r</sup>. Kings motion “that not less than 33 in the H. of Rep<sup>s</sup>. nor less than 14 in the Senate sh<sup>d</sup>. constitute a Quorum which may be increased by a law, on additions of the members in either House.

N. H. no. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Randolph & M<sup>r</sup> Madison moved to add to the end of Art. VI. Sect. 3, “and may be authorized to compel the attendance of absent members in such manner & under such penalties as each House may provide.” Agreed to by all except Pen<sup>a</sup> which was divided.

Art. VI. Sect. 3. agreed to as amended nem. con.

Sect. 4. } Agreed to nem. con.

Sect. 5. }

M<sup>r</sup>. Madison observed that the right of expulsion (Art. VI. Sect. 6.) was too important to be exercised by a bare majority of a quorum: and in emergencies of faction might be dangerously abused. He moved that, “with the concurrence of ?,” might be inserted between may & expel.

M<sup>r</sup>. Randolph & M<sup>r</sup>. Mason approved the idea.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. This power may be safely trusted to a majority. To require more may produce abuses on the side of the minority. A few men from factious motives may keep in a member who ought to be expelled.

M<sup>r</sup>. Carrol thought that the concurrence of ? at least ought to be required.

On the question requiring ? in cases of expelling a member.

N. H. ay. Mass. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. div<sup>d</sup>. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Art. VI. Sect. 6. as thus amended agreed to nem. con.

Art: VI. Sect. 7. taken up.

M<sup>r</sup>. Gov<sup>r</sup>. Morris urged that if the yeas & nays were proper at all any individual ought to be authorized to call for them; and moved an amendment to that effect.—The small States may otherwise be under a disadvantage, and find it difficult to get a concurrence of ?.

M<sup>r</sup>. Randolph 2<sup>ded</sup>. y<sup>e</sup> motion.

M<sup>r</sup>. Sherman had rather strike out the yeas & nays altogether. They never have done any good, and have done much mischief. They are not proper as the reasons governing the voter never appear along with them.

M<sup>r</sup>. Elseworth was of the same opinion.

Col. Mason liked the Section as it stood. it was a middle way between two extremes.

M<sup>r</sup> Ghorum was opposed to the motion for allowing a single member to call the yeas & nays, and recited the abuses of it in Mass<sup>ts</sup>. 1 in stuffing the journals with them on frivolous occasions. 2 in misleading the people who never know the reasons determining the votes.

The motion for allowing a single member to call the yeas & nays was disag<sup>d</sup> to nem. con.

M<sup>r</sup> Carrol. & M<sup>r</sup> Randolph moved to strike out the words, “each House” and to insert the words, “the House of Representatives” in Sect. 7. Art. 6. and to add to the section the words “and any member of the Senate shall be at liberty to enter his dissent.”

M<sup>r</sup> Gov<sup>r</sup>. Morris & M<sup>r</sup>. Wilson observed that if the minority were to have a right to enter their votes & reasons, the other side would have a right to complain, if it were not extended to them: & to allow it to both, would fill the Journals, like the records of a Court, with replications, rejoinders &c.

Question on M<sup>r</sup>. Carrols motion to allow a member to enter his dissent

N. H. no. Mass. no. Con<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup> Gerry moved to strike out the words “when it shall be acting in its legislative capacity” in order to extend the provision to the Senate when exercising its peculiar authorities and to insert “except such parts thereof as in their judgment require

secrecy” after the words “publish them.”—(It was thought by others that provision should be made with respect to these when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words “when acting in its legislative capacity”

N. H. div<sup>d</sup>. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

## Saturday Aug<sup>St</sup> 11 In Convention

M<sup>r</sup>. Madison & M<sup>r</sup> Rutledge moved “that each House shall keep a journal of its proceedings, & shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its Legislative capacity as may be judged by that House to require secrecy.”

M<sup>r</sup>. Mercer. This implies that other powers than legislative will be given to the Senate which he hoped would not be given.

M<sup>r</sup>. Madison & M<sup>r</sup>. R’s motion was disag<sup>d</sup>. to by all the States except Virg<sup>a</sup>

M<sup>r</sup> Gerry & M<sup>r</sup>. Sharman moved to insert after the words “publish them” the following “except such as relate to treaties & military operations.” Their object was to give each House a discretion in such cases.—On this question

N. H. no. Mass. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> no. Del. no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Elseworth. As the clause is objectionable in so many shapes, it may as well be struck out altogether. The Legislature will not fail to publish their proceedings from time to time. The people will call for it if it should be improperly omitted.

M<sup>r</sup> Wilson thought the expunging of the clause would be very improper. The people have a right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings. Besides as this is a clause in the existing confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak & suspicious minds may be easily misled.

M<sup>r</sup> Mason thought it would give a just alarm to the people, to make a conclave of their Legislature.

M<sup>r</sup> Sherman thought the Legislature might be trusted in this case if in any.

Question on 1<sup>st</sup> part of the section down to “*publish them*” inclusive: Agreed to nem. con.

Question on the words to follow, to wit “except such parts thereof as may in their Judgment require secrecy.” N. H. div<sup>d</sup> Mass. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. ay.

The remaining part as to yeas & nays,—agreed to nem. con.

Art VI. Sect. 8. taken up.

M<sup>f</sup> King remarked that the section authorized the 2 Houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the federal Gov<sup>t</sup>. and would require as strong a cure as we could devise. He thought a law at least should be made necessary to a removal of the Seat of Gov<sup>t</sup>.

M<sup>f</sup> Madison viewed the subject in the same light, and joined with M<sup>f</sup> King in a motion requiring a law.

Mr. Govern<sup>f</sup> Morris proposed the additional alteration by inserting the words, “during the Session” &c.

M<sup>f</sup> Spaight. This will fix the seat of Gov<sup>t</sup> at N. Y. The present Congress will convene them there in the first instance, and they will never be able to remove, especially if the Presid<sup>t</sup>. should be [a] Northern Man.

M<sup>f</sup>. Gov<sup>f</sup>. Morris such a distrust is inconsistent with all Gov<sup>t</sup>.

M<sup>f</sup> Madison supposed that a central place for the seat of Gov<sup>t</sup> was so just and w<sup>d</sup>. be so much insisted on by the H. of Representatives, that though a law should be made requisite for the purpose, it could & would be obtained. The necessity of a central residence of the Gov<sup>t</sup>. w<sup>d</sup>. be much greater under the new than old Gov<sup>t</sup>. The members of the new Gov<sup>t</sup> w<sup>d</sup> be more numerous. They would be taken more from the interior parts of the States; they w<sup>d</sup>. not like members of y<sup>e</sup> present Cong<sup>s</sup>. come so often from the distant States by water. As the powers & objects of the new Gov<sup>t</sup>. would be far greater y<sup>n</sup>. heretofore, more private individuals w<sup>d</sup>. have business calling them to the seat of it, and it was more necessary that the Gov<sup>t</sup>. should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation. These considerations he supposed would extort a removal even if a law were made necessary. But in order to quiet suspicions both within & without doors, it might not be amiss to authorize the 2 Houses by a concurrent vote to adjourn at their first meeting to the most proper place, and to require thereafter, the sanction of a law to their removal.

The motion was accordingly moulded into the following form: “the Legislature shall at their first assembling determine on a place at which their future sessions shall be held; neither House shall afterwards, during the session of the House of Rep<sup>s</sup> without the consent of the other, adjourn for more than three days, nor shall they adjourn to any other place than such as shall have been fixt by law.”

M<sup>f</sup> Gerry thought it would be wrong to let the Presid<sup>t</sup>. check the will of the 2 Houses on this subject at all.

M<sup>r</sup> Williamson supported the ideas of M<sup>r</sup>. Spaight.

M<sup>r</sup>. Carrol was actuated by the same apprehensions.

M<sup>r</sup>. Mercer, it will serve no purpose to require the two Houses at their first meeting to fix on a place. They will never agree.

After some further expressions from others denoting an apprehension that the seat of Gov<sup>t</sup> might be continued at an improper place if a law should be made necessary to a removal, and the motion above stated with another for recommitting the section had been negatived, the section was left in the shape it which it was reported as to this point. The words, “during the session of the Legislature were prefixed to the 8<sup>th</sup> section—and the last sentence “But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the — article” struck out. The 8<sup>th</sup>. section as amended was then agreed to.

M<sup>r</sup>. Randolph moved according to notice to reconsider Art: IV. Sect. 5. concerning money bills which had been struck out. He argued 1. that he had not wished for this privilege whilst a proportional Representation in the Senate was in contemplation, but since an equality had been fixed in that house, the large States would require this compensation at least. 2. that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body, and will expect that the usual guards ag<sup>st</sup>. its influence be provided according to the example in G. Britain. 3. the privilege will give some advantage to the House of Rep<sup>s</sup>. if it extends to the originating only—but still more if it restrains the Senate from amend<sup>g</sup> 4. he called on the smaller States to concur in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose instead of the original section, a clause specifying that the bills in question should be for the purpose of Revenue, in order to repel y<sup>e</sup>. objection ag<sup>st</sup>. the extent of the words, “*raising money*,” which might happen incidentally, and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate the inconveniences urged ag<sup>st</sup> a restriction of the Senate to a simple affirmation or negative.

M<sup>r</sup> Williamson 2<sup>ded</sup> the motion.

M<sup>r</sup>. Pinkney was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion, but as he considered it a mere waste of time he could not bring himself to consent to it. He said that notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of Representation in the 1<sup>st</sup> branch was the true condition of that in the 2<sup>d</sup> branch.—Several others spoke for & ag<sup>st</sup> the reconsideration, but without going into the merits.—On the Question to reconsider.

N. H. ay. Mass. ay. C<sup>t</sup> ay. N. J. 1 ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. div<sup>d</sup>. Geo. ay.—Monday was then assigned—

Adj<sup>d</sup>2

## Monday, Aug<sup>St</sup>. 13. In Convention

Art. IV. Sect. 2. reconsidered—

M<sup>r</sup>. Wilson & M<sup>r</sup>. Randolph moved to strike out “7 years” and insert “4 years,” as the requisite term of Citizenship to qualify for the House of Rep<sup>s</sup>. M<sup>r</sup>. Wilson said it was very proper the electors should govern themselves by this consideration; but unnecessary & improper that the Constitution should chain them down to it.

M<sup>r</sup>. Gerry wished that in future the eligibility might be confined to Natives. Foreign powers will intermeddle in our affairs, and spare no expence to influence them. Persons having foreign attachments will be sent among us & insinuated into our councils, in order to be made instruments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Mass<sup>ts</sup> reasoned in the same manner.

M<sup>r</sup> Williamson moved to insert 9 years instead of seven. He wished this Country to acquire as fast as possible national habits. Wealthy emigrants do more harm by their luxurious examples, than good, by the money, they bring with them.

Col. Hamilton was in general ag<sup>st</sup> embarrassing the Gov<sup>t</sup> with minute restrictions. There was on one side the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious & admitted. Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first Citizens. He moved that the section be so altered as to require merely citizenship & inhabitancy. The right of determining the rule of naturalization will then leave a discretion to the Legislature on this subject which will answer every purpose.

M<sup>r</sup>. Madison seconded the motion. He wished to maintain the character of liberality which had been professed in all the Constitutions & publications of America. He wished to invite foreigners of merit & republican principles among us. America was indebted to emigration for her settlement & Prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture & the arts. There was a possible danger he admitted that men with foreign predilections might obtain appointments but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native Country, our own people w<sup>d</sup>. prefer natives of this Country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted among the electors but among the elected, and among natives having full Confidence of the people not among strangers who would be regarded with a jealous eye.

M<sup>r</sup>. Wilson cited Pennsylv<sup>a</sup> as a proof of the advantage of encouraging emigrations. It was perhaps the youngest (except Georgia) settle<sup>t</sup> on the Atlantic; yet it was at least among the foremost in population & prosperity. He remarked that almost all the Gen<sup>l</sup> officers of the Pen<sup>a</sup> line of the late army were foreigners. And no complaint had ever been made against their fidelity or merit. Three of her deputies to the Convention (M<sup>r</sup>



R. Morris, M<sup>r</sup>. Fitzsimons & himself) were also not natives. He had no objection to Col. Hamiltons motion & would withdraw the one made by himself.

M<sup>r</sup>. Butler was strenuous ag<sup>st</sup> admitting foreigners into our public Councils.

Question on Col. Hamilton's Motion.

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. no. Md. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

Question on M<sup>r</sup>. Williamson's motion to insert 9 years instead of seven.

N. H. ay. Mass<sup>ts</sup> no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup> Wilson renewed the motion for 4 years instead of 7; & on question.

N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to add to the end of the section (Art IV. S. 2) a proviso that the limitation of seven years should not affect the rights of any person now a Citizen.

M<sup>r</sup> Mercer 2<sup>ded</sup>. the motion. It was necessary he said to prevent a disfranchisement of persons who had become Citizens under and on the faith & according to the laws & Constitution from being on a level in all respects with natives.

M<sup>r</sup> Rutledge. It might as well be said that all qualifications are disfranchisem<sup>ts</sup> and that to require the age of 25 years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now Citizens; as to those who are to be naturalized in future.

M<sup>r</sup>. Sherman. The U. States have not invited foreigners nor pledged their faith that they should enjoy equal privileges with native Citizens. The Individual States alone have done this. The former therefore are at liberty to make any discriminations they may judge requisite.

M<sup>r</sup>. Ghorum. When foreigners are naturalized it w<sup>d</sup>. seem as if they stand on an equal footing with natives. He doubted then the propriety of giving a retrospective force to the restriction.

M<sup>r</sup>. Madison animadverted on the peculiarity of the doctrine of M<sup>r</sup>. Sharman. It was a subtilty by which every national engagement might be evaded. By parity of reason, Whenever our public debts, or foreign treaties become inconvenient nothing more would be necessary to relieve us from them, than to new model the Constitution. It was said that the *U. S.* as such have not pledged their faith to the naturalized foreigners, & therefore are not bound. Be it so, & that the States alone are bound. Who are to form the New Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the States y<sup>e</sup>. Agents? will they not

be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their Act? If the new Constitution then violates the faith pledged to any description of people will not the makers of it, will not the States, be the violaters. To justify the doctrine it must be said that the States can get rid of their obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He considered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which w<sup>d</sup>. soon be echoed from the other side of the Atlantic; and would unnecessarily enlist among the Adversaries of the reform a very considerable body of Citizens: We should moreover reduce every State to the dilemma of rejecting it or of violating the faith pledged to a part of its Citizens.

M<sup>r</sup> Gov<sup>r</sup>. Morris considered the case of persons under 25 years, as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age should be in all cases on a level with those above it. But with regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of Citizens. If the restriction as to age had been confined to natives, & had left foreigners under 25 years, eligible in this case, the discrimination w<sup>d</sup>. have been an equal injustice on the other side.

M<sup>r</sup>. Pinkney remarked that the laws of the States had varied much the terms of naturalization in different parts of America; and contended that the U. S. could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Col. Mason was truck not like (Mr. Madison) with the *peculiarity*, but the *propriety* of the doctrine of M<sup>r</sup>. Sharman. The States have formed different qualifications themselves, for enjoying different rights of citizenship. Greater caution w<sup>d</sup> be necessary in the outset of the Gov<sup>t</sup>. than afterwards. All the great objects w<sup>d</sup>. then be provided for. Every thing would be then set in motion. If persons among us attached to G. B. should work themselves into our Councils, a turn might be given to our affairs & particularly to our Commercial regulations which might have pernicious consequences. The Great Houses of British Merchants will spare no pains to insinuate the instruments of their views into the Gov<sup>t</sup>.

M<sup>r</sup>. Wilson read the clause in the Constitution of Pen<sup>a</sup>. giving to foreigners after two years residence all the rights whatsoever of Citizens, Combined it with the article of Confederation making the Citizens of one State Citizens of all, inferred the obligation Pen<sup>a</sup> was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaints which her failure would authorize: He observed likewise that the Princes & States of Europe would avail themselves of such breach of faith to deter their subjects from emigration to the U. S.

M<sup>r</sup>. Mercer enforced the same idea of a breach of faith.

M<sup>r</sup>. Baldwin could not enter into the force of the arguments ag<sup>st</sup>. extending the disqualification to foreigners now Citizens. The discrimination of the place of birth,

was not more objectionable than that of age which all had concurred in the propriety of.

Question on the proviso of M<sup>t</sup>. Gov<sup>t</sup>. Morris in favor of foreigners now Citizens

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. no. Mary<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

M<sup>t</sup>. Carrol moved to insert “5 years” instead of “seven” in Sect. 2<sup>d</sup>. Art: IV

N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup> div<sup>d</sup>. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

The Section (Art IV. Sec. 2.) as formerly amended was then agreed to nem. con.

M<sup>t</sup>. Wilson moved that (in Art: V. Sect. 3.) 9 years be reduced to seven, which was disag<sup>d</sup>. to and the 3<sup>d</sup> section (Art. V.) confirmed by the following vote. N. H. ay. Mass. ay. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Art. IV. Sec. 5. being reconsidered.

M<sup>t</sup>. Randolph moved that the clause be altered so as to read—“Bills for raising money for the *purpose of revenue* or for appropriating the same shall originate in the House of Representatives and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation.”—He would not repeat his reasons, but barely remind the members from the smaller States of the compromise by which the larger States were entitled to this privilege.

Col. Mason. This amendment removes all the objections urged ag<sup>st</sup>. the section as it stood at first. By specifying *purposes of revenue*, it obviated the objection that the section extended to all bills under which money might incidentally arise. By authorizing amendments in the Senate it got rid of the objections that the Senate could not correct errors of any sort, & that it would introduce into the House of Rep<sup>s</sup>. the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. 1. the Senate did not represent the *people*, but the *States* in their political character. It was improper therefore that it should tax the people. The reason was the same ag<sup>st</sup>. their doing it; as it had been ag<sup>st</sup>. Cong<sup>s</sup>. doing it. Nor was it in any respect necessary in order to cure the evils of our Republican system. He admitted that notwithstanding the superiority of the Republican form over every other, it had its evils. The chief ones, were the danger of the majority oppressing the minority, and the mischievous influence of demagogues. The Gen<sup>l</sup> Government of itself will cure them. As the States will not concur at the same time in their unjust & oppressive plans, the General Gov<sup>t</sup> will be able to check & defeat them, whether they result from the wickedness of the majority, or from the misguidance of demagogues. Again, the Senate is not like the H. of Rep<sup>s</sup> chosen frequently and obliged to return frequently among the people. They are to be chosen by the Sts for 6 years, will probably settle themselves at the seat of Gov<sup>t</sup>. will pursue schemes for their own

aggrandisement—will be able by weary<sup>g</sup> out the H. of Rep<sup>s</sup>. and taking advantage of their impatience at the close of a long Session, to extort measures for that purpose. If they should be paid as he expected would be yet determined & wished to be so, out of the Nat<sup>l</sup> Treasury, they will particularly extort an increase of their wages. A bare negative was a very different thing from that of originating bills. The practice in Engl<sup>d</sup> was in point. The House of Lords does not represent nor tax the people, because not elected by the people. If the Senate can originate, they will in the recess of the Legislative Sessions, hatch their mischievous projects, for their own purposes, and have their money bills ready cut & dried (to use a common phrase) for the meeting of the H. of Rep<sup>s</sup>. He compared the case to Poyning's law—and signified that the House of Rep<sup>s</sup>. might be rendered by degrees like the Parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise so much had passed on that subject that he would say nothing about it. He did not mean by what he had said to oppose the permanency of the Senate. On the contrary he had no repugnance to an increase of it—nor to allowing it a negative, though the Senate was not by its present constitution entitled to it. But in all events he would contend that the purse-strings should be in the hands of the Representatives of the people.

M<sup>r</sup>. Wilson was himself directly opposed to the equality of votes granted to the Senate by its present Constitution. At the same time he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark that as an insuperable objection ag<sup>st</sup>. the proposed restriction of money bills to the H. of Rep<sup>s</sup>. that it would be a source of perpetual contentions where there was no mediator to decide them. The Presid<sup>t</sup> here could not like the Executive Magistrate in England interpose by a prorogation, or dissolution. This restriction had been found pregnant with altercation in every State where the Constitution had established it. The House of Rep<sup>s</sup> will insert other things in money bills, and by making them conditions of each other, destroy the deliberate liberty of the Senate. He stated the case of a Preamble to a money bill sent up by the House of Commons in the reign of Queen Anne, to the H. of Lords, in which the conduct of the displaced Ministry, who were to be impeached before the Lords, was condemned; the Com<sup>ons</sup> thus extorting a premature judgm<sup>t</sup>. without any hearing of the Parties to be tried, and the H. of Lords being thus reduced to the poor & disgraceful expedient of opposing to the authority of a law, a protest on their Journals ag<sup>st</sup>. its being drawn into precedent. If there was any thing like Poyning's law in the present case, it was in the attempt to vest the exclusive right of originating in the H. of Rep<sup>s</sup> and so far he was ag<sup>st</sup> it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the H. of Rep<sup>s</sup> the other in those of the Senate. Both houses must concur in untying, and of what importance could it be which untied first, which last. He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose and would be in the habits of business. War, Commerce, & Revenue were the great objects of the Gen<sup>l</sup> Government. All of them are connected with money. The restriction in favor of the H. of Represent<sup>s</sup>. would exclude the Senate from originating any important bills whatever—

M<sup>r</sup> Gerry considered this as a part of the plan that would be much scrutinized. Taxation & representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses. In short the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills.

M<sup>r</sup>. Govern<sup>r</sup>. Morris. All the arguments suppose the right to originate & to tax, to be exclusively vested in the Senate.—The effects commented on may be produced by a Negative only in the Senate. They can tire out the other House, and extort their concurrence in favorite measures, as well by withholding their negative, as by adhering to a bill introduced by themselves.

M<sup>r</sup>. Madison thought If the substitute offered by M<sup>r</sup>. Randolph for the original section is to be adopted it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be restrained from checking the extravagance of the other House? One of the greatest evils incident to Republican Gov<sup>t</sup>. was the spirit of contention & faction. The proposed substitute, which in some respects lessened the objections ag<sup>st</sup>. the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two houses. The word *revenue* was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue sh<sup>d</sup>. be the sole object, in exclusion even of other incidental effects. When the Contest was first opened with G. B. their power to regulate trade was admitted. Their power to raise revenue rejected. An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words *amend or alter* form an equal source of doubt & altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Rep<sup>s</sup>, it will be called an origination under the name of an amendment. The Senate may actually couch extraneous matter under that name. In these cases, the question will turn on the *degree* of connection between the matter & object of the bill and the alteration or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virg<sup>a</sup> where the Senate can originate no bill. The words, “so as to *increase or diminish* the sum to be raised,” were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new Gov<sup>t</sup> the sum to be raised, would be increased or diminished by a variety of collateral circumstances influencing the consumption, in general, the consumption of foreign or of domestic articles—of this or that particular species of articles and even by the mode of collection which may be closely connected with the productiveness of a tax.—The friends of the section had argued its necessity from the permanency of the Senate. He could not see how this argum<sup>t</sup> applied. The Senate was not more permanent now than in the form it bore in the original propositions of M<sup>r</sup>. Randolph and at the time when no objection whatever was hinted ag<sup>st</sup>. its originating money bills. Or if in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated as has been urged as the indemnification the permanency of the Senate will remain the same.—If the right to originate be vested exclusively in the House of

Rep<sup>s</sup>. either the Senate must yield ag<sup>st</sup> its judgment to that House, in which case the Utility of the check will be lost—or the Senate will be inflexible & the H. of Rep<sup>s</sup>. must adapt its money bill to the views of the Senate, in which case, the exclusive right will be of no avail.—As to the Compromise of which so much had been said, he would make a single observation. There were 5 States which had opposed the equality of votes in the Senate, viz, Mass<sup>ts</sup>. Penn<sup>a</sup>. Virg<sup>a</sup>. N. Carolina & South Carol<sup>a</sup>. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five States a majority viz. Penn<sup>a</sup>. Virg<sup>a</sup>. & S. Carol<sup>a</sup> have uniformly voted ag<sup>st</sup>. the proposed compensation, on its own merits, as rendering the plan of Gov<sup>t</sup>. still more objectionable. Mass<sup>ts</sup> has been divided. N. Carolina alone has set a value on the compensation, and voted on that principle. What obligation then can the small States be under to concur ag<sup>st</sup>. their judgments in reinstating the section?

M<sup>r</sup>. Dickenson. Experience must be our only guide. Reason may mislead us. It was not Reason that discovered the singular & admirable mechanism of the English Constitution. It was not Reason that discovered or ever could have discovered the odd & in the eye of those who are governed by reason, the absurd mode of trial by Jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is then our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people. Whence the effect may have proceeded he could not say: whether from the respect with which this privilege inspired the other branches of Gov<sup>t</sup> to the H. of Com<sup>mons</sup>, or from the turn of thinking it gave to the people at large with regard to their rights, but the effect was visible & could not be doubted—Shall we oppose to this long experience, the short experience of 11 years which we had ourselves, on this subject. As to disputes, they could not be avoided any way. If both Houses should originate, each would have a different bill to which it would be attached, and for which it would contend.—He observed that all the prejudices of the people would be offended by refusing this exclusive privilege to the H. of Repres<sup>s</sup>. and these prejudices sh<sup>d</sup>. never be disregarded by us when no essential purpose was to be served. When this plan goes forth it will be attacked by the popular leaders. Aristocracy will be the watchword; the Shiboleth among its adversaries. Eight States have inserted in their Constitutions the exclusive right of originating money bills in favor of the popular branch of the Legislature. Most of them however allowed the other branch to amend. This he thought would be proper for us to do.

M<sup>r</sup>. Randolph regarded this point as of such consequence, that as he valued the peace of this Country, he would press the adoption of it. We had numerous & monstrous difficulties to combat. Surely we ought not to increase them. When the people behold in the Senate, the countenance of an aristocracy; and in the president, the form at least of a little monarch, will not their alarms be sufficiently raised without taking from their immediate representatives, a right which has been so long appropriated to them.—The Executive will have more influence over the Senate, than over the H. of Rep<sup>s</sup>. Allow the Senate to originate in this Case, & that influence will be sure to mix itself in their deliberations & plans. The Declaration of War he conceived ought not to be in the Senate composed of 26 men only, but rather in the other House. In the other House ought to be placed the origination of the means of war. As to Commercial

regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills, for the *mere* or *sole*, purpose of raising revenue. The Senate will be more likely to be corrupt than the H. of Rep<sup>s</sup> and should therefore have less to do with money matters. His principal object however was to prevent popular objections against the plan, and to secure its adoption.

M<sup>r</sup>. Rutledge. The friends of this motion are not consistent in their reasoning. They tell us that we ought to be guided by the long experience of G. B. & not our own experience of 11 years; and yet they themselves propose to depart from it. The *H. of Com<sup>ons</sup>* not only have the exclusive right of originating, but the *Lords* are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale. They cannot but see that it is of no real consequence; and will be more likely to be displeased with it as an attempt to bubble them, than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect, till examined & approved by the H. of Rep<sup>s</sup> there can be no possible danger. These clauses in the Constitutions of the States had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in S. Carolina, where the Senate can originate or amend money bills, has shewn that it answers no good purpose; and produces the very bad one of continually dividing & heating the two houses. Sometimes indeed if the matter of the amendment of the Senate is pleasing to the other House they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every Session is distracted by altercations on this subject. The practice now becoming frequent is for the Senate not to make formal amendments; but to send down a schedule of the alterations which will procure the bill their assent.

M<sup>r</sup>. Carrol. The most ingenious men in Mary<sup>d</sup>. are puzzled to define the case of money bills, or explain the Constitution on that point, tho' it seemed to be worded with all possible plainness & precision. It is a source of continual difficulty & squabble between the two houses.

M<sup>r</sup>. McHenry<sup>1</sup> mentioned an instance of extraordinary subterfuge, to get rid of the apparent force of the Constitution.

On Question on the first part of the motion as to the exclusive originating of Money bills in the H. of Rep<sup>s</sup>. N. H. ay. Mass. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. Virg<sup>a</sup> ay. M<sup>r</sup>. Blair & M<sup>r</sup>. M. no. M<sup>r</sup>. R, Col. Mason and Gen<sup>l</sup>. Washington<sup>2</sup> ay. N. C. ay. S. C. no. Geo. no.

Question on Originating by H. of Rep<sup>s</sup>. & *amending* by Senate, as reported Art IV. Sect. 5.

N. H. ay. Mass. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>.<sup>1</sup> ay. N. C. ay. S. C. no. Geo. no.

Question on the last clause of Sect. 5, Art: IV—viz “No money shall be drawn from the Public Treasury, but in pursuance of *appropriations* that shall originate in the House of Rep<sup>s</sup>. It passed in the negative—

N. H. no. Mas. ay. Con. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

Adj<sup>d</sup>.

## Tuesday Aug. 14<sup>2</sup> . In Convention

Article VI. Sect. 9. taken up.

M<sup>t</sup>. Pinkney argued that the making the members ineligible to offices was *degrading* to them, and the more improper as their election into the Legislature implied that they had the confidence of the people; that it was *inconvenient*, because the Senate might be supposed to contain the fittest men. He hoped to see that body become a School of public Ministers, a nursery of Statesmen: that it was *impolitic*, because the Legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section in order to take up the following proposition viz—“the members of each House shall be incapable of holding any office under the U. S. for which they or any of others for their benefit receive any salary, fees, or emoluments of any kind—and the acceptance of such office shall vacate their seats respectively.”

Gen<sup>l</sup> Mifflin<sup>1</sup> 2<sup>ded</sup>. the motion.

Col. Mason ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American Soil—for compleating that Aristocracy which was probably in the contemplation of some among us, and for inviting into the Legislative Service, those generous & benevolent characters who will do justice to each other’s merit, by carving out offices & rewards for it. In the present state of American morals & manners, few friends it may be thought will be lost to the plan, by the opportunity of giving premiums to a mercenary & depraved ambition.

M<sup>t</sup> Mercer. It is a first principle in political science, that whenever the rights of property are secured, an aristocracy will grow out of it. Elective Governments also necessarily become aristocratic, because the rulers being few can & will draw emoluments for themselves from the many. The Governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the Governors, not of the people. The people are dissatisfied & complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability & uncertainty to their other evils.—Governm<sup>ts</sup>. can only be maintained by *force* or *influence*. The Executive has not *force*, deprive him of influence by rendering the members of the Legislature ineligible to Executive offices, and he becomes a mere phantom of authority. The Aristocratic part will not even let him in for a share of the plunder. The Legislature must & will be composed of wealth



& abilities, and the people will be governed by a Junto. The Executive ought to have a Council, being members of both Houses. Without such an influence, the war will be between the aristocracy & the people. He wished it to be between the Aristocracy & the Executive. Nothing else can protect the people ag<sup>st</sup> those speculating Legislatures which are now plundering them throughout the U. States.

M<sup>r</sup> Gerry read a Resolution of the Legislature of Mass<sup>ts</sup>. passed before the Act of Cong<sup>s</sup> recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the 5<sup>th</sup>. art: of Confederation, nor to agree in any case to give to the members of Cong<sup>s</sup> a capacity to hold offices under the Government. This he said was repealed in consequence of the Act of Cong<sup>s</sup> with which the State thought it proper to comply in an unqualified manner. The Sense of the State however was Still the same. He could not think with M<sup>r</sup> Pinkney that the disqualification was degrading. Confidence is the road to tyranny. As to Ministers & Ambassadors few of them were necessary. It is the opinion of a great many that they ought to be discontinued, on our part; that none may be sent among us, & that source of influence be shut up. If the Senate were to appoint Ambassadors as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for them. If they are once appointed, the House of Rep<sup>s</sup> will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the Legislature without a prospect of such offices, our situation is deplorable indeed. If our best Citizens are actuated by such mercenary views we had better chuse a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one Gentleman (M<sup>r</sup> Mercer) our Government it seems is to be a Gov<sup>t</sup> of plunder. In that case it certainly would be prudent to have but one rather than many to be employed in it. We cannot be too circumspect in the formation of this System. It will be examined on all sides and with a very suspicious eye. The people who have been so lately in arms ag<sup>st</sup> G. B. for their liberties, will not easily give them up. He lamented the evils existing at present under our Governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands it is as compleat an aristocracy as ever was framed. If great powers should be given to the Senate we shall be governed in reality by a Junto as has been apprehended. He remarked that it would be very differently constituted from Cong<sup>s</sup>.  
 1. there will be but 2 deputies from each State, in Cong<sup>s</sup> there may be 7. and are generally 5.—2. they are chosen for six years, those of Congress annually. 3. they are not subject to recall; those of Cong<sup>s</sup> are. 4. In Congress 9 *States* are necessary for all great purposes, here 8 *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the H. of Rep<sup>s</sup> as well as of the Senate ineligible not only during, but for one year after the expiration of their terms.—If it should be thought that this will injure the Legislature by keeping out of it men of abilities who are willing to serve in other offices it may be required as a qualification for other offices, that the Candidate shall have served a certain time in the Legislature.

M<sup>r</sup>. Gov<sup>t</sup>. Morris. Exclude the officers of the army & navy, and you form a band having a different interest from & opposed to the civil power: you stimulate them to

despise & reproach those “talking Lords who dare not face the foe.” Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and though the Civil authority “be intrinched in parchment to the teeth” they will cut their way to it. He was ag<sup>st</sup>. rendering the members of the Legislature ineligible to offices. He was for rendering them eligible ag<sup>n</sup> after having vacated their Seats by accepting office. Why should we not avail ourselves of their services if the people chuse to give them their confidence. There can be little danger of corruption either among the people or the Legislatures who are to be the Electors. If they say, we see their merits, we honor the men, we chuse to renew our confidence in them, have they not a right to give them a preference; and can they be properly abridged of it.

M<sup>r</sup>. Williamson; introduced his opposition to the motion by referring to the question concerning “money bills.” That clause he said was dead. Its Ghost he was afraid would notwithstanding haunt us. It had been a matter of conscience with him, to insist upon it as long as there was hope of retaining it. He had swallowed the vote of rejection, with reluctance. He could not digest it. All that was said on the other side was that the restriction was not *convenient*. We have now got a House of Lords which is to originate money-bills.—To avoid another *inconveniency*, we are to have a whole Legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills he did not wish to make it worse by expunging the present Section. He had scarcely seen a single corrupt measure in the Legislature of N. Carolina, which could not be traced up to office hunting.

M<sup>r</sup> Sherman. The Constitution sh<sup>d</sup> lay as few temptations as possible in the way of those in power. Men of abilities will increase as the Country grows more populous and as the means of education are more diffused.

M<sup>r</sup> Pinkney. No State has rendered the members of the Legislature ineligible to offices. In S. Carolina the Judges are eligible into the Legislature. It cannot be supposed then that the motion will be offensive to the people. If the State Constitutions should be revised he believed restrictions of this sort w<sup>d</sup> be rather diminished than multiplied.

M<sup>r</sup> Wilson could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting & responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question what he should say to his constituents in case they should call upon him to tell them why he sacrificed his own Judgment in a case where they authorized him to exercise it? Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort: did you suppose the people of Penn<sup>a</sup> had not good sense enough to receive a good Government? Under this impression he should certainly follow his own Judgment which disapproved of the section. He would remark in addition to the objections urged ag<sup>st</sup> it, that as one branch of the Legislature was to be appointed by the Legislatures of the States, the other by the people of the States, as both are to be paid by the States, and to be appointable to State offices, nothing

seemed to be wanting to prostrate the Nat<sup>l</sup>. Legislature, but to render its members ineligible to Nat<sup>l</sup> offices, & by that means take away its power of attracting those talents which were necessary to give weight to the Govern<sup>t</sup> and to render it useful to the people. He was far from thinking the ambition which aspired to Offices of dignity and trust, an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards, which might engage it in the career of public service. He observed that the State of Penn<sup>a</sup> which had gone as far as any State into the policy of fettering power, had not rendered the members of the Legislature ineligible to offices of Gov<sup>t</sup>.

M<sup>r</sup> Elsworth did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve 2 years or 7 years in the Legislature for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the Legislature, although whilst members they should be ineligible to Public offices. Besides, merit will be most encouraged, when most impartially rewarded. If rewards are to circulate only within the Legislature, merit out of it will be discouraged.

M<sup>r</sup> Mercer was extremely anxious on this point. What led to the appointment of this Convention? The corruption & mutability of the Legislative Councils of the States. If the plan does not remedy these, it will not recommend itself; and we shall not be able in our private capacities to support & enforce it: nor will the best part of our Citizens exert themselves for the purpose.—It is a great mistake to suppose that the paper we are to propose will govern the U. States. It is The men whom it will bring into the Govern<sup>t</sup> and interest in maintaining it that is to govern them. The paper will only mark out the mode & the form. Men are the substance and must do the business. All Gov<sup>t</sup> must be by force or influence. It is not the King of France—but 200,000 janisaries of power that govern that Kingdom. There will be no such force here; influence then must be substituted; and he would ask whether this could be done, if the members of the Legislature should be ineligible to offices of State; whether such a disqualification would not determine all the most influential men to stay at home, & prefer appointments within their respective States.

M<sup>r</sup> Wilson was by no means satisfied with the answer given by M<sup>r</sup> Elsworth to the argument as to the discouragement of merit. The members must either go a second time into the Legislature, and disqualify themselves—or say to their Constituents, we served you before only from the mercenary view of qualifying ourselves for offices, and have<sup>g</sup> answered this purpose we do not chuse to be again elected.

M<sup>r</sup> Gov<sup>r</sup>. Morris put the case of a war, and the Citizen the most capable of conducting it, happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the Course of the late contest for our liberties?

On question for postponing in order to take up M<sup>r</sup>. Pinkneys motion, it was lost,

N. H. ay. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. div<sup>d</sup>.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to insert, after “office,” except offices in the army or navy: but in that case their offices shall be vacated.

M<sup>r</sup>. Broom 2<sup>ds</sup> him.

M<sup>r</sup> Randolph had been & should continue uniformly opposed to the striking out of the clause; as opening a door for influence & corruption. No arguments had made any impression on him, but those which related to the case of war, and a co-existing incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by M<sup>r</sup> Gov<sup>r</sup> Morris.

M<sup>r</sup> Butler & M<sup>r</sup> Pinkney urged a general postponem<sup>t</sup> of 9. Sect. Art. VI. till it should be seen what powers would be vested in the Senate, when it would be more easy to judge of the expediency of allowing the officers of State to be chosen out of that body.—A general postponement was agreed to nem. con.

Art: VI. Sect. 10. taken up—“that members be paid by their respective States.”

M<sup>r</sup> Elseworth said that in reflecting on this subject he had been satisfied that too much dependence on the States would be produced by this mode of payment. He moved to strike it out and insert that they should “be paid out of the Treasury of the U. S. an allowance not exceeding (NA) dollars per day or the present value thereof.”

M<sup>r</sup> Gov<sup>r</sup>. Morris, remarked that if the members were to be paid by the States it would throw an unequal burden on the distant States, which would be unjust as the Legislature, was to be a national Assembly. He moved that the payment be out of the Nat<sup>l</sup> Treasury; leaving the quantum to the discretion of the Nat<sup>l</sup> Legislature. There could be no reason to fear that they would overpay themselves.

M<sup>r</sup>. Butler contended for payment by the States; particularly in the case of the Senate, who will be so long out of their respective States, that they will lose sight of their Constituents unless dependent on them for their support.

M<sup>r</sup> Langdon was ag<sup>st</sup> payment by the States. There would be some difficulty in fixing the sum; but it would be unjust to oblige the distant States to bear the expence of their members in travelling to and from the Seat of Gov<sup>t</sup>

M<sup>r</sup>. Madison. If the H. of Rep<sup>s</sup> is to be chosen *biennially*—and the Senate to be *constantly* dependent on the Legislatures which are chosen *annually*, he could not see any chance for that stability in the Gen<sup>l</sup> Gov<sup>t</sup>. the want of which was a principal evil in the State Gov<sup>ts</sup>. His fear was that the organization of the Gov<sup>t</sup>. supposing the Senate to be really independ<sup>t</sup>. for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the State Gov<sup>ts</sup> which separately had been found insufficient. The Senate was formed on the model of that of Maryl<sup>d</sup>. The Revisionary check, on that of N. York. What the effect of a union of these provisions might be, could not be foreseen. The enlargement of the sphere of the Government was indeed a circumstance which he thought would be favorable as he had on several occasions undertaken to show. He was however for fixing at least two extremes not to be exceeded by the Nat<sup>l</sup> Legisl<sup>re</sup> in the payment of themselves.

M<sup>r</sup> Gerry. There are difficulties on both sides. The observation of M<sup>r</sup> Butler has weight in it. On the other side, the State Legislatures may turn out the Senators by reducing their salaries. Such things have been practised.

Col. Mason. It has not yet been noticed that the clause as it now stands makes the House of Represent<sup>s</sup> also dependent on the State Legislatures: so that both houses will be made the instruments of the politics of the States whatever they may be.

M<sup>r</sup> Broom could see no danger in trusting the Gen<sup>l</sup> Legislature with the payment of themselves. The State Legislatures had this power, and no complaint had been made of it.

M<sup>r</sup> Sherman was not afraid that the Legislature would make their own wages too high; but too low, so that men ever so fit could not serve unless they were at the same time rich. He thought the best plan would be to fix a moderate allowance to be paid out of the Nat<sup>l</sup> Treas<sup>y</sup> and let the States make such additions as they might judge fit. He moved that 5 dollars per day be the sum, any further emoluments to be added by the States.

M<sup>r</sup> Carrol had been much surprised at seeing this clause in the Report. The dependence of both Houses on the State Legislatures is compleat; especially as the members of the former are eligible to State offices. The States can now say: if you do not comply with our wishes, we will starve you; if you do we will reward you. The new Gov<sup>t</sup> in this form was nothing more than a second edition of Congress in two volumes, instead of one, and perhaps with very few amendments—

M<sup>r</sup>. Dickenson took it for granted that all were convinced of the necessity of making the Gen<sup>l</sup> Gov<sup>t</sup>. independent of the prejudices, passions, and improper views of the State Legislatures. The contrary of This was effected by the section as it stands. On the other hand there were objections ag<sup>st</sup> taking a permanent standard as wheat which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the Nat<sup>l</sup>. Legislature. He proposed that an Act should be passed every 12 years by the Nat<sup>l</sup>. Legisl<sup>re</sup> settling the quantum of their wages. If the Gen<sup>l</sup>. Gov<sup>t</sup> should be left dependent on the State Legislatures, it would be happy for us if we had never met in this Room.

M<sup>r</sup>. Elseworth was not unwilling himself to trust the Legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, tho' perhaps not insuperable objections. He thought changes in the value of money, provided for by his motion in the words, "or the present value thereof."

M<sup>r</sup>. L. Martin. As the Senate is to represent the States, the members of it ought to be paid by the States.

M<sup>r</sup>. Carrol. The Senate was to represent & manage the affairs of the whole, and not to be the advocates of State interests. They ought then not to be dependent on nor paid by the States.

On the question for paying the Members of the Legislature out of the Nat<sup>l</sup> Treasury,  
N. H. ay. Mass. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. no.  
Geo. ay.

M<sup>r</sup> Elseworth moved that the pay be fixed at 5 doll<sup>rs</sup> or the present value thereof per day during their attendance & for every thirty miles in travelling to & from Congress.

M<sup>r</sup>. Strong preferred 4 dollars, leaving the Sts. at liberty to make additions.

On question for fixing the pay at 5 dollars.

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. no. S. C. no.  
Geo. no.

M<sup>r</sup> Dickenson proposed that the wages of the members of both houses s<sup>d</sup> be required to be the same.

M<sup>r</sup>. Broome seconded him.

M<sup>r</sup> Ghorum. this would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and in time of war perhaps to sit constantly. Their allowance should certainly be higher. The members of the Senates in the States are allowed more, than those of the other house.

M<sup>r</sup>. Dickenson withdrew his motion.

It was moved & agreed to amend the section by adding—“to be ascertained by law.”

The section (Art. VI. Sect. 10) as amended, agreed to nem. con.

Adj<sup>d</sup>.

## Wednesday August 15. In Convention.

Art: VI. Sect. 11. Agreed to nem. con.

Art: VI. Sect 12. taken up.

M<sup>r</sup>. Strong moved to amend the article so as to read—“Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Gov<sup>t</sup>. which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases.”

Col. Mason, 2<sup>ds</sup> the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

M<sup>r</sup>. Ghorum urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

M<sup>r</sup>. Govern<sup>r</sup>. Morris opposed it as unnecessary and inconvenient.

M<sup>r</sup>. Williamson, some think this restriction on the Senate essential to liberty, others think it of no importance. Why should not the former be indulged. he was for an efficient and stable Gov<sup>t</sup>.: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

M<sup>r</sup>. Rutledge 2<sup>ds</sup>. the motion.

M<sup>r</sup> Mercer should hereafter be ag<sup>st</sup> returning to a reconsideration of this section. He contended (alluding to M<sup>r</sup> Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Commerce with France.

Col. Mason, did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c, without legislative sanction. The cessions of the British Islands in W. Indies by Treaty alone were an example. If Spain should possess herself of Georgia therefore the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On the question for postponing Sect: 12. it passed in the affirmative.

N. H. ay. Mass. ay. C<sup>t</sup> no. N. J. no. Pen<sup>a</sup> no. Del: no. Mary<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison moved that all acts before they become laws should be submitted both to the Executive and supreme Judiciary Departments, that if either of these should object ? of each House, if both should object,  $\frac{3}{4}$  of each House, should be necessary to overrule the objections and give to the acts the force of law.1

M<sup>r</sup>. Wilson seconds the motion.

M<sup>r</sup> Pinkney opposed the interference of the Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

M<sup>r</sup>. Mercer heartily approved the motion. It is an axiom that the Judiciary ought to be separate from the Legislative; but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the

Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontroulable.

M<sup>r</sup>. Gerry. This motion comes to the same thing with what has been already negatived.

Question on the motion of M<sup>r</sup> Madison.

N. H. no. Mass. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. ay. Mary<sup>d</sup> ay. Virg<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Gov<sup>r</sup>. Morris regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public Credit, and the difficulty of supporting it without some strong barrier against the instability of legislative Assemblies. He suggested the idea of requiring three fourths of each house to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power as the Executive was now to be constituted (elected by Congress.) The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the National legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring  $\frac{3}{4}$  to repeal would, though not a compleat remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

M<sup>r</sup>. Dickenson was strongly impressed with the remark of M<sup>r</sup>. Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Arragon he observed became by degrees the lawgiver.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, suggested the expedient of an absolute negative in the Executive. He could not agree that the Judiciary which was part of the Executive, should be bound to say that a direct violation of the Constitution was law. A controul over the legislature might have its inconveniences. But view the danger on the other side. The most virtuous Citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government ought to be guarded ag<sup>st</sup>. The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsylv<sup>a</sup> points out the many invasions of the legislative department on the Executive numerous as the latter 1 is, within the short term of seven years, and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments ag<sup>st</sup>. it. If the Executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome where the Aristocracy overturned the throne, the consequence was different. He enlarged on the tendency of the legislative Authority to usurp on the Executive and wished the section to be postponed, in order to consider of some more effectual check than requiring ? only to overrule the negative of the Executive.



M<sup>r</sup>. Sharman. Can one man be trusted better than all the others if they all agree? This was neither wise nor safe. He disapproved of Judges meddling in politics and parties. We have gone far enough in forming the negative as it now stands.

M<sup>r</sup> Carrol. when the negative to be overruled by ? only was agreed to, the *quorum* was not fixed. He remarked that as a majority was now to be the quorum, 17. in the larger, and 8 in the smaller house might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controuling power however of the Executive could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

M<sup>r</sup> Ghorum saw no end to these difficulties and postponements. Some could not agree to the form of Government before the powers were defined. Others could not agree to the powers till it was seen how the Government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixt in the U. States.

M<sup>r</sup> Wilson; after viewing the subject with all the coolness and attention possible was most apprehensive of a dissolution of the Gov<sup>t</sup>. from the legislature swallowing up all the other powers. He remarked that the prejudices ag<sup>st</sup> the Executive resulted from a misapplication of the adage that the parliament was the palladium of liberty. Where the Executive was really formidable, *King* and *Tyrant*, were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the Executive was not formidable, the two last were most properly associated. After the destruction of the King in Great Britain, a more pure and unmixed tyranny sprang up in the parliament than had been exercised by the monarch. He insisted that we had not guarded ag<sup>st</sup> the danger on this side by a sufficient self-defensive power either to the Executive or Judiciary department.

M<sup>r</sup> Rutlidge was strenuous ag<sup>st</sup> postponing; and complained much of the tediousness of the proceedings.

M<sup>r</sup>. Elseworth held the same language. We grow more & more sceptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative: Del: & Mary<sup>d</sup>. only being in the affirmative.

M<sup>r</sup>. Williamson moved to change, “? of each House” into “ $\frac{3}{4}$ ” as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the Presid<sup>t</sup> alone, to admitting the Judges into the business of legislation.

M<sup>r</sup>. Wilson 2<sup>ds</sup>. the motion; referring to and repeating the ideas of M<sup>r</sup> Carroll.

On this motion for  $\frac{3}{4}$ , instead of two-thirds; it passed in the affirmative.

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. no. Pen<sup>a</sup>. div<sup>d</sup> Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

M<sup>f</sup> Madison, observing that if the negative of the President was confined to *bills*; it would be evaded by acts under the form and name of Resolutions, votes &c, proposed that “or resolve” should be added after “*bill*” in the beginning of sect 13. with an exception as to votes of adjournment &c. After a short and rather confused conversation on the subject, the question was put & rejected, the States being as follows,

N. H. no. Mass. ay. C<sup>t</sup> no. N. J. no. Pen<sup>a</sup>. no. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

“*Ten* days (Sundays excepted)” instead of “*seven*” were allowed to the President for returning bills with his objections N. H. & Mas: only voting ag<sup>st</sup> it.

The 13 Sect: of Art. VI as amended was then agreed to.

Adjourned.

### Thursday. August 16. In Convention.

M<sup>f</sup>. Randolph having thrown into a new form the motion putting votes, Resolutions &c. on a footing with Bills, renewed it as follows—“Every order resolution or vote, to which the concurrence of the Senate & House of Rep<sup>s</sup>. may be necessary (except on a question of adjournment and in the cases hereinafter mentioned) shall be presented to the President for his revision; and before the same shall have force shall be approved by him, or being disapproved by him shall be repassed by the Senate & House of Rep<sup>s</sup> according to the rules & limitations prescribed in the case of a Bill.”

M<sup>f</sup>. Sherman thought it unnecessary, except as to votes taking money out of the Treasury which might be provided for in another place.

On Question as moved by M<sup>f</sup>. Randolph.

N. H. ay. Mass. not present. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The Amendment was made section 14. of Art. VI.

Art: VII. Sect. 1. taken up.

M<sup>f</sup>. L. Martin asked what was meant by the Committee of detail in the expression,—“*duties*” and “*imposts*.” If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.

M<sup>f</sup>. Wilson. *duties* are applicable to many objects to which the word *imposts* does not relate. The latter are appropriated to commerce; the former extend to a variety of objects, as stamp duties &c.

M<sup>r</sup>. Carroll reminded the Convention of the great difference of interests among the States, and doubts the propriety in that point of view of letting a majority be a quorum.

M<sup>r</sup> Mason urged the necessity of connecting with the power of levying taxes duties &c, the prohibition in Sect. 4 Art. VI that no tax should be laid on exports. He was unwilling to trust to its being done in a future article. He hoped the North<sup>n</sup> States did not mean to deny the Southern this security. It would hereafter be as desirable to the former when the latter should become the most populous. He professed his jealousy for the productions of the Southern or as he called them, the staple States. He moved to insert the following amendment: "provided that no tax duty or imposition shall be laid by the Legislature of the U. States on articles exported from any State"

M<sup>r</sup>. Sherman had no objection to the proviso here, other than it would derange the parts of the report as made by the Committee, to take them in such an order.

M<sup>r</sup> Rutledge. It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent part relating to negroes should also be agreed to.

M<sup>r</sup> Gouverneur Morris considered such a proviso as inadmissible any where. It was so radically objectionable, that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without taxing exports; and that taxes on exports would be often the most easy and proper of the two.

M<sup>r</sup>. Madison. 1. the power of laying taxes on exports is proper in itself, and as the States cannot with propriety exercise it separately, it ought to be vested in them collectively. 2. it might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets, as Tob<sup>o</sup>. &c. The contract between the French Farmers Gen<sup>l</sup>. and M<sup>r</sup>. Morris stipulating that if taxes s<sup>d</sup>. be laid in america on the export of Tob<sup>o</sup> they s<sup>d</sup>. be paid by the Farmers, shewed that it was understood by them, that the price would be thereby raised in America, and consequently the taxes be paid by the European Consumer. 3. it would be unjust to the States whose produce was exported by their neighbours, to leave it subject to be taxed by the latter. This was a grievance which had already filled N. H. Con<sup>t</sup> N. Jer<sup>y</sup>. Del: and N. Carolina with loud complaints, as it related to imports, and they would be equally authorized by taxes by the States on exports. 4. The South<sup>n</sup> States being most in danger and most needing naval protection, could the less complain if the burthen should be somewhat heaviest on them. 5. we are not providing for the present moment only, and time will equalize the situation of the States in this matter. He was for these reasons ag<sup>st</sup> the motion.

M<sup>r</sup> Williamson considered the clause proposed ag<sup>st</sup>. taxes on exports as reasonable and necessary.

M<sup>r</sup>. Elsworth was ag<sup>st</sup>. Taxing exports; but thought the prohibition stood in the most proper place, and was ag<sup>st</sup>. deranging the order reported by the Committee.

M<sup>r</sup>. Wilson was decidedly ag<sup>st</sup>. prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving N. Jersey Connecticut &c any longer subject to the exactions of their commercial neighbours.

M<sup>r</sup> Gerry thought the legislature could not be trusted with such a power. It might ruin the Country. It might be exercised partially, raising one and depressing another part of it.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. However the legislative power may be formed, it will if disposed be able to ruin the Country. He considered the taxing of exports to be in many cases highly politic Virginia has found her account in taxing Tobacco. All Countries having peculiar articles tax the exportation of them; as France her wines and brandies. A tax here on lumber, would fall on the W. Indies & punish their restrictions on our trade. The same is true of live stock and in some degree of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects and you push them into Revolts.

M<sup>r</sup>. Mercer was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation. The States had now a right where their situation permitted, to tax both the imports and the exports of their uncommercial neighbours. It was enough for them to sacrifice one half of it. It had been said the Southern States had most need of naval protection. The reverse was the case. Were it not for promoting the carrying trade of the North<sup>n</sup>. States, the South<sup>n</sup>. States could let the trade go into foreign bottoms, where it would not need our protection. Virginia by taxing her tobacco had given an advantage to that of Maryland.

M<sup>r</sup> Sherman. To examine and compare the States in relation to imports and exports will be opening a boundless field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial States was guarded ag<sup>st</sup>. by the power to regulate trade between the States. As to compelling foreigners, that might be done by regulating trade in general. The Government would not be trusted with such a power. Objections are most likely to be excited by considerations relating to taxes & money. A power to tax exports would shipwreck the whole.

M<sup>r</sup>. Carrol was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed that the question concerning exports sh<sup>d</sup>. lie over for the place in which the exception stood in the report: Mary<sup>d</sup>. alone voting ag<sup>st</sup>. it

Sect: 1. (Art. VII) agreed to; M<sup>r</sup>. Gerry alone answering, no.

Clause for regulating commerce with foreign nations &c. agreed to nem. con.

for coining money. ag<sup>d</sup> to nem. con.

for regulating foreign coin. d<sup>o</sup> d<sup>o</sup>

for fixing standard of weights & measures. d<sup>o</sup> d<sup>o</sup>

“To establish post-offices,” M<sup>r</sup> Gerry moved to add, and post-roads. M<sup>r</sup> Mercer 2<sup>ded</sup> & on question

N. H. no. Mass. ay. C<sup>t</sup> no. N. J. no. Pen<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup> Gov<sup>r</sup>. Morris moved to strike out “and emit bills on the credit of the U. States”—If the United States had credit such bills would be unnecessary; if they had not, unjust & useless.

M<sup>r</sup> Butler, 2<sup>ds</sup> the motion.

M<sup>r</sup> Madison, will it not be sufficient to prohibit the making them a *tender*? This will remove the temptation to emit them with unjust views. And promissory notes in that shape may in some emergencies be best.

M<sup>r</sup> Gov<sup>r</sup> Morris, striking out the words will leave room still for notes of a *responsible* minister which will do all the good without the mischief. The Monied interest will oppose the plan of Government, if paper emissions be not prohibited.

M<sup>r</sup>. Ghorum was for striking out, without inserting any prohibition, if the words stand they may suggest and lead to the measure.

Col. Mason had doubts on the subject. Cong<sup>s</sup>. he thought would not have the power unless it were expressed. Though he had a mortal hatred to paper money, yet as he could not foresee all emergencies, he was unwilling to tie the hands of the Legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr. Ghorum. The power as far as it will be necessary or safe, is involved in that of borrowing.

M<sup>r</sup>. Mercer was a friend to paper money, though in the present state & temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point. It was impolitic also to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of Citizens.

M<sup>r</sup> Elseworth thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made, were now fresh in the public mind and had excited the disgust of all the respectable part of

America. By withholding the power from the new Govern<sup>t</sup>. more friends of influence would be gained to it than by almost any thing else. Paper money can in no case be necessary. Give the Government credit, and other resources will offer. The power may do harm, never good.

M<sup>r</sup> Randolph, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

M<sup>r</sup> Wilson. It will have a most salutary influence on the credit of the U. States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered. And as long as it can be resorted to, it will be a bar to other resources.

M<sup>r</sup> Butler remarked that paper was a legal tender in no Country in Europe. He was urgent for disarming the Government of such a power.

M<sup>r</sup> Mason was still averse to tying the hands of the Legislature *altogether*. If there was no example in Europe as just remarked it might be observed on the other side, that there was none in which the Government was restrained on this head.

M<sup>r</sup> Read, thought the words, if not struck out, would be as alarming as the mark of the Beast in Revelations.

M<sup>r</sup> Langdon had rather reject the whole plan than retain the three words (“and emit bills”)

On the motion for striking out

N. H. ay. Mass. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup> ay. 1 N. C. ay. S. C. ay. Geo. ay.

The clause for borrowing money, agreed to nem. con.

Adj<sup>d</sup>.

## Friday August 17<sup>Th</sup> In Convention

Art. VII. Sect. 1. resumed. on the clause, “to appoint Treasurer by ballot,”

M<sup>r</sup>. Ghorum moved to insert “joint” before ballot, as more convenient as well as reasonable, than to require the separate concurrence of the Senate.

M<sup>r</sup>. Pinkney 2<sup>ds</sup> the motion. M<sup>r</sup>. Sherman opposed it as favoring the larger States.

M<sup>r</sup>. Read moved to strike out the clause, leaving the appointment of the Treasurer as of other officers to the Executive. The Legislature was an improper body for appointments. Those of the State legislatures were a proof of it. The Executive being responsible would make a good choice.

M<sup>r</sup>. Mercer 2<sup>ds</sup>. the motion of M<sup>r</sup> Read.

On the motion for inserting the word “joint” before ballot

N. H. ay. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Col. Mason in opposition to M<sup>r</sup>. Reads motion desired it might be considered to whom the money would belong; if to the people, the legislature representing the people ought to appoint the keepers of it.

On striking out the clause as amended by inserting “Joint”

N. H. no. Mass. no. C<sup>t</sup> no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

“To constitute inferior tribunals” agreed to nem. con.

“To make rules as to captures on land & water” d<sup>o</sup>. d<sup>o</sup>.

“To declare the law and punishment of piracies and felonies &c &c” considered.

M<sup>r</sup>. Madison moved to strike out “and punishment &c.”

M<sup>r</sup>. Mason doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power in all these cases wholly from the States.

M<sup>r</sup>. Govern<sup>r</sup>. Morris thought it would be necessary to extend the authority further, so as to provide for the punishment of counterfeiting in general. Bills of exchange for example might be forged in one State and carried into another.

It was suggested by some other member that *foreign* paper might be counterfeited by Citizens; and that it might be politic to provide by national authority for the punishment of it.

M<sup>r</sup>. Randolph did not conceive that expunging “the punishment” would be a constructive exclusion of the power. He doubted only the efficacy of the word “declare.”

M<sup>r</sup>. Wilson was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws; though necessary in enacting & expounding them.

On motion for striking out “and punishment” as moved by M<sup>r</sup>. Madison

N. H. no. Mass. ay. C<sup>t</sup>. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup> Morris moved to strike out “declare the law” and insert “punish” before “piracies,” and on the question

N. H. ay. Mass. ay. C<sup>t</sup> no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison & M<sup>r</sup>. Randolph moved to insert “define &,” before “punish.”

M<sup>r</sup>. Wilson thought “felonies” sufficiently defined by common law.

M<sup>r</sup>. Dickenson concurred with M<sup>r</sup>. Wilson.

M<sup>r</sup> Mercer was in favor of the amendment.

M<sup>r</sup>. Madison. felony at common law is vague. It is also defective. One defect is supplied by Stat: of Anne as to running away with vessels which at com<sup>on</sup> law was a breach of trust only. Besides no foreign law should be a standard farther than is expressly adopted. If the laws of the States were to prevail on this subject, the Citizens of different States would be subject to different punishments for the same offence at Sea. There would be neither uniformity nor stability in the law—The proper remedy for all these difficulties was to vest the power proposed by the term “define” in the Nat<sup>l</sup> legislature.

M<sup>r</sup>. Gov<sup>r</sup>. Morris would prefer *designate* to *define*, the latter being as he conceived, limited to the preexisting meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies & of piracies. The motion of M<sup>r</sup>. M. & M<sup>r</sup>. R was agreed to.

M<sup>r</sup>. Elseworth enlarged the motion so as to read “to define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the U. States, and offences ag<sup>st</sup>. the law of Nations” which was agreed to nem. con.

“To subdue a rebellion in any State, on the application of its legislature”

M<sup>r</sup>. Pinkney moved to strike out, “on the application of its legislature.”

M<sup>r</sup>. Gov<sup>r</sup> Morris 2<sup>ds</sup>.

M<sup>r</sup>. L. Martin opposed it as giving a dangerous & unnecessary power. The consent of the State ought to precede the introduction of any extraneous force whatever.

M<sup>r</sup>. Mercer supported the opposition of M<sup>r</sup> Martin.

M<sup>r</sup>. Elseworth proposed to add after “legislature,” “or Executive.”

M<sup>r</sup> Gov<sup>r</sup>. Morris. The Executive may possibly be at the head of the Rebellion. The Gen<sup>l</sup>. Gov<sup>t</sup> should enforce obedience in all cases where it may be necessary.

M<sup>r</sup>. Elseworth. In many cases The Gen<sup>l</sup> Gov<sup>t</sup>. ought not to be able to interpose, unless called upon. He was willing to vary his motion so as to read “or without it when the legislature cannot meet.”



M<sup>r</sup>. Gerry was ag<sup>st</sup> letting loose the myrmidons of the U. States on a State without its own consent. The States will be the best Judges in such cases. More blood would have been spilt in Mass<sup>ts</sup>. in the late insurrection, if the Gen<sup>l</sup> Authority had intermeddled.

M<sup>r</sup>. Langdon was for striking out as moved by M<sup>r</sup>. Pinkney. The apprehension of the national force, will have a salutary effect in preventing insurrections.

M<sup>r</sup>. Randolph. If the Nat<sup>l</sup>. Legislature is to judge whether the State legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of M<sup>r</sup>. Pinkney.

M<sup>r</sup>. Gov<sup>r</sup> Morris. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The legislature may surely be trusted with such a power to preserve the public tranquillity.

On the motion to add, “or without it (application) when the legislature cannot meet”

N. H. ay. Mass. no. C<sup>t</sup>. ay. P<sup>a</sup>. div<sup>d</sup>. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. div<sup>d</sup>. S. C. ay. Geo. ay. So agreed to.

M<sup>r</sup>. Madison and M<sup>r</sup>. Dickenson moved to insert as explanatory, after “State”—“against the Government thereof”. There might be a rebellion ag<sup>st</sup>. the U. States—which was agreed to nem. con.

On the clause as amended.

N. H. ay. Mass. 1 abs<sup>t</sup>. C<sup>t</sup>. ay. Pen. abs<sup>t</sup>. Del. no. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. no. S. C. no. Georg. ay—so it was lost.

“To make war”

M<sup>r</sup>. Pinkney opposed the vesting this power in the Legislature. Its proceedings were too slow. It w<sup>d</sup>. meet but once a year. the H<sup>s</sup>. of Rep<sup>s</sup>. would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the States are equally represented in the Senate, so as to give no advantage to the large States, the power will notwithstanding be safe, as the small have their all at stake in such cases as well as the large States. It would be singular for one authority to make war, and another peace.

M<sup>r</sup> Butler. The Objections ag<sup>st</sup>. the Legislature lie in a great degree ag<sup>st</sup>. the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.

M<sup>r</sup>. Madison and M<sup>r</sup>. Gerry moved to insert “*declare*,” striking out “*make*” war; leaving to the Executive the power to repel sudden attacks.

M<sup>r</sup> Sharman thought it stood very well. The Executive sh<sup>d</sup>. be able to repel and not to commence war. “Make” is better than “declare” the latter narrowing the power too much.

M<sup>r</sup>. Gerry never expected to hear in a republic a motion to empower the Executive alone to declare war.

M<sup>r</sup>. Elsworth. There is a material difference between the cases of making *war* and making *peace*. It sh<sup>d</sup> be more easy to get out of war, than into it War also is a simple and overt declaration, peace attended with intricate & secret negotiations.

M<sup>r</sup>. Mason was ag<sup>st</sup>. giving the power of war to the Executive because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging rather than facilitating war; but for facilitating peace. He preferred “*declare*” to “*make*.”

On the motion to insert “*declare*”—in place of “*make*,” it was agreed to.

N. H. no. Mass. abs<sup>t</sup>. Con<sup>t</sup>. no. 1 P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Pinkney’s motion to strike out whole clause, disag<sup>d</sup> to without call of States.

M<sup>r</sup>. Butler moved to give the Legislature the power of peace, as they were to have that of war.

M<sup>r</sup>. Gerry 2<sup>ds</sup>. him. 8 Senators may possibly exercise the power if vested in that body, and 14 if all should be present; and may consequently give up part of the U. States. The Senate are more liable to be corrupted by an Enemy than the whole Legislature.

On the motion for adding “and peace” after “war,”

N. H. no. Mas. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

Adjourned.

## Saturday August 18. In Convention

M<sup>r</sup>. Madison submitted, in order to be referred to the Committee of detail the following powers as proper to be added to those of the General Legislature.

“To dispose of the unappropriated lands of the U. States”

“To institute temporary Governments for new States arising therein”

“To regulate affairs with the Indians as well within as without the limits of the U. States.

“To exercise exclusively Legislative authority at the seat of the General Government, and over a district around the same, not exceeding — square miles; the Consent of the Legislature of the State or States comprising the same, being first obtained”

“To grant charters of incorporation in cases where the public good may require them, and the authority of a single State may be incompetent”

“To secure to literary authors their copy rights for a limited time”

“To establish an University”

“To encourage by premiums & provisions, the advancement of useful knowledge and discoveries”

“To authorize the Executive to procure and hold for the use of the U. S. landed property for the erection of Forts, magazines, and other necessary buildings”

These propositions were referred to the Committee of detail which had prepared the Report and at the same time the following which were moved by M<sup>r</sup>. Pinkney:—in both cases unanimously:

“To fix and permanently establish the seat of Government of the U. S. in which they shall possess the exclusive right of soil & jurisdiction”

“To establish seminaries for the promotion of literature and the arts & sciences.”

“To grant charters of incorporation”

“To grant patents for useful inventions”

“To secure to Authors exclusive rights for a certain time”

“To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and manufactures”

“That funds which shall be appropriated for the payment of public Creditors, shall not during the time of such appropriation, be diverted or applied to any other purpose and that the Committee prepare a clause or clauses for restraining the Legislature of the U. S. from establishing a perpetual revenue”

“To secure the payment of the public debt”

“To secure all creditors under the new Constitution from a violation of the public faith when pledged by the authority of the Legislature”

“To grant letters of mark and reprisal”

“To regulate Stages on the post roads”

M<sup>r</sup>. Mason introduced the subject of regulating the militia. He thought such a power necessary to be given to the Gen<sup>l</sup>. Government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The Militia ought therefore to be the more effectually prepared for the public defence. Thirteen States will never concur in any one system, if the disciplining of the Militia be left in their hands. If they will not give up the power over the whole, they probably will over a part as a select militia. He moved as an addition to the propositions just referred to the Committee of detail, & to be referred in like manner, “a power to regulate the militia.”

M<sup>r</sup> Gerry remarked that some provision ought to be made in favor of public Securities, and something inserted concerning letters of marque, which he thought not included in the power of war. He proposed that these subjects should also go to a Committee.

M<sup>r</sup>. Rutledge moved to refer a clause “that funds appropriated to public creditors should not be diverted to other purposes.”

M<sup>r</sup> Mason was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue which must of necessity subvert the liberty of any country. If it be objected to on the principle of M<sup>r</sup>. Rutledge’s motion that public Credit may require perpetual provisions, that case might be excepted; it being declared that in other cases, no taxes should be laid for a longer term than — years. He considered the caution observed in Great Britain on this point as the paladium of public liberty.

M<sup>r</sup>. Rutledge’s motion was referred—He then moved that a Grand Committee be appointed to consider the necessity and expediency of the U. States assuming all the State debts—A regular settlement between the Union & the several States would never take place. The assumption would be just as the State debts were contracted in the common defence. It was necessary, as the taxes on imports the only sure source of revenue were to be given up to the Union. It was politic, as by disburdening the people of the State debts it would conciliate them to the plan.

M<sup>r</sup>. King and M<sup>r</sup>. Pinkney seconded the motion. (Col. Mason interposed a motion that the Committee prepare a clause for restraining perpetual revenue, which was agreed to nem. con.)

M<sup>r</sup>. Sherman thought it would be better to authorize the Legislature to assume the State debts, than to say positively it should be done. He considered the measure as just and that it would have a good effect to say something about the matter.

M<sup>r</sup>. Elsworth differed from M<sup>r</sup> Sherman. As far as the State debts ought in equity to be assumed, he conceived that they might and would be so.

M<sup>r</sup>. Pinkney observed that a great part of the State debts were of such a nature that although in point of policy and true equity they ought, yet would they not be viewed in the light of federal expenditures.

M<sup>r</sup>. King thought the matter of more consequence than M<sup>r</sup>. Elseworth seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy which had been mentioned, it might be remarked that the State Creditors an active and formidable party would otherwise be opposed to a plan which transferred to the Union the best resources of the States without transferring the State debts at the same time. The State Creditors had generally been the strongest foes to the impostplan. The State debts probably were of greater amount than the federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a Committee

On M<sup>r</sup>. Rutledge's motion, that a Com<sup>e</sup>. be appointed to consider of the assumption &c N. H. no. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. div<sup>d</sup>. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Gerry's motion to provide for public securities, for stages on post roads, and for letters of marque & reprisal, were committed nem. con.

M<sup>r</sup> King suggested that all unlocated lands of particular States ought to be given up if State debts were to be assumed:—M<sup>r</sup>. Williamson concurred in the idea.

A Grand Committee was appointed consisting of M<sup>r</sup>. Langdon, M<sup>r</sup>. King, M<sup>r</sup>. Sharman, M<sup>r</sup> Livingston, M<sup>r</sup>. Clymer, M<sup>r</sup>. Dickenson, M<sup>r</sup> M<sup>c</sup>.Henry, M<sup>r</sup>. Mason, M<sup>r</sup>. Williamson, M<sup>r</sup>. C. C. Pinkney, M<sup>r</sup>. Baldwin.

M<sup>r</sup>. Rutledge remarked on the length of the Session, the probable impatience of the public and the extreme anxiety of many members of the Convention to bring the business to an end; concluding with a motion that the Convention meet henceforward precisely at 10 Oc A. M. and that precisely at 4 Oc P. M. the President adjourn the House without motion for the purpose, and that no motion to adjourn sooner be allowed

On this question

N. H. ay. Mass. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Elseworth observed that a Council had not yet been provided for the President. He conceived there ought to be one. His proposition was that it should be composed of the President of the Senate, the Chief Justice, and the ministers as they might be estab<sup>d</sup>. for the departments of foreign & domestic affairs, war finance and marine, who should advise but not conclude the President.

M<sup>r</sup>. Pinkney wished the proposition to lie over, as notice had been given for a like purpose by M<sup>r</sup>. Gov<sup>r</sup> Morris who was not then on the floor. His own idea was that the President sh<sup>d</sup>. be authorized to call for advice or not as he might chuse. Given him an able Council and it will thwart him; a weak one and he will shelter himself under their sanction.

M<sup>r</sup>. Gerry was ag<sup>st</sup>. letting the heads of the Departments, particularly of finance have any thing to do in business connected with legislation. He mentioned the Chief Justice also as particularly exceptionable. These men will also be so taken up with other matters as to neglect their own proper duties.

M<sup>r</sup>. Dickenson urged that the great appointments should be made by the Legislature in which case they might properly be consulted by the Executive, but not if made by the Executive himself—This subject by general consent lay over; & the House proceeded to the clause “To raise armies.”

M<sup>r</sup> Ghorum moved to add “and support” after “raise.” Agreed to nem. con. and then the clause was agreed to nem. con. as amended

M<sup>r</sup> Gerry took notice that there was no check here ag<sup>st</sup>. standing armies in time of peace. The existing Cong<sup>s</sup> is so constructed that it cannot of itself maintain an army. This w<sup>d</sup>. not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making ag<sup>st</sup> it. (he seemed to allude to the activity of the Gov<sup>t</sup> of N. York at this crisis in disciplining the militia of that State.) He thought an army dangerous in time of peace & could never consent to a power to keep up an indefinite number. He proposed that there shall not be kept up in time of peace more than — thousand troops. His idea was that the blank should be filled with two or three thousand.

Instead of “to build and equip fleets”—“to provide and maintain a navy” agreed to nem. con. as a more convenient definition of the power.

“To make rules for the Government and regulation of the land & naval forces,” added from the existing Articles of Confederation.

M<sup>r</sup>. L. Martin and M<sup>r</sup>. Gerry now regularly moved “provided that in time of peace the army shall not consist of more than — thousand men.”

Gen<sup>l</sup> Pinkney asked whether no troops were ever to be raised untill an attack should be made on us?

M<sup>r</sup>. Gerry. if there be no restriction, a few States may establish a military Gov<sup>t</sup>.

M<sup>r</sup>. Williamson, reminded him of M<sup>r</sup>. Mason’s motion for limiting the appropriation of revenue as the best guard in this case.

M<sup>r</sup>. Langdon saw no room for M<sup>r</sup>. Gerry’s distrust of the Representatives of the people.

M<sup>r</sup>. Dayton. preparations for war are generally made in peace; and a standing force of some sort may, for ought we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of M<sup>r</sup>. Martin and M<sup>r</sup>. Gerry was disagreed to nem. con.

M<sup>r</sup>. Mason moved as an additional power “to make laws for the regulation and discipline of the militia of the several States, reserving to the States the appointment of the officers.” He considered uniformity as necessary in the regulation of the Militia throughout the Union.

Gen<sup>l</sup>. Pinkney mentioned a case during the war in which a dissimilarity in the militia of different States had produced the most serious mischiefs. Uniformity was essential. The States would never keep up a proper discipline of their militia.

M<sup>r</sup>. Elseworth was for going as far in submitting the militia to the Gen<sup>l</sup>. Government as might be necessary, but thought the motion of M<sup>r</sup> Mason went too far. He moved that the militia should have the same arms & exercise and be under rules established by the Gen<sup>l</sup> Gov<sup>t</sup>. when in actual service of the U. States and when States neglect to provide regulations for militia, it sh<sup>d</sup> be regulated & established by the Legislature of U. S. The whole authority over the militia ought by no means to be taken away from the States whose consequence would pine away to nothing after such a sacrifice of power. He thought the Gen<sup>l</sup>. Authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the States to give the Militia out of their hands.

M<sup>r</sup>. Sherman 2<sup>ds</sup>. the motion.

M<sup>r</sup>. Dickenson. We are come now to a most important matter, that of the sword. His opinion was that the States never would nor ought to give up all authority over the Militia. He proposed to restrain the general power to one fourth part at a time, which by rotation would discipline the whole Militia.

M<sup>r</sup>. Butler urged the necessity of submitting the whole Militia to the general Authority, which had the care of the general defence.

M<sup>r</sup>. Mason. had suggested the idea of a select militia. He was led to think that would be in fact as much as the Gen<sup>l</sup>. Gov<sup>t</sup>. could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power “to make laws for regulating and disciplining the militia, not exceeding one tenth part in any one year, and reserving the appointment of officers to the States.”

Gen<sup>l</sup> Pinkney, renewed M<sup>r</sup>. Mason’s original motion. For a part to be under the Gen<sup>l</sup>. and a part under the State Gov<sup>ts</sup>. w<sup>d</sup>. be an incurable evil. he saw no room for such distrust of the Gen<sup>l</sup> Gov<sup>t</sup>.

M<sup>r</sup>. Langdon 2<sup>ds</sup> General Pinkney’s renewal. He saw no more reason to be afraid of the Gen<sup>l</sup> Gov<sup>t</sup> than of the State Gov<sup>ts</sup>. He was more apprehensive of the confusion of the different authorities on this subject, than of either.

M<sup>r</sup> Madison thought the regulation of the Militia naturally appertaining to the authority charged with the public defence. It did not seem in its nature to be divisible between two distinct authorities. If the States would trust the Gen<sup>l</sup>. Gov<sup>t</sup>. with a power over the public treasure, they would from the same consideration of necessity grant it

the direction of the public force. Those who had a full view of the public situation w<sup>d</sup>. from a sense of the danger, guard ag<sup>st</sup>. it: the States would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

M<sup>r</sup>. Elseworth, considered the idea of a select militia as impracticable; & if it were not it would be followed by a ruinous declension of the great body of the Militia. The States would never submit to the same militia laws. Three or four shillings as a penalty will enforce better obedience in New England, than forty lashes in some other places.

M<sup>r</sup> Pinkney thought the power such an one as could not be abused, and that the States would see the necessity of surrendering it. He had however but a scanty faith in Militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.1

M<sup>r</sup> Sherman, took notice that the States might want their militia for defence ag<sup>st</sup> invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

M<sup>r</sup>. Gerry thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the Gen<sup>l</sup>. Gov<sup>t</sup>. as some gentlemen possessed, and believed it would be found that the States have not.

Col. Mason, thought there was great weight in the remarks of M<sup>r</sup> Sherman, and moved an exception to his motion “of such part of the militia as might be required by the States for their own use.”

M<sup>r</sup>. Read doubted the propriety of leaving the appointment of the Militia officers in the States. In some States they are elected by the Legislatures; in others by the people themselves. He thought at least an appointment by the State Executives ought to be insisted on.

On committing to the grand Committee last appointed, the latter motion of Col. Mason, & the original one revived by Ge<sup>l</sup>. Pinkney.

N. H. ay. Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Adjourned.

## Monday August 20. In Convention

M<sup>r</sup> Pinkney submitted to the House, in order to be referred to the Committee of detail, the following propositions—“Each House shall be the judge of its own privileges, and



shall have authority to punish by imprisonment every person violating the same, or who, in the place where the Legislature may be sitting and during the time of its Session, shall threaten any of its members for any thing said or done in the House; or who shall assault any of them therefor—or who shall assault or arrest any witness or other person ordered to attend either of the Houses in his way going or returning; or who shall rescue any person arrested by their order.”

“Each branch of the Legislature, as well as the supreme Executive shall have authority to require the opinions of the supreme Judicial Court upon important questions of law, and upon solemn occasions”

“The privileges and benefit of the Writ of Habeas corpus shall be enjoyed in this Government in the most expeditious and ample manner; and shall not be suspended by the Legislature except upon the most urgent and pressing occasions, and for a limited time not exceeding — months.”

“The liberty of the Press, shall be inviolably preserved”

“No troops shall be kept up in time of peace, but by consent of the Legislature”

“The military shall always be subordinate to the Civil power, and no grants of money shall be made by the Legislature for supporting military Land forces, for more than one year at a time”

“No soldier shall be quartered in any house in time of peace without consent of the owner.”

“No person holding the office of President of the U. S. a Judge of their supreme Court, Secretary for the department of Foreign Affairs, of Finance, of Marine, of War, or of —, shall be capable of holding at the same time any other office of Trust or emolument under the U. S. or an individual State.”

“No religious test or qualification shall ever be annexed to any oath of office under the authority of the U. S.”

“The U. S. shall be forever considered as one Body corporate and politic in law, and entitled to all the rights privileges and immunities, which to Bodies corporate ought to or do appertain”

“The Legislature of the U. S. shall have the power of making the Great Seal which shall be kept by the President of the U. S. or in his absence by the President of the Senate, to be used by them as the occasion may require.—It shall be called the Great Seal of the U. S. and shall be affixed to all laws.”

“All commissions and writs shall run in the name of the U. S.”

“The Jurisdiction of the Supreme Court shall be extended to all controversies between the U. S. and an individual State, or the U. S. and the Citizens of an individual State”

These propositions were referred to the Committee of detail without debate or consideration of them by the House.

M<sup>r</sup>. Gov<sup>r</sup> Morris 2<sup>ded</sup> by M<sup>r</sup>. Pinkney, submitted the following propositions which were in like manner referred to the Committee of Detail.

“To assist the President in conducting the Public affairs there shall be a Council of State composed of the following officers— 1. The Chief Justice of the Supreme Court, who shall from time to time recommend such alterations of and additions to the laws of the U. S. as may in his opinion be necessary to the due administration of Justice, and such as may promote useful learning and inculcate sound morality throughout the Union: He shall be President of the Council in the absence of the President.

2. The Secretary of Domestic affairs who shall be appointed by the President and hold his office during pleasure. It shall be his duty to attend to matters of general police, the State of Agriculture and manufactures, the opening of roads and navigations, and the facilitating communications thro’ the U. States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

3. The Secretary of Commerce and Finance who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare & report plans of revenue and for the regulation of expenditures, and also to recommend such things as may in his Judgment promote the commercial interests of the U. S.

4. The Secretary of foreign affairs who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign Ministers, prepare plans of Treaties, & consider such as may be transmitted from abroad, and generally to attend to the interests of the U. S. in their connections with foreign powers.

5. The Secretary of War who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the war Department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals & the like—also in time of war to prepare & recommend plans of offence and Defence.

6. The Secretary of the Marine who shall also be appointed during pleasure—It shall be his duty to superintend every thing relating to the Marine Department, the public ships, Dock Yards, naval Stores & arsenals—also in the time of war to prepare and recommend plans of offence and defence.

The President shall also appoint a Secretary of State to hold his office during pleasure; who shall be Secretary to the Council of State, and also public Secretary to the President. It shall be his duty to prepare all Public dispatches from the President which he shall countersign.

The President may from time to time submit any matter to the discussion of the Council of State, and he may require the written opinions of any one or more of the

members: But he shall in all cases exercise his own judgment, and either Conform to such opinions or not as he may think proper; and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular Department.

Each of the officers above mentioned shall be liable to impeachment & removal from office for neglect of duty malversation or corruption”

M<sup>r</sup> Gerry moved “that the Committee be instructed to report proper qualifications for the President, and a mode of trying the Supreme Judges in cases of impeachment.

The clause “to call forth the aid of the Militia &c. was postponed till report should be made as to the power over the Militia referred yesterday to the Grand Committee of eleven.

M<sup>r</sup>. Mason moved to enable Congress “to enact sumptuary laws.” No Government can be maintained unless the manners be made consonant to it. Such a discretionary power may do good and can do no harm. A proper regulation of excises & of trade may do a great deal but it is best to have an express provision. It was objected to sumptuary laws that they were contrary to nature. This was a vulgar error. The love of distinction it is true is natural; but the object of sumptuary laws is not to extinguish this principle but to give it a proper direction.

M<sup>r</sup>. Elseworth. The best remedy is to enforce taxes & debts. As far as the regulation of eating & drinking can be reasonable, it is provided for in the power of taxation.

M<sup>r</sup> Gov<sup>r</sup>. Morris argued that sumptuary laws tended to create a landed nobility, by fixing in the great-landholders and their posterity their present possessions.

M<sup>r</sup>. Gerry, the law of necessity is the best sumptuary law.

On Motion of M<sup>r</sup> Mason “as to sumptuary laws”

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. ay.

“And to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the Government of the U. S. or any department or officer thereof.”

M<sup>r</sup>. Madison and M<sup>r</sup> Pinkney moved to insert between “laws” and “necessary” “and establish all offices,” it appearing to them liable to cavil that the latter was not included in the former.

M<sup>r</sup> Gov<sup>r</sup>. Morris, M<sup>r</sup>. Wilson, M<sup>r</sup>. Rutledge and M<sup>r</sup> Elseworth urged that the amendment could not be necessary.

On the motion for inserting “and establish all offices”

N. H. no. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

The clause as reported was then agreed to nem. con.

Art: VII Sect. 2. concerning Treason which see.

M<sup>r</sup> Madison, thought the definition too narrow. It did not appear to go as far as the Stat. of Edw<sup>d</sup> III. He did not see why more latitude might not be left to the Legislature. It w<sup>d</sup> be as safe as in the hands of State legislatures. And it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes as well as be abused.

M<sup>r</sup>. Mason was for pursuing the Stat: of Edw<sup>d</sup>. III.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was for giving to the Union an exclusive right to declare what sh<sup>d</sup>. be treason. In case of a contest between the U. S. and a particular State, the people of the latter must under the disjunctive terms of the clause, be traitors to one or other authority.

M<sup>r</sup>. Randolph thought the clause defective in adopting the words, “in adhering” only. The British Stat: adds, “giving them aid and comfort” which had a more extensive meaning.

M<sup>r</sup>. Elseworth considered the definition as the same in fact with that of the Statute.

M<sup>r</sup> Gov<sup>r</sup> Morris “adhering” does not go so far as “giving aid and comfort” or the latter words may be restrictive of “adhering,” in either case the Statute is not pursued.

M<sup>r</sup> Wilson held “giving aid and comfort” to be explanatory, not operative words; and that it was better to omit them.

M<sup>r</sup>. Dickenson, thought the addition of “giving aid and comfort” unnecessary & improper; being too vague and extending too far. He wished to know what was meant by the “testimony of two witnesses” whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt act ought to be expressed as essential in the case.

Doc<sup>r</sup> Johnson considered “giving aid & comfort” as explanatory of “adhering” & that something should be inserted in the definition concerning overt acts. He contended that Treason could not be both ag<sup>st</sup> the U. States—and individual States; being an offence ag<sup>st</sup>. the Sovereignty which can be but one in the same community.

M<sup>r</sup> Madison remarked that “and” before “in adhering” should be changed into “or” otherwise both offences viz. of “levying war,” & of adhering to the Enemy might be necessary to constitute Treason. He added that, as the definition here was of treason against *the U. S.* it would seem that the individual States w<sup>d</sup>. be left in possession of a concurrent power so far as to define & punish treason particularly ag<sup>st</sup>. themselves; which might involve double punishm<sup>t</sup>.

It was moved that the whole clause be recommitted which was lost, the votes being equally divided.

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. div<sup>d</sup> S. C. no. Geo. ay.

M<sup>r</sup>. Wilson & Doc<sup>r</sup> Johnson moved, that “or any of them,” after “United States” be struck out in order to remove the embarrassment; which was agreed to nem. con.

M<sup>r</sup>. Madison. This has not removed the embarrassment. The same Act might be treason ag<sup>st</sup>. the United States as here defined—and ag<sup>st</sup>. a particular State according to its laws.

M<sup>r</sup> Elseworth. There can be no danger to the gen<sup>l</sup> authority from this; as the laws of the U. States are to be paramount.

Doc<sup>r</sup>. Johnson was still of opinion there could be no Treason ag<sup>st</sup>. a particular State. It could not even at present, as the Confederation now stands, the Sovereignty being in the Union; much less can it be under the proposed system.

Col. Mason. The United States will have a qualified sovereignty only. The individual States will retain a part of the Sovereignty. An Act may be treason ag<sup>st</sup> a particular State which is not so ag<sup>st</sup>. the U. States. He cited the Rebellion of Bacon in Virginia as an illustration of the doctrine.

Doc<sup>r</sup>. Johnson: That case would amount to Treason ag<sup>st</sup>. the Sovereign, the Supreme Sovereign, the United States.

M<sup>r</sup> King observed that the controversy relating to Treason might be of less magnitude than was supposed; as the Legislature might punish capitally under other names than Treason.

M<sup>r</sup> Gov<sup>r</sup>. Morris and M<sup>r</sup>. Randolph wished to substitute the words of the British Statute and moved to postpone Sect 2. art VII in order to consider the following substitute—“Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of Treason, it is therefore ordained, declared & established, that if a man do levy war ag<sup>st</sup>. the U. S. within their territories, or be adherent to the enemies of the U. S. within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed by the people of his condition, he shall be adjudged guilty of Treason.”

On this question

N. H.—Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

It was then moved to strike out “ag<sup>st</sup> United States” after “treason” so as to define treason generally, and on this question

Mass. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. ay.

It was then moved to insert after “two witnesses” the words “to the same overt act.”

Doc<sup>r</sup>. Franklin wished this amendment to take place. prosecutions for treason were generally virulent; and perjury too easily made use of against innocence.

M<sup>r</sup> Wilson. much may be said on both sides. Treason may sometimes be practised in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy.

On the question—as to some overt act

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup> King moved to insert before the word “power” the word “sole,” giving the U. States the exclusive right to declare the punishment of Treason.

M<sup>r</sup>. Broom 2<sup>ds</sup>. the motion.

M<sup>r</sup>. Wilson. in cases of a general nature, treason can only be ag<sup>st</sup>. the U— States, and in such they sh<sup>d</sup>. have the sole right to declare the punishment—yet in many cases it may be otherwise. The subject was however intricate and he distrusted his present judgment on it.

M<sup>r</sup> King this amendment results from the vote defining treason generally by striking out ag<sup>st</sup> the U. States, which excludes any treason ag<sup>st</sup>. particular States. These may however punish offences as high misdemeanors.

On inserting the word “sole.” It passed in the negative

N. H. ay. Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no—

M<sup>r</sup>. Wilson. the clause is ambiguous now. “Sole” ought either to have been inserted, or “against the U. S.” to be re-instated.

M<sup>r</sup>. King. no line can be drawn between levying war and adhering to enemy ag<sup>st</sup> the U. States and ag<sup>st</sup>. an individual State—Treason ag<sup>st</sup>. the latter must be so ag<sup>st</sup>. the former.

M<sup>r</sup> Sherman, resistance ag<sup>st</sup>. the laws of the U. States as distinguished from resistance ag<sup>st</sup>. the laws of a particular State, forms the line.

M<sup>r</sup> Elseworth, the U. S. are sovereign on one side of the line dividing the jurisdictions—the States on the other—each ought to have power to defend their respective Sovereignities.

M<sup>r</sup> Dickenson, war or insurrection ag<sup>st</sup>. a member of the Union must be so ag<sup>st</sup> the whole body; but the constitution should be made clear on this point.

The clause was reconsidered nem. con—& then M<sup>r</sup> Wilson & M<sup>r</sup>. Elseworth moved to reinstate “ag<sup>st</sup>. the U. S.” after “Treason—” on which question

N. H. no. Mass. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

M<sup>r</sup>. Madison was not satisfied with the footing on which the clause now stood. As Treason ag<sup>st</sup>. the U. States involves treason ag<sup>st</sup> particular States, and vice versa, the same act may be twice tried & punished by the different authorities. M<sup>r</sup> Gov<sup>r</sup>. Morris viewed the matter in the same light—

It was moved & 2<sup>ded</sup> to amend the sentence to read—“Treason ag<sup>st</sup>. the U. S. shall consist only in levying war against them, or in adhering to their enemies” which was agreed to

Col. Mason moved to insert the words “giving them aid and comfort,” as restrictive of “adhering to their Enemies &c.” the latter he thought would be otherwise too indefinite—This motion was agreed to: Con<sup>t</sup>: Del: & Georgia only being in the Negative.

M<sup>r</sup>. L. Martin moved to insert after conviction &c—“or on confession in open court”—and on the question (the negative States thinking the words superfluous) it was agreed to.

N. H. ay. Mass. no. C<sup>t</sup> ay. N. J. ay. P. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. div<sup>d</sup>. S. C. no. Geo. no.

Art: VII. Sect. 2, as amended was then agreed to nem. con.

Sect. 3. taken up. “white & other” struck out nem. con. as superfluous.

M<sup>r</sup>. Elseworth moved to require the first census to be taken within “three” instead of “six” years from the first meeting of the Legislature—and on question

N. H: ay. Mass. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. King asked what was the precise meaning of *direct* taxation? No one answe<sup>d</sup>.

M<sup>r</sup>. Gerry moved to add to the 3<sup>d</sup> Sect. Art: VII. the following clause “That from the first meeting of the Legislature of the U. S. until a Census shall be taken all monies for supplying the public Treasury by direct taxation shall be raised from the several States according to the number of their Representatives respectively in the first branch”

M<sup>r</sup>. Langdon. This would bear unreasonably hard on N. H. and he must be ag<sup>st</sup> it.

M<sup>r</sup>. Carrol opposed it. The number of Rep<sup>s</sup>. did not admit of a proportion exact enough for a rule of taxation.

Before any question the House

Adjourned.

## Tuesday August 21. In Convention

Governour Livingston<sup>1</sup> from the Committee of Eleven to whom was referred the propositions respecting the debts of the several States and also the Militia entered on the 18<sup>th</sup> inst: delivered the following report:

“The Legislature of the U. S. shall have power to fulfil the engagements which have been entered into by Congress, and to discharge as well the debts of the U. S. as the debts incurred by the several States during the late war, for the common defence and general welfare”

“To make laws for organizing arming and disciplining the militia, and for governing such part of them as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by the U. States”

M<sup>r</sup>. Gerry considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the U— States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed as here proposed great opposition would be excited ag<sup>st</sup>. the plan. He urged also that as the States had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of States which had done least.

M<sup>r</sup>. Sharman. It means neither more nor less than the confederation as it relates to this subject.

M<sup>r</sup>. Elseworth moved that the Report delivered in by Gov<sup>r</sup>. Livingston should lie on the table.—Agreed to nem. con.

Art: VII. Sect. 3 resumed.—M<sup>r</sup>. Dickinson moved to postpone this in order to reconsider Art: IV. Sect. 4. and to *limit* the number of representatives to be allowed to the large States. Unless this were done the small States would be reduced to entire insignificancy, and encouragement given to the importation of slaves.

M<sup>r</sup>. Sherman would agree to such a reconsideration, but did not see the necessity of postponing the section before the House.—M<sup>r</sup>. Dickenson withdrew his motion.

Art: VII. Sect 3. then agreed to 10 ays, Delaware alone being no.



M<sup>r</sup>. Sherman moved to add to Sect 3. the following clause “And all accounts of supplies furnished, services performed, and monies advanced by the several States to the U. States, or by the U. S. to the several States shall be adjusted by the same rule”

M<sup>r</sup>. Govern<sup>r</sup>. Morris 2<sup>ds</sup> the motion.

M<sup>r</sup>. Ghorum, thought it wrong to insert this in the Constitution. The Legislature will no doubt do what is right. The present Congress have such a power and are now exercising it.

M<sup>r</sup>. Sherman unless some rule be expressly given none will exist under the new system.

M<sup>r</sup> Elseworth. Though The contracts of Congress will be binding, there will be no rule for executing them on the States; and one ought to be provided.

M<sup>r</sup> Sherman withdrew his motion to make way for one of M<sup>r</sup> Williamson to add to Sect. 3. “By this rule the several quotas of the States shall be determined in settling the expences of the late war.”

M<sup>r</sup>. Carrol brought into view the difficulty that might arise on this subject from the establishment of the Constitution as intended without the *unanimous* consent of the States

M<sup>r</sup>. Williamson’s motion was postponed nem. con.

Art: VI Sect. 12. which had been postponed of Aug: 15. was now called for by Col. Mason, who wished to know how the proposed amendment as to money bills would be decided, before he agreed to any further points.

M<sup>r</sup>. Gerry’s motion of yesterday that previous to a census, direct taxation be proportioned on the States according to the number of Representatives, was taken up. He observed that the principal acts of Government would probably take place within that period, and it was but reasonable that the States should pay in proportion to their share in them.

M<sup>r</sup>. Elseworth thought such a rule unjust. there was a great difference between the number of Represent<sup>s</sup> and the number of inhabitants as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A State might have one Representative only that had inhabitants enough for 1½ or more, if fractions could be applied, &c—. He proposed to amend the motion by adding the words, “subject to a final liquidation by the foregoing rule when a census shall have been taken”

M<sup>r</sup>. Madison. The last appointment of Cong<sup>s</sup> on which the number of Representatives was founded, was conjectural and meant only as a temporary rule till a Census should be established.

M<sup>r</sup>. Read. The requisitions of Cong<sup>s</sup>. had been accommodated to the impoverishment produced by the war; and to other local and temporary circumstances.

M<sup>r</sup>. Williamson opposed M<sup>r</sup>. Gerry's motion.

M<sup>r</sup>. Langdon was not here when N. H. was allowed three members. If it was more than her share; he did not wish for them.

M<sup>r</sup>. Butler contended warmly for M<sup>r</sup> Gerry's motion as founded in reason and equity.

M<sup>r</sup>. Elseworth's proviso to M<sup>r</sup>. Gerry's motion was agreed to nem. con.

M<sup>r</sup>. King thought the power of taxation given to the Legislature rendered the motion of M<sup>r</sup>. Gerry altogether unnecessary.

On M<sup>r</sup> Gerry's motion as amended

N. H. no. Mass. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. div<sup>d</sup>. S. C. ay. Geo. no.

On a question, Shall Art: VI Sect. 12. with the amendment to it proposed & entered on the 15 instant, as called for by Col. Mason be now taken up? it passed in the negative.

N. H. ay. Mass. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. L. Martin. The power of taxation is most likely to be criticised by the public. Direct taxation should not be used but in cases of absolute necessity; and then the States will be the best Judges of the mode. He therefore moved the following addition to Sect: 3: Art VII "And whenever the Legislature of the U. S. shall find it necessary that revenue should be raised by direct taxation, having apportioned the same, according to the above rule on the several States, requisitions shall be made of the respective States to pay into the Continental Treasury their respective quotas within a time in the said requisitions specified; and in case of any of the States failing to comply with such requisitions, then and then only to devise and pass acts directing the mode, and authorizing the collection of the same."

M<sup>r</sup>. M<sup>c</sup>. Henry 2<sup>ded</sup>. the motion—there was no debate, and on the question

N. H. no. C<sup>t</sup> no. N. J. ay. Pen<sup>a</sup>. no. Del. no. M<sup>d</sup>. div<sup>d</sup>. (Jenifer & Carol no) V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

Art. VII. Sect. 4.—M<sup>r</sup> Langdon, by this section the States are left at liberty to tax exports. N. H. therefore with other non-exporting States, will be subject to be taxed by the States exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the South<sup>n</sup> This may be guarded ag<sup>st</sup>. by requiring the concurrence of  $\frac{2}{3}$  or  $\frac{3}{4}$  of the legislature in such cases.

M<sup>r</sup>. Elseworth. It is best as it stands. The power of regulating trade between the States will protect them ag<sup>st</sup> each other. Should this not be the case, the attempts of one to tax the produce of another passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons ag<sup>st</sup>. Cong<sup>s</sup> taxing exports. 1. it will discourage industry, as taxes on imports discourage luxury. 2. The produce of different States is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all; as Tob<sup>o</sup> rice & indigo, and a tax on these alone would be partial & unjust. 3. The taxing of exports would engender incurable jealousies.

M<sup>r</sup>. Williamson. Tho' N. C. has been taxed by Virg<sup>a</sup>. by a duty on 12000 Hhs of her Tob<sup>o</sup>. exported thro' Virg<sup>a</sup>. yet he would never agree to this power. Should it take place, it would destroy the last hope of an adoption of the plan.

M<sup>r</sup> Gov<sup>r</sup>. Morris. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting States will tax the produce of their uncommercial neighbours. The power of regulating the trade between P<sup>a</sup>. & N. Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from N. Jersey. The advantages possessed by a large trading City, outweigh the disadvantage of a moderate duty; and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid though in time of war such a measure may be of critical importance. Tobacco, lumber and live-stock are three objects belonging to different States, of which great advantage might be made by a power to tax exports. To these may be added Genseng and Masts for Ships by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia is one of the many follies of lord Sheffield's pamphlets. The State of the Country also will change, and render duties on exports, as skins, beaver & other peculiar raw materials, politic in the view of encouraging American manufactures.

M<sup>r</sup>. Butler was strenuously opposed to a power over exports, as unjust and alarming to the staple States.

M<sup>r</sup> Langdon suggested a prohibition on the States from taxing the produce of other States exported from their harbours.

M<sup>r</sup>. Dickenson. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles and for ever. He thought it would be better to except particular articles from the power.

M<sup>r</sup> Sherman. It is best to prohibit the National legislature in all cases. The States will never give up all power over trade. An enumeration of particular articles would be difficult invidious and improper

M<sup>r</sup>. Madison As we ought to be governed by national and permanent views, it is a sufficient argument for giving y<sup>e</sup>. power over exports that a tax, tho' it may not be expedient at present, may be so hereafter. A porper regulation of exports may & probably will be necessary hereafter, and for the same purposes as the regulation of

imports; viz, for revenue—domestic manufactures—and procuring equitable regulations from other nations. An Embargo may be of absolute necessity, and can alone be effectuated by the Gen<sup>l</sup>. authority. The regulation of trade between State and State cannot effect more than indirectly to hinder a State from taxing its own exports; by authorizing its Citizens to carry their commodities freely into a neighbouring State which might decline taxing exports in order to draw into its channel the trade of its neighbours. As to the fear of disproportionate burthens on the more exporting States, it might be remarked that it was agreed on all hands that the revenue w<sup>d</sup>. principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports—or half from those, and half from exports. The imports and exports must be pretty nearly equal in every State—and relatively the same among the different States.

M<sup>r</sup>. Elseworth did not conceive an embargo by the Congress interdicted by this section.

M<sup>r</sup>. M<sup>c</sup>.Henry conceived that power to be included in the power of war.

M<sup>r</sup>. Wilson. Pennsylvania exports the produce of Mary<sup>d</sup>. N. Jersey, Delaware & will by & by when the River Delaware is opened, export for N. York. In favoring the general power over exports therefore, he opposed the particular interest of his State. He remarked that the power had been attacked by reasoning which could only have held good in case the Gen<sup>l</sup>. Gov<sup>t</sup>. had been *compelled*, instead of *authorized*, to lay duties on exports. To deny this power is to take from the Common Gov<sup>t</sup>. half the regulation of trade. It was his opinion that a power over exports might be more effectual than that over imports in obtaining beneficial treaties of commerce

M<sup>r</sup>. Gerry was strenuously opposed to the power over exports. It might be made use of to compel the States to comply with the will of the Gen<sup>l</sup>. Government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised. It will enable the Gen<sup>l</sup>. Gov<sup>t</sup>. to oppress the States as much as Ireland is oppressed by Great Britain.

M<sup>r</sup>. Fitzimmons<sup>1</sup> would be ag<sup>st</sup> a tax on exports to be laid immediately; but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing Country. He illustrated his argument by the duties in G. Britain on wool &c.

Col. Mason. If he were for reducing the States to mere corporations as seemed to be the tendency of some arguments, he should be for subjecting their exports as well as imports to a power of general taxation. He went on a principle often advanced & in which he concurred, that “a majority when interested will oppress the minority.” This maxim had been verified by our own Legislature (of Virginia). If we compare the States in this point of view the 8 Northern States have an interest different from the five South<sup>n</sup> States; and have in one branch of the legislature 36 votes ag<sup>st</sup>. 29. and in the other in the proportion of 8 ag<sup>st</sup> 5. The Southern States had therefore ground for their suspicions. The case of Exports was not the same with that of imports. The latter were the same throughout the States; the former very different. As to Tobacco other

nations do raise it, and are capable of raising it as well as Virg<sup>a</sup>. &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

M<sup>f</sup>. Clymer<sup>1</sup> remarked that every State might reason with regard to its particular productions, in the same manner as the Southern States. The middle States may apprehend an oppression of their wheat flour, provisions &c. and with more reason, as these articles were exposed to a competition in foreign markets not incident to Tob<sup>o</sup> rice &c. They may apprehend also combinations ag<sup>st</sup>. them between the Eastern & Southern States as much as the latter can apprehend them between the Eastern & middle. He moved as a qualification of the power of taxing Exports that it should be restrained to regulations of trade by inserting after the word “duty” sect 4 art VII the words, “for the purpose of revenue.”

On question on M<sup>f</sup> Clymer’s motion

N. H. no. Mass. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>f</sup>. Madison. In order to require ? of each House to tax exports, as a lesser evil than a total prohibition moved to insert the words “unless by consent of two thirds of the Legislature”

M<sup>f</sup>. Wilson 2<sup>ds</sup>. and on this question, it passed in the Negative.

N. H. ay. Mass. ay. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> no. (Col. Mason, M<sup>f</sup>. Randolph M<sup>f</sup> Blair no. Gen<sup>l</sup> Washington & J. M. ay.) N. C. no. S. C. no. Geo. no.

Question on Sect: 4. Art VII. as far as to “no tax sh<sup>l</sup>. be laid on exports—it passed in the affirmative.

N. H. no. Mass. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. (Gen<sup>l</sup>. W. & J. M. no) N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup>. L. Martin, proposed to vary the Sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves. 1. as five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause would leave an encouragement to this trafic. 2 slaves weakened one part of the Union which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

M<sup>f</sup> Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them. Religion & humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the South<sup>n</sup>. States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves which will increase the commodities of which they will become the carriers.

M<sup>r</sup>. Elseworth was for leaving the clause as it stands, let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:

M<sup>r</sup>. Pinkney. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that State has expressly & watchfully excepted that of meddling with the importation of negroes. If the States be all left at liberty on this subject, S. Carolina may perhaps by degrees do of herself what is wished, as Virginia & Maryland already have done.

Adjourned.

### Wednesday August 22. In Convention.

Art VII sect 4. resumed. M<sup>r</sup> Sherman was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of Slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal traffic originated in the avarice of British Merchants. The British Gov<sup>t</sup>. constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain, if S. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands, and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. Slavery discourages arts & manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes & effects providence punishes national sins, by national calamities. He lamented that some of our Eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the States being in possession of the Right to import, this was the case with many other rights, now to be properly given

up. He held it essential in every point of view that the Gen<sup>l</sup>. Gov<sup>t</sup> should have power to prevent the increase of slavery.

M<sup>r</sup>. Elseworth. As he had never owned a slave could not judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the Country.—As slaves also multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards S. Carolina & Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

M<sup>r</sup> Pinkney. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece Rome & other antient States; the sanction given by France England, Holland & other modern States. In all ages one half of mankind have been slaves. If the S. States were let alone they will probably of themselves stop importations. He w<sup>d</sup>. himself as a citizen of S. Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Pinkney declared it to be his firm opinion that if himself & all his colleagues were to sign the Constitution & use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. S. Carolina & Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, & she has more than she wants. It would be unequal to require S. C. & Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to S. Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; The more consumption also, and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports, but should consider a rejection of the clause as an exclusion of S. Carol<sup>a</sup>. from the Union.

M<sup>r</sup>. Baldwin had conceived national objects alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a Gen<sup>l</sup>. Governm<sup>t</sup>. to be the pursuit of the central States who wished to have a vortex for every thing—that her distance would preclude her from equal advantage—& that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of — which he said was a respectable class of people, who carried their ethics beyond the mere *equality of men*, extending their humanity to the claims of the whole animal creation.

M<sup>r</sup>. Wilson observed that if S. C. & Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to Unite because the importation might be prohibited. As the section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

M<sup>r</sup>. Gerry thought we had nothing to do with the conduct of the States as to Slaves, but ought to be careful not to give any sanction to it.

M<sup>r</sup>. Dickenson considered it as inadmissible on every principle of honor & safety that the importation of slaves should be authorized to the States by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the National Gov<sup>t</sup> not to the States particularly interested. If Eng<sup>d</sup> & France permit slavery, slaves are at the same time excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the South<sup>n</sup>. States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the Gen<sup>l</sup>. Government.

M<sup>r</sup>. Williamson stated the law of N. Carolina on the subject, to-wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa, £10 on each from elsewhere, & £50 on each from a State licensing manumission. He thought the S. States could not be members of the Union if the clause sh<sup>d</sup>. be rejected, and that it was wrong to force any thing down not absolutely necessary, and which any State must disagree to.

M<sup>r</sup>. King thought the subject should be considered in a political light only. If two States will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great & equal opposition would be experienced from the other States. He remarked on the exemption of slaves from duty whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the North<sup>n</sup> & Middle States.

M<sup>r</sup>. Langdon was strenuous for giving the power to the Gen<sup>l</sup> Gov<sup>t</sup>. He c<sup>d</sup>. not with a good conscience leave it with the States who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

Gen<sup>l</sup> Pinkney thought himself bound to declare candidly that he did not think S. Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right & w<sup>ch</sup>. w<sup>d</sup>. remove one difficulty that had been started.

M<sup>r</sup>. Rutledge. If the Convention thinks that N. C. S. C. & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest.



He was strenuous ag<sup>st</sup> striking out the section, and seconded the motion of Gen<sup>l</sup> Pinkney for a commitment.

M<sup>r</sup>. Gov<sup>r</sup>. Morris wished the whole subject to be committed including the clauses relating to taxes on exports & to a navigation act. These things may form a bargain among the Northern & Southern States.

M<sup>r</sup>. Butler declared that he never would agree to the power of taxing exports.

M<sup>r</sup>. Sherman said it was better to let the S. States import slaves than to part with them, if they made that a sine qua non. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were *property*. He acknowledged that if the power of prohibiting the importation should be given to the Gen<sup>l</sup>. Government that it would be exercised. He thought it would be its duty to exercise the power.

M<sup>r</sup>. Read was for the commitment provided the clause concerning taxes on exports should also be committed.

M<sup>r</sup> Sherman observed that that clause had been agreed to & therefore could not be committed.

M<sup>r</sup>. Randolph was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He w<sup>d</sup>. sooner risk the constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the States having no slaves. On the other hand, two States might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of Sect. 4 & 5. of Art: 7. N. H. no. Mass. abs<sup>t</sup>. Con<sup>t</sup> ay N. J. ay P<sup>a</sup>. no. Del. no Mary<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay S. C. ay. Geo. ay.

M<sup>r</sup>. Pinkney & M<sup>r</sup> Langdon moved to commit Sect. 6. as to navigation act by two thirds of each House

M<sup>r</sup>. Gorham did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered that the Eastern States had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the South<sup>n</sup> States.

M<sup>r</sup>. Wilson wished for a commitment in order to reduce the proportion of votes required.

M<sup>r</sup> Elseworth was for taking the plan as it is. This widening of opinions has a threatening aspect. If we do not agree on this middle & moderate ground he was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed.

On Question for committing 6 Sect. as to navigation act to a member from each State—N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The Committee appointed were M<sup>f</sup> Langdon, King, Johnson, Livingston, Clymer, Dickenson, L. Martin, Madison, Williamson, C. C. Pinkney, & Baldwin.

To this committee were referred also the two clauses above mentioned, of the 4 & 5. Sect: of Art. 7.

M<sup>f</sup>. Rutledge from the Committee to whom were referred on the 18 & 20<sup>th</sup>. instant the propositions of M<sup>f</sup>. Madison & M<sup>f</sup> Pinkney made the Report following:1

“The committee report, that in their opinion the following additions should be made to the report now before the convention, namely,

“At the end of the first clause of the first section of the seventh article add, ‘for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than — years.’

“At the end of the second clause, second section, seventh article, add, ‘and with Indians, within the limits of any state, not subject to the laws thereof.’

“At the end of the sixteenth clause of the second section, seventh article, add, ‘and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the governments of individual states, in matters which respect only their internal police, or for which their individual authority may be competent.’

“At the end of the first section, tenth article, add, ‘he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.’

“After the second section of the tenth article, insert the following as a third section:

“ ‘The President of the United States shall have a privy council, which shall consist of the president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established, whose duty it shall be to advise him in matters respecting the execution of his office, which he shall think proper to lay before them: but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.’

“At the end of the second section of the eleventh article, add, ‘the judges of the supreme court shall be triable by the senate, on impeachment by the house of representatives.’”

“Between the fourth and fifth lines of the third section of the eleventh article, after the word ‘controversies,’ insert, ‘between the United States and an individual state, or the United States and an individual person.’”

A motion to rescind the order of the House respecting the hours of meeting & adjourning, was negatived: Mass: P<sup>a</sup>. Del. Mar<sup>d</sup>. ay N. H. Con: N. J. V<sup>a</sup>. N. C. S. C. Geo. no.

M<sup>r</sup>. Gerry and M<sup>r</sup>. M<sup>c</sup>.Henry moved to insert after the 2<sup>d</sup>. Sect. Art: 7, the clause following, to wit, “The Legislature shall pass no bill of attainder nor any ex post facto law.”<sup>1</sup>

M<sup>r</sup> Gerry urged the necessity of this prohibition, which he said was greater in the National than the State Legislature, because the number of members in the former being fewer, they were on that account the more to be feared.

M<sup>r</sup>. Gov<sup>r</sup> Morris thought the precaution as to ex post facto laws unnecessary; but essential as to bills of attainder

M<sup>r</sup>. Elseworth contended that there was no lawyer, no civilian who would not say that ex post facto laws were void of themselves. It cannot then be necessary to prohibit them.

M<sup>r</sup>. Wilson was against inserting any thing in the Constitution as to ex post facto laws. It will bring reflexions on the Constitution—and proclaim that we are ignorant of the first principles of Legislation, or are constituting a Government that will be so.

The question being divided, The first part of the motion relating to bills of attainder was agreed to *nem contradicente*.

On the second part relating to ex post facto laws—

M<sup>r</sup>. Carrol remarked that experience overruled all other calculations. It had proved that in whatever light they might be viewed by civilians or others, the State Legislatures had passed them, and they had taken effect.

M<sup>r</sup>. Wilson. If these prohibitions in the State Constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, and will differ as to its application.

M<sup>r</sup>. Williamson. Such a prohibitory clause is in the Constitution of N. Carolina, and tho it has been violated, it has done good there & may do good here, because the Judges can take hold of it.

Doc<sup>f</sup> Johnson thought the clause unnecessary, and implying an improper suspicion of the National Legislature.

M<sup>f</sup> Rutledge was in favor of the clause.

On the question for inserting the prohibition of ex post facto laws.

N. H. ay. Mas. ay. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. Virg<sup>a</sup>. ay. N. C. div<sup>d</sup>. S. C. ay. Geo. ay.

The report of the committee of 5. made by M<sup>f</sup>. Rutledge, was taken up and then postponed that each member might furnish himself with a copy.

The Report of the Committee of Eleven delivered in & entered on the Journal of the 21<sup>st</sup> inst. was then taken up, and the first clause containing the words “The Legislature of the U. S. *shall have power* to fulfil the engagements which have been entered into by Congress” being under consideration,

M<sup>f</sup>. Elseworth argued that they were unnecessary. The U. S. heretofore entered into Engagements by Cong<sup>s</sup> who were their Agents. They will hereafter be bound to fulfil them by their new agents.

M<sup>f</sup> Randolph thought such a provision necessary: for though the U. States will be bound, the new Gov<sup>t</sup>. will have no authority in the case unless it be given to them.

M<sup>f</sup>. Madison thought it necessary to give the authority in order to prevent misconstruction. He mentioned the attempts made by the Debtors to British subjects to shew that contracts under the old Government, were dissolved by the Revolution which destroyed the political identity of the Society.

M<sup>f</sup>. Gerry thought it essential that some explicit provision should be made on this subject, so that no pretext might remain for getting rid of the public engagements.

M<sup>f</sup>. Gov<sup>t</sup>. Morris moved by way of amendment to substitute—“The Legislature *shall* discharge the debts & fulfil the engagements of the U. States.”

It was moved to vary the amendment by striking out “discharge the debts” & to insert “liquidate the claims,” which being negatived,

The amendment moved by M<sup>f</sup>. Gov<sup>t</sup> Morris was agreed to all the States being in the affirmative.

It was moved & 2<sup>ded</sup> to strike the following words out of the 2<sup>d</sup>. clause of the report “and the authority of training the militia according to the discipline prescribed by the U. S.” Before a question was taken.

The House adjourned.

## Thursday In Convention Aug: 23, 1787

The Report of the Committee of Eleven made Aug: 21. being taken up, and the following clause being under consideration to wit “To make laws for organizing, arming & disciplining the Militia, and for governing such parts of them as may be employed in the service of the U. S. reserving to the States respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed.”

M<sup>r</sup>. Sherman moved to strike out the last member “and authority of training &c. He thought it unnecessary. The States will have this authority of course if not given up.

M<sup>r</sup> Elseworth doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation of the appointment to offices. He remarked at the same time that the term discipline was of vast extent and might be so expounded as to include all power on the subject.

M<sup>r</sup> King, by way of explanation, said that by *organizing*, the Committee meant, proportioning the officers & men—by *arming*, specifying the kind size & caliber of arms—& by *disciplining*, prescribing the manual exercise evolutions &c.

M<sup>r</sup>. Sherman withdrew his motion.

M<sup>r</sup> Gerry. This power in the U. S. as explained is making the States drill-sergeants. He had as lief let the Citizens of Massachusetts be disarmed, as to take the command from the States, and subject them to the Gen<sup>l</sup> Legislature. It would be regarded as a system of Despotism.

M<sup>r</sup>. Madison observed that “*arming*” as explained did not extend to furnishing arms; nor the term “*disciplining*” to penalties & Courts Martial for enforcing them.

M<sup>r</sup>. King added to his former explanation that *arming* meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves, the State Governments, or the National Treasury; that *laws* for disciplining, must involve penalties and every thing necessary for enforcing penalties.

M<sup>r</sup>. Dayton moved to postpone the paragraph, in order to take up the following proposition.

“To establish an uniform & general system of discipline for the Militia of these States, and to make laws for organizing, arming, disciplining & governing *such part of them as may be employed in the service of the U. S.*, reserving to the States respectively the appointment of the officers, and all authority over the militia not herein given to the General Government.”

On the question to postpone in favor of this proposition; it passed in the Negative.

N. H. no. Mas. no. C<sup>t</sup> no. N. J. ay. P. no. Del. no. Mary<sup>d</sup> ay. V<sup>a</sup> no. N. C. no. S. C. no. Geo. ay.

M<sup>r</sup>. Elseworth & M<sup>r</sup>. Sherman moved to postpone the 2<sup>d</sup>. clause in favor of the following.

“To establish an uniformity of arms, exercise & organization for the militia, and to provide for the Government of them when called into the service of the U. States.”

The object of this proposition was to refer the plan for the Militia to the General Gov<sup>t</sup> but to leave the execution of it to the State Gov<sup>ts</sup>.

Mr. Langdon said he could not understand the jealousy expressed by some Gentlemen. The General & State Gov<sup>ts</sup>. were not enemies to each other, but different institutions for the good of the people of America. As one of the people he could say, the National Gov<sup>t</sup> is mine, the State Gov<sup>t</sup> is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use, and put it into my right hand where it can be better used.

M<sup>r</sup> Gerry thought it was rather taking out of the right hand & putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men taken from the whole continent, as in the hands of two or three hundred taken from a single State.

M<sup>r</sup>. Dayton was against so absolute a uniformity. In some States there ought to be a greater proportion of cavalry than in others. In some places rifles would be most proper, in others muskets &c.

Gen<sup>l</sup> Pinkney preferred the clause reported by the Committee, extending the meaning of it to the case of fines &c.

M<sup>r</sup> Madison. The primary object is to secure an effectual discipline of the Militia. This will no more be done if left to the States separately than the requisitions have been hitherto paid by them. The States neglect their Militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety & the less prepare its Militia for that purpose; in like manner as the militia of a State would have been still more neglected than it has been if each county had been independently charged with the care of its Militia. The Discipline of the Militia is evidently a *National* concern, and ought to be provided for in the *National* Constitution.

M<sup>r</sup> L. Martin was confident that the States would never give up the power over the Militia; and that, if they were to do so, the militia would be less attended to by the Gen<sup>l</sup>. than by the State Governments.

M<sup>r</sup>. Randolph asked what danger there Could be that the Militia could be brought into the field and made to commit suicide on themselves. This is a power that cannot from its nature be abused, unless indeed the whole mass should be corrupted. He was for trammelling the Gen<sup>l</sup>. Gov<sup>t</sup>. whenever there was danger, but here there could be none.

He urged this as an essential point; observing that the Militia were every where neglected by the State Legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the States protects the people ag<sup>st</sup>. every apprehension that could produce murmur.

On Question on M<sup>f</sup>. Elsworth's Motion

N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

A motion was then made to recommit the 2<sup>d</sup>. clause which was negatived.

On the question to agree to the 1<sup>st</sup> part of the clause, namely.

“To make laws for organizing arming & disciplining the Militia, and for governing such part of them as may be employed in the service of the U. S.”

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup>. Madison moved to amend the next part of the clause so as to read “reserving to the States respectively, the appointment of the officers, *under the rank of General officers.*”

M<sup>f</sup>. Sherman considered this as absolutely inadmissible. He said that if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the Gen<sup>l</sup> Government, every man of discernment would rouse them by sounding the alarm to them.

M<sup>f</sup>. Gerry. Let us at once destroy the State Gov<sup>ts</sup>. have an Executive for life or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the Gen<sup>l</sup> Gov<sup>t</sup>. but as the States are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention ag<sup>st</sup> pushing the experiment too far. Some people will support a plan of vigorous Government at every risk. others of a more democratic cast will oppose it with equal determination, and a Civil war may be produced by the conflict.

M<sup>f</sup> Madison. As the greatest danger is that of disunion of the States, it is necessary to guard ag<sup>st</sup>. it by sufficient powers to the Common gov<sup>t</sup>. and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good Militia.

On the Question to agree to M<sup>f</sup>. Madison's motion.

N. H. ay. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. ay.1

On the question to agree to the “reserving to the States the appointment of the officers.” It was agreed to nem: contrad:

On the question on the clause “and the authority of training the Militia according to the discipline prescribed by the U. S.”—

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

On the question to agree to Art. VII. Sect. 7. as reported it passed nem: contrad:

M<sup>r</sup>. Pinkney urged the necessity of preserving foreign Ministers & other officers of the U. S. independent of external influence and moved to insert, after Art. VII Sect 7. the clause following—“No person holding any office of profit or trust under the U. S. shall without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State which passed nem: contrad:

M<sup>r</sup>. Rutledge moved to amend Art: VIII to read as follows,

“This Constitution & the laws of the U. S. made in pursuance thereof, and all the Treaties made under the authority of the U. S. shall be the supreme law of the several States and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions, any thing in the Constitutions or laws of the several States, to the contrary notwithstanding.”

which was agreed to, nem: contrad:

Art: IX being next for consideration,

M<sup>r</sup> Gov<sup>r</sup> Morris argued ag<sup>st</sup>. the appointment of officers by the Senate. He considered the body as too numerous for the purpose; as subject to cabal; and as devoid of responsibility. If Judges were to be tried by the Senate according to a late report of a Committee it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

M<sup>r</sup>. Wilson was of the same opinion & for like reasons.

The art IX. being waved, and Art VII. Sect. 1. resumed,

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike the following words out of the 18 clause “enforce treaties” as being superfluous, since treaties were to be “laws”—which was agreed to nem: contrad:

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to alter 1<sup>st</sup>. part. of 18. clause Sect. 1. art VII so as to read “to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions”—which was agreed to nem: contrad:

On the question then to agree to the 18 clause of Sect. 1. Art: 7. as amended it passed in the affirmative nem: contrad.



M<sup>r</sup>. C. Pinkney moved to add as an additional power to be vested in the Legislature of the U. S. “To negative all laws passed by the several States interfering in the opinion of the legislature with the general interests and harmony of the Union; “provided that two thirds of the members of each House assent to the same”. This principle he observed had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large States had been removed by the equality established in the Senate.1

M<sup>r</sup>. Broome 2<sup>ded</sup>. the proposition.

M<sup>r</sup>. Sherman thought it unnecessary; the laws of the General Government being supreme & paramount to the State laws according to the plan, as it now stands.

M<sup>r</sup>. Madison proposed that it should be committed. He had been from the beginning a friend to the principle; but thought the modification might be made better.

M<sup>r</sup>. Mason wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the Sanction of the General Legislature? Is this to sit constantly in order to receive & revise the State Laws?—He did not mean by these remarks to condemn the expedient, but he was apprehensive that great objections would lie ag<sup>st</sup> it.

M<sup>r</sup> Williamson thought it unnecessary, having been already decided, a revival of the question was a waste of time.

M<sup>r</sup>. Wilson considered this as the key-stone wanted to compleat the wide arch of Government we are raising. The power of self-defence had been urged as necessary for the State Governments. It was equally necessary for the General Government. The firmness of Judges is not of itself sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void when passed.

M<sup>r</sup>. Rutledge. If nothing else, this alone would damn and ought to damn the Constitution. Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them whose bye laws would not be subject to this shackle.

M<sup>r</sup>. Elsworth observed that the power contended for w<sup>d</sup>. require either that all laws of the State Legislatures should previously to their taking effect be transmitted to the Gen<sup>l</sup>. Legislature, or be repealable by the Latter; or that the State Executives should be appointed by the Gen<sup>l</sup> Government, and have a controul over the State laws. If the last was meditated let it be declared.

M<sup>r</sup> Pinkney declared that he thought the State Executives ought to be so appointed with such a controul, & that it would be so provided if another Convention should take place.

M<sup>r</sup>. Govern<sup>r</sup> Morris did not see the utility or practicability of the proposition of M<sup>r</sup>. Pinkney, but wished it to be referred to the consideration of a Committee.

M<sup>r</sup>. Langdon was in favor of the proposition. He considered it as resolvable into the question whether the extent of the National Constitution was to be judged of by the Gen<sup>l</sup>. or the State Governments.

On the question for commitment, it passed in the negative.

N. H. ay. Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Pinkney then withdrew his proposition.

The 1<sup>st</sup>. sect. of Art: VII being so amended as to read “The Legislature *shall* fulfil the engagements and discharge the debts of the U. S. & shall have the power to lay & collect taxes duties imposts & excises,” was agreed to.

M<sup>r</sup>. Butler expressed his dissatisfaction lest it should compel payment as well to the Blood-suckers who had speculated on the distresses of others, as to those who had fought & bled for their country. He would be ready he said to-morrow to vote for a discrimination between those classes of people, and gave notice that he should move for a reconsideration.

Art IX Sect. 1. being resumed, to wit. “The Senate of the U. S. shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court.”

M<sup>r</sup>. Madison observed that the Senate represented the States alone, and that for this as well as other obvious reasons it was proper that the President should be an agent in Treaties.

M<sup>r</sup>. Gov<sup>r</sup>. Morris did not know that he should agree to refer the making of Treaties to the Senate at all, but for the present w<sup>d</sup> move to add, as an amendment to the section after “Treaties”—“but no Treaty shall be binding on the U. S. which is not ratified by a law.”

M<sup>r</sup>. Madison suggested the inconvenience of requiring a legal *ratification* of treaties of alliance for the purposes of war &c &c”

M<sup>r</sup>. Ghorum. Many other disadvantages must be experienced if treaties of peace & all negotiations are to be previously ratified—and if not previously, the Ministers would be at a loss how to proceed. What would be the case in G. Britain if the King were to proceed in this manner. American Ministers must go abroad not instructed by the same Authority (as will be the case with other Ministers) which is to ratify their proceedings.

M<sup>r</sup> Gov<sup>r</sup> Morris. As to treaties of alliance, they will oblige foreign powers to send their ministers here the very thing we should wish for. Such treaties could not be otherwise made, if his amendment sh<sup>d</sup>. succeed. In general he was not solicitous to multiply & facilitate Treaties. He wished none to be made with G. Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

M<sup>r</sup>. Wilson. In the most important Treaties, the King of G. Britain being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of M<sup>r</sup> Morris' will impose on the Senate. It was refused yesterday to permit even the Legislature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a Treaty, requiring all the Rice of S. Carolina to be sent to some one particular port.

M<sup>r</sup>. Dickinson concurred in the amendment, as most safe and proper, tho' he was sensible it was unfavorable to the little States, w<sup>ch</sup>. would otherwise have an *equal* share in making Treaties.

Doc<sup>r</sup> Johnson thought there was something of solecism in saying that the acts of a minister with plenipotentiary powers from one Body, should depend for ratification on another Body. The Example of the King of G. B. was not parallel. Full & compleat power was vested in him. If the Parliament should fail to provide the necessary means of execution, the Treaty would be violated.

M<sup>r</sup>. Ghorum in answer to M<sup>r</sup>. Gov<sup>r</sup> Morris, said that negotiations on the spot were not to be desired by us, especially if the whole Legislature is to have any thing to do with Treaties. It will be generally influenced by two or three men, who will be corrupted by the Ambassadors here. In such a Government as ours, it is necessary to guard against the Government itself being seduced.

M<sup>r</sup> Randolph observing that almost every Speaker had made objections to the clause as it stood, moved in order to a further consideration of the subject, that the motion of M<sup>r</sup>. Gov<sup>r</sup> Morris should be postponed, and on this question. It was lost the States being equally divided.

Mass<sup>ts</sup>. no. Con<sup>t</sup> no. N. J. ay. Pen<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On M<sup>r</sup> Gov<sup>r</sup>. Morris motion

Mass<sup>ts</sup> no. Con<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. div<sup>d</sup>. S. C. no. Geo. no.

The several clauses of Sect: 1. Art IX, were then separately postponed after inserting "and other public ministers" next after "ambassadors."

M<sup>r</sup>. Madison hinted for consideration, whether a distinction might not be made between different sorts of Treaties—allowing the President & Senate to make Treaties eventual and of alliance for limited terms—and requiring the concurrence of the whole Legislature in other Treaties.

The 1<sup>st</sup>. Sect Art IX. was finally referred nem: con: to the committee of Five, and the House then

Adjourned.

## Friday August 24. 1787. In Convention

Governour Livingston, from the Committee of Eleven, to whom were referred the two remaining clauses of the 4<sup>th</sup>. Sect & the 5 & 6 Sect: of the 7<sup>th</sup>. Art: delivered in the following Report:

“Strike out so much of the 4<sup>th</sup>. Sect: as was referred to the Committee and insert—‘The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800, but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports.’ ”

“The 5 Sect: to remain as in the Report”

“The 6 Sect. to be stricken out”

M<sup>r</sup>. Butler, according to notice, moved that clause 1<sup>st</sup>. sect. 1. of art VII, as to the discharge of debts, be reconsidered tomorrow. He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders. Gen<sup>l</sup>. Pinkney 2<sup>ded</sup>. him.

M<sup>r</sup>. Randolph wished for a reconsideration in order to better the expression, and to provide for the case of the State debts as is done by Congress.

On the question for reconsidering

N. H. no. Mass: ay. Con<sup>t</sup>. ay. N. J. ay. Pen<sup>a</sup>. absent. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. absent. S. C. ay. Geo. ay.—and tomorrow assigned for the reconsideration.

Sect: 2 & 3 of art: IX being taken up,

M<sup>r</sup>. Rutledge said this provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established, and moved to strike it out.

Doc<sup>r</sup>. Johnson 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Sherman concurred: so did M<sup>r</sup>. Dayton.

M<sup>r</sup>. Williamson was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the Judiciary were interested or too closely connected with the parties.

M<sup>r</sup>. Ghorum had doubts as to striking out. The Judges might be connected with the States being parties—He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the Judiciary.

On the Question for postponing the 2<sup>d</sup>. & 3<sup>d</sup>. Section it passed in the negative.

N. H. ay. Mass<sup>ts</sup>. no. Con<sup>t</sup>. no. N. J. no. Pen<sup>a</sup>. abs<sup>t</sup>. Del. no. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. ay.  
S. C. no. Geo. ay.

M<sup>r</sup>. Wilson urged the striking out, the Judiciary being a better provision.

On Question for striking out 2 & 3 Sections Art: IX

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. abs<sup>t</sup>. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C.  
ay. Geo. no.

Art X. Sect. 1. “The Executive power of the U. S. shall be vested in a single person. His stile shall be “The President of the U. S. of America” and his title shall be “His Excellency.” He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

On the question for vesting the power in a *single person*—It was agreed to nem: con:  
So also on the *stile* and *title*.

M<sup>r</sup>. Rutledge moved to insert “joint” before the word “ballot,” as the most convenient mode of electing.

M<sup>r</sup>. Sherman objected to it as depriving the *States* represented in the *Senate* of the negative intended them in that house.

M<sup>r</sup> Ghorum said it was wrong to be considering at every turn whom the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue if the two Houses sh<sup>d</sup> vote separately, each having a negative on the choice of the other.

M<sup>r</sup>. Dayton. It might be well for those not to consider how the Senate was constituted, whose interest it was to keep it out of sight.—If the amendment should be agreed to, a *joint* ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance & necessity of the case would ensure a concurrence.

M<sup>r</sup>. Carrol moved to strike out “by the Legislature” and insert “by the people.” M<sup>r</sup>. Wilson 2<sup>ded</sup>. him & on the question.

N. H. no. Mass<sup>ts</sup> no. Con<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C.  
no. Geo. no.

M<sup>r</sup> Brearly was opposed to the motion for inserting the word “joint.” The argument that the small States should not put their hands into the pockets of the large ones did not apply in this case.

M<sup>r</sup> Wilson urged the reasonableness of giving the larger States a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He

remarked also that the Senate had peculiar powers balancing the advantage given by a joint ballot in this case to the other branch of the Legislature.

M<sup>r</sup> Langdon. This general officer ought to be elected by the joint & general voice. In N. Hampshire the mode of separate votes by the two Houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting “joint” tho’ unfavorable to N. Hampshire as a small State.

M<sup>r</sup>. Wilson remarked that as the President of the Senate was to be the President of the U. S. that Body in cases of vacancy might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

M<sup>r</sup> Madison. If the amendment be agreed to the rule of voting will give to the largest State, compared with the smallest, an influence as 4 to 1 only, altho the population is as 10 to 1. This surely cannot be unreasonable as the President is to act for the *people* not for the *States*. The President of the *Senate* also is to be occasionally President of the U. S. and by his negative alone can make  $\frac{3}{4}$  of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting “joint,” it passed in the affirmative

N. H. ay. Mass<sup>ts</sup>. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

M<sup>r</sup>. Dayton then moved to insert, after the word “Legislatures” the words “each State having one vote.” M<sup>r</sup> Brearly 2<sup>ded</sup> him, and on the question it passed in the negative

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. no. S. C. no. Geo. ay.

M<sup>r</sup>. Pinkney moved to insert after the word “Legislature” the words “to which election a majority of the votes of the members present shall be required” & on this question, it passed in the affirmative

N. H. ay. Mass. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Read moved “that in case the numbers for the two highest in votes should be equal, then the President of the Senate shall have an additional casting vote,” which was disagreed to by a general negative.

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed the election of the President by the Legislature. He dwelt on the danger of rendering the Executive uninterested in maintaining the rights of his Station, as leading to Legislative tyranny. If the Legislature have the Executive dependent on them, they can perpetuate & support their usurpations by the influence of tax-gatherers & other officers, by fleets armies &c. Cabal & corruption are attached to that mode of election: so also is ineligibility a second time. Hence the Executive is interested in Courting popularity in the Legislature by sacrificing his Executive

Rights; & then he can go into that Body, after the expiration of his Executive office, and enjoy there the fruits of his policy. To these considerations he added that rivals would be continually intriguing to oust the President from his place. To guard against all these evils he moved that the President “shall be chosen by Electors to be chosen by the People of the several States” M<sup>r</sup>. Carrol 2<sup>ded</sup>. him & on the question it passed in the negative N. H. no. Mass. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Dayton moved to postpone the consideration of the two last clauses of Sect. 1. art X. which was disagreed to without a count of the States.

M<sup>r</sup>. Broome moved to refer the two clauses to a Committee of a member from each State, & on the question, it failed the States being equally divided N. H. no. Mas. no. C<sup>t</sup>. div<sup>d</sup> N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

On the question taken on the first part of M<sup>r</sup>. Gov<sup>r</sup>. Morris’s motion to wit “shall be chosen by electors” as an abstract question, it failed the States being equally divided, N. H. no. Mas. abs<sup>t</sup> C<sup>t</sup> div<sup>d</sup> N. Jersey ay P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> div<sup>d</sup> V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

The consideration of the remaining clauses of Sect 1. art X. was then postponed till tomorrow at the instance of the Deputies on New Jersey.

Sect. 2. Art: X being taken up, the word information was transposed & inserted after “Legislature”

On motion of M<sup>r</sup> Gov<sup>r</sup>. Morris, “he may” was struck out, & “and” inserted before “recommend” in the clause 2<sup>d</sup> art: X. in order to make it the *duty* of the President to recommend, & thence prevent umbrage or cavil at his doing it.

M<sup>r</sup> Sherman objected to the sentence “and shall appoint officers in all cases not otherwise provided for by this Constitution.” He admitted it to be proper that many officers in the Executive Department should be so appointed—but contended that many ought not, as general officers in the army in time of peace &c. Herein lay the corruption in G. Britain. If the Executive can model the army, he may set up an absolute Government; taking advantage of the close of a war and an army commanded by his creatures. James 2<sup>d</sup>. was not obeyed by his officers because they had been appointed by his predecessors not by himself. He moved to insert “or by law” after the word “Constitution.”

On motion of M<sup>r</sup>. Madison “officers” was struck out and “to offices” inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the Legislature.

On the question for inserting “or by law as moved by M<sup>r</sup>. Sherman N. H. no. Mas. no. C<sup>t</sup> ay. N. J. no. Pen<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. absent. S. C. no. Geo. no.

M<sup>r</sup> Dickinson moved to strike out the words “and shall appoint to offices in all cases not otherwise provided for by this Constitution” and insert—“and shall appoint to all

offices established by this Constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law.”

M<sup>r</sup>. Randolph observed that the power of appointments was a formidable one both in the Executive & Legislative hands—and suggested whether the Legislature should not be left at liberty to refer appointments in some cases, to some State authority.

M<sup>r</sup>. Dickenson’s motion, it passed in the affirmative N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. abs<sup>t</sup> S. C. no. Geo. ay.

M<sup>r</sup>. Dickinson then moved to annex to his last amendment “except where by law the appointment shall be vested in the Legislatures or Executives of the several States.” M<sup>r</sup> Randolph 2<sup>ded</sup> the motion.

M<sup>r</sup>. Wilson. If this be agreed to it will soon be a standing instruction from the State Legislatures to pass no law creating offices, unless the app<sup>ts</sup> be referred to them.

M<sup>r</sup>. Sherman objected to “Legislatures” in the motion, which was struck out by consent of the movers.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. This would be putting it in the power of the States to say, “You shall be viceroys but we will be viceroys over you”—

The motion was negatived without a Count of the States—

Ordered unanimously that the order respecting the adjournment at 4 OClock be repealed, & that in future the House assemble at 10 OC. & adjourn at 3 OC.

Adjourned

## Saturday August 25. 1787. In Convention

The 1<sup>st</sup>. clause of 1 Sect. of art: VII being reconsidered

Col. Mason objected to the term “*shall*”—fullfil the engagements & discharge the debts &c as too strong. It may be impossible to comply with it. The Creditors should be kept in the same plight. They will in one respect be necessarily and properly in a better. The Government will be more able to pay them. The use of the term *shall* will beget speculations and increase the pestilent practice of stock-jobbing. There was a great distinction between original creditors & those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought Stock in open market. He was sensible of the difficulty of drawing the line in this case, but he did not wish to preclude the attempt. Even fair purchasers at 4. 5. 6. 8 for 1 did not stand on the same footing with the first Holders, supposing them not to be blameable. The interest they receive even in paper, is equal to their purchase money. What he particularly wished was to leave the door open for buying up the securities, which he thought would be precluded by the term “*shall*” as requiring *nominal payment*, &



which was not inconsistent with his ideas of public faith. He was afraid also the word “*shall*,” might extend to all the old continental paper.

M<sup>r</sup> Langdon wished to do no more than leave the Creditors in statu quo.

M<sup>r</sup> Gerry said that for himself he had no interest in the question being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe however that as the public had received the value of the literal amount, they ought to pay that value to some body. The frauds on *the soldiers* ought to have been foreseen. these poor & ignorant people could not but part with their securities. There are other creditors who will part with any thing rather than be cheated of the capital of their advances. The interest of the States he observed was different on this point, some having more, others less than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit, of which he was not clear, he would not object to a revision of the debt so far as to compel restitution to the ignorant & distressed, who have been defrauded. As to stock-jobbers he saw no reason for the censures thrown on them. They keep up the value of the paper. Without them there would be no market.

M<sup>r</sup>. Butler said he meant neither to increase nor diminish the security of the Creditors.

M<sup>r</sup>. Randolph moved to postpone the clause in favor of the following “All debts contracted & engagements entered into, by or under the authority of Cong<sup>s</sup>. shall be as valid ag<sup>st</sup>. the U. States under this constitution as under the Confederation.”

Doc<sup>t</sup>. Johnson. The debts are debts of the U. S. of the great Body of America. Changing the Government cannot change the obligation of the U. S. which devolves of course on the new Government. Nothing was in his opinion necessary to be said. If any thing, it should be a mere declaration as moved by M<sup>r</sup>. Randolph.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, said he never had become a public Creditor that he might urge with more propriety the compliance with public faith. He had always done so and always would, and prefer<sup>d</sup> the term “*shall*” as the most explicit. As to *buying up* the debt, the term “*shall*” was not inconsistent with it, if provision be first made for paying the interest: if not, such an expedient was a mere evasion. He was content to say nothing as the New Government would be bound of course, but would prefer the clause with the term “*shall*,” because it would create many friends to the plan.

On M<sup>r</sup>. Randolph’s Motion.

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. Mary<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Sherman thought it necessary to connect with the clause for laying taxes duties &c an express provision for the object of the old debts &c—and moved to add to the 1<sup>st</sup> clause of 1<sup>st</sup> sect. art VII “for the payment of said debts and for the defraying the expences that shall be incurred for the common defence and general welfare.”

The proposition, as being unnecessary was disagreed to, Connecticut alone, being in the affirmative.

The Report of the Committee of eleven (see friday the 24<sup>th</sup>. instant) being taken up, Gen<sup>l</sup>. Pinkney moved to strike out the words, “the year eighteen hundred” as the year limiting the importation of slaves, and to insert the words “the year eighteen hundred and eight”

M<sup>r</sup>. Ghorum 2<sup>ded</sup> the motion.

M<sup>r</sup> Madison. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonourable to the National character than to say nothing about it in the Constitution.

On the motion; which passed in the affirmative, N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was for making the clause read at once, “the importation of slaves into N. Carolina, S. Carolina & Georgia shall not be prohibited &c.” This he said would be most fair and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it.

Col: Mason was not against using the term “slaves” but ag<sup>st</sup>. naming N. C. S. C. & Georgia, lest it should give offence to the people of those States.

M<sup>r</sup>. Sherman liked a description better than the terms proposed, which had been declined by the old Cong<sup>s</sup>. & were not pleasing to some people. M<sup>r</sup>. Clymer concurred with M<sup>r</sup>. Sherman.

M<sup>r</sup>. Williamson said that both in opinion & practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in S. C & Georgia on those terms, than to exclude them from the Union.

M<sup>r</sup>. Gov<sup>r</sup>. Morris withdrew his motion.

M<sup>r</sup>. Dickenson wished the clause to be confined to the States which had not themselves prohibited the importation of slaves, and for that purpose moved to amend the clause so as to read “The importation of slaves into such of the States as shall permit the same shall not be prohibited by the Legislature of the U. S. until the year 1808”—which was disagreed to nem: con: [1](#)

The first part of the report was then agreed to, amended as follows. “The migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1808.” N. H. Mas. Con. M<sup>d</sup>. N. C. S. C. Geo: ay. N. J. P<sup>a</sup>. Del. Virg<sup>a</sup> no.

M<sup>r</sup>. Baldwin in order to restrain & more explicitly define “the average duty” moved to strike out of the 2<sup>d</sup> part the words “average of the duties laid on imports” and insert “common impost on articles not enumerated” which was agreed to nem: cont:

M<sup>r</sup> Sherman was ag<sup>st</sup>. this 2<sup>d</sup> part, as acknowledging men to be property, by taxing them as such under the character of slaves.

M<sup>r</sup>. King & M<sup>r</sup> Langdon considered this as the price of the 1<sup>st</sup>. part.

Gen<sup>l</sup> Pinkney admitted that it was so.

Col: Mason. Not to tax, will be equivalent to a bounty on the importation of slaves.

M<sup>r</sup>. Ghorum thought that M<sup>r</sup>. Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

M<sup>r</sup>. Gov<sup>r</sup>. Morris remarked that as the clause now stands it implies that the Legislature may tax freemen imported.

M<sup>r</sup>. Sherman in answer to M<sup>r</sup>. Ghorum observed that the smallness of the duty shewed revenue to be the object, not the discouragement of the importation.

M<sup>r</sup>. Madison thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not like merchandize, consumed, &c.

Col. Mason (in answ<sup>r</sup>. to Gov<sup>r</sup>. Morris) the provision as it stands was necessary for the case of convicts in order to prevent the introduction of them.

It was finally agreed nem. contrad: to make the clause read “but a tax or duty may be imposed on such importation not exceeding ten dollars for each person,” and then the 2<sup>d</sup> part as amended was agreed to.

Sect. 5. art. VII was agreed to nem: con: as reported.

Sect. 6. art. VII. in the Report, was postponed.

On motion of M<sup>r</sup> Madison 2<sup>ded</sup>. by M<sup>r</sup>. Gov<sup>r</sup> Morris Article VIII was reconsidered and after the words “all treaties made,” were inserted nem: con: the words “or which shall be made.” This insertion was meant to obviate all doubt concerning the force of treaties preexisting, by making the words “all treaties made” to refer to them, as the words inserted would refer to future treaties.

M<sup>r</sup> Carrol and M<sup>r</sup>. L. Martin expressed their apprehensions, and the probable apprehensions of their constituents, that under the power of regulating trade the General Legislature, might favor the ports of particular States, by requiring vessels destined to or from other States to enter & clear thereat, as vessels belonging or bound to Baltimore, to enter & clear at Norfolk &c. They moved the following proposition.

“The Legislature of the U. S. shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other State than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one State in preference to another”

M<sup>r</sup>. Ghorum thought such a precaution unnecessary; & that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different States without being required to enter, with the opportunity of landing & selling their cargoes by the way.

M<sup>r</sup> M<sup>c</sup>Henry & Gen<sup>l</sup>. Pinkney made the following propositions.

“Should it be judged expedient by the Legislature of the U. S. that one or more port for collecting duties or imposts other than those ports of entrance & clearance already established by the respective States, should be established, the Legislature of the U. S. shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary; to be laid by the said Executives before the Legislatures of the States at their next session; and the Legislature of the U. S. shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the U. S. to the Executive of such State”

“All duties imposts & excises, prohibitions or restraints laid or made by the Legislature of the U. S. shall be uniform & equal throughout the U. S.”

These several propositions were referred nem: con: to a committee composed of a member from each State. The committee appointed by ballot were M<sup>r</sup> Langdon, M<sup>r</sup> Ghorum, M<sup>r</sup> Sherman, M<sup>r</sup>. Dayton, M<sup>r</sup>. Fitzimmons, M<sup>r</sup>. Read, M<sup>r</sup> Carrol, M<sup>r</sup> Mason, M<sup>r</sup>. Williamson, M<sup>r</sup>. Butler, M<sup>r</sup> Few.

On the question now taken on M<sup>r</sup>. Dickinson’s motion of yesterday, allowing appointments to offices, to be referred by the Gen<sup>l</sup> Legislature to the Executives of the several States as a further amendment to sect. 2. art. X, the votes were N. H. no. Mas. no. C<sup>t</sup>. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup>. divided. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. ay.

In amendment of the same section, “other public Ministers” were inserted after “ambassadors.”

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to strike out of the section—“and may correspond with the supreme Executives of the several States” as unnecessary and implying that he could not correspond with others. M<sup>r</sup>. Broome 2<sup>ded</sup>. him.

On the question

N. H. ay. Mas. ay. C<sup>t</sup>. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

“Shall receive ambassadors & other public Ministers,” agreed to, nem. con.

M<sup>r</sup>. Sherman moved to amend the “power to grant reprieves & pardon” so as to read “to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate.”

On the question

N. H. no. Mas. no. C<sup>t</sup> ay. P<sup>a</sup> no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

“except in cases of impeachment” inserted nem. con: after “pardon”

On the question to agree to —“but his pardon shall not be pleadable in bar”

N. H. ay. Mas. no. C<sup>t</sup> no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. no.

Adjourned

Monday Aug<sup>St</sup> 27<sup>Th</sup> 1787. In Convention

Art X. Sect 2. being resumed,

M<sup>r</sup> L. Martin moved to insert the words “after conviction” after the words “reprieves and pardons.”

M<sup>r</sup>. Wilson objected that pardon before conviction might be necessary in order to obtain the testimony of accomplices. He stated the case of forgeries in which this might particularly happen.—M<sup>r</sup>. L. Martin withdrew his motion.

M<sup>r</sup>. Sherman moved to amend the clause giving the Executive the command of the Militia, so as to read “and of the Militia of the several States, *when called into the actual service of the U. S.*” and on the Question N. H. ay. Mas. abs<sup>t</sup> C<sup>t</sup>. ay. N. J. abs<sup>t</sup>. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. abs<sup>t</sup>. S. C. no. Geo. ay.

The clause for removing the President on impeachment by the House of Rep<sup>s</sup>. and conviction in the supreme Court, of Treason, Bribery or corruption, was postponed nem: con: at the instance of M<sup>r</sup>. Gov<sup>r</sup>. Morris, who thought the Tribunal an improper one, particularly, if the first Judge was to be of the privy Council.

M<sup>r</sup>. Gov<sup>r</sup>. Morris objected also to the President of the Senate being provisional successor to the President, and suggested a designation of the Chief Justice.

M<sup>r</sup> Madison added as a ground of objection that the Senate might retard the appointment of a President in order to carry points whilst the revisionary power was in the President of their own body, but suggested that the Executive powers during a vacancy, be administered by the persons composing the Council to the President.

M<sup>r</sup>. Williamson suggested that the Legislature ought to have power to provide for occasional successors, & moved that the last clause (of 2 sect. X art.) relating to a provisional successor to the President, be postponed.

M<sup>r</sup>. Dickinson 2<sup>ded</sup>. the postponement, remarking that it was too vague. What is the extent of the term “disability” and who is to be the judge of it?

The postponement was agreed to nem: con:

Col: Mason & M<sup>r</sup>. Madison moved to add to the oath to be taken by the supreme Executive “and will to the best of my judgment and power preserve protect and defend the Constitution of the U. S.”

M<sup>r</sup>. Wilson thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.—

On the question

N. H. ay. Mas. abs<sup>t</sup>. C<sup>t</sup>. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. abs<sup>t</sup>. S. C. ay. Geo. ay.

Art: XI. being taken up.

Doc<sup>r</sup>. Johnson suggested that the judicial power ought to extend to equity as well as law—and moved to insert the words, “both in law and equity” after the words “U. S.” in the 1<sup>st</sup>. line of sect 1.

M<sup>r</sup>. Read objected to vesting these powers in the same Court.

On the question

N. H. ay. Mas. absent C<sup>t</sup> ay. N. J. abs<sup>t</sup> P. ay. Del. no. M<sup>d</sup> no. Virg<sup>a</sup> ay. N. C. abs<sup>t</sup> S. C. ay. Geo. ay.

On the question to agree to Sect. 1. art. XI. as amended

N. H. ay. Mas. abs<sup>t</sup> C<sup>t</sup> ay. P<sup>a</sup> ay. N. J. abs<sup>t</sup>. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. abs<sup>t</sup>. S. C. ay. Geo. ay.

M<sup>r</sup> Dickinson moved as an amendment to sect. 2. art XI after the words “good behavior” the words “provided that they may be removed by the Executive on the application by the Senate and House of Representatives.”

M<sup>r</sup>. Gerry 2<sup>ded</sup>. the motion

M<sup>r</sup> Gov<sup>r</sup> Morris thought it a contradiction in terms to say that the Judges should hold their offices during good behavior, and yet be removeable without a trial. Besides it was fundamentally wrong to subject Judges to so arbitrary an authority.

M<sup>r</sup>. Sherman saw no contradiction or impropriety if this were made a part of the Constitutional regulation of the Judiciary establishment. He observed that a like provision was contained in the British Statutes.

M<sup>r</sup>. Rutledge. If the Supreme Court is to judge between the U. S. and particular States, this alone is an insuperable objection to the motion.

M<sup>r</sup> Wilson considered such a provision in the British Government as less dangerous than here, the House of Lords & House of Commons being less likely to concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended by his independent conduct, both houses of Parliament. Had this happened at the same time, he would have been ousted. The Judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our Gov<sup>t</sup>

M<sup>r</sup>. Randolph opposed the motion as weakening too much the independence of the Judges.

M<sup>r</sup>. Dickinson was not apprehensive that the Legislature composed of different branches constructed on such different principles, would improperly unite for the purpose of displacing a Judge.

On the question for agreeing to M<sup>r</sup>. Dickinson's Motion

N. H. no. Mas. abs<sup>t</sup> C<sup>t</sup>. ay. N. J. abs<sup>t</sup>. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. abs<sup>t</sup> S. C. no. Geo. no.

M<sup>r</sup>. Madison and M<sup>r</sup>. M<sup>c</sup>Henry moved to reinstate the words "increased or" before the word "diminished" in 2<sup>d</sup>. sect. art XI.

M<sup>r</sup>. Gov<sup>r</sup>. Morris opposed it for reasons urged by him on a former occasion—

Col: Mason contended strenuously for the motion. There was no weight he said in the argument drawn from changes in the value of the metals, because this might be provided for by an increase of salaries so made as not to affect persons in office, and this was the only argument on which much stress seemed to have been laid.

Gen<sup>l</sup>. Pinkney. The importance of the Judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the U. S. can allow in the first instance. He was not satisfied with the expedient mentioned by Col: Mason. He did not think it would have a good effect or a good appearance, for new Judges to come in with higher salaries than the old ones.

M<sup>r</sup> Gov<sup>r</sup>. Morris said the expedient might be evaded & therefore amounted to nothing. Judges might resign, & then be re-appointed to increased salaries.

On the question

N. H. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. S. C. no. Geo. abs<sup>t</sup>. also Mas<sup>ts</sup> & N. J. & N. C.

M<sup>r</sup>. Randolph & M<sup>r</sup>. Madison then moved to add the following words to art XI. sect. 2. “nor increased by any Act of the Legislature which shall operate before the expiration of three years after the passing thereof”

On the question

N. H. no. C<sup>t</sup>. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. S. C. no. Geo. abs<sup>t</sup> also Mas. N. J. & N. C.

Sect. 3. art. XI. being taken up, the following cause was postponed viz, “to the trial of impeachments of officers of the U. S.” by which the jurisdiction of the supreme Court was extended to such cases.

M<sup>r</sup> Madison & M<sup>r</sup>. Gov<sup>r</sup> Morris moved to insert after the word “controversies” the words “to which the U. S. shall be a party,” which was agreed to nem: con:

Doc<sup>r</sup>. Johnson moved to insert the words “this Constitution and the” before the word “laws”

M<sup>r</sup>. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising under the Constitution & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

The motion of Doc<sup>r</sup> Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature.

On motion of M<sup>r</sup>. Rutledge the words “passed by the Legislature” were struck out, and after the words “U. S.” were inserted nem: con: the words “and treaties made or which shall be made under their authority” conformably to a preceding amendment in another place.

The clause “in cases of impeachment,” was postponed.

M<sup>r</sup>. Gov<sup>r</sup>. Morris wished to know what was meant by the words “In all the cases before-mentioned it (jurisdiction) shall be appellate with such exceptions &c,” whether it extended to matters of fact as well as law—and to cases of common law as well as civil law.

M<sup>r</sup> Wilson. The Committee he believed meant facts as well as law & Common as well as Civil law. The jurisdiction of the federal Court of Appeals had he said been so construed.

M<sup>r</sup>. Dickinson moved to add after the word “appellate” the words “both as to law & fact which was agreed to nem: con:

M<sup>r</sup>. Madison & M<sup>r</sup>. Gov<sup>r</sup> Morris moved to strike out the beginning of the 3<sup>d</sup> sect. “The jurisdiction of the supreme Court” & to insert the words “the Judicial power” which was agreed to nem: con:



The following motion was disagreed to, to wit to insert “In all the other cases beforementioned the Judicial power shall be exercised in such manner as the Legislature shall direct” Del. Virg<sup>a</sup> ay. N. H. Con. P. M. S. C. G. no.

On a question for striking out the last sentence of of the sect. 3. “The Legislature may assign &c.” N. H. ay. C<sup>t</sup> ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Sherman moved to insert after the words “between Citizens of different States” the words, “between Citizens of the same State claiming lands under grants of different States”—according to the provision in the 9th Art: of the Confederation—which was agreed to nem: con:

Adjourned

## Tuesday August 28 1787. In Convention

M<sup>r</sup>. Sherman from the Committee to whom were referred several propositions on the 25<sup>th</sup>. instant, made the following report:—

That there be inserted after the 4 clause of 7<sup>th</sup>. section

“Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter clear or pay duties in another and all tonnage, duties, imposts & excises laid by the Legislature shall be uniform throughout the U. S.”

Art XI Sect. 3, It was moved to strike out the words “it shall be appellate” to insert the words “the supreme Court shall have appellate jurisdiction,”—in order to prevent uncertainty whether “it” referred to the *supreme Court*, or to the *Judicial power*.

On the question

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. abs<sup>t</sup>. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. ay. N C ay. S. C ay. Geo. ay.

Sect. 4. was so amended nem. con: as to read “The trial of all crimes (except in cases of impeachment) shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct” The object of this amendment was to provide for trial by jury of offences committed out of any State.

M<sup>r</sup> Pinkney urged the propriety of securing the benefit of the Habeas corpus in the most ample manner, moved “that it should not be suspended but on the most urgent occasions, & then only for a limited time not exceeding twelve months”

M<sup>r</sup> Rutledge was for declaring the Habeas Corpus inviolable. He did not conceive that a suspension could ever be necessary at the same time through all the States.

M<sup>r</sup>. Gov<sup>r</sup> Morris moved that “The privilege of the writ of Habeas Corpus shall not be suspended; unless where in cases of Rebellion or invasion the public safety may require it.”

M<sup>r</sup> Wilson doubted whether in any case a suspension could be necessary, as the discretion now exists with Judges, in most important cases to keep in Gaol or admit to Bail.

The first part of M<sup>r</sup>. Gov<sup>r</sup>. Morris’ motion, to the word “unless” was agreed to nem: con:—on the remaining part;

N. H. ay. Mas ay. C<sup>t</sup> ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

Sec. 5. of art: XI. was agreed to *nem: con.*[1](#)

Art: XII being taken up.

M<sup>r</sup>. Wilson & M<sup>r</sup>. Sherman moved to insert after the words “coin money” the words “nor emit bills of credit, nor make any thing but gold & silver coin a tender in payment of debts” making these prohibitions absolute, instead of making the measures allowable (as in the XIII art:) *with the consent of the Legislature of the U. S.*

M<sup>r</sup> Ghorum thought the purpose would be as well secured by the provisions of art: XIII which makes the consent of the Gen<sup>l</sup> Legislature necessary, and that in that mode no opposition would be excited; whereas an absolute prohibition of paper money would rouse the most desperate opposition from its partizans.

M<sup>r</sup>. Sherman thought this a favorable crisis for crushing paper money. If the consent of the Legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the Legislature in order to license it.

The question being divided; on the 1<sup>st</sup>. part—“nor emit bills of credit” N. H. ay. Mas. ay. C<sup>t</sup> ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

The remaining part of M<sup>r</sup> Wilson’s & Sherman’s motion was agreed to nem: con:

M<sup>r</sup>. King moved to add, in the words used in the Ordinance of Cong<sup>r</sup>. establishing new States, a prohibition on the States to interfere in private contracts.

M<sup>r</sup> Gov<sup>r</sup>. Morris. This would be going too far. There are a thousand laws, relating to bringing actions—limitations, of actions & which affect contracts. The Judicial power of the U. S. will be a protection in cases within their jurisdiction; and within the State itself a majority must rule, whatever may be the mischief done among themselves.

M<sup>r</sup>. Sherman. Why then prohibit bills of credit?

M<sup>r</sup>. Wilson was in favor of M<sup>r</sup>. King’s motion.

M<sup>r</sup>. Madison admitted that inconveniences might arise from such a prohibition but thought on the whole it would be overbalanced by the utility of it. He conceived however that a negative on the State laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the Legislatures.

Col: Mason. This is carrying the restraint too far. Cases will happen that cannot be foreseen, where some kind of interference will be proper & essential. He mentioned the case of limiting the period for bringing actions on open account—that of bonds after a certain lapse of time—asking whether it was proper to tie the hands of the States from making provision in such cases?

M<sup>r</sup>. Wilson. The answer to these objections is that retrospective interferences only are to be prohibited.

M<sup>r</sup>. Madison. Is not that already done by the prohibition of ex post facto laws, which will oblige the Judges to declare such interferences null & void.

M<sup>r</sup>. Rutledge moved instead of M<sup>r</sup>. King's Motion to insert —“nor pass bills of attainder nor retrospective<sup>1</sup> laws” on which motion N. H. ay. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. Virg<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Madison moved to insert after the word “reprisal” (art. XII) the words “nor lay embargoes.” He urged that such acts by the States would be unnecessary—impolitic—and unjust.

M<sup>r</sup>. Sherman thought the States ought to retain this power in order to prevent suffering & injury to their poor.

Col: Mason thought the amendment would be not only improper but dangerous, as the Gen<sup>l</sup>. Legislature would not sit constantly and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes during the war, to prevent exports, particularly in the case of a blockade.

M<sup>r</sup>. Gov<sup>r</sup>. Morris considered the provision as unnecessary; the power of regulating trade between State & State already vested in the Gen<sup>l</sup> Legislature, being sufficient.

On the question

N. H. no. Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

M<sup>r</sup>. Madison moved that the words “nor lay imposts or duties on imports” be transferred from art: XIII where the consent of the Gen<sup>l</sup>. Legislature may license the act—into art: XII which will make the prohibition of the States absolute. He observed that as the States interested in this power by which they could tax the imports of their neighbors passing thro' their markets, were a majority, they could give the consent of the Legislature, to the injury of N. Jersey, N. Carolina &c.

M<sup>r</sup> Williamson 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Sherman thought the power might safely be left to the Legislature of the U. States.

Col: Mason observed that particular States might wish to encourage by impost duties certain manufactures for which they enjoyed natural advantages, as Virginia, the manufacture of Hemp &c.

M<sup>r</sup>. Madison. The encouragement of Manufactures in that mode requires duties not only on imports directly from foreign Countries, but from the other States in the Union, which would revive all the mischiefs experienced from the want of a Gen<sup>l</sup>. Government over commerce. [1](#)

On the question

N. H. ay. Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. no. Del<sup>a</sup>. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

Art: XII as amended agreed to nem: con:

Art: XIII being taken up. M<sup>r</sup>. King moved to insert after the word “imports” the words “or exports,” so as to prohibit the States from taxing either, & on this question it passed in the affirmative.

N. H. ay. Mas. ay. C<sup>t</sup>. no. N. J. ay. P. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. Sherman moved to add after the word “exports”—the words “nor with such consent but for the use of the U. S.”—so as to carry the proceeds of all State duties on imports & exports, into the common Treasury.

M<sup>r</sup> Madison liked the motion as preventing all State imposts—but lamented the complexity we were giving to the commercial system.

M<sup>r</sup> Gov<sup>r</sup>. Morris thought the regulation necessary to prevent the Atlantic States from endeavoring to tax the Western States—& promote their interest by opposing the navigation of the Mississippi which would drive the Western people into the arms of G. Britain.

M<sup>r</sup>. Clymer thought the encouragement of the Western Country was suicide on the old States. If the States have such different interests that they cannot be left to regulate their own manufactures without encountering the interests of other States, it is a proof that they are not fit to compose one nation.

M<sup>r</sup>. King was afraid that the regulation moved by M<sup>r</sup>. Sherman would too much interfere with the policy of States respecting their manufactures, which may be necessary. Revenue he reminded the House was the object of the general Legislature.

On M<sup>r</sup>. Sherman’s motion

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

Art XIII was then agreed to as amended.

Art. XIV was taken up.

Gen<sup>l</sup> Pinkney was not satisfied with it. He seemed to wish some provision should be included in favor of property in slaves.

On the question on Art: XIV.

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. divided.

Art: XV. being taken up, the words “high misdemesnor,” were struck out, and “other crime” inserted, in order to comprehend all proper cases; it being doubtful whether “high misdemeanor” had not a technical meaning too limited.

M<sup>r</sup> Butler and M<sup>r</sup> Pinkney moved “to require fugitive slaves and servants to be delivered up like criminals.”

M<sup>r</sup>. Wilson. This would oblige the Executive of the State to do it at the public expence.

M<sup>r</sup>. Sherman saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.

M<sup>r</sup>. Butler withdrew his proposition in order that some particular provision might be made apart from this article.

Art XV as amended was then agreed to nem: con:

Adjourned

Wednesday August 29<sup>Th</sup>. 1787. In Convention

Art: XVI. taken up.

M<sup>r</sup>. Williamson moved to substitute in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article.

M<sup>r</sup>. Wilson and Doc<sup>r</sup>. Johnson supposed the meaning to be that Judgments in one State should be the ground of actions in other States, & that acts of the Legislatures should be included, for the sake of Acts of insolvency &c.

M<sup>r</sup>. Pinkney moved to commit Art XVI with the following proposition “To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange”

M<sup>r</sup> Ghorum was for agreeing to the article, and committing the proposition.

M<sup>r</sup>. Madison was for committing both. He wished the Legislature might be authorized to provide for the *execution* of Judgments in other States, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

M<sup>r</sup>. Randolph said there was no instance of one nation executing judgments of the Courts of another nation. He moved the following proposition:

“Whenever the Act of any State, whether Legislative, Executive or Judiciary shall be attested & exemplified under the seal thereof, such attestation and exemplification, shall be deemed in other States as full proof of the existence of that act—and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done.”

On the question for committing Art: XVI with M<sup>r</sup>. Pinkney’s motion N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. P<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

The motion of M<sup>r</sup> Randolph was also committed nem: con:

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to commit also the following proposition on the same subject.

“Full faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws, determine the proof and effect of such acts, records, and proceedings” and it was committed nem. contrad:

The Committee appointed for these references, were M<sup>r</sup>. Rutlidge, M<sup>r</sup>. Randolph, M<sup>r</sup>. Gorham, M<sup>r</sup>. Wilson, & M<sup>r</sup>. Johnson.

M<sup>r</sup>. Dickenson mentioned to the House that on examining Blackstone’s Commentaries, he found that the term “ex post facto” related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases, and that some further provision for this purpose would be requisite.

Art: VII Sect. 6 by y<sup>e</sup>. Com<sup>?</sup>ittee of eleven reported to be struck out (see the 24 instant) being now taken up.

M<sup>r</sup>. Pinkney moved to postpone the Report in favor of the following proposition—“That no act of the Legislature for the purpose of regulating the commerce of the U. S. with foreign powers among the several States, shall be passed without the assent of two thirds of the members of each House.” He remarked that

there were five distinct commercial interests. 1. the fisheries & W. India trade, which belonged to the N. England States. 2. the interest of N. York lay in a free trade. 3. Wheat & flour the Staples of the two middle States (N. J. & Penn<sup>a</sup>). 4. Tob<sup>o</sup>. the staple of Maryl<sup>d</sup>. & Virginia & partly of N. Carolina. 5. Rice & Indigo, the staples of S. Carolina & Georgia. These different interests would be a source of oppressive regulations if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the S. States. They did not need the protection of the N. States at present.

M<sup>r</sup>. Martin 2<sup>ded</sup>. the motion

Gen<sup>l</sup>. Pinkney said it was the true interest of the S. States to have no regulation of commerce; but considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views<sup>1</sup> of South Carolina, and the interest the weak South<sup>n</sup>. States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices ag<sup>st</sup> the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

M<sup>r</sup>. Clymer. The diversity of commercial interests of necessity creates difficulties, which ought not to be increased by unnecessary restrictions. The Northern & middle States will be ruined, if not enabled to defend themselves against foreign regulations.

M<sup>r</sup> Sherman, alluding to M<sup>r</sup>. Pinkney's enumeration of particular interests, as requiring a security ag<sup>st</sup> abuse of the power; observed that the diversity was of itself a security, adding that to require more than a majority to decide a question was always embarrassing as had been experienced in cases requiring the votes of nine States in Congress.

M<sup>r</sup>. Pinkney replied that his enumeration meant the five minute interests. It still left the two great divisions of Northern & Southern interests.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, opposed the object of the motion as highly injurious. Preferences to american ships will multiply them, till they can carry the Southern produce cheaper than it is now carried.—A navy was essential to security, particularly of the S. States, and can only be had by a navigation act encouraging american bottoms & seamen. In those points of view then alone, it is the interest of the S. States that navigation acts should be facilitated. Shipping he said was the worst & most precarious kind of property, and stood in need of public patronage.

M<sup>r</sup>. Williamson was in favor of making two thirds instead of a majority requisite, as more satisfactory to the Southern people. No useful measure he believed had been lost in Congress for want of nine votes. As to the weakness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion

requiring ? necessary in itself, because if a majority of the Northern States should push their regulations too far the S. States would build ships for themselves; but he knew the Southern people were apprehensive on this subject and would be pleased with the precaution.

M<sup>r</sup>. Spaight was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

M<sup>r</sup>. Butler differed from those who considered the rejection of the motion as no concession on the part of the S. States. He considered the interest of these and of the Eastern States, to be as different as the interests of Russia and Turkey. Being notwithstanding desirous of conciliating the affections of the East: States, he should vote ag<sup>st</sup>. requiring ? instead of a majority.

Col: Mason. If the Gov<sup>t</sup> is to be lasting, it must be founded in the confidence & affections of the people, and must be so constructed as to obtain these. The *Majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves bound hand & foot to the Eastern States, and enable them to exclaim, in the words of Cromwell on a certain occasion—“the lord hath delivered them into our hands.

M<sup>r</sup> Wilson took notice of the several objections and remarked that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority he said would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot than the former. Great inconveniences had, he contended, been experienced in Congress from the article of confederation requiring nine votes in certain cases.

M<sup>r</sup>. Madison went into a pretty full view of the subject. He observed that the disadvantage to the S. States from a navigation act, lay chiefly in a temporary rise of freight, attended however with an increase of South<sup>n</sup>. as well as Northern Shipping—with the emigration of Northern Seamen & merchants to the Southern States—& with a removal of the existing & injurious retaliations among the States on each other. The power of foreign nations to obstruct our retaliating measures on them by a corrupt influence would also be less if a majority sh<sup>d</sup>. be made competent than if ? of each House sh<sup>d</sup>. be required to legislative acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of 2 branches—by the independence of the Senate, by the negative of the Executive, by the interest of Connecticut & N. Jersey which were agricultural, not commercial States; by the interior interest which was also agricultural in the most commercial States, by the accession of Western States which w<sup>d</sup>. be altogether agricultural. He added that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the S. States, by increasing, the consumption of their produce. If the wealth of the Eastern should in a still greater proportion be augmented, that wealth w<sup>d</sup>. contribute the more to the public wants, and be otherwise a national benefit.



M<sup>r</sup>. Rutledge was ag<sup>st</sup>. the motion of his colleague. It did not follow from a grant of the power to regulate trade, that it would be abused, At the worst a navigation act could bear hard a little while only on the S. States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation act was necessary for obtaining it.

M<sup>r</sup>. Randolph said that there were features so odious in the constitution as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would compleat the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures if two thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority & two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President who could require three fourths by his negative. He did not mean however to enter into the merits. What he had in view was merely to pave the way for a declaration which he might be hereafter obliged to make if an accumulation of obnoxious ingredients should take place, that he could not give his assent to the plan.

M<sup>r</sup>. Gorham. If the Government is to be so fettered as to be unable to relieve the Eastern States what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves. The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion, but if it should take place it was the Southern part of the Continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern & Middle States being a security against it. It was moreover certain that foreign ships would never be altogether excluded especially those of Nations in treaty with us.

On the question to postpone in order to take up M<sup>r</sup>. Pinkney's motion N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

The Report of the Committee for striking out Sect. 6. requiring two thirds of each House to pass a navigation act was then agreed to, nem: con:

M<sup>r</sup>. Butler moved to insert after Art: XV. "If any person bound to service or labor in any of the U. States shall escape into another State, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor," which was agreed to nem: con:

Art: XVII being taken up, M<sup>r</sup> Gov<sup>r</sup> Morris moved to strike out the two last sentences, to wit "If the admission be consented to, the new States shall be admitted on the same terms with the original States. But the Legislature may make conditions with the new

States, concerning the public debt which shall be then subsisting.”—He did not wish to bind down the Legislature to admit Western States on the terms here stated.

M<sup>r</sup>. Madison opposed the motion, insisting that the Western States neither would nor ought to submit to a union which degraded them from an equal rank with the other States.

Col: Mason. If it were possible by just means to prevent emigrations to the Western Country, it might be good policy. But go the people will as they find it for their interest, and the best policy is to treat them with that equality which will make them friends not enemies.

M<sup>r</sup>. Gov<sup>r</sup>. Morris did not mean to discourage the growth of the Western Country. He knew that to be impossible. He did not wish however to throw the power into their hands.

M<sup>r</sup>. Sherman, was ag<sup>st</sup>. the motion & for fixing an equality of privileges by the Constitution.

M<sup>r</sup>. Langdon was in favor of the motion, he did not know but circumstances might arise which would render it inconvenient to admit new States on terms of equality.

M<sup>r</sup>. Williamson was for leaving the Legislature free. The existing *small* States enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On M<sup>r</sup>. Gov<sup>r</sup>. Morris’s motion for striking out.

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. L. Martin & M<sup>r</sup> Gov<sup>r</sup>. Morris moved to strike out of art XVII, “but to such admission the consent of two thirds of the members present shall be necessary.” Before any question was taken on this motion,

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved the following proposition as a substitute for the XVII Art:

“New States may be admitted by the Legislature into this Union; but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the Gen<sup>l</sup> Legislature.”

The first part to Union inclusive was agreed to nem: con:

M<sup>r</sup>. L. Martin opposed the latter part. Nothing he said would so alarm the limited States as to make the consent of the large States claiming the Western lands, necessary to the establishment of new States within their limits. It is proposed to guarantee the States. Shall Vermont be reduced by force in favor of the States claiming it? Frankland & the Western county of Virginia were in a like situation.

On M<sup>r</sup>. Gov<sup>r</sup>. Morris's motion to substitute &c it was agreed to. N. H. no. Mass. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XVII—before the House, as amended.

M<sup>r</sup>. Sherman was against it. He thought it unnecessary. The Union cannot dismember a State without its consent.

M<sup>r</sup>. Langdon thought there was great weight in the argument of M<sup>r</sup>. Luther Martin, and that the proposition substituted by M<sup>r</sup> Gov<sup>r</sup> Morris would excite a dangerous opposition to the plan.

M<sup>r</sup> Gov<sup>r</sup>. Morris thought on the contrary that the small States would be pleased with the regulation, as it holds up the idea of dismembering the large States.

M<sup>r</sup>. Butler. If new States were to be erected without the consent of the dismembered States, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new States.

Doc<sup>t</sup> Johnson agreed in general with the ideas of M<sup>r</sup> Sherman, but was afraid that as the clause stood, Vermont would be subjected to N. York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

M<sup>r</sup>. Langdon said his objections were connected with the case of Vermont. If they are not taken in, & remain exempt from taxes, it would prove of great injury to N. Hampshire and the other neighbouring States

M<sup>r</sup>. Dickinson hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small States to secure the large ones in their extensive claims of territory.

M<sup>r</sup> Wilson. When the *majority* of a State wish to divided they can do so. The aim of those in opposition to the article, he perceived was that the Gen<sup>l</sup> Government should abet the *minority*, & by that means divide a State against its own consent.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. If the forced division of the States is the object of the new system, and is to be pointed ag<sup>st</sup>. one or two States, he expected the Gentlemen from these would pretty quickly leave us.

Adjourned

## Thursday August 30th 1787. In Convention

Art XVII resumed for a question on it as amended by M<sup>r</sup>. Gov<sup>r</sup>. Morris's substitutes

M<sup>r</sup>. Carrol moved to strike out so much of the article as requires the consent of the State to its being divided. He was aware that the object of this prerequisite might be to

prevent domestic disturbances; but such was our situation with regard to the Crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no guard was provided for the right of the U. States to the back lands. He suggested that it might be proper to provide that nothing in the Constitution should affect the Right of the U. S. to lands ceded by G. Britain in the Treaty of peace, and proposed a committment to a member from each State. He assured the House that this was a point of a most serious nature. It was desirable above all things that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

M<sup>r</sup>. L. Martin 2<sup>ded</sup>. the motion for a commitment.

M<sup>r</sup> Rutledge is it to be supposed that the States are to be cut up without their own consent. The case of Vermont will probably be particularly provided for. There could be no room to fear, that Virginia or N. Carolina would call on the U. States to maintain their Government over the Mountains.

M<sup>r</sup>. Williamson said that N. Carolina was well disposed to give up her western lands, but attempts at compulsion was not the policy of the U. S. He was for doing nothing in the constitution in the present case, and for leaving the whole matter in Statu quo.

M<sup>r</sup>. Wilson was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of the new States as heretofore. He knew nothing that would give greater or juster alarm than the doctrine, that a political society is to be torn assunder without its own consent.

On M<sup>r</sup>. Carrol's motion for commitment.

N. H. no. Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Sherman moved to postpone the substitute for Art: XVII agreed to yesterday in order to take up the following amendment.

“The Legislature shall have power to admit other States into the Union, and new States to be formed by the division or junction of States now in the Union, with the consent of the Legislature of such States.” (The first part was meant for the case of Vermont to secure its admission.)

On the question, it passed in the negative

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

Doc<sup>r</sup> Johnson moved to insert the words “hereafter formed or” after the words “shall be” in the substitute for Art: XVII (the more clearly to save Vermont as being already

formed into a State, from a dependence on the consent of N. York for her admission.)  
The motion was agreed to Del. & M<sup>d</sup> only dissenting.

M<sup>f</sup> Gov<sup>f</sup> Morris moved to strike out the word “limits” in the substitute, and insert the word “jurisdiction” (This also was meant to guard the case of Vermont, the jurisdiction of N. York not extending over Vermont which was in the exercise of sovereignty, tho’ Vermont was within the asserted limits of New York.)

On this question

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. no. S. C. no.  
Geo. no.

M<sup>f</sup> L. Martin urged the unreasonableness of forcing & guaranteeing the people of Virginia beyond the Mountains, the Western people of N. Carolina & of Georgia, & the people of Maine, to continue under the States now governing them, without the consent of those States to their separation. Even if they should become the *majority*, the majority of *Counties*, as in Virginia may still hold fast the dominion over them. Again the majority may place the seat of Government entirely among themselves & for their own conveniency, and still keep the injured parts of the States in subjection, under the guarantee of the Gen<sup>l</sup> Government ag<sup>st</sup> domestic violence. He wished M<sup>f</sup> Wilson had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small States were in question, they were phantoms, ideal beings. Now when the Great States were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small States to guarantee the Western claims of the large ones.—It was said yesterday by M<sup>f</sup> Gov<sup>f</sup>. Morris, that if the large States were to be split to pieces without their consent, their representatives here would take their leave. If the Small States are to be required to guarantee them in this manner, it will be found that the Representatives of other States will with equal firmness take their leave of the Constitution on the table.

It was moved by M<sup>f</sup> L. Martin to postpone the substituted article, in order to take up the following.

“The Legislature of the U. S. shall have power to erect New States within as well as without the territory claimed by the several States or either of them, and admit the same into the Union: provided that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the late treaty of peace, which passed in the negative: N. J. Del. & M<sup>d</sup>. only ay.

On the question to agree to M<sup>f</sup>. Gov<sup>f</sup> Morris’s substituted article as amended in the words following.

“New States may be admitted by the Legislature into the Union: but no new State shall be hereafter formed or erected within the jurisdiction of any of the present States without the consent of the Legislature of such State as well as of the General Legislature”

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Dickinson moved to add the following clause to the last—

“Nor shall any State be formed by the junction of two or more States or parts thereof, without the consent of the Legislature of such States, as well as of the Legislature of the U. States,” which was agreed to without a count of the votes.

M<sup>r</sup>. Carrol moved to add—“Provided nevertheless that nothing in this Constitution shall be construed to affect the claim of the U. S. to vacant lands ceded to them by the Treaty of peace.” This he said might be understood as relating to lands not claimed by any particular States, but he had in view also some of the claims of particular States.

M<sup>r</sup>. Wilson was ag<sup>st</sup>. the motion. There was nothing in the Constitution affecting one way or the other the claims of the U. S. & it was best to insert nothing, leaving every thing on that litigated subject in statu quo.

M<sup>r</sup>. Madison considered the claim of the U. S. as in fact favored by the jurisdiction of the Judicial power of the U. S. over controversies to which they should be parties. He thought it best on the whole to be silent on the subject. He did not view the proviso of Mr. Carrol as dangerous; but to make it neutral & fair, it ought to go further & declare that the claims of particular States also should not be affected.

M<sup>r</sup> Sherman thought the proviso harmless, especially with the addition suggested by M<sup>r</sup> Madison in favor of the claims of particular States.

M<sup>r</sup> Baldwin did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that if Georgia has gained much by the cession in the Treaty of peace, she was in danger during the war of a Uti possidetis.

M<sup>r</sup>. Rutledge thought it wrong to insert a proviso where there was nothing which it could restrain, or on which it could operate.

M<sup>r</sup> Carrol withdrew his motion and moved the following.

“Nothing in this Constitution shall be construed to alter the claims of the U. S. or of the individual States to the Western territory, but all such claims shall be examined into & decided upon, by the Supreme Court of the U. States.”

M<sup>r</sup> Gov<sup>r</sup>. Morris moved to postpone this in order to take up the following.

“The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U. States; and nothing in this constitution contained, shall be so construed as to prejudice any claims either of the U. S. or of any particular State.”—The postponem<sup>t</sup> ag<sup>d</sup> to nem. con.

M<sup>f</sup> L. Martin moved to amend the proposition of M<sup>f</sup> Gov<sup>f</sup>. Morris by adding—“But all such claims may be examined into & decided upon by the supreme Court of the U. States.”

M<sup>f</sup> Gov<sup>f</sup>. Morris. this is unnecessary, as all suits to which the U. S. are parties, are already to be decided by the Supreme Court.

M<sup>f</sup> L. Martin, it is proper in order to remove all doubts on this point.

Question on M<sup>f</sup> L. Martin’s amendatory motion

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> no—States not farther called the negatives being sufficient & the point given up.

The Motion of M<sup>f</sup> Gov<sup>f</sup>. Morris was then agreed to, M<sup>d</sup>. alone dissenting.

Art: XVIII being taken up,—the word “foreign” was struck out nem: con: as superfluous, being implied in the term “invasion.”

M<sup>f</sup>. Dickinson moved to strike out “on the application of its Legislature, against” He thought it of essential importance to the tranquility of the U. S. that they should in all cases suppress domestic violence, which may proceed from the State Legislature itself, or from disputes between the two branches where such exist.

M<sup>f</sup>. Dayton mentioned the Conduct of Rho: Island as shewing the necessity of giving latitude to the power of the U. S. on this subject.

On the question

N. H. no. Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

On a question for striking out “domestic violence” and insert<sup>g</sup>. “insurrections—” It passed in the negative.

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup> Dickinson moved to insert the words, “or Executive” after the words “application of its Legislature.”—The occasion itself he remarked might hinder the Legislature from meeting.

On this question

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> div<sup>d</sup>. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup> L. Martin moved to subjoin to the last amendment the words “in the recess of the Legislature” On which question

N. H. no. Mas. no. C<sup>t</sup>. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

On Question on the last clause as amended

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XIX taken up.

M<sup>r</sup>. Gov<sup>r</sup>. Morris suggested that the Legislature should be left at liberty to call a Convention, whenever they please.

The Art: was agreed to nem: con:

Art: XX. taken up.—“or affirmation” was added after “oath.”

M<sup>r</sup>. Pinkney moved to add to the Art:—“but no religious test shall ever be required as a qualification to any office or public trust under the authority of the U. States”

M<sup>r</sup>. Sherman thought it unnecessary, the prevailing liberality being a sufficient security ag<sup>st</sup>. such tests.

M<sup>r</sup>. Gov<sup>r</sup>. Morris & Gen<sup>l</sup> Pinkney approved the motion.

The motion was agreed to nem: con: and then the whole Article; N. C. only no—and M<sup>d</sup>. divided.

Art: XXI. taken up, viz: “The ratifications of the Conventions of — States shall be sufficient for organizing this Constitution.”

M<sup>r</sup> Wilson proposed to fill the blank with “seven” that being a majority of the whole number & sufficient for the commencement of the plan.

M<sup>r</sup>. Carrol moved to postpone the article in order to take up the Report of the Committee of Eleven (see Tuesday Aug<sup>st</sup> 28)— and on the question

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Gov<sup>r</sup>. Morris thought the blank ought to be filled in a twofold way, so as to provide for the event of the ratifying States being contiguous which would render a smaller number sufficient, and the event of their being dispersed, which w<sup>d</sup>. require a greater number for the introduction of the Government.

M<sup>r</sup>. Sherman observed that the States being now confederated by articles which require unanimity in changes, he thought the ratification in this case of ten States at least ought to be made necessary.



M<sup>r</sup>. Randolph was for filling the blank with “nine” that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

M<sup>r</sup> Wilson mentioned “eight” as preferable.

M<sup>r</sup>. Dickinson asked whether the concurrence of Congress is to be essential to the establishment of the system, whether the refusing States in the Confederacy could be deserted—and whether Congress could concur in contravening the system under which they acted?

M<sup>r</sup> Madison, remarked that if the blank should be filled with “seven” “eight,” or “nine,” the Constitution as it stands might be put in force over the whole body of the people, tho’ less than a majority of them should ratify it.

M<sup>r</sup> Wilson. As the Constitution stands, the States only which ratify can be bound. We must he said in this case go to the original powers of Society. The House on fire must be extinguished, without a scrupulous regard to ordinary rights.

M<sup>r</sup>. Butler was in favor of “nine.” He revolted at the idea, that one or two States should restrain the rest from consulting their safety.

M<sup>r</sup>. Carrol moved to fill the blank with “the thirteen,” unanimity being necessary to dissolve the existing confederacy which had been unanimously established.

M<sup>r</sup>. King thought this amend<sup>t</sup> necessary, otherwise as the Constitution now stands it will operate on the whole though ratified by a part only. Adjourned.

### Friday August 31<sup>St</sup>. 1787 In Convention.

M<sup>r</sup>. King moved to add to the end of Art: XXI the words “between the said States” so as to confine the operation of the Gov<sup>t</sup>. to the States ratifying it.

On the question

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. M<sup>d</sup>. no. Virg<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison proposed to fill the blank in the article with “any seven or more States entitled to thirty three members at least in the House of Representatives according to the allotment made in the 3 Sect: of Art: 4.” This he said would require the concurrence of a majority of both the States and the people.

M<sup>r</sup> Sherman doubted the propriety of authorizing less than all the States to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the States may concur, and on that supposition it is needless to hold out a breach of faith.

M<sup>f</sup>. Clymer and M<sup>f</sup> Carrol moved to postpone the consideration of Art: XXI in order to take up the Reports of Committees not yet acted on. On this question, the States were equally divided. N. H. ay. Mas. no. C<sup>t</sup> div<sup>d</sup>. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. G. ay.

M<sup>f</sup> Gov<sup>f</sup>. Morris moved to strike out “Conventions of the” after “ratifications” leaving the States to pursue their own modes of ratification.

M<sup>f</sup> Carrol mentioned the mode of altering the Constitution of Maryland pointed out therein, and that no other mode could be pursued in that State.

M<sup>f</sup> King thought that striking out “Conventions,” as the requisite mode was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the Legislatures, will succeed, and if not positively required by the plan its enemies will oppose that mode.

M<sup>f</sup> Gov<sup>f</sup>. Morris said he meant to facilitate the adoption of the plan, by leaving the modes approved by the several State Constitutions to be followed.

M<sup>f</sup> Madison considered it best to require Conventions; Among other reasons, for this, that the powers given to the Gen<sup>l</sup>. Gov<sup>t</sup>. being taken from the State Gov<sup>ts</sup> the Legislatures would be more disinclined than conventions composed in part at least of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting the ratification. The difficulty in Maryland was no greater than in other States, where no mode of change was pointed out by the Constitution, and all officers were under oath to support it. The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the Bills of rights, that first principles might be resorted to.

M<sup>f</sup>. M<sup>c</sup>.Henry said that the officers of Gov<sup>t</sup>. in Maryland were under oath to support the mode of alteration prescribed by the Constitution.

M<sup>f</sup>. Ghorum urged the expediency of “Conventions” also M<sup>f</sup>. Pinkney, for reasons formerly urged on a discussion of this question.

M<sup>f</sup>. L. Martin insisted on a reference to the State Legislatures. He urged the danger of commotions from a resort to the people & to first principles, in which the Governments might be on one side and the people on the other. He was apprehensive of no such consequences however in Maryland, whether the Legislature or the people should be appealed to. Both of them would be generally against the Constitution. He repeated also the peculiarity in the Maryland Constitution.

M<sup>f</sup>. King observed that the Constitution of Massachusetts was made unalterable till the year 1790, yet this was no difficulty with him. The State must have contemplated a recurrence to first principles before they sent deputies to this Convention.

M<sup>f</sup>. Sherman moved to postpone art. XXI. & to take up art: XXII on which question,

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. no. P. ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no.

On M<sup>r</sup>. Gov<sup>r</sup>. Morris's motion to strike out "Conventions of the," it was negatived

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. no. S. C. no. Geo. ay.

On filling the blank in Art: XXI with "thirteen" moved by Mr. Carrol & Martin, N. H. no. Mas. no. C<sup>t</sup>. no, all except Maryland.

M<sup>r</sup>. Sherman & M<sup>r</sup>. Dayton moved to fill the blank with "ten."

M<sup>r</sup> Wilson supported the motion of M<sup>r</sup>. Madison, requiring a majority both of the people and of States. M<sup>r</sup>. Clymer was also in favor of it.

Col: Mason was for preserving ideas familiar to the people. Nine States had been required in all great cases under the Confederation & that number was on that account preferable

On the question for "ten"

N. H. no. Mas. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. ay.

On question for "nine"

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. ay.

Art: XXI. as amended was then agreed to by all the States, Maryland excepted, & M<sup>r</sup>. Jenifer being ay.

Art. XXII taken up, to wit, "This Constitution shall be laid before the U. S. in Cong<sup>s</sup>. assembled for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a Convention chosen, in each State under the recommendation of its Legislature, in order to receive the ratification of such Convention."

M<sup>r</sup>. Gov<sup>r</sup> Morris & M<sup>r</sup>. Pinkney moved to strike out the words "for their approbation"  
On this question

N. H. ay. Mas. no. C<sup>t</sup>. ay. N. J. ay. 1 P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

M<sup>r</sup>. Gov<sup>r</sup>. Morris & M<sup>r</sup> Pinkney then moved to amend the art: so as to read

"This Constitution shall be laid before the U. S. in Congress assembled; and it is the opinion of this Convention that it should afterwards be submitted to a Convention chosen in each State, in order to receive the ratification of such Convention; to which

end the several Legislatures ought to provide for the calling Conventions within their respective States as speedily as circumstances will permit.” M<sup>r</sup> Gov<sup>r</sup> Morris said his object was to impress in stronger terms the necessity of calling Conventions in order to prevent enemies to the plan, from giving it the go by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees the State officers, & those interested in the State Gov<sup>ts</sup> will intrigue & turn the popular current against it.

M<sup>r</sup> L. Martin believed M<sup>r</sup> Morris to be right, that after a while the people would be ag<sup>st</sup> it, but for a different reason from that alledged. He believed they would not ratify it unless hurried into it by surprize.

M<sup>r</sup> Gerry enlarged on the idea of M<sup>r</sup> L. Martin in which he concurred, represented the system as full of vices, and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

Question on M<sup>r</sup> Gov<sup>r</sup> Morris’s & M<sup>r</sup> Pinkney’s motion

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Gerry moved to postpone art: XXII.

Col: Mason 2<sup>ded</sup>. the motion, declaring that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points not yet decided brought to a decision, before being compelled to give a final opinion on this article. Should these points be improperly settled, his wish would then be to bring the whole subject before another general Convention.

M<sup>r</sup> Gov<sup>r</sup>. Morris was ready for a postponement. He had long wished for another Convention, that will have the firmness to provide a vigorous Government, which we are afraid to do.

M<sup>r</sup>. Randolph stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the State Conventions should be at liberty to propose amendments to be submitted to another General Convention which may reject or incorporate them, as may be judged proper.

On the question for postponing

N. H. no. Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. ay. S. C. no. Geo. no.

On the question on Art: XXII

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

Art: XXIII being taken up, as far as the words “assigned by Congress” inclusive, was agreed to nem: con: the blank having been first filled with the word “nine” as of course.

On a motion for postponing the residue of the clause, concerning the choice of the President &c.

N. H. no. Mas. ay. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup> Gov<sup>r</sup>. Morris then moved to strike out the words “choose the President of the U. S. and”—this point, of choosing the President not being yet finally determined, & on this question

N. H. no. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. div<sup>d</sup>. V<sup>a</sup>. ay. N. C. ay. S. C. ay. 1 Geo. ay.

Art: XXIII as amended was then agreed to nem: con:

The Report of the Grand Committee of eleven made by M<sup>r</sup>. Sherman was then taken up (see Aug: 28)

On the question to agree to the following clause, to be inserted after sect. 4. art: VII. “nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another.” Agreed to nem: con:

On the clause “or oblige vessels bound to or from any State to enter clear or pay duties in another”

M<sup>r</sup>. Madison thought the restriction w<sup>d</sup>. be inconvenient, as in the River Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvania.

M<sup>r</sup>. Fitzimmons admitted that it might be inconvenient, but thought it would be a greater inconvenience to require vessels bound to Philad<sup>a</sup> to enter below the jurisdiction of the State.

M<sup>r</sup>. Ghorum & M<sup>r</sup> Langdon, contended that the Gov<sup>t</sup> would be so fettered by this clause, as to defeat the good purpose of the plan. They mentioned the situation of the trade of Mas. & N. Hampshire, the case of Sandy Hook which is in the State of N. Jersey, but where precautions ag<sup>st</sup> smuggling into N. York, ought to be established by the Gen<sup>l</sup> Government.

M<sup>r</sup> M<sup>c</sup>.Henry said the clause would not screen a vessel from being obliged to take an officer on board as a security for due entry &c.

M<sup>r</sup>. Carrol was anxious that the clause should be agreed to. He assured the House, that this was a tender point in Maryland.

M<sup>r</sup> Jennifer urged the necessity of the clause in the same point of view.

On the question for agreeing to it

N. H. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. ay.

The word “tonnage” was struck out, nem: con: as comprehended in “duties.”

On question On the clause of the Report “and all duties, imposts & excises, laid by the Legislature shall be uniform throughout the U. S.” It was agreed to nem: con:1

On motion of M<sup>r</sup>. Sherman it was agreed to refer such parts of the Constitution as have been postponed, and such parts of Reports as have not been acted on, to a Committee of a member from each State; the Committee appointed by ballot, being, M<sup>r</sup>. Gilman, M<sup>r</sup> King, M<sup>r</sup>. Sherman, M<sup>r</sup>. Brearly, M<sup>r</sup>. Gov<sup>r</sup>. Morris, M<sup>r</sup>. Dickinson, M<sup>r</sup> Carrol, M<sup>r</sup>. Madison, M<sup>r</sup> Williamson, M<sup>r</sup>. Butler, & M<sup>r</sup> Baldwin.

The House adjourned

Saturday Sep<sup>R</sup>. 1. 1787. In Convention.

M<sup>r</sup> Brearley from the Comm<sup>e</sup>. of eleven to which were referred yesterday the postponed part of the Constitution, & parts of Reports not acted upon, made the following partial report.

That in lieu of the 9<sup>th</sup>. Sect: of Art: 6. the words following be inserted viz “The members of each House shall be ineligible to any Civil office under the authority of the U. S. during the time for which they shall respectively be elected, and no person holding an office under the U. S. shall be a member of either House during his continuance in office.”

M<sup>r</sup>. Rutledge from the Committee to whom were referred sundry propositions (see Aug: 29), together with art: XVI reported that the following additions be made to the Report—viz

After the word “States” in the last line on the Margin of the 3<sup>d</sup> page (see the printed Report),—add “to establish uniform laws on the subject of Bankruptcies.”

And insert the following as Art: XVI viz

“Full faith and credit ought to be given in each State to the public acts, records, and Judicial proceedings of every other State, and the Legislature shall, by general laws prescribe the manner in which such acts, Records, & proceedings shall be proved, and the effect which Judgments obtained in one State, shall have in another.”

After receiving these reports

The House adjourned to 10OC on Monday next

## Monday Sep<sup>R</sup>. 3 1787. In Convention

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to amend the Report concerning the respect to be paid to Acts Records &c of one State, in other States (see Sep<sup>r</sup> 1.) by striking out “judgments obtained in one State shall have in another” and to insert the word “thereof” after the word “effect”

Col: Mason favored the motion, particularly if the “effect” was to be restrained to judgments & Judicial proceedings

M<sup>r</sup> Wilson remarked, that if the Legislature were not allowed to *declare the effect* the provision would amount to nothing more than what now takes place among all Independent Nations.

Doc<sup>r</sup>. Johnson thought the amendment as worded would authorize the Gen<sup>l</sup> Legislature to declare the effect of Legislative acts of one State in another State.

M<sup>r</sup>. Randolph considered it as strengthening the general objection ag<sup>st</sup>. the plan, that its definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. He was for not going farther than the Report, which enables the Legislature to provide for the effect of *Judgments*.

On the amendment, as moved by M<sup>r</sup> Gov<sup>r</sup>. Morris

Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup> ay. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. ay. S. C. ay. Geo. no.

On motion of M<sup>r</sup> Madison, “ought to” were struck out, and “shall” inserted; and “shall” between “Legislature” & “by general laws” struck out, and “may” inserted, nem: con:

On the question to agree to the report as amended viz “Full faith & credit shall be given in each State to the public acts, records & judicial proceedings of every other State, and the Legislature may by general laws prescribe the manner in which such acts records & proceedings shall be proved, and the effect thereof” Agreed to with<sup>t</sup> a count of Sts.

The clause in the Report “To establish uniform laws on the subject of Bankruptcies” being taken up.

M<sup>r</sup>. Sherman observed that Bankruptcies were in some cases punishable with death by the laws of England, & He did not chuse to grant a power by which that might be done here.

M<sup>r</sup>. Gov<sup>r</sup>. Morris said this was an extensive & delicate subject. He would agree to it because he saw no danger of abuse of the power by the Legislature of the U. S.

On the question to agree to the clause

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Pinkney moved to postpone the Report of the Committee of Eleven (see Sep<sup>r</sup> 1.) in order to take up the following,

“The members of each House shall be incapable of holding any office under the U. S. for which they or any other for their benefit, receive any salary, fees or emoluments of any kind, and the acceptance of such office shall vacate their seats respectively.” He was strenuously opposed to an ineligibility of members to office, and therefore wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the Legislature to the honourable offices of Government, as resembling the policy of the Romans, in making the temple of virtue the road to the temple of fame.

On this question

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. King moved to insert the word “created” before the word “during” in the Report of the Committee. This he said would exclude the members of the first Legislature under the Constitution, as most of the offices w<sup>d</sup>. then be created.

M<sup>r</sup>. Williamson 2<sup>ded</sup> the motion. He did not see why members of the Legislature should be ineligible to *vacancies* happening during the term of their election.

M<sup>r</sup>. Sherman was for entirely incapacitating members of the Legislature. He thought their eligibility to offices would give too much influence to the Executive. He said the incapacity ought at least to be extended to cases where salaries should be *increased*, as well as *created*, during the term of the member. He mentioned also the expedient by which the restriction could be evaded to wit: an existing officer might be translated to an office created, and a member of the Legislature be then put into the office vacated.

M<sup>r</sup>. Gov<sup>r</sup>. Morris contended that the eligibility of members to office w<sup>d</sup> lessen the influence of the Executive. If they cannot be appointed themselves, the Executive will appoint their relations & friends, retaining the service & votes of the members for his purposes in the Legislature. Whereas the appointment of the members deprives him of such an advantage.

M<sup>r</sup> Gerry, thought the eligibility of members would have the effect of opening batteries ag<sup>st</sup>. good officers, in order to drive them out & make way for members of the Legislature.

M<sup>r</sup>. Gorham was in favor of the amendment. Without it we go further than has been done in any of the States, or indeed any other Country. The experience of the State Governments where there was no such ineligibility, proved that it was not necessary; on the contrary that the eligibility was among the inducements for fit men to enter into the Legislative service.

M<sup>r</sup> Randolph was inflexibly fixed against inviting men into the Legislature by the prospect of being appointed to offices.



M<sup>r</sup>. Baldwin remarked that the example of the States was not applicable. The Legislatures there are so numerous that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the General Government.

Col: Mason. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

M<sup>r</sup>. Wilson considered the exclusion of members of the Legislature as increasing the influence of the Executive as observed by M<sup>r</sup> Gov<sup>r</sup>. Morris at the same time that it would diminish, the general energy of the Government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

M<sup>r</sup> Pinkney. The first Legislature will be composed of the ablest men to be found. The States will select such to put the Government into operation. Should the Report of the Committee or even the amendment be agreed to, The great offices, even those of the Judiciary Department which are to continue for life, must be filled while those most capable of filling them will be under a disqualification.

On the question on M<sup>r</sup> King's motion

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

The amendment being thus lost by the equal division of the States, M<sup>r</sup> Williamson moved to insert the words "created or the emoluments whereof shall have been increased" before the word "during" in the Report of the Committee.

M<sup>r</sup>. King 2<sup>ded</sup> the motion, & on the question

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. no. Pa. ay. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. divided.

The last clause rendering a Seat in the Legislature & an office incompatible was agreed to nem. con:

The Report as amended & agreed to is as follows.

"The members of each House shall be ineligible to any Civil office under the authority of the U. States, created, or the emoluments whereof shall have been increased during the time for which they shall respectively be elected—And no person holding any office under the U. S. shall be a member of either House during his continuance in office."

Adjourned.

## Tuesday Sep<sup>R</sup>. 4. 1787. In Convention

M<sup>r</sup>. Brearly from the Committee of eleven made a further partial Report as follows

“The Committee of Eleven to whom sundry resolutions &c were referred on the 31<sup>st</sup> of August, report that in their opinion the following additions and alterations should be made to the Report before the Convention, viz<sup>1</sup>

(1.) The first clause of sect: 1. art. 7. to read as follows—‘The Legislature shall have power to lay and collect taxes duties imposts & excises, to pay the debts and provide for the common defence & general welfare of the U. S.’

(2.) At the end of the 2<sup>d</sup>. clause of sect. 1. art. 7. add ‘and with the Indian tribes.’

(3.) In the place of the 9<sup>th</sup>. art. Sect. 1. to be inserted ‘The Senate of the U. S. shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present.’

(4.) After the word ‘Excellency’ in sect. 1. art. 10. to be inserted. ‘He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected in the following manner, viz. Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit sealed to the Seat of the Gen<sup>l</sup> Government, directed to the President of the Senate—The President of the Senate shall in that House open all the certificates, and the votes shall be then & there counted. The Person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose by ballot one of them for President: but if no person have a majority, then from the five highest on the list, the Senate shall choose by ballot the President, and in every case after the choice of the President, the person having the greatest number of votes shall be vice-president: but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President. The Legislature may determine the time of choosing and assembling the Electors, and the manner of certifying and transmitting their votes.’

(5) ‘Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.’

(6) ‘Sect. 3. The vice-president shall be ex officio President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice

shall preside, and excepting also when he shall exercise the powers and duties of President, in which case & in case of his absence, the Senate shall chuse a President pro tempore—The vice President when acting as President of the Senate shall not have a vote unless the House be equally divided.’

(7) ‘Sect. 4. The President by and with the advice and Consent of the Senate, shall have power to make Treaties; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, and other public ministers, Judges of the Supreme Court, and all other Officers of the U. S. whose appointments are not otherwise herein provided for. But no Treaty shall be made without the consent of two thirds of the members present.’

(8) After the words—“into the service of the U. S.” in sect. 2. art: 10. add ‘and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices.’

The latter part of Sect. 2. art: 10. to read as follows.

(9) ‘He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.’

The (1<sup>st</sup>) clause of the Report was agreed to, nem. con.

The (2) clause was also agreed to nem: con:

The (3) clause was postponed in order to decide previously on the mode of electing the President.

The (4) clause was accordingly taken up.

M<sup>r</sup>. Gorham disapproved of making the next highest after the President, the vice-President, without referring the decision to the Senate in case the next highest should have less than a majority of votes. As the regulation stands a very obscure man with very few votes may arrive at that appointment

M<sup>r</sup>. Sherman said the object of this clause of the report of the Committee was to get rid of the ineligibility, which was attached to the mode of election by the Legislature, & to render the Executive independent of the Legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case; and he had no objection to requiring the vice-President to be chosen in like manner, where the choice was not decided by a majority in the first instance

M<sup>r</sup>. Madison was apprehensive that by requiring both the President & vice President to be chosen out of the five highest candidates, the attention of the electors would be

turned too much to making candidates instead of giving their votes in order to a definitive choice. Should this turn be given to the business, The election would, in fact be consigned to the Senate altogether. It would have the effect at the same time, he observed, of giving the nomination of the candidates to the largest States.

M<sup>r</sup> Gov<sup>r</sup> Morris concurred in, & enforced the remarks of M<sup>r</sup> Madison.

M<sup>r</sup>. Randolph & M<sup>r</sup> Pinkney wished for a particular explanation & discussion of the reasons for changing the mode of electing the Executive.

M<sup>r</sup> Gov<sup>r</sup>. Morris said he would give the reasons of the Committee and his own. The 1<sup>st</sup> was the danger of intrigue & faction if the appointm<sup>t</sup> should be made by the Legislature. 2 the inconveniency of an ineligibility required by that mode in order to lessen its evils. 3. The difficulty of establishing a Court of Impeachments, other than the Senate which would not be so proper for the trial nor the other branch for the impeachment of the President, if appointed by the Legislature. 4. Nobody had appeared to be satisfied with an appointment by the Legislature. 5. Many were anxious even for an immediate choice by the people. 6. the indispensable necessity of making the Executive independent of the Legislature.—As the Electors would vote at the same time throughout the U. S. and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible also to corrupt them. A conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments, was that the latter was to try the President after the trial of the impeachment.

Col: Mason confessed that the plan of the Committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable however to this strong objection, that nineteen times in twenty the President would be chosen by the Senate, an improper body for the purpose.

M<sup>r</sup>. Butler thought the mode not free from objections, but much more so than an election by the Legislature, where as in elective monarchies, cabal faction & violence would be sure to prevail.

M<sup>r</sup>. Pinkney stated as objections to the mode 1. that it threw the whole appointment in fact into the hands of the Senate. 2. The Electors will be strangers to the several candidates and of course unable to decide on their comparative merits. 3. It makes the Executive reeligible which will endanger the public liberty. 4. It makes the same body of men which will in fact elect the President his Judges in case of an impeachment.

M<sup>r</sup> Williamson had great doubts whether the advantage of reeligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought at least the Senate ought to be restrained to the *two* highest on the list.

M<sup>r</sup> Gov<sup>r</sup> Morris said the principal advantage aimed at was that of taking away the opportunity for cabal. The President may be made if thought necessary ineligible on

this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

M<sup>r</sup>. Baldwin thought the plan not so objectionable when well considered, as at first view. The increasing intercourse among the people of the States, would render important characters less & less unknown; and the Senate would consequently be less & less likely to have the eventual appointment thrown into their hands.

M<sup>r</sup>. Wilson. This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan on the whole a valuable improvement on the former. It gets rid of one great evil, that of cabal & corruption; & Continental Characters will multiply as we more & more coalesce, so as to enable the electors in every part of the Union to know & judge of them. It clears the way also for a discussion of the question of re-eligibility on its own merits which the former mode of election seemed to forbid. He thought it might be better however to refer the eventual appointment to the Legislature than to the Senate, and to confine it to a smaller number than five of the Candidates. The eventual election by the Legislature w<sup>d</sup> not open cabal anew, as it would be restrained to certain designated objects of choice, and as these must have had the previous sanction of a number of the States; and if the election be made as it ought as soon as the votes of the Electors are opened & it is known that no one has a majority of the whole there can be little danger of corruption. Another reason for preferring the Legislature to the Senate in this business was that the House of Rep<sup>s</sup> will be so often changed as to be free from the influence & faction to which the permanence of the Senate may subject that branch.

M<sup>r</sup>. Randolph preferred the former mode of constituting the Executive, but if the change was to be made, he wished to know why the eventual election was referred to the *Senate* and not to the *Legislature*? He saw no necessity for this and many objections to it. He was apprehensive also that the advantage of the eventual appointment would fall into the hands of the States near the seat of Government.

M<sup>r</sup>. Gov<sup>r</sup>. Morris said the *Senate* was preferred because fewer could then say to the President, you owe your appointment to us. He thought the President would not depend so much on the Senate for his reappointment as on his general good conduct.

The further consideration of the Report was postponed that each member might take a copy of the remainder of it.

The following motion was referred to the Committee of Eleven—to wit,—“To prepare & report a plan for defraying the expences of the Convention.”

1 M<sup>r</sup>. Pinkney moved a clause declaring “that each House should be judge of the privilege of its own members.” M<sup>r</sup> Gov<sup>r</sup>. Morris 2<sup>ded</sup> the motion.

M<sup>r</sup> Randolph & M<sup>r</sup> Madison expressed doubts as to the propriety of giving such a power, & wished for a postponement.

M<sup>r</sup>. Gov<sup>r</sup>. Morris thought it so plain a case that no postponement could be necessary.

M<sup>r</sup>. Wilson thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as Courts &c. Every Court is the judge of its own privileges.

M<sup>r</sup> Madison distinguished between the power of Judging of privileges previously & duly established, and the effect of the motion which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law*, the privileges of each House, than to allow each House to decide for itself. He suggested also the necessity of considering what privileges ought to be allowed to the Executive.

Adjourned

Wednesday Sep<sup>r</sup>. 5. 1787. In Convention.

M<sup>r</sup> Brearley from the Committee of Eleven made a farther report as follows,

(1) To add to the clause “to declare war” the words “and grant letters of marque and reprisal.”

(2) To add to the clause “to raise and support armies” the words “but no appropriation of money to that use shall be for a longer term than two years.”

(3) Instead of sect: 12. art 6. say—“All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the Treasury, but in consequence of appropriations made by law.”

(4) Immediately before the last clause of sect. 1. art. 7. insert “To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by Cession of particular States and the acceptance of the Legislature become the Seat of the Government of the U. S. and to exercise like authority over all places purchased for the erection of Forts, Magazines, Arsenals, Dock Yards, and other needful buildings.”

(5) “To promote the progress of Science and useful arts by securing for limited times to authors & inventors, the exclusive right to their respective writings and discoveries.”

This report being taken up,—The (1) clause was agreed to nem: con:

To the (2) clause M<sup>r</sup> Gerry objected that it admitted of appropriations to an army, for two years instead of one, for which he could not conceive a reason, that it implied that there was to be a standing army which he inveighed against as dangerous to liberty, as unnecessary even for so great an extent of Country as this, and if necessary, some

restriction on the number & duration ought to be provided: Nor was this a proper time for such an innovation. The people would not bear it.

M<sup>r</sup>. Sherman remarked that the appropriations were permitted only, not required to be for two years. As the Legislature is to be biennially elected, it would be inconvenient to require appropriations to be for one year, as there might be no Session within the time necessary to renew them. He should himself he said like a reasonable restriction on the number and continuance of an army in time of peace.

The (2) clause was then agreed to nem: con:

The (3) clause, M<sup>r</sup> Gov<sup>r</sup>. Morris moved to postpone. It had been agreed to in the Committee on the ground of compromise, and he should feel himself at liberty to dissent to it, if on the whole he should not be satisfied with certain other parts to be settled.—M<sup>r</sup> Pinkney 2<sup>ded</sup> the motion.

M<sup>r</sup> Sherman was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> no. N. C. ay. S. C. ay. Geo. ay.

So much of the (4) clause as related to the seat of Government was agreed to nem: con:

On the residue to wit, “to exercise like authority over all places purchased for forts &c.

M<sup>r</sup> Gerry contended that this power might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing the State into an undue obedience to the Gen<sup>l</sup>. Government.

M<sup>r</sup>. King thought himself the provision unnecessary, the power being already involved: but would move to insert after the word “purchased” the words “by the consent of the Legislature of the State” This would certainly make the power safe.

M<sup>r</sup>. Gov<sup>r</sup>. Morris 2<sup>ded</sup> the motion, which was agreed to nem: con: as was then the residue of the clause as amended.

The (5) clause was agreed to nem: con:

The following Resolution & order being reported from the Committee of eleven, to wit,

“Resolved that the U. S. in Congress be requested to allow and cause to be paid to the Secretary and other officers of this Convention such sums in proportion to their

respective times of service, as are allowed to the Secretary & similar officers of Congress.”

“Ordered that the Secretary make out & transmit to the Treasury office of the U. S. an account for the said services & for the incidental expences of this Convention.”

The resolution & order were separately agreed to nem: con:

M<sup>f</sup>. Gerry gave notice that he should move to reconsider articles XIX. XX. XXI. XXII.

M<sup>f</sup>. Williamson gave like notice as to the article fixing the number of Representatives, which he thought too small. He wished also to allow Rhode Island more than one, as due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

The Report made yesterday as to the appointment of the Executive being then taken up. M<sup>f</sup> Pinkney renewed his opposition to the mode, arguing 1. that the electors will not have sufficient knowledge of the fittest men, & will be swayed by an attachment to the eminent men of their respective States. Hence 2<sup>dly</sup> the dispersion of the votes would leave the appointment with the Senate, and as the President’s reappointment will thus depend on the Senate he will be the mere creature of that body. 3. He will combine with the Senate ag<sup>st</sup>. the House of Representatives. 4. This change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

M<sup>f</sup>. Gerry did not object to this plan of constituting the Executive in itself, but should be governed in his final vote by the powers that may be given to the President.

M<sup>f</sup>. Rutledge was much opposed to the plan reported by the Committee. It would throw the whole power into the Senate. He was also against a reeligibility. He moved to postpone the Report under consideration & take up the original plan of appointment by the Legislature, to wit. “He shall be elected by joint ballot by the Legislature to which election a majority of the votes of the members present shall be required: He shall hold his office during the term of seven years; but shall not be elected a second time.”

On this motion to postpone

N. H. div<sup>d</sup>. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. ay. S. C. ay. Geo. no.

Col. Mason admitted that there were objections to an appointment by the Legislature as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the Committee. 1. It puts the appointment in fact into the hands of the Senate; as it will rarely happen that a majority of the whole votes will fall on any one candidate: and as the existing President will always be one of the 5 highest, his reappointment will of course depend on the Senate. 2. Considering the powers of the President & those of the Senate, if a coalition should be established



between these two branches, they will be able to subvert the Constitution — The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words “if such number be a majority of that of the electors.”

M<sup>r</sup> Williamson 2<sup>ded</sup>. the motion. He could not agree to the clause without some such modification. He preferred making the highest tho’ not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption & aristocracy.

M<sup>r</sup>. Gov<sup>r</sup> Morris thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man. As each Elector is to give two votes, more than ¼ will give a majority. Besides as one vote is to be given to a man out of the State, and as this vote will not be thrown away, ½ the votes will fall on characters eminent & generally known. Again if the President shall have given satisfaction, the votes will turn on him of course, and a majority of them will reappoint him, without resort to the Senate: If he should be disliked, all disliking him, would take care to unite their votes so as to ensure his being supplanted.

Col. Mason those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

M<sup>r</sup>. Sherman reminded the opponents of the new mode proposed that if the small States had the advantage in the Senate’s deciding among the five highest candidates the large States would have in fact the nomination of these candidates.

On the motion of Col: Mason

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup> ay. 1 V<sup>a</sup> no. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. Wilson moved to strike out “Senate” and insert the word “Legislature”

M<sup>r</sup>. Madison considered it as a primary object to render an eventual resort to any part of the Legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large States too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer, as the large States would predominate in the Legislature which would have the final choice out of the candidates. Whereas if the Senate in which the small States predominate should have the final choice, the concerted effort of the large States would be to make the appointment in the first instance conclusive.

M<sup>r</sup>. Randolph. We have in some revolutions of this plan made a bold stroke for Monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President in addition to its other powers, to convert that body into a real & dangerous Aristocracy.

M<sup>r</sup>. Dickinson was in favor of giving the eventual election to the Legislature, instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by M<sup>r</sup> Wilson

N. H. div<sup>d</sup> Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. no.

M<sup>r</sup>. Madison & M<sup>r</sup> Williamson moved to strike out the word “majority” and insert “one-third” so that the eventual power might not be exercised if less than a majority, but not less than  $\frac{1}{3}$  of the Electors should vote for the same person.

M<sup>r</sup>. Gerry objected that this would put it in the power of three or four States to put in whom they pleased.

M<sup>r</sup>. Williamson. There are seven States which do not contain one third of the people. If the Senate are to appoint, less than one sixth of the people will have the power.

On the question

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup> Gerry suggested that the eventual election should be made by six Senators and seven Representatives chosen by joint ballot of both Houses.

M<sup>r</sup> King observed that the influence of the Small States in the Senate was somewhat balanced by the influence of the large States in bringing forward the candidates,<sup>1</sup> and also by the Concurrence of the small States in the Committee in the clause vesting the exclusive origination of Money bills in the House of Representatives.

Col: Mason moved to strike out the word “five” and insert the word “three” as the highest candidates for the Senate to choose out of.

M<sup>r</sup>. Gerry 2<sup>ded</sup> the motion

M<sup>r</sup>. Sherman would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Col: Mason & M<sup>r</sup> Gerry

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> no. Delaware [and] M<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup>. Spaight and M<sup>r</sup> Rutlidge moved to strike out “five” and insert “thirteen” — to which all the States disagreed—except N. C. & S. C.

M<sup>r</sup>. Madison & M<sup>r</sup> Williamson moved to insert after “Electors” the words “who shall have balloted” so that the non voting electors not being counted might not increase the

number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. no.

M<sup>f</sup>. Dickinson moved, in order to remove ambiguity from the intention of the clause as explained by the vote, to add, after the words “if such number be a majority of the whole number of the Electors” the word “appointed.”

On this motion

N. H. ay. Mas. ay. Con. ay. N. J. ay. P<sup>a</sup>. ay. Delaware [and] M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

Col: Mason. As the mode of appointment is now regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the Government of Prussia to one which will put all power into the hands of seven or eight men, and fix an Aristocracy worse than absolute monarchy.

The words “and of their giving their votes” being inserted on motion for that purpose, after the words “The Legislature may determine the time of chusing and assembling the Electors”

The House adjourned.

## Thursday Sep<sup>R</sup>. 6. 1787. In Convention

M<sup>f</sup> King and M<sup>f</sup>. Gerry moved to insert in the (5)1 clause of the Report (see Sep<sup>f</sup> 4) after the words “may be entitled in the Legislature” the words following—“But no person shall be appointed an elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.” which passed nem: con:

M<sup>f</sup> Gerry proposed as the President was to be elected by the Senate out of the five highest candidates, that if he should not at the end of his term be re-elected by a majority of the Electors, and no other candidate should have a majority, the eventual election should be made by the Legislature. This he said would relieve the President from his particular dependence on the Senate for his continuance in office.

M<sup>f</sup>. King liked the idea, as calculated to satisfy particular members and promote unanimity & as likely to operate but seldom.

M<sup>f</sup>. Read opposed it, remarking that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

M<sup>r</sup>. Williamson espoused it as a reasonable precaution against the undue influence of the Senate.

M<sup>r</sup>. Sherman liked the arrangement as it stood, though he should not be averse to some amendments. He thought he said that if the Legislature were to have the eventual appointment instead of the Senate, it ought to vote in the case by States, in favor of the small States, as the large States would have so great an advantage in nominating the candidates.

M<sup>r</sup>. Gov<sup>r</sup>. Morris thought favorably of M<sup>r</sup> Gerry's proposition. It would free the President from being tempted in naming to offices, to Conform to the will of the Senate, & thereby virtually give the appointments to office, to the Senate.

M<sup>r</sup>. Wilson said that he had weighed carefully the report of the Committee for remodelling the constitution of the Executive; and on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have in fact, the appointment of the President, and through his dependence on them, the virtual appointment to offices; among others the Officers of the Judiciary Department. They are to make Treaties; and they are to try all impeachments. In allowing them thus to make the Executive & Judiciary appointments, to be the Court of impeachments, and to make Treaties which are to be laws of the land, the Legislative, Executive & Judiciary powers are all blended in one branch of the Government. The power of making Treaties involves the case of subsidies, and here as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people as he ought to be, but the minion of the Senate. He cannot even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate, will moreover in all probability be in constant Session. They will have high salaries. And with all those powers, and the President in their interest, they will depress the other branch of the Legislature, and aggrandize themselves in proportion. Add to all this, that the Senate sitting in conclave, can by holding up to their respective States various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the Report, nor befriend a system of which they make a part.

M<sup>r</sup> Gov<sup>r</sup> Morris expressed his wonder at the observations of M<sup>r</sup>. Wilson so far as they preferred the plan in the printed Report to the new modification of it before the House, and entered into a comparative view of the two, with an eye to the nature of M<sup>r</sup>. Wilsons objections to the last. By the first the Senate he observed had a voice in appointing the President out of all the Citizens of the U. S: by this they were limited to five candidates previously nominated to them, with a probability of being barred altogether by the successful ballot of the Electors. Here surely was no increase of power. They are now to appoint Judges nominated to them by the President. Before they had the appointment without any agency whatever of the President. Here again was surely no additional power. If they are to make Treaties as the plan now stands,

the power was the same in the printed plan. If they are to try impeachments, the Judges must have been triable by them before. Wherein then lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House, was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the States into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several States where they have influence, as would favor the object of their partiality.

M<sup>r</sup>. Williamson, replying to M<sup>r</sup>. Morris, observed that the aristocratic complexion proceeds from the change in the mode of appointing the President which makes him dependent on the Senate.

M<sup>r</sup>. Clymer said that the aristocratic part to which he could never accede was that in the printed plan, which gave the Senate the power of appointing to offices.

M<sup>r</sup>. Hamilton said that he had been restrained from entering into the discussions by his dislike of the Scheme of Gov<sup>t</sup> in General; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed Report. In this the President was a Monster elected for seven years, and ineligible afterwards; having great powers, in appointments to office, & continually tempted by this constitutional disqualification to abuse them in order to subvert the Government. Although he should be made re-eligible, still if appointed by the Legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable therefore that some other mode of election should be devised. Considering the different views of different States, & the different districts Northern Middle & Southern, he concurred with those who thought that the votes would not be centered, and that the appointment would consequently in the present mode devolve on the Senate. The nomination to offices will give great weight to the President. Here then is a mutual connexion & influence, that will perpetuate the President, and aggrandize both him & the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

M<sup>r</sup> Spaight & M<sup>r</sup>. Williamson moved to insert “seven” instead of “four” years for the term of the President<sup>1</sup> —

On this motion

N. H. ay. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

M<sup>r</sup> Spaight & M<sup>r</sup> Williamson, then moved to insert “six,” instead of “four” On which motion

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. ay. S. C. ay. Geo. no.

On the term “four” all the States were ay, except N. Carolina, no.

On the question (Clause 4. in the Report) for appointing President by electors—down to the words,—“entitled in the Legislature” inclusive

N. H. ay. Mas: ay. Con<sup>t</sup> ay. N. J. ay. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo.—ay.

It was moved that the Electors meet at the seat of the Gen<sup>l</sup>. Gov<sup>t</sup>. which passed in the Negative N. C. only being ay.

It was moved to insert the words “under the seal of the State” after the word “transmit” in the 4<sup>th</sup> clause of the Report which was disagreed to; as was another motion to insert the words “and who shall have given their votes” after the word “appointed” in the 4<sup>th</sup> Clause of the Report as added yesterday on motion of M<sup>f</sup>. Dickinson.

On several motions, the words “in presence of the Senate and House of Representatives” were inserted after the word “counted” and the word “immediately” before the word “choose;” and the words “of the Electors” after the word “votes.”

M<sup>f</sup>. Spaight said if the election by Electors is to be crammed down, he would prefer their meeting altogether and deciding finally without any reference to the Senate and moved “that the Electors meet at the seat of the General Government.”

M<sup>f</sup>. Williamson 2<sup>ded</sup>. the motion, on which all the States were in the negative except N: Carolina.

On motion the words “But the election shall be on the same day throughout the U. S.” were added after the words “transmitting their votes” N. H. ay. Mas. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo—ay.

On a question on the sentence in clause (4) “if such number be a majority of that of the Electors appointed”

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

On a question on the clause referring the eventual appointment of the President to the Senate

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. V<sup>a</sup>. ay. N. C. no. Here the call ceased.

M<sup>f</sup>. Madison made a motion requiring ? at least of the Senate to be present at the choice of a President. M<sup>f</sup> Pinkney 2<sup>ded</sup> the motion

M<sup>r</sup>. Gorham thought it a wrong principle to require more than a majority in any case. In the present case it might prevent for a long time any choice of a President. On the question moved by M<sup>r</sup> M. and M<sup>r</sup>. P.

N. H. ay. Mas. abs<sup>t</sup> C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Williamson suggested as better than an eventual choice by the Senate, that this choice should be made by the Legislature, voting *by States* and not *per capita*.

M<sup>r</sup>. Sherman suggested the “House of Rep<sup>s</sup>” as preferable to the Legislature, and moved accordingly,

To strike out the words “The Senate shall immediately choose &c.” and insert “The House of Representatives shall immediately choose by ballot one of them for President, the members from each State having one vote.”

Col: Mason liked the latter mode best as lessening the aristocratic influence of the Senate.

On the motion of M<sup>r</sup>. Sherman

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Gov<sup>r</sup> Morris suggested the idea of providing that in all cases, the President in office, should not be one of the five Candidates; but be only re-eligible in case a majority of the electors should vote for him. (This was another expedient for rendering the President independent of the Legislative body for his continuance in office.)

M<sup>r</sup>. Madison remarked that as a majority of members w<sup>d</sup>. make a quorum in the H. of Rep<sup>s</sup> it would follow from the amendment of M<sup>r</sup>. Sherman giving the election to a majority of States, that the President might be elected by two States only, Virg<sup>a</sup>. & Pen<sup>a</sup> which have 18 members, if these States alone should be present

On a motion that the eventual election of Presid<sup>t</sup>. in case of *an equality* of the votes of the electors be referred to the House of Rep<sup>s</sup>

N. H. ay. Mas. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. King moved to add to the amendment of M<sup>r</sup> Sherman “But a quorum for this purpose shall consist of a member or members from two thirds of the States,” and also of a majority of the whole number of the House of Representatives.”

Col: Mason liked it as obviating the remark of M<sup>r</sup>. Madison—The motion as far as “States” inclusive was ag<sup>d</sup>. to. On the residue to wit, “and also of a majority of the whole number of the House of Reps<sup>s</sup>” it passed in the negative

N. H. no. Mas. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

The Report relating to the appointment of the Executive stands as amended, as follows.

“He shall hold his office during the term of four years, and together with the vice-President, chosen for the same term, be elected in the following manner.

Each State shall appoint in such manner as its Legislature may direct, a number of electors equal to the whole number of Senators and members of the House of Representatives, to which the State may be entitled in the Legislature:

But no person shall be appointed an Elector who is a member of the Legislature of the U. S. or who holds any office of profit or trust under the U. S.

The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the Seat of the General Government, directed to the President of the Senate.

The President of the Senate shall in the presence of the Senate and House of Representatives open all the certificates & the votes shall then be counted.

The person having the greatest number of votes shall be the President (if such number be a majority of the whole number of electors appointed) and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President, the Representation from each State having one vote. But if no person have a majority, then from the five highest on the list, the House of Representatives shall in like manner choose by ballot the President. In the choice of a President by the House of Representatives, a Quorum shall consist of a member or members from two thirds of the States, (1 and the concurrence of a majority of all the States shall be necessary to such choice.)—And in every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the vice-president: But, if there should remain two or more who have equal votes, the Senate shall choose from them the vice-President.2

The Legislature may determine the time of choosing the Electors, and of their giving their votes; and the manner of certifying and transmitting their votes—But the election shall be on the same day throughout the U. States.”

Adjourned



## Friday Sep<sup>R</sup>. 7<sup>1</sup>1787. In Convention

The mode of constituting the Executive being resumed, M<sup>F</sup>. Randolph moved, to insert in the first section of the report made yesterday

“The Legislature may declare by law what officer of the U. S. shall act as President in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly until the time of electing a President shall arrive.”

M<sup>F</sup> Madison observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute—“until such disability be removed, or a President shall be elected.” M<sup>F</sup>. Gov<sup>F</sup>. Morris 2<sup>ded</sup>. the motion, which was agreed to.

It seemed to be an objection to the provision with some, that according to the process established for chusing the Executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the Legislature was restrained in the temporary appointment to “*officers*” of the U. S.: They wished it to be at liberty to appoint others than such.

On the Motion of M<sup>F</sup> Randolph as amended, it passed in the affirmative

N. H. divided. Mas. no. C<sup>t</sup>. no. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo. ay.

M<sup>F</sup>. Gerry moved “that in the election of President by the House of Representatives, no State shall vote by less than three members, and where that number may not be allotted to a State, it shall be made up by its Senators; and a concurrence of a majority of all the States shall be necessary to make such choice.” Without some such provision five individuals might possibly be competent to an election; these being a majority of two thirds of the existing number of States; and two thirds being a quorum for this business.

M<sup>F</sup> Madison 2<sup>ded</sup>. the motion

M<sup>F</sup>. Read observed that the States having but one member only in the House of Rep<sup>s</sup> would be in danger of having no vote at all in the election: the sickness or absence either of the Representative or one of the Senators would have that effect.

M<sup>F</sup>. Madison replied that, if one member of the House of Representatives should be left capable of voting for the State, the states having one Representative only would still be subject to that danger. He thought it an evil that so small a number at any rate should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection that the representatives of a *Minority* of the people, might reverse the choice of a *majority* of the *States* and of the *people*. He wished some cure for this inconveniency might yet be provided.

M<sup>r</sup>. Gerry withdrew the first part of his motion; and on the, Question on the 2<sup>d</sup> part viz: “and a concurrence of a majority of all the States shall be necessary to make such choice” to follow the words “a member or members from two thirds of the States”—It was agreed to nem: con:

The section 2. (see Sep<sup>r</sup>. 4) requiring that the President should be a natural-born Citizen &c, & have been resident for fourteen years, & be thirty five years of age, was agreed to nem: con:

Section 3 (see Sep<sup>r</sup> 4). “The vice President shall be ex-officio President of the Senate”

M<sup>r</sup> Gerry opposed this regulation. We might as well put the President himself at the head of the Legislature. The close intimacy that must subsist between the President & vice-president makes it absolutely improper. He was ag<sup>st</sup>. having any vice President.

M<sup>r</sup> Gov<sup>r</sup>. Morris. The vice President then will be the first heir apparent that ever loved his father. If there should be no vice president, the President of the Senate would be temporary successor, which would amount to the same thing.

M<sup>r</sup>. Sherman saw no danger in the case. If the vice-President were not to be President of the Senate, he would be without employment, and some member by being made President must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

M<sup>r</sup>. Randolph concurred in the opposition to the clause.

M<sup>r</sup>. Williamson, observed that such an officer as vice-President was not wanted. He was introduced only for the sake of a valuable mode of election which required two to be chosen at the same time.

Col: Mason, thought the office of vice-President an encroachment on the rights of the Senate; and that it mixed too much the Legislative & Executive, which as well as the Judiciary departments, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever of the power to make appointments, to either branch of the Legislature. On the other hand he was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested that a privy Council of six members to the president should be established; to be chosen for six years by the Senate, two out of the Eastern two out of the middle, and two out of the Southern quarters of the Union, & to go out in rotation two every second year; the concurrence of the Senate to be required only in the appointment of Ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate which he thought dangerous, as well as keep the departments separate & distinct. It would also save the expence of constant sessions of the Senate. He had he said always considered the Senate as too unwieldy & expensive for appointing officers, especially the smallest, such as tide waiters &c. He had not reduced his idea to writing, but it could be easily done if it should be found acceptable.

On the question shall the vice President be ex officio President of the Senate? N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup> ay. Del. ay. Mar. no. V<sup>a</sup>. ay. N. C. abs<sup>t</sup> S. C. ay. Geo. ay.

The other parts of the same Section (3) were then agreed to.

The Section 4.—to wit. “The President by & with the advice and consent of the Senate shall have power to make Treaties &c”

M<sup>r</sup> Wilson moved to add after the word “Senate” the words, “and House of Representatives.” As treaties he said are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this he thought, so far as it was inconsistent with obtaining the Legislative sanction, was outweighed by the necessity of the latter.

M<sup>r</sup> Sherman thought the only question that could be made was whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole Legislature.

M<sup>r</sup>. Fitzimmons 2<sup>ded</sup> the motion of M<sup>r</sup> Wilson, & on the question N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

The first sentence as to making treaties was then Agreed to; nem: con:

“He shall nominate &c Appoint Ambassadors &c.”

M<sup>r</sup>. Wilson objected to the mode of appointing, as blending a branch of the Legislature with the Executive. Good laws are of no effect without a good Executive; and there can be no good Executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col: Mason, provided its advice should not be made obligatory on the President.

M<sup>r</sup>. Pinkney was against joining the Senate in these appointments, except in the instances of Ambassadors who he thought ought not to be appointed by the President

M<sup>r</sup>. Gov<sup>r</sup>. Morris said that as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security. As Congress now make appointments there is no responsibility.

M<sup>r</sup> Gerry. The idea of responsibility in the nomination to offices is Chimerical. The President cannot know all characters, and can therefore always plead ignorance.

M<sup>r</sup>. King. As the idea of a Council proposed by Col. Mason has been supported by M<sup>r</sup>. Wilson, he would remark that most of the inconveniences charged on the Senate are incident to a Council of Advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion also that the people

would be alarmed at an unnecessary creation of new Corps which must increase the expence as well as influence of the Government.

On the question on these words in the clause viz—“He shall nominate & by & with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers (and consuls) Judges of the Supreme Court” Agreed to nem: con: the insertion of “and consuls” having first taken place.

On the question on the following words “And all other officers of U. S.” N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

On motion of M<sup>r</sup> Spaight—“that the President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting Commissions which shall expire at the end of the next Session of the Senate” It was agreed to nem: con:

Section 4. “The President by and with the advice and consent of the Senate shall have power to make Treaties,—*But no treaty shall be made without the consent of two thirds of the members present*”—this last clause being before the House.

M<sup>r</sup>. Wilson thought it objectionable to require the concurrence of ? which puts it into the power of a minority to controul the will of a majority.

M<sup>r</sup> King concurred in the objection; remarking that as the Executive was here joined in the business, there was a check which did not exist in Congress where the concurrence of ? was required.

M<sup>r</sup> Madison moved to insert after the word “treaty” the words “except treaties of peace” allowing these to be made with less difficulty than other treaties—It was agreed to nem: con:

M<sup>r</sup> Madison then moved to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President.—The President he said would necessarily derive so much power and importance from a state of war that he might be tempted if authorized, to impede a treaty of peace. M<sup>r</sup>. Butler 2<sup>ded</sup> the motion

M<sup>r</sup>. Gorham thought the precaution unnecessary as the means of carrying on the war would not be in the hands of the President, but of the Legislature.

M<sup>r</sup> Gov<sup>r</sup>. Morris thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests.

M<sup>r</sup>. Butler was strenuous for the motion, as a necessary security against ambitious & corrupt Presidents. He mentioned the late perfidious policy of the Statholder in Holland; and the artifices of the Duke of Marlbro’ to prolong the war of which he had the management.

M<sup>r</sup>. Gerry was of opinion that in treaties of peace a greater rather than less proportion of votes was necessary, than in other treaties. In Treaties of peace the dearest interests will be at stake, as the fisheries, territory &c. In treaties of peace also there is more danger to the extremities of the Continent of being sacrificed, than on any other occasions.

M<sup>r</sup> Williamson thought that Treaties of peace should be guarded at least by requiring the same concurrence as in other Treaties.

On the motion of M<sup>r</sup> Madison & M<sup>r</sup> Butler

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> no. N. C. no. S. C. ay. Geo. ay.

On the part of the clause concerning treaties amended by the exception as to Treaties of peace,

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

“and may require the opinion in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices,” being before the House

Col: Mason<sup>1</sup> said that in rejecting a Council to the President we were about to try an experiment on which the most despotic Government had never ventured. The Grand Signor himself had his Divan. He moved to postpone the consideration of the clause in order to take up the following

“That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an Executive Council, as a Council of State for the President of the U. States, to consist of six members, two of which from the Eastern, two from the middle, and two from the Southern States, with a Rotation and duration of office similar to those of the Senate; such Council to be appointed by the Legislature or by the Senate.”

Doctor Franklin 2<sup>ded</sup>. the motion. We seemed he said too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience shewed that caprice, the intrigues of favorites & mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad Governors appointed in G. B. for the Colonies. He thought a Council would not only be a check on a bad President but be a relief to a good one.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. The question of a Council was considered in the Committee, where it was judged that the Presid<sup>t</sup>. by persuading his Council to concur in his wrong measures, would acquire their protection for them.

M<sup>r</sup>. Wilson approved of a Council in preference to making the Senate a party to appointments<sup>ts</sup>

M<sup>r</sup>. Dickinson was for a Council. It w<sup>d</sup> be a singular thing if the measures of the Executive were not to undergo some previous discussion before the President.

M<sup>r</sup>. Madison was in favor of the instruction to the Committee proposed by Col: Mason.

The motion of M<sup>r</sup> Mason was negatived. May<sup>d</sup>. ay. S. C. ay. Geo. ay— N. H. no. Mas. no. C<sup>t</sup> no. N. J. no P<sup>a</sup>. no. Del. no. V<sup>a</sup> no. N. C. no.

On the question, “authorizing the President to call for the opinions of the Heads of Departments, in writing”: it passed in the affirmative N. H. only being no. 1

The clause was then unanimously agreed to—

M<sup>r</sup> Williamson & M<sup>r</sup> Spaight moved “that no Treaty of peace affecting Territorial rights sh<sup>d</sup>. be made without the concurrence of two thirds of the members of the Senate present.

M<sup>r</sup> King. It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion—“to all present rights of the U. States.”

Adjourned.

## Saturday September 8<sup>Th</sup>. In Convention

The last Report of the Committee of Eleven (see Sep<sup>r</sup> 4) was resumed.

M<sup>r</sup>. King moved to strike out the “exception of Treaties of peace” from the general clause requiring two thirds of the Senate for making Treaties.

M<sup>r</sup>. Wilson wished the requisition of two thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by M<sup>r</sup>. Ghorum, that we were not fit for one Society.

A reconsideration of the whole clause was agreed to.

M<sup>r</sup>. Gov<sup>r</sup>. Morris was ag<sup>st</sup> striking out the “exception of Treaties of peace”. If two thirds of the Senate should be required for peace, the Legislature will be unwilling to make war for that reason, on account of the Fisheries or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode, of negating the supplies for the war.

M<sup>r</sup>. Williamson remarked that Treaties are to be made in the branch of the Gov<sup>t</sup>. where there may be a majority of the States without a majority of the people. Eight

men may be a majority of a quorum, & should not have the power to decide the conditions of peace. There would be no danger, that the exposed States, as S. Carolina or Georgia, would urge an improper war for the Western Territory.

M<sup>r</sup>. Wilson. If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

M<sup>r</sup>. Gerry enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one fifth of the people. The Senate will be corrupted by foreign influence.

M<sup>r</sup> Sherman was ag<sup>st</sup>. leaving the rights established by the Treaty of peace, to the Senate, & moved to annex a proviso that no such rights sh<sup>d</sup> be ceded without the sanction of the Legislature.

M<sup>r</sup>. Gov<sup>r</sup>. Morris seconded the ideas of M<sup>r</sup> Sherman.

M<sup>r</sup> Madison observed that it had been too easy in the present Congress, to make Treaties altho' nine States were required for the purpose.

On the question for striking "except Treaties of peace".

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Wilson & M<sup>r</sup> Dayton move to strike out the clause requiring two thirds of the Senate for making Treaties; on which,

N. H. no. Mas. no. C<sup>t</sup> div<sup>d</sup> N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup>. Rutledge & M<sup>r</sup>. Gerry moved that "no Treaty be made without the consent of ? of all the members of the Senate"—according to the example in the present Cong<sup>s</sup>.

M<sup>r</sup>. Ghorum. There is a difference in the case, as the President's consent will also be necessary in the new Gov<sup>t</sup>.

On the question.

N. H. no. Mass. no. (M<sup>r</sup>. Gerry ay). C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Sherman mov<sup>d</sup>. that no Treaty be made without a Majority of the whole number of the Senate. M<sup>r</sup>. Gerry seconded him.

M<sup>r</sup>. Williamson. This will be less security than ? as now required.

M<sup>r</sup>. Sherman. It will be less embarrassing.

On the question, it passed in the negative.

N. H. no. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

M<sup>r</sup>. Madison moved that a Quorum of the Senate consist of ? of all the members.

M<sup>r</sup>. Gov<sup>r</sup>. Morris—This will put it in the power of one man to break up a Quorum.

M<sup>r</sup>. Madison. This may happen to any Quorum.

On the Question it passed in the negative.

N. H. no. Mass. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Williamson & M<sup>r</sup> Gerry mov<sup>d</sup>. “that no Treaty sh<sup>d</sup>. be made with<sup>t</sup>. previous notice to the members, & a reasonable time for their attending.”

On the Question.

All the States no; except N. C. S. C. & Geo. ay.

On a question on clause of the Report of the Com<sup>e</sup> of Eleven relating to Treaties by ? of the Senate. All the States were ay—except P<sup>a</sup>. N. J. & Geo. no.

M<sup>r</sup>. Gerry mov<sup>d</sup> that “no officer be app<sup>d</sup>. but to offices created by the Constitution or by law.”—This was rejected as unnecessary by six no’s & five ays:

The Ayes. Mass. C<sup>t</sup> N. J. N. C. Geo.—Noes. N. H. P<sup>a</sup>. Del. M<sup>d</sup> V<sup>a</sup>. S. C.

The clause referring to the Senate, the trial of impeachments ag<sup>st</sup> the President, for Treason & bribery, was taken up.

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined. As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend the power of impeachments. He mov<sup>d</sup>. to add, after “bribery” “or maladministration.” M<sup>r</sup> Gerry seconded him.

M<sup>r</sup>. Madison so vague a term will be equivalent to a tenure during pleasure of the Senate.

M<sup>r</sup>. Gov<sup>r</sup>. Morris, it will not be put in force & can do no harm. An election of every four years will prevent maladministration.



Col. Mason withdrew “maladministration” & substitutes “other high crimes & misdemeanors ag<sup>st</sup> the State”

On the question thus altered

N. H. ay. Mass. ay. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. 1 Geo. ay.

M<sup>f</sup>. Madison objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

M<sup>f</sup>. Gov<sup>r</sup>. Morris thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted. He was ag<sup>st</sup>. a dependence of the Executive on the Legislature, considering the Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out.

M<sup>f</sup>. Pinkney disapproved of making the Senate the Court of impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine ag<sup>st</sup> him, and under the influence of heat and faction throw him out of office.

M<sup>f</sup> Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President.

M<sup>f</sup> Sherman regarded the Supreme Court as improper to try the President, because the Judges would be appointed by him.

On motion of M<sup>f</sup>. Madison to strike out the words—“by the Senate” after the word “conviction”

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

In the amendment of Col: Mason just agreed to, the word “State” after the words “misdemeanors against,” was struck out, and the words “United States,” inserted unanimously, in order to remove ambiguity.

On the question to agree to clause as amended,

N. H. ay. Mas. ay. Cont ay N J ay. P<sup>a</sup>. no. Del ay M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

On motion “The vice-President and other Civil officers of the U. S. shall be removed from office on impeachment and conviction as aforesaid” was added to the clause on the subject of impeachments.

The clause of the report made on the 5<sup>th</sup> Sep<sup>r</sup> & postponed was taken up to wit—“All bills for raising revenue shall originate in the House of Representatives; and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the Treasury but in consequence of appropriations made by law.”

It was moved to strike out the words “and shall be subject to alterations and amendments by the Senate” and insert the words used in the Constitution of Massachusetts on the same subject—“but the Senate may propose or concur with amendments as in other bills” which was agreed too nem: con:

On the question On the first part of the clause—“All bills for raising revenue shall originate in the House of Representatives”1

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gov<sup>r</sup>. Morris moved to add to clause (3) of the report made on Sep<sup>r</sup> 4. the words “and every member shall be on oath” which being agreed to, and a question taken on the clause so amended viz—“The Senate of the U. S. shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present; and every member shall be on oath”

N. H. ay. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del— ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gerry repeated his motion above made on this day, in the form following: “The Legislature shall have the sole right of establishing offices not heretofore provided for” which was again negated: Mas. Con<sup>t</sup>. & Geo. only being ay.

M<sup>r</sup>. M<sup>c</sup>Henry observed that the President had not yet been any where authorized to convene the Senate, and moved to amend Art X. sect. 2. by striking out the words “he may convene them (the Legislature) on extraordinary occasions,” & insert, “He may convene both or either of the Houses on extraordinary occasions.” This he added would also provide for the case of the Senate being in Session, at the time of convening the Legislature.

M<sup>r</sup>. Wilson said he should vote ag<sup>st</sup>. the motion, because it implied that the senate might be in Session, when the Legislature was not, which he thought improper.

On the question

N. H. ay. Mas. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. ay. S. C. no. Geo. ay.

A Committee was then appointed by Ballot to revise the stile of and arrange the articles which had been agreed to by the House. The committee consisted of M<sup>r</sup> Johnson, M<sup>r</sup>. Hamilton, M<sup>r</sup> Gov<sup>r</sup>. Morris, M<sup>r</sup> Madison and M<sup>r</sup> King.

M<sup>r</sup>. Williamson moved that, previous to this work of the Committee the clause relating to the number of the House of Representatives sh<sup>d</sup> be reconsidered for the purpose of increasing the number.

M<sup>r</sup> Madison 2<sup>ded</sup>. the Motion

M<sup>r</sup>. Sherman opposed it he thought the provision on that subject amply sufficient.

Col: Hamilton expressed himself with great earnestness and anxiety in favor of the motion. He avowed himself a friend to a vigorous Government, but would declare at the same time, that he held it essential that the popular branch of it should be on a broad foundation. He was Seriously of opinion that the House of Representatives was on so narrow a scale as to be really dangerous, and to warrant a jealousy in the people for their liberties. He remarked that the connection between the President & Senate would tend to perpetuate him, by corrupt influence. It was the more necessary on this account that a numerous representation in the other branch of the Legislature should be established.

On the motion of M<sup>r</sup> Williamson to reconsider, it was negatived<sup>1</sup>

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. no.

Adj<sup>d</sup>

## Monday Sep<sup>R</sup> 10. 1787 In Convention<sup>2</sup>

M<sup>r</sup>. Gerry moved to reconsider Art XIX. viz. “On the application of the Legislatures of two thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the U. S. shall call a Convention for that purpose,” (see Aug 6)

This constitution he said is to be paramount to the State Constitutions. It follows hence, from this article that two thirds of the States may obtain a Convention, a majority of which can bind the Union to innovations that may subvert the State Constitutions altogether. He asked whether this was a situation proper to be run into.

M<sup>r</sup>. Hamilton 2<sup>ded</sup>. the motion, but he said with a different view from M<sup>r</sup>. Gerry. He did not object to the consequences stated by M<sup>r</sup> Gerry. There was no greater evil in subjecting the people of the U. S. to the major voice than the people of a particular State. It had been wished by many and was much to have been desired that an easier mode of introducing amendments had been provided by the articles of the Confederation. It was equally desirable now that an easy mode should be established for supplying defects which will probably appear in the new System. The mode proposed was not adequate. The State Legislatures will not apply for alterations but

with a view to increase their own powers. The National Legislature will be the first to perceive and will be most sensible to the necessity of amendments, and ought also to be empowered, whenever two thirds of each branch should concur to call a Convention. There could be no danger in giving this power, as the people would finally decide in the case.

M<sup>f</sup>. Madison remarked on the vagueness of the terms, “call a Convention for the purpose,” as sufficient reason for reconsidering the article. How was a Convention to be formed? by what rule decide? what the force of its acts?

On the motion of M<sup>f</sup>. Gerry to reconsider

N. H. div<sup>d</sup> Mas. ay. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>f</sup>. Sherman moved to add to the article “or the Legislature may propose amendments to the several States for their approbation, but no amendments shall be binding until consented to by the several States.”

M<sup>f</sup>. Gerry 2<sup>ded</sup>. the motion

M<sup>f</sup>. Wilson moved to insert, “two thirds of” before the words “several States”—on which amendment to the motion of M<sup>f</sup>. Sherman

N. H. ay. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. no. S. C. no. Geo. no.

M<sup>f</sup>. Wilson then moved to insert “three fourths of” before “the several Sts” which was agreed to nem: con:

M<sup>f</sup>. Madison moved to postpone the consideration of the amended proposition in order to take up the following,

“The Legislature of the U. S. whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States, shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the Legislature of the U. S:”

M<sup>f</sup>. Hamilton 2<sup>ded</sup> the motion.

M<sup>f</sup>. Rutledge said he never could agree to give a power by which the articles relating to slaves might be altered by the States not interested in that property and prejudiced against it. In order to obviate this objection, these words were added to the proposition:<sup>1</sup> “provided that no amendments which may be made prior to the year 1808 shall in any manner affect the 4 & 5 sections of the VII article”—The postponement being agreed to,

On the question on the proposition of M<sup>r</sup>. Madison & M<sup>r</sup>. Hamilton as amended

N. H. div<sup>d</sup>. Mas. ay. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Gerry moved to reconsider Art: XXI and XXII. from the latter of which “for the approbation of Cong<sup>s</sup>.” had been struck out. He objected to proceeding to change the Government without the approbation of Congress, as being improper and giving just umbrage to that body: He repeated his objections also to an annulment of the confederation with so little scruple or formality.

M<sup>r</sup>. Hamilton concurred with M<sup>r</sup>. Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong also to allow nine States as provided by Art XXI. to institute a new Government on the ruins of the existing one. He w<sup>d</sup>. propose as a better modification of the two articles (XXI & XXII) that the plan should be sent to Congress in order that the same if approved by them, may be communicated to the State Legislatures, to the end that they may refer it to State conventions; each Legislature declaring that if the Convention of the State should think the plan ought to take effect among nine ratifying States, the same sh<sup>d</sup> take effect accordingly.

M<sup>r</sup> Gorham. Some States will say that nine States shall be sufficient to establish the plan, others will require unanimity for the purpose. And the different and conditional ratifications will defeat the plan altogether.

M<sup>r</sup>. Hamilton. No Convention convinced of the necessity of the plan will refuse to give it effect on the adoption by nine States. He thought this mode less exceptionable than the one proposed in the article, while it would attain the same end.

M<sup>r</sup> Fitzimmons remarked that the words “for their approbation” had been struck out in order to save Congress from the necessity of an Act inconsistent with the Articles of Confederation under which they held their authority.

M<sup>r</sup> Randolph declared, if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had from the beginning he said been convinced that radical changes in the system of the Union were necessary. Under this conviction he had brought forward a set of republican propositions as the basis and outline of a reform. These Republican propositions had however, much to his regret, been widely, and, in his opinion, irreconcilably departed from. In this state of things it was his idea and he accordingly meant to propose, that the State Conventions sh<sup>d</sup>. be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt, would give quiet to his own mind.

M<sup>r</sup>. Wilson was against a reconsideration for any of the purposes which had been mentioned.

M<sup>r</sup> King thought it would be more respectful to Congress to submit the plan generally to them; than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine States he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

M<sup>r</sup>. Gerry urged the indecency and pernicious tendency of dissolving in so slight a manner, the solemn obligations of the articles of confederation. If nine out of thirteen can dissolve the compact. Six out of nine will be just as able to dissolve the new one hereafter.

M<sup>r</sup> Sherman was in favor of M<sup>r</sup> King's idea of submitting the plan generally to Congress. He thought nine States ought to be made sufficient: but that it would be best to make it a separate act and in some such form as that intimated by Col: Hamilton, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, XXI & XXII—

N. H. div<sup>d</sup>. Mas. no. C<sup>t</sup>. ay. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. ay.

M<sup>r</sup>. Hamilton then moved to postpone art XXI in order to take up the following, containing the ideas he had above expressed, viz

Resolved that the foregoing plan of a Constitution be transmitted to the U. S. in Congress assembled, in order that if the same shall be agreed to by them, it may be communicated to the Legislatures of the several States, to the end that they may provide for its final ratification by referring the same to the Consideration of a Convention of Deputies in each State to be chosen by the people thereof, and that it be recommended to the said Legislatures in their respective acts for organizing such convention to declare, that if the said Convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the State, and further that if the said Convention should be of opinion that the same upon the assent of any nine States thereto, ought to take effect between the States so assenting, such opinion shall thereupon be also binding upon such a State, and the said Constitution shall take effect between the States assenting thereto

M<sup>r</sup>. Gerry 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Wilson. This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention on the approbation of Congress. He declared it to be worse than folly to rely on the concurrence of the Rhode Island members of Cong<sup>s</sup>. in the plan. Maryland has voted on this floor; for requiring the unanimous assent of the 13 States to the proposed change in the federal System. N. York has not been represented for a long time past in the Convention. Many individual deputies from other States have spoken much against the plan. Under these circumstances can it be safe to make the assent of Congress necessary. After spending

four or five months in the laborious & arduous task of forming a Government for our Country, we are ourselves at the close throwing insuperable obstacles in the way of its success.

M<sup>r</sup> Clymer thought that the mode proposed by M<sup>r</sup>. Hamilton would fetter & embarrass Cong<sup>s</sup>. as much as the original one, since it equally involved a breach of the articles of Confederation.

M<sup>r</sup>. King concurred with M<sup>r</sup>. Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the State Legislatures will not propose the plan to Conventions; or if the States themselves are to provide that nine States shall suffice to establish the System, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

M<sup>r</sup>. Rutledge viewed the matter in the same light with M<sup>r</sup>. King.

On the question to postpone in order to take up Col: Hamilton's motion

N. H. no. Mas. no. C<sup>t</sup>. ay. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. no. Geo. no.

A Question being then taken on the article XXI. It was agreed to unanimously.

Col: Hamilton withdrew the remainder of the motion to postpone art XXII, observing that his purpose was defeated by the vote just given.

M<sup>r</sup>. Williamson & M<sup>r</sup>. Gerry moved to re-instate the words "for the approbation of Congress" in Art: XXII. which was disagreed to nem: con:

M<sup>r</sup>. Randolph took this opportunity to state his objections to the System. They turned on the Senate's being made the Court of Impeachment for trying the Executive—on the necessity of  $\frac{3}{4}$  instead of  $\frac{2}{3}$  of each house to overrule the negative of the President—on the smallness of the number of the Representative branch,—on the want of limitation to a standing army—on the general clause concerning necessary and proper laws—on the want of some particular restraint on navigation acts—on the power to lay duties on exports—on the authority of the General Legislature to interpose on the application of the *Executives* of the States—on the want of a more definite boundary between the General & State Legislatures—and between the General and State Judiciaries—on the unqualified power of the President to pardon treasons—on the want of some limit to the power of the Legislature in regulating their own compensations. With these difficulties in his mind, what course he asked was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in Tyranny? He was unwilling he said to impede the wishes and Judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the Convention of his State, to act according to the dictates of his judgment. The only mode in which his embarrassments could be removed, was that of submitting the plan to Cong<sup>s</sup> to go from them to the State Legislatures, and from these to State Conventions having power to adopt reject or amend; the process to close with

another General Convention with full power to adopt or reject the alterations proposed by the State Conventions, and to establish finally the Government. He accordingly proposed a Resolution to this effect.

Doc<sup>r</sup> Franklin 2<sup>ded</sup> the motion

Col: Mason urged & obtained that the motion should lie on the table for a day or two to see what steps might be taken with regard to the parts of the system objected to by M<sup>r</sup> Randolph.

M<sup>r</sup> Pinkney moved “that it be an instruction to the Committee for revising the stile and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid with the same before the U. States in Congress”

1 The motion itself was referred to the Committee nem: con:

1 M<sup>r</sup> Randolph moved to refer to the Committee also a motion relating to pardons in cases of Treason—which was agreed to nem: con:

Adjourned

Tuesday Sep<sup>R</sup>. 11. 1787. In Convention

The Report of the Com<sup>?</sup>ittee of stile & arrangement not being made & being waited for,

The House Adjourned

Wednesday Sep<sup>R</sup> 12. 1787. In Convention

Doc<sup>r</sup> Johnson from the Committee of stile &c. reported a digest of the plan, of which printed copies were ordered to be furnished to the members. He also reported a letter to accompany the plan, to Congress.2

We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I.

*Sect.* 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Sect.* 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall



have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York, six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and they shall have the sole power of impeachment.

*Sect. 3.* The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years: and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided<sup>1</sup> as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year: and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be, *ex officio*,<sup>2</sup> President of the senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

*Sect. 4.* The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time by law make or alter such regulations.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

*Sect. 5.* Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

*Sect. 6.* The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time;

and no person holding any office under the United States, shall be a member of either house during his continuance in office.

*Sect. 7.* The enacting stile of the laws shall be, “Be it enacted by the senators and representatives in Congress assembled.”

All bills for raising revenue shall originate in the house of representatives: but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by 1 three-fourths<sup>2</sup> of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

*Sect. 8.* The Congress may by joint ballot appoint a treasurer. They shall have power

To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare of the United States<sup>3</sup>

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states, and with the Indian tribes.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and 1 offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies: but no appropriations of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

*Sect. 9.* The migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it

No bill of attainder shall be passed, nor any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.[1](#)

No tax or duty shall be laid on articles exported from any State.

No money shall be drawn from the treasury, but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

*Sect. 10.* No state shall coin money, nor emit bills of credit, nor make any thing but gold or silver coin a tender in payment of debts, nor pass any bill of attainder, nor ex post facto laws, nor laws altering or impairing the obligation of contracts; nor grant letters of marque and reprisal, nor enter into any treaty, alliance, or confederation, nor grant any title of nobility.

No state shall, without the consent of Congress, lay imposts or duties on imports or exports, nor with such consent, but to the use of the treasury of the United States.[12](#) Nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another state, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of delay until the Congress can be consulted.

## II.

*Sect. 1.* The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, altogether with the vice-president, chosen for the same term, be elected in the following manner:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in Congress: but no senator or representative shall be appointed an elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the senate. The president of the senate shall in the presence of the senate and house of representatives open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot

one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states and not per capita,<sup>1</sup> the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president by the representatives,<sup>2</sup> the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.

The Congress may determine the time of chusing the electors, and the time in<sup>3</sup> which they shall give their votes; but the election shall be on the same day<sup>4</sup> throughout the United States

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or the period for chusing another president arrive.<sup>1</sup>

The president shall, at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I —, do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my judgment and power, preserve, protect and defend the constitution of the United States."

*Sect. 2.* The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States: he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, when called into the actual service of the United States,<sup>2</sup> and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

*Sect. 3.* He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient: he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper: he shall receive ambassadors and other public ministers: he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States

*Sect. 4.* The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### III.

*Sect. 1.* The judicial power of the United States, both in law and equity, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

*Sect. 2.* The judicial power shall extend to all cases, both in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. To all cases affecting ambassadors, other public ministers and consuls. To all cases of admiralty and maritime jurisdiction. To controversies to which the United States shall be a party. To controversies between two or more States; between a state and citizens of another state; between citizens of different States; between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

*Sect. 3.* Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be

convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood nor forfeiture, except during the life of the person attainted.

#### IV.

*Sect. 1.* Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

*Sect. 2.* The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled be delivered up, and removed to the state having jurisdiction of the crime.

No person legally held to service or labour in one state, escaping into another, shall in consequence of regulations subsisting therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labour may be due.

*Sect. 3.* New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

*Sect. 4.* The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature or executive, against domestic violence.

#### V.

The Congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds<sup>1</sup> of the legislatures<sup>2</sup> of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of<sup>3</sup> the legislatures<sup>4</sup> of the several states, or by conventions in three-fourths thereof, as the



one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the —1 and2 — section3 of4 article

## VI.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

## LETTER. 1

We have now the Honor to submit to the Consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

The Friends of our Country have long seen and desired that the Power of making War Peace and Treaties, that of levying Money & regulating Commerce and the correspondent executive and judicial Authorities should be fully and effectually vested in the general Government of the Union. But the Impropriety of delegating such extensive Trust to one Body of Men is evident. Hence results the Necessity of a different organization.

It is obviously impracticable in the fœderal Government of these States to secure all Rights of independent Sovereignty to each and yet provide for the Interest and Safety of all. Individuals entering into Society must give up a Share of Liberty to preserve the Rest. The Magnitude of the Sacrifice must depend as well on Situation and Circumstances as on the Object to be obtained. It is at all times difficult to draw with Precision the Line between those Rights which must be surrendered and those which may be reserved. And on the present Occasion this Difficulty was increased by a

Difference among the several States as to their Situation Extent Habits and particular Interests

In all our Deliberations on this Subject we kept steadily in our View that which appears to us the greatest Interest of every true American. The Consolidation of our Union in which is involved our Prosperity Felicity Safety perhaps our national Existence. This important Consideration seriously and deeply impressed on our Minds led each State in the Convention to be less rigid in Points of inferior Magnitude than might have been otherwise expected. And thus the Constitution which we now present is the Result of a Spirit of Amity and of that mutual Deference & Concession which the Peculiarity of our political Situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected. But each will doubtless consider that had her Interests been alone consulted the Consequences might have been particularly disagreeable or injurious to others. That it is liable to as few Exceptions as could reasonably have been expected we hope and believe That it may promote the lasting Welfare of that Country so dear to us all and secure her Freedom and Happiness is our most ardent Wish—

M<sup>r</sup>. Williamson moved to reconsider the clause requiring three fourths of each House to overrule the negative of the President, in order to strike out  $\frac{3}{4}$  and insert ?. He had he remarked himself proposed  $\frac{3}{4}$  instead of ?, but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

M<sup>r</sup> Sherman was of the same opinion; adding that the States would not like to see so small a minority and the President, prevailing over the general voice. In making laws regard should be had to the sense of the people, who are to be bound by them, and it was more probable that a single man should mistake or betray this sense than the Legislature.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. Considering the difference between the two proportions numerically, it amounts in one House to two members only; and in the others to not more than five; according to the numbers of which the Legislature is at first to be composed. It is the interest moreover of the distant States to prefer  $\frac{3}{4}$  as they will be oftenest absent and need the interposing check of the President. The excess rather than the deficiency, of laws was to be dreaded. The example of N. York shews that ? is not sufficient to answer the purpose.

M<sup>r</sup> Hamilton added his testimony to the fact that ? in N. York had been ineffectual either where a popular object, or a legislative faction operated; of which he mentioned some instances.

M<sup>r</sup> Gerry. It is necessary to consider the danger on the other side also. ? will be a considerable, perhaps a proper security.  $\frac{3}{4}$  puts too much in the power of a few men. The primary object of the revisionary check in the President is not to protect the general interest, but to defend his own department. If  $\frac{3}{4}$  be required, a few Senators

having hopes from the nomination of the President to offices, will combine with him and impede proper laws. Making the vice-President Speaker increases the danger.

M<sup>r</sup> Williamson was less afraid of too few than of too many laws. He was most of all afraid that the repeal of bad laws might be rendered too difficult by requiring  $\frac{3}{4}$  to overcome the dissent of the President.

Col: Mason had always considered this as one of the most exceptionable parts of the System. As to the numerical argument of M<sup>r</sup>. Gov<sup>r</sup>. Morris, little arithmetic was necessary to understand that  $\frac{3}{4}$  was more than  $\frac{1}{2}$ , whatever the numbers of the Legislature might be. The example of New York depended on the real merits of the laws. The Gentlemen citing it, had no doubt given their own opinions. But perhaps there were others of opposite opinions who could equally paint the abuses on the other side. His leading view was to guard against too great an impediment to the repeal of laws.

M<sup>r</sup>. Gov<sup>r</sup>. Morris dwelt on the danger to the public interest from the instability of laws, as the most to be guarded against. On the other side there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The Inspection laws of Virginia & Maryland to which all are now so much attached were unpopular at first.

M<sup>r</sup> Pinkney was warmly in opposition to  $\frac{3}{4}$  as putting a dangerous power in the hands of a few Senators headed by the President.

M<sup>r</sup> Madison. When  $\frac{3}{4}$  was agreed to, the President was to be elected by the legislature and for seven years. He is now to be elected by the people and for four years. The object of the revisionary power is two fold. 1. to defend the Executive rights 2. to prevent popular or factious injustice. It was an important principle in this & in the State Constitutions to check legislative injustice and encroachments. The Experience of the States had demonstrated that their checks are insufficient. We must compare the danger from the weakness of  $\frac{1}{2}$  with the danger from the strength of  $\frac{3}{4}$ . He thought on the whole the former was the greater. As to the difficulty of repeals it was probable that in doubtful cases the policy would soon take place of limiting the duration of laws so as to require renewal instead of repeal.

The reconsideration being agreed to. On the question to insert  $\frac{1}{2}$  in place of  $\frac{3}{4}$ .

N. H. div<sup>d</sup>. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup>. ay. M<sup>r</sup> McHenry no. V<sup>a</sup>. no. Gen<sup>l</sup> Washington M<sup>r</sup> Blair, M<sup>r</sup> Madison no. Col. Mason, M<sup>r</sup> Randolph ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup>. Williamson, observed to the House that no provision was yet made for juries in Civil cases and suggested the necessity of it.

M<sup>r</sup>. Gorham. It is not possible to discriminate equity cases from those in which juries are proper. The Representatives of the people may be safely trusted in this matter.

M<sup>r</sup>. Gerry urged the necessity of Juries to guard ag<sup>st</sup>. corrupt Judges. He proposed that the Committee last appointed should be directed to provide a clause for securing the trial by Juries.

Col: Mason perceived the difficulty mentioned by M<sup>r</sup> Gorham. The jury cases cannot be specified. A general principle laid down on this and some other points would be sufficient. He wished the plan had been prefaced with a Bill of Rights, & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours.

M<sup>r</sup> Gerry concurred in the idea & moved for a Committee to prepare a Bill of Rights.  
Col: Mason 2<sup>ded</sup>. the motion.

M<sup>r</sup>. Sherman, was for securing the rights of the people where requisite. The State Declarations of Rights are not repealed by this Constitution; and being in force are sufficient. There are many cases where juries are proper which cannot be discriminated. The Legislature may be safely trusted.

Col: Mason. The laws of the U. S. are to be paramount to State Bills of Rights. On the question for a Com<sup>e</sup> to prepare a Bill of Rights

N. H. no. Mas. abs<sup>t</sup>. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

The Clause relating to exports being reconsidered, at the instance of Col: Mason, who urged that the restriction on the States would prevent the incidental duties necessary for the inspection & safe-keeping of their produce, and be ruinous to the Staple States, as he called the five Southern States, he moved as follows—“provided nothing herein contained shall be construed to restrain any State from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing and indemnifying the losses in keeping the commodities in the care of public officers, before exportation.” In answer to a remark which he anticipated, to wit, that the States could provide for these expences, by a tax in some other way, he stated the inconveniency of requiring the Planters to pay a tax before the actual delivery for exportation.

M<sup>r</sup> Madison 2<sup>ded</sup> the motion. It would at least be harmless; and might have the good effect of restraining the States to bona fide duties for the purpose, as well as of authorizing explicitly such duties; tho’ perhaps the best guard against an abuse of the power of the States on this subject, was the right in the Gen<sup>l</sup> Government to regulate trade between State & State.

M<sup>r</sup> Gov<sup>r</sup> Morris saw no objection to the motion. He did not consider the dollar per Hhd laid on Tob<sup>o</sup>. in Virg<sup>a</sup>. as a duty on exportation, as no drawback would be allowed on Tob<sup>o</sup> taken out of the Warehouse for internal consumption.

M<sup>r</sup>. Dayton was afraid the proviso w<sup>d</sup> enable Pennsylv<sup>a</sup> to tax N. Jersey under the idea of Inspection duties of which Pen<sup>a</sup>. would Judge.

M<sup>r</sup> Gorham & M<sup>r</sup>. Langdon, thought there would be no security if the proviso sh<sup>d</sup> be agreed to, for the States exporting thro' other States, ag<sup>st</sup> these oppressions of the latter. How was redress to be obtained in case duties should be laid beyond the purpose expressed?

M<sup>r</sup>. Madison. There will be the same security as in other cases. The jurisdiction of the supreme Court must be the source of redress. So far only had provision been made by the plan ag<sup>st</sup> injurious acts of the States. His own opinion was, that this was sufficient. A negative on the State laws alone could meet all the shapes which these could assume. But this had been overruled.

M<sup>r</sup>. Fitzimmons. Incidental duties on Tob<sup>o</sup> & flour never have been & never can be considered as duties on exports.

M<sup>r</sup> Dickinson. Nothing will save the States in the situation of N. Hampshire N. Jersey Delaware &c from being oppressed by their neighbors, but requiring the assent of Cong<sup>s</sup>. to inspection duties. He moved that this assent sh<sup>d</sup> accordingly be required.

M<sup>r</sup> Butler 2<sup>ded</sup> the motion.

Adjourned

## Thursday Sep<sup>R</sup> 13. 1787. In Convention

Col. Mason.1 He had moved without success for a power to make sumptuary regulations. He had not yet lost sight of his object. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, and the necessity of restricting it, as well with œconomical as republican views, he moved that a Committee be appointed to report articles of association for encouraging by the advice the influence and the example of the members of the Convention, œconomy frugality and american manufactures.

Doc<sup>r</sup> Johnson 2<sup>ded</sup>. the motion which was without debate agreed to, nem: con: and a Committee appointed, consisting of Col: Mason, Doc<sup>r</sup> Franklin, M<sup>r</sup> Dickenson, Doc<sup>r</sup> Johnson and M<sup>r</sup> Livingston.1

Col: Mason renewed his proposition of yesterday on the subject of inspection laws, with an additional clause giving to Congress a controul over them in case of abuse—as follows:

“Provided that no State shall be restrained from imposing the usual duties on produce exported from such State, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers: but all such regulations shall in case of abuse, be subject to the revision and controul of Congress.”

There was no debate & on the question

N. H. ay. Mas. ay. C<sup>t</sup> ay. P<sup>a</sup> no. Del. no. M<sup>d</sup> ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. ay.

The Report from the committee of stile & arrangement, was taken up, in order to be compared with the articles of the plan as agreed to by the House & referred to the Committee, and to receive the final corrections and sanction of the Convention.

Art: 1, sect. 2. On motion of M<sup>f</sup> Randolph the word “servitude” was struck out, and “service” unanimously l inserted, the former being thought to express the condition of slaves, & the latter the obligations of free persons.

M<sup>f</sup> Dickenson & M<sup>f</sup>. Wilson moved to strike out, “and direct taxes,” from sect. 2, art 1, as improperly placed in a clause relating merely to the Constitution of the House of Representatives.

M<sup>f</sup>. Gov<sup>f</sup> Morris. The insertion here was in consequence of what had passed on this point; in order to exclude the appearance of counting the negroes in *the Representation*. The including of them may now be referred to the object of direct taxes, and incidentally only to that of Representation.

On the motion to strike out “and direct taxes” from this place N. H. no. Mas. no. C<sup>t</sup> no. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

Art. 1, sect. 7.—“if any bill shall not be returned by the president within ten days (sundays excepted) after it shall have been presented to him &c.”

M<sup>f</sup>. Madison moved to insert between “after” and “it” in sect. 7, Art. 1 the words “the day on which,” in order to prevent a question whether the day on which the bill be presented ought to be counted or not as one of the ten days.

M<sup>f</sup>. Randolph 2<sup>ded</sup>. the motion.

M<sup>f</sup>. Govern<sup>f</sup>. Morris. The amendment is unnecessary. The law knows no fractions of days.

A number of members being very impatient & calling for the question N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. no—

Doc<sup>f</sup> Johnson made a further report from the Committee of stile &c of the following resolutions to be substituted for 22 & 23 articles.

“Resolved that the preceding Constitution be laid before the U. States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent & ratification; & that each Convention assenting & ratifying the same should give notice thereof to the U. S. in Cong<sup>s</sup> assembled.

“Resolved that it is the opinion of this Convention that as soon as the Conventions of nine States, shall have ratified this Constitution, the U. S. in Cong<sup>s</sup>. assembled should

fix a day on which electors should be appointed by the States which shall have ratified the same; and a day on which the Electors should assemble to vote for the President; and the time and place for commencing proceedings under this Constitution—That after such publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the day fixed for the election of the President, and should transmit their votes certified signed, sealed and directed, as the Constitution requires, to the Secretary of the U. States in Cong<sup>s</sup>. assembled: that the Senators and Representatives should convene at the time & place assigned: that the Senators should appoint a President for the sole purpose of receiving, opening, and counting the votes for President, and that after he shall be chosen, the Congress, together with the President should without delay proceed to execute this Constitution.”

Adjourned

Friday Sep<sup>R</sup> 14<sup>Th</sup>. 1787. In Convention

The Report of the Committee of stile & arrangement being resumed,

M<sup>f</sup>. Williamson moved to reconsider in order to increase the number of Representatives fixed for the first Legislature. His purpose was to make an addition of one half generally to the number allotted to the respective States; and to allow two to the smallest States.

On this motion

N. H. no. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup> ay. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. ay. N. C. ay. S. C. no. Geo. no.

Art. 1. sect. 3. the words “by lot”<sup>1</sup> were struck out nem: con: on motion of M<sup>f</sup> Madison, that some rule might prevail in the rotation that would prevent both the members from the same State from going out at the same time.

“Ex officio” struck out of the same section as superfluous; nem: con; and “or affirmation” after “oath” inserted also unanimously.

M<sup>f</sup> Rutledge and M<sup>f</sup> Gov<sup>f</sup> Morris moved “that persons impeached be suspended from their office until they be tried and acquitted”

M<sup>f</sup>. Madison. The President is made too dependent already on the Legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension, will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

M<sup>f</sup> King concurred in the opposition to the amendment

On the question to agree to it

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. no. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. ay.

Art. 1. sect. 4. “except as to the places of choosing Senators” was added nem: con: to the end of the first clause, in order to exempt the seats of Gov<sup>t</sup>. in the States from the power of Congress.

Art. 1. Sect. 5. “Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy.”

Col: Mason & M<sup>t</sup> Gerry moved to insert after the word “parts,” the words “of the proceedings of the Senate” so as to require publication of all the proceedings of the House of Representatives.

It was intimated on the other side that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war in which the House of Rep<sup>s</sup> was to concur, were instanced.

On the question, it passed in the negative

N. H. no. (Rh. I abs). Mas. no. Con: no. (N. Y. abs). N. J. no. Pen. ay. Del. no. Mary. ay. Virg. no. N. C. ay. S. C. div<sup>d</sup>. Geor. no.

M<sup>t</sup> Baldwin observed that the clause, Art. 1. Sect. 6. declaring that no member of Cong<sup>s</sup> “during the time for which he was elected, shall be appointed to any Civil office under the authority of the U. S. which shall have been created, or the emoluments whereof shall have been increased during such time,” would not extend to offices *created by the Constitution*; and the salaries of which would be created, *not increased* by Cong<sup>s</sup> at their first session. The members of the first Cong<sup>s</sup> consequently might evade the disqualification in this instance.—He was neither seconded nor opposed; nor did any thing further pass on the subject.

Art. 1. Sect. 8. The Congress “may by joint ballot appoint a Treasurer”

M<sup>t</sup>. Rutledge moved to strike out this power, and let the Treasurer be appointed in the same manner with other officers.

M<sup>t</sup>. Gorham & M<sup>t</sup>. King said that the motion, if agreed to, would have a mischievous tendency. The people are accustomed & attached to that mode of appointing Treasurers, and the innovation will multiply objections to the system.

M<sup>t</sup> Gov<sup>t</sup> Morris remarked that if the Treasurer be not appointed by the Legislature, he will be more narrowly watched, and more readily impeached.

M<sup>t</sup> Sherman. As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint but several votes.



Gen<sup>l</sup> Pinkney. The Treasurer is appointed by joint ballot in South Carolina. The consequence is that bad appointments are made, and the Legislature will not listen to the faults of their own officer.

On the motion to strike out.

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> no. N. C. ay. S. C. ay. Geo. ay.

Art 1 sect. 8. “but all such duties imposts & excises, shall be uniform throughout the U. S.” were unanimously annexed to the power of taxation.

To define & punish piracies and felonies on the high seas, and “punish” offences against the law of nations.

M<sup>r</sup> Gov<sup>r</sup> Morris moved to strike out “punish” before the words “offences ag<sup>st</sup> the law of nations,” so as to let these be *definable* as well as punishable, by virtue of the preceding member of the sentence.

M<sup>r</sup> Wilson hoped the alteration would by no means be made. To pretend to *define* the law of nations which depended on the authority of all the civilized nations of the world, would have a look of arrogance, that would make us ridiculous.

M<sup>r</sup>. Gov<sup>r</sup>. Morris. The word *define* is proper when applied to *offences* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word “punish” it passed in the affirmative N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup> no. V<sup>a</sup>. no. N. C. ay. S. C. ay. Geo. no.

Doc<sup>r</sup>. Franklin moved 1 to add after the words “post roads” Art 1. Sect. 8. “a power to provide for cutting canals where deemed necessary”

M<sup>r</sup>. Wilson 2<sup>ded</sup> the motion

M<sup>r</sup> Sherman objected. The expence in such cases will fall on the U. States, and the benefit accrue to the places where the canals may be cut.

M<sup>r</sup>. Wilson. Instead of being an expence to the U. S. they may be made a source of revenue.

M<sup>r</sup> Madison suggested an enlargement of the motion into a power “to grant charters of incorporation where the interest of the U. S. might require & the legislative provisions of individual States may be incompetent.” His primary object was however to secure an easy communication between the States which the free intercourse now to be opened, seemed to call for. The political obstacles being removed, a removal of the natural ones as far as possible ought to follow. M<sup>r</sup> Randolph 2<sup>ded</sup>. the proposition.

M<sup>r</sup> King thought the power unnecessary.

M<sup>r</sup>. Wilson. It is necessary to prevent a *State* from obstructing the *general* welfare.

M<sup>r</sup> King. The States will be prejudiced and divided into parties by it. In Philad<sup>a</sup> & New York, It will be referred to the establishment of a Bank, which has been a subject of contention in those Cities. In other places it will be referred to mercantile monopolies.

M<sup>r</sup> Wilson mentioned the importance of facilitating by canals, the communication with the Western settlements. As to Banks he did not think with M<sup>r</sup>. King that the power in that point of view would excite the prejudices & parties apprehended. As to mercantile monopolies they are already included in the power to regulate trade.

Col: Mason was for limiting the power to the single case of Canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution as supposed by M<sup>r</sup> Wilson.

The motion being so modified as to admit a distinct question specifying & limited to the case of canals,

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. ay.

The other part fell of course, as including the power rejected.

M<sup>r</sup> Madison & M<sup>r</sup> Pinkney then moved to insert in the list of powers vested in Congress a power—"to establish an University, in which no preferences or distinctions should be allowed on account of Religion."

M<sup>r</sup> Wilson supported the motion

M<sup>r</sup> Gov<sup>r</sup> Morris. It is not necessary. The exclusive power at the Seat of Government, will reach the object.

On the question

N. H. no. Mas. no. Con<sup>t</sup> div<sup>d</sup> D<sup>r</sup> Johnson ay. M<sup>r</sup> Sherman no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. no.

Col: Mason, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing at the same time to insert something pointing out and guarding against the danger of them, moved to preface the clause (Art 1 sect. 8) "To provide for organizing, arming and disciplining the militia &c" with the words "And that the liberties of the people may be better secured against the danger of standing armies in time of peace". M<sup>r</sup> Randolph 2<sup>ded</sup> the motion

M<sup>r</sup> Madison was in favor of it. It did not restrain Congress from establishing a military force in time of peace if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the Gov<sup>t</sup> on that head.

M<sup>r</sup> Gov<sup>r</sup> Morris opposed the motion as setting a dishonorable mark of distinction on the military class of Citizens

M<sup>r</sup> Pinkney & M<sup>r</sup> Bedford concurred in the opposition.

On the question

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Mary<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. ay.

Col: Mason moved to strike out from the clause (art 1 sect 9.) “no bill of attainder nor any ex post facto law shall be passed” the words “nor any ex post facto law.” He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature, and no Legislature ever did or can altogether avoid them in Civil cases.

M<sup>r</sup> Gerry 2<sup>ded</sup> the motion but with a view to extend the prohibition to “civil cases,” which he thought ought to be done.

On the question; all the States were—no

M<sup>r</sup> Pinkney & M<sup>r</sup> Gerry, moved to insert a declaration “that the liberty of the Press should be inviolably observed.”

M<sup>r</sup> Sherman. It is unnecessary. The power of Congress does not extend to the Press. On the question, it passed in the negative

N. H. 1 no. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. no. S. C. ay: Geo. no.

Art 1. Sect. 9. “no capitation tax shall be laid, unless &c”

M<sup>r</sup>. Read moved to insert after “capitation” the words, “or other direct tax”. He was afraid that some liberty might otherwise be taken to saddle the States, with a readjustment by this rule, of past requisitions of Cong<sup>s</sup>—and that his amendment by giving another cast to the meaning would take away the pretext. M<sup>r</sup> Williamson 2<sup>ded</sup> the motion which was agreed to. On motion of Col: Mason “or enumeration” inserted after, as explanatory of “Census” Con. & S. C. only, no. 1

At the end of the clause “no tax or duty shall be laid on articles exported from any State” was added the following amendment conformably to a vote on the [31] of [August] viz—no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear or pay duties in another.

Col. Mason moved a clause requiring “that an Account of the public expenditures should be annually published” M<sup>r</sup> Gerry 2<sup>ded</sup> the motion

M<sup>r</sup> Gov<sup>r</sup>. Morris urged that this w<sup>d</sup> be impossible in many cases.

M<sup>r</sup> King remarked, that the term expenditures went to every minute shilling. This would be impracticable. Cong<sup>s</sup> might indeed make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

M<sup>r</sup>. Madison proposed to strike out “annually” from the motion & insert “from time to time,” which would enjoin the duty of frequent publications and leave enough to the discretion of the Legislature. Require too much and the difficulty will beget a habit of doing nothing. The articles of Confederation require halfyearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

M<sup>r</sup> Wilson 2<sup>ded</sup> & supported the motion. Many operations of finance cannot be properly published at certain times.

M<sup>r</sup> Pinkney was in favor of the motion.

M<sup>r</sup> Fitzimmons. It is absolutely impossible to publish expenditures in the full extent of the term.

M<sup>r</sup> Sherman thought “from time to time” the best rule to be given.

“Annual” was struck out—& those words—inserted nem: con:

The motion of Col Mason so amended was then agreed to nem: con: and added after—“appropriations by law” as follows—“And a regular statement and account of the receipts & expenditures of all public money shall be published from time to time”

The first clause of Art. 1 Sect. 10—was altered so as to read—“no State shall enter into any Treaty alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold & silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”

M<sup>r</sup> Gerry entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the States from impairing the obligation of contracts, alledging that Congress ought to be laid under the like prohibitions, he made a motion to that effect. He was not 2<sup>ded</sup>

Adjourned.

Saturday Sep<sup>R</sup> 15<sup>Th</sup> 1787. In Convention

M<sup>r</sup> Carrol reminded the House that no address to the people had yet been prepared. He considered it of great importance that such an one should accompany the Constitution. The people had been accustomed to such on great occasions, and would expect it on this. He moved that a Committee be appointed for the special purpose of preparing an address.

M<sup>r</sup> Rutledge objected on account of the delay it would produce and the impropriety of addressing the people before it was known whether Congress would approve and support the plan. Congress if an address be thought proper can prepare as good a one. The members of the Convention can also explain the reasons of what has been done to their respective Constituents.

M<sup>r</sup> Sherman concurred in the opinion that an address was both unnecessary and improper.

On the motion of M<sup>r</sup>. Carrol

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. 1 abs<sup>t</sup> S. C. 1 no. Geo. no.

M<sup>r</sup> Langdon. Some gentlemen have been very uneasy that no increase of the number of Representatives has been admitted. It has in particular been thought that one more ought to be allowed to N. Carolina. He was of opinion that an additional one was due both to that State and to Rho: Island, & moved to reconsider for that purpose.

M<sup>r</sup> Sherman. When the Committee of eleven reported the apportionment—five Representatives were thought the proper share of N. Carolina. Subsequent information however seemed to entitle that State to another.

On the motion to reconsider

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. no. Pen. div<sup>d</sup> Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

M<sup>r</sup> Langdon moved to add 1 member to each of the Representations of N. Carolina & Rho. Island. 2

M<sup>r</sup> King was ag<sup>st</sup> any change whatever as opening the door for delays. There had been no official proof that the numbers of N. C are greater than before estimated, and he never could sign the Constitution if Rho: Island is to be allowed two members that is one fourth of the number allowed to Massts, which will be known to be unjust.

M<sup>r</sup>. Pinkney urged the propriety of increasing the number of Rep<sup>s</sup> allotted to N. Carolina.

M<sup>r</sup>. Bedford contended for an increase in favor of Rho: Island, and of Delaware also it passed in the negative.

On the question for allowing two Rep<sup>s</sup> to Rho: Island, it passed in the negative.

N. H. ay. Mas. no. C<sup>t</sup>. no. N. J. no. P<sup>a</sup>. no. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> no. N. C. ay. S. C. no. Geo. ay.

On the question for allowing six to N. Carolina, it passed in the negative

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. no. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. ay. Geo. ay.

Art 1. Sect. 10. (paragraph 2) “No State shall, without the consent of Congress lay imposts or duties on imports or exports; nor with such consent, but to the use of the Treasury of the U. States.”

In consequence of the proviso moved by Col: Mason; and agreed to on the 13 Sep<sup>r</sup>., this part of the section was laid aside in favor of the following substitute viz: “No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its Inspection laws; and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the U. S; and all such laws shall be subject to the revision and controul of the Congress”

On a motion to strike out the last part “and all such laws shall be subject to the revision and controul of the Congress” it passed in the negative.

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup>. div<sup>d</sup> Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. ay. S. C. no. Geo. ay.

The substitute was then agreed to; Virg<sup>a</sup>. alone being in the negative.

The remainder of the paragraph being under consideration—viz—“nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another State, nor with any foreign power. Nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay, until Congress can be consulted”

M<sup>r</sup> M<sup>c</sup>Henry & M<sup>r</sup> Carrol moved that “no State shall be restrained from laying duties of tonnage for the purpose of clearing harbours and erecting light-houses.”

Col. Mason in support of this explained and urged the situation of the Chesapeake which peculiarly required expences of this sort.

M<sup>r</sup> Gov<sup>r</sup> Morris. The States are not restrained from laying tonnage as the Constitution now stands. The exception proposed will imply the contrary, and will put the States in a worse condition than the gentleman (Col. Mason) wishes.

M<sup>r</sup> Madison. Whether the States are now restrained from laying tonnage duties, depends on the extent of the power “to regulate commerce.” These terms are vague, but seem to exclude this power of the States. They may certainly be restrained by Treaty. He observed that there were other objects for tonnage Duties as the support of seamen &c. He was more & more convinced that the regulation of Commerce was in its nature indivisible and ought to be wholly under one authority.

M<sup>r</sup> Sherman. The power of the U. States to regulate trade being supreme can controul interferences of the State regulations when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

M<sup>r</sup>. Langdon insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the States ought to have nothing to do with it. On motion “that no State shall lay any duty on tonnage without the consent of Congress”

N. H. ay. Mas. ay. C<sup>t</sup>. div<sup>d</sup>. N. J. ay. P<sup>a</sup>. no. Del. ay. M<sup>d</sup>. ay. V<sup>a</sup>. no. N. C. no. S. C. ay. Geo. no.

The remainder of the paragraph was then remoulded and passed as follows viz.—“No State shall without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.”

Art II. sect. 1. (paragraph 6) “or the period for chusing another president arrive” were changed into “or a President shall be elected” conformably to a vote of the NA of NA.

M<sup>r</sup> Rutledge and Doc<sup>r</sup> Franklin moved to annex to the end of paragraph 7. Sect. 1. Art II—“and he (the President) shall not receive, within that period, any other emolument from the U. S. or any of them.” on which question

N. H. ay. Mas. ay. C<sup>t</sup> no. N. J. no. P<sup>a</sup> ay. Del. no. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. no. S. C. ay. Geo.—ay.

Art: II. Sect. 2. “he shall have power to grant reprieves and pardons for offences against the U. S. &c”

M<sup>r</sup> Randolph moved to except “cases of treason.” The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The Traitors may be his own instruments.

Col: Mason supported the motion.

M<sup>r</sup> Gov<sup>r</sup> Morris had rather there should be no pardon for treason, than let the power devolve on the Legislature.

M<sup>r</sup> Wilson. Pardon is necessary for cases of treason, and is best placed in the hands of the Executive. If he be himself a party to the guilt he can be impeached and prosecuted.

M<sup>r</sup> King thought it would be inconsistent with the Constitutional separation of the Executive & Legislative powers to let the prerogative be exercised by the latter. A Legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that State: the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of Pardon.

M<sup>r</sup> Madison admitted the force of objections to the Legislature, but the pardon of treasons was so peculiarly improper for the President that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He

would prefer to either an association of the Senate as a Council of advice, with the President.

M<sup>r</sup> Randolph could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President & that body.

Col: Mason. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur, & the President moreover can require ? of both Houses.

On the motion of M<sup>r</sup>. Randolph

N. H. no—Mas. no. C<sup>t</sup> div<sup>d</sup> N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup> no. V<sup>a</sup> ay. N. C. no. S. C. no. Geo. ay.

Art II. Sect. 2. (paragraph 2). To the end of this, M<sup>r</sup> Govern<sup>r</sup> Morris moved to annex “but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments.” M<sup>r</sup> Sherman 2<sup>ded</sup> the motion.

M<sup>r</sup> Madison. It does not go far enough if it be necessary at all. Superior officers below Heads of Departments ought in some cases to have the appointment of the lesser offices.

M<sup>r</sup> Gov<sup>r</sup> Morris. There is no necessity. Blank commissions can be sent—

On the motion

N. H. ay. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. no. M<sup>d</sup> div<sup>d</sup> V<sup>a</sup> no. N. C. ay. S. C. no. Geo. no.

The motion being lost by an equal division of votes, It was urged that it be put a second time some such provision being too necessary to be omitted, and on a second question it was agreed to nem: con.

Art. II. Sect. 1. The words “and not per capita” were struck out as superfluous and the words “by the Representatives” also—as improper, the choice of President being in another mode as well as eventually by the House of Rep<sup>s</sup>

Art II. Sect. 2. After “officers of the U. S. whose appointments are not otherwise provided for,” were added the words “and which shall be established by law.”

Art III. Sect. 2. parag: 3. M<sup>r</sup> Pinkney & M<sup>r</sup> Gerry moved to annex to the end, “And a trial by jury shall be preserved as usual in civil cases.”

M<sup>r</sup> Gorham. The constitution of Juries is different in different States and the trial itself is *usual* in different cases in different States.

M<sup>r</sup> King urged the same objections



Gen<sup>l</sup> Pinkney also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to nem: con:

Art. IV. Sect. 2. parag: 3. the term “legally” was struck out, and “under the laws thereof” inserted after the word “State” in compliance with the wish of some who thought the term legal equivocal, and favoring the idea that slavery was legal in a moral view.

Art. IV. Sect. 3. “New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Cong<sup>S</sup>”

M<sup>r</sup>. Gerry moved to insert after “or parts of States” the words “or a State and part of a State” which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the Committee.

Art. IV. Sect. 4. After the word “Executive” were inserted the words “when the Legislature cannot be convened.”

Art. V. “The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the Legislatures of the several States shall propose amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the Legislatures of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the 1 & 4 clauses in the 9. Section of article 1”

M<sup>r</sup> Sherman expressed his fears that three fourths of the States might be brought to do things fatal to particular States, as abolishing them altogether or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the States importing slaves should be extended so as to provide that no State should be affected in its internal police, or deprived of its equality in the Senate.

Col: Mason thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case.

M<sup>r</sup> Gov<sup>r</sup> Morris & M<sup>r</sup> Gerry moved to amend the article so as to require a Convention on application of ? of the Sts

M<sup>r</sup>. Madison did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the States as to call a Convention on the like application. He saw no objection however against providing for a Convention for the

purpose of amendments, except only that difficulties might arise as to the form, the quorum &c. which in constitutional regulations ought to be as much as possible avoided.

The motion of M<sup>r</sup> Gov<sup>r</sup> Morris & M<sup>r</sup> Gerry was agreed to nem: con: (see the first part of the article as finally past)

M<sup>r</sup> Sherman moved to strike out of art. V. after “legislatures” the words “of three fourths” and so after the word “Conventions” leaving future Conventions to act in this matter, like the present Conventions according to circumstances.

On this motion

N. H. div<sup>d</sup> Mas. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo—no.

M<sup>r</sup> Gerry moved to strike out the words “or by Conventions in three fourths thereof”  
On this motion

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Sherman moved according to his idea above expressed to annex to the end of the article a further proviso “that no State shall without its consent be affected in its internal police, or deprived of its equal suffrage in the Senate.”

M<sup>r</sup> Madison. Begin with these special provisos, and every State will insist on them, for their boundaries, exports &c.

On the motion of M<sup>r</sup> Sherman

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. ay. M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no.

M<sup>r</sup> Sherman then moved to strike out art V altogether

M<sup>r</sup> Brearley 2<sup>ded</sup> the motion, on which

N. H. no. Mas. no. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup> no. Del. div<sup>d</sup> M<sup>d</sup> no. V<sup>a</sup> no. N. C. no. S. C. no. Geo. no

M<sup>r</sup> Gov<sup>r</sup> Morris moved to annex a further proviso—“that no State, without its consent shall be deprived of its equal suffrage in the Senate”

This motion being dictated by the circulating murmurs of the small States was agreed to without debate, no one opposing it, or on the question, saying no

Col: Mason expressing his discontent at the power given to Congress by a bare majority to pass navigation acts, which he said would not only enhance the freight, a

consequence he did not so much regard—but would enable a few rich merchants in Philad<sup>a</sup> N. York & Boston, to monopolize the Staples of the Southern States & reduce their value perhaps 50 Per C<sup>t</sup> moved a further proviso that no law in the nature of a navigation act be passed before the year 1808, without the consent of ? of each branch of the Legislature

On this motion

N. H. no. Mas. no. C<sup>t</sup> no. N. J. no. P<sup>a</sup> no. Del. no. M<sup>d</sup>. ay. V<sup>a</sup> ay. N. C. abs<sup>t</sup> S. C. no. Geo. ay.

M<sup>r</sup>. Randolph animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention, on the close of the great & awful subject of their labours, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing “that amendments to the plan might be offered by the State Conventions, which should be submitted to and finally decided on by another general Convention”. Should this proposition be disregarded, it would he said be impossible for him to put his name to the instrument. Whether he should oppose it afterwards he would not then decide but he would not deprive himself of the freedom to do so in his own State, if that course should be prescribed by his final judgment.

Col: Mason 2<sup>ded</sup> & followed M<sup>r</sup>. Randolph in animadversions on the dangerous power and structure of the Government, concluding that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention as proposed, he could sign.

M<sup>r</sup>. Pinkney. These declarations from members so respectable at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations & amendments of the different States on the subject of Government at large. Nothing but confusion & contrariety could spring from the experiment. The States will never agree in their plans, and the Deputies to a second Convention coming together under the discordant impressions of their Constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections as well as others to the plan. He objected to the contemptible weakness & dependence of the Executive. He objected to the power of a majority only of Cong<sup>s</sup> over Commerce. But apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

M<sup>r</sup> Gerry stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House

of Representatives to conceal their journals. 3. the power of Congress over the places of election. 4. the unlimited power of Congress over their own compensation. 5. Massachusetts has not a due share of Representatives allotted to her. 6. ? of the Blacks are to be represented as if they were freemen. 7. Under the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Starchamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention.

On the question on the proposition of M<sup>r</sup> Randolph. All the States answered no

On the question to agree to the Constitution as amended. All the States ay.

The Constitution was then ordered to be engrossed. and the House adjourned.

## Monday Sep<sup>R</sup> 17. 1787. In Convention

The engrossed Constitution being read.

Doc<sup>t</sup>. Franklin rose with a speech in his hand, which he had reduced to writing for his own conveniency, and which M<sup>r</sup> Wilson read in the words following.

M<sup>r</sup> President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said “I don’t know how it happens, Sister but I meet with nobody but myself, that is always in the right—*Il n’y a que moi qui a toujours raison.*”

In these sentiments. Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall

become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administered.

On the whole, Sir, I cannot help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.—He then moved that the Constitution be signed by the members and offered the following as a convenient form viz: “Done in Convention by the unanimous consent of *the States* present the 17<sup>th</sup> of Sep<sup>r</sup> &c.—In witness whereof we have hereunto subscribed our names.”

This ambiguous form had been drawn up by M<sup>r</sup>. G. M. in order to gain the dissenting members, and put into the hands of Doc<sup>t</sup> Franklin that it might have the better chance of success.

M<sup>r</sup> Gorham said if it was not too late he could wish, for the purpose of lessening objections to the Constitution, that the clause declaring “the number of Representatives shall not exceed one for every forty thousand” which had produced so much discussion, might be yet reconsidered, in order to strike out 40,000 & insert “thirty thousand.” This would not he remarked establish that as an absolute rule, but only give Congress a greater latitude which could not be thought unreasonable.

M<sup>r</sup>. King & M<sup>r</sup> Carrol seconded & supported the ideas of M<sup>r</sup> Gorham.

When the President rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of Representatives had been considered by many members of the Convention an insufficient security for the rights & interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted.<sup>1</sup>

No opposition was made to the proposition of M<sup>r</sup> Gorham and it was agreed to unanimously.

On the question to agree to the Constitution enrolled in order to be signed. It was agreed to all the States answering ay.

M<sup>r</sup> Randolph then rose and with an allusion to the observations of Doc<sup>t</sup> Franklin apologized for his refusing to sign the Constitution notwithstanding the vast majority & venerable names that would give sanction to its wisdom and its worth. He said however that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the convention would be frustrated by the alternative which it presented to the people. Nine States will fail to ratify the plan and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

M<sup>r</sup> Gov<sup>r</sup> Morris said that he too had objections, but considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth all other considerations will be laid aside, and the great question will be, shall there be a national Government or not? and this must take place or a general anarchy will be the alternative. He remarked that the signing in the form proposed related only to the fact that the *States* present were unanimous.

M<sup>r</sup> Williamson suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members<sup>1</sup> who disliked the Constitution. For himself he did not think a better plan was to be expected and had no scruples against putting his name to it.

M<sup>r</sup> Hamilton expressed his anxiety that every member should sign. A few characters of consequence, by opposing or even refusing to sign the Constitution, might do infinite mischief by kindling the latent sparks which lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from

the plan than his own were known to be; but is it possible to deliberate between anarchy and Convulsion on one side, and the chance of good to be expected from the plan on the other.

M<sup>r</sup> Blount<sup>2</sup> said he had declared that he would not sign, so as to pledge himself in support of the plan, but he was relieved by the form proposed and would without committing himself attest the fact that the plan was the unanimous act of the States in Convention.

Doc<sup>r</sup> Franklin expressed his fears from what M<sup>r</sup> Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that when drawing up that paper he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to M<sup>r</sup> Randolph for having brought forward the plan in the first instance, and for the assistance he had given in its progress, and hoped that he would yet lay aside his objections, and by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

M<sup>r</sup>. Randolph could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form therefore could make no difference with him. He repeated that in refusing to sign the Constitution he took a step which might be the most awful of his life, but it was dictated by his conscience, and it was not possible for him to hesitate, much less, to change. He repeated also his persuasion, that the holding out this plan with a final alternative to the people, of accepting or rejecting it in toto, would really produce the anarchy & civil convulsions which were apprehended from the refusal of individuals to sign it.

M<sup>r</sup>. Gerry described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject w<sup>ch</sup> had been finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound as he was disposed to treat it with the respect due to the Act of the Convention. He hoped he should not violate that respect in declaring on this occasion his fears that a Civil war may result from the present crisis of the U. S. In Massachusetts, particularly he saw the danger of this calamitous event—In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this & other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not therefore by signing the Constitution pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Doc<sup>r</sup> Franklin, he could not he said but view them as levelled at himself and the other gentlemen who meant not to sign.

Gen<sup>l</sup> Pinkney. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid and let the form speak the

substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Doc<sup>f</sup> Franklin. It is too soon to pledge ourselves before Congress and our Constituents shall have approved the plan.

M<sup>f</sup> Ingersol<sup>1</sup> did not consider the signing, either as a mere attestation of the fact, or as pledging the signers to support the Constitution at all events; but as a recommendation, of what, all things considered, was the most eligible.

On the motion of Doc<sup>f</sup> Franklin

N. H. ay. Mas. ay. C<sup>t</sup> ay. N. J. ay. P<sup>a</sup>. ay. Del. ay. M<sup>d</sup> ay. V<sup>a</sup> ay. N. C. ay. S. C. div<sup>d</sup><sup>2</sup>  
Geo. ay.

M<sup>f</sup> King suggested that the Journals of the Convention should be either destroyed, or deposited in the custody of the President. He thought if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

M<sup>f</sup> Wilson preferd the second expedient, he had at one time liked the first best; but as false suggestions may be propagated it should not be made impossible to contradict them.

A question was then put on depositing the Journals and other papers of the Convention in the hands of the President, on which,

N. H. ay. M<sup>ts</sup> ay. C<sup>t</sup> ay. N. J. ay. Pen<sup>a</sup> ay. Del. ay. M<sup>d</sup> no.<sup>1</sup> V<sup>a</sup> ay. N. C. ay. S. C. ay.  
Geo. ay.<sup>2</sup>

The President having asked what the Convention meant should be done with the Journals &c. whether copies were to be allowed to the members if applied for. It was Resolved nem. con: “that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution.”

The members then proceeded to sign the instrument.

Whilst the last members were signing it Doct<sup>f</sup> Franklin looking towards the President’s Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

The Constitution being signed by all the members except M<sup>f</sup> Randolph, M<sup>f</sup>. Mason and M<sup>f</sup> Gerry, who declined giving it the sanction of their names, the Convention dissolved itself by an Adjournment sine die.<sup>1</sup>



[Following is a literal copy of the engrossed Constitution as signed. It is in four sheets, with an additional sheet containing the resolutions of transmissal. The note indented at the end is in the original precisely as reproduced here.]

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas

and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same: and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general

Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States,

and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of

Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

## Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

## Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.



A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

## Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every

State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names,

Attest William Jackson Secretary

G<sup>o</sup> Washington—Presid<sup>t</sup>  
and deputy from Virginia

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, The Word "Thirty" being partly written on an Erasure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

New Hampshire	{ JOHN LANGDON }
	{ NICHOLAS GILMAN }
Massachusetts	{ NATHANIEL GORHAM }
	{ RUFUS KING }
Connecticut	{ W <sup>M</sup> SAM <sup>L</sup> JOHNSON }
	{ ROGER SHERMAN }
New York	ALEXANDER HAMILTON
	{ WIL: LIVINGSTON }
New Jersey	{ DAVID BREARLEY. }
	{ W <sup>M</sup> PATERSON. }
	{ JONA: DAYTON }
	{ B FRANKLIN }
	{ THOMAS MIFFLIN }
	{ ROB <sup>T</sup> MORRIS }
Pennsylvania	{ GEO. CLYMER }
	{ THO <sup>S</sup> FITZSIMONS }
	{ JARED INGERSOLL }
	{ JAMES WILSON }
	{ GOUV MORRIS }
	{ GEO: READ }
	{ GUNNING BEDFORD jun }
Delaware	{ JOHN DICKINSON }
	{ RICHARD BASSETT }
	{ JACO: BROOM }
	{ JAMES M <sup>C</sup> HENRY }
Maryland	{ DAN OF S <sup>T</sup> THO <sup>S</sup> JENIFER }
	{ DAN <sup>L</sup> CARROLL. }
Virginia	{ JOHN BLAIR— }
	{ JAMES MADISON Jr. }
	{ W <sup>M</sup> BLOUNT }
North Carolina	{ RICH <sup>D</sup> DOBBS SPAIGHT. }
	{ HU WILLIAMSON }
	{ J. RUTLEDGE }
South Carolina	{ CHARLES COTESWORTH PINCKNEY }
	{ CHARLES PINCKNEY }
	{ PIERCE BUTLER. }
Georgia	{ WILLIAM FEW }
	{ ABR BALDWIN }

In Convention Monday September 17<sup>Th</sup> 1787.

Present

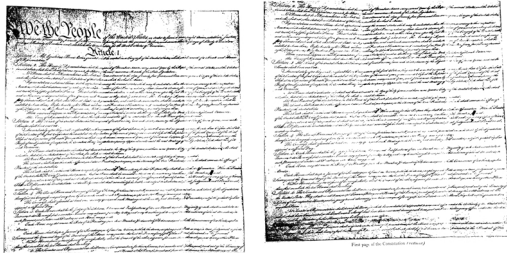
The States of

New Hampshire, Massachusetts, Connecticut, M<sup>r</sup> Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved.

That the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.



First page of the Constitution (*reduced*)

By the Unanimous Order of the Convention

G<sup>O</sup> Washington Presid<sup>T</sup>

W. Jackson Secretary.

[1] The Journal gives it 100,000.—*Journal of the Federal Convention*, 190.

[2] “Mr. Broom is a plain good Man, with some abilities, but nothing to render him conspicuous. He is silent in public, but chearful and conversable in private. He is about 35 years old.”—Pierce’s notes, *Am. Hist. Rev.*, iii., 330.

[1] In the printed Journal Cont, no: N. Jersey ay.—Madison’s Note.

[1] “Mr. McLurg is a learned physician, but having never appeared before in public life his character as a politician is not sufficiently known. He attempted once or twice to speak, but with no great success. It is certain that he has a foundation of learning, on which, if he pleases, he may erect a character of high renown. The Doctor is about 38 years of age, a Gentleman of great respectability, and of a fair and unblemished character.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 332.

[1] Mr. Gilman is modest, genteel, and sensible. There is nothing brilliant or striking in his character, but there is something respectable and worthy in the man.—About 30 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 325.

He did not speak in the convention.

[2] The act appointing deputies to the convention was not passed by the New Hampshire Legislature till June 27, 1787.—*Journal of Federal Convention*, 17.

[1] “Mr Carrol is a Man of large fortune, and influence in his State. He possesses plain good sense, and is in the full confidence of his Countrymen. This Gentleman is about years of age.”—Pierce’s Notes, *Am Hist. Rev.*, iii., 330.

[2] “Mr. Houston is an Attorney at Law, and has been Member of Congress for the State of Georgia. He is a Gentleman of Family, and was educated in England. As to his legal or political knowledge he has very little to boast of. Nature seems to have done more for his corporeal than mental powers. His Person is striking, but his mind very little improved with useful or elegant knowledge. He has none of the talents requisite for the Orator, but in public debate is confused and irregular. Mr. Houston is about 30 years of age of an amiable and sweet temper, and of good and honorable principles.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 334.

[1] This might possibly be meant as a caricature of the previous motions in order to defeat the object of them.—Madison’s Note.

[1] The object was to lessen the eagerness on one side, & the opposition on the other, to the share of representation claimed by the S. States on account of the Negroes.—Madison’s Note.

[1] “Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the command in chief of the American army shall not be given to, nor devolve on, any but a natural *born* citizen.”—John Jay to Washington, July 25, 1787 (Wash. MSS.)

[1]“The affairs of the federal government are, I believe, in the utmost confusion. The convention is an expedient that will produce a decisive effect. It will either recover us from our present embarrassments or complete our ruin, for I do suspect that if what they recommend should be rejected this would be the case. But I trust that the presence of Genl Washington will have great weight in the body itself so as to overawe & keep under the demon of party, & that the signature of his name to whatever act shall be the result of their deliberations will secure its passage thro’ the union.”—Monroe to Jefferson, July 27, 1787 (*Writings of Monroe*, i., 173).

[1]“Mr Langdon is a man of considerable fortune, possesses a liberal mind, and a good plain understanding—about 40 years old.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 325.

[1]Madison’s note says: “here copy them from the Journal p.207.” In the *Journal* they are given as having been “collected from the proceedings of the convention, as they are spread over the journal from June 19th. to July 26th”—*Journal of Federal Convention*, 207. The dates show when the resolutions were agreed to, and are correct.

[1]

“Aug. 1. 1787 Williamsb.

“Dear Col.

“We are here & I believe every where all Impatience to know something of your conventional Deliberations. If you cannot tell us what you are doing, you might at least give us some Information of what you are not doing. This wd afford food for political conjecture, and perhaps be sufficient to satisfy present Impatience. I hope you have already discovered the means of preserving the American Empire united—& that the scheme of a Disunion has been found pregnant with ye greatest Evils—But we are not at this distance able to judge with any accuracy upon subjects so truly important & interesting as those wch must engage you at present—We can only hope, that you will all resemble Cæsar, at least in one particular 'nil actum reputans si quid superesset agendum',—& that your Exertions will be commensurate to ye great Expectations wch have been formed. . . .

“J. Madison.”\*

[1]Madison’s printed copy is marked: “As Reported by Come of Detail viz of five. Aug. 6, 1787.” It is a large folio of seven pages. In the enumeration of the Articles by a misprint VI. was repeated, and the alterations in Article VII and succeeding articles were made by Madison. In Sect. 11 of Article VI., as it was printed, it appeared: “The enacting stile of the laws of the United States shall be. ‘Be it enacted and it is hereby enacted by the House of Representatives, and by the Senate of the United States, in Congress assembled,’ ” which Madison altered to read. “The enacting stile of the laws of the United States shall be. ‘Be it enacted by the Senate & representatives, in Congress assembled.’ ” The printed copy among the Madison papers is a duplicate of

the copy filed by General Washington with the papers of the Constitution, and Sec. 11 is there given as actually printed.—*Journal of the Federal Convention*, 219. (Const. MSS.)

Madison accurately transcribed the report for his journal and it is this copy which is used in the text.

[1] Although the secrecy of the proceedings was guarded carefully, the reason of the long adjournment was generally known outside of the Convention.

“The Convention adjourned about three weeks ago and appointed a Committee consisting of Mr Rutlege, Mr Randolph, Mr Wilson, Mr Elsworth, & Mr Gorham to draw into form the measures which had been agreed upon—they reassembled last Monday sen’night to receive the report—I suppose we shall have the result of this great business in a few weeks more.”—Edward Carrington to Monroe, August 7, 1787.

Monroe MSS.

*Cf.* King’s account of the debate confirming the accuracy of Madison’s report (King’s *Life and Correspondence of Rufus King*, i., 617).

[1] “Note to speech of J. M. in Convention of 1787, August 7th.

“As appointments for the General Government here contemplated will, in part, be made by the State Govts., all the Citizens in States where the right of suffrage is not limited to the holders of property, will have an indirect share of representation in the General Government. But this does not satisfy the fundamental principle that men cannot be justly bound by laws in making which they have no part. Persons & property being both essential objects of Government, the most that either can claim, is such a structure of it as will leave a reasonable security for the other. And the most obvious provision, of this double character, seems to be that of confining to the holders of property the object deemed least secure in popular Govts the right of suffrage for one of the two Legislative branches. This is not without example among us, as well as other constitutional modifications, favouring the influence of property in the Government. But the U. S. have not reached the stage of Society in which conflicting feelings of the Class with, and the Class without property, have the operation natural to them in Countries fully peopled. The most difficult of all political arrangements is that of so adjusting the claims of the two Classes as to give security to each and to promote the welfare of all. The federal principle,—which enlarges the sphere of power without departing from the elective basis of it and controuls in various ways the propensity in small republics to rash measures & the facility of forming & executing them, will be found the best expedient yet tried for solving the problem.”—Madison’s note.

“Note to the speech of J. M. on the [7th] day of [August].

“These observations (in the speech of J. M. see debates in the Convention of 1787, on

the [7th] day of [August]) do not convey the speaker's more full & matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.

“The right of suffrage is a fundamental Article in Republican Constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity, alone sufficiently proves it. Extend it equally to all, and the rights of property, or the claims of justice, may be overruled by a majority without property or interested in measures of injustice. Of this abundant proof is afforded by other popular Govts. and is not without examples in our own, particularly in the laws impairing the obligation of contracts.

“In civilized communities, property as well as personal rights is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits, that industry from which property results, & that enjoyment which consists not merely in its immediate use, but in its posthumous destination to objects of choice and of kindred affection.

“In a just & a free Government, therefore, the rights both of property & of persons ought to be effectually guarded. Will the former be so in case of a universal & equal suffrage? Will the latter be so in case of a suffrage confined to the holders of property?

“As the holders of property have at stake all the other rights common to those without property, they may be the more restrained from infringing, as well as the less tempted to infringe the rights of the latter. It is nevertheless certain, that there are various ways in which the rich may oppress the poor, in which property may oppress liberty; and that the world is filled with examples. It is necessary that the poor should have a defence against the danger.

“On the other hand, the danger to the holders of property cannot be disguised, if they be undefended against a majority without property. Bodies of men are not less swayed by interest than individuals, and are less controlled by the dread of reproach and the other motives felt by individuals. Hence the liability of the rights of property, and of the impartiality of laws affecting it, to be violated by Legislative majorities having an interest real or supposed in the injustice. Hence agrarian laws, and other leveling schemes. Hence the cancelling or evading of debts, and other violations of contracts. We must not shut our eyes to the nature of man, nor to the light of experience. Who would rely on a fair decision from three individuals if two had an interest in the case opposed to the rights of the third? Make the number as great as you please, the impartiality will not be increased; nor any further security against injustice be obtained, than what may result from the greater difficulty of uniting the wills of a greater number.

“In all Govts. there is a power which is capable of oppressive exercise. In Monarchies and Aristocracies oppression proceeds from a want of sympathy & responsibility in the Govt towards the people. In popular Governments the danger lies in an undue sympathy among individuals composing a majority, and a want of responsibility in



the majority to the minority. The characteristic excellence of the political System of the U. S. arises from a distribution and organization of its powers, which at the same time that they secure the dependence of the Govt on the will of the nation, provides better guards than are found in any other popular Govt. against interested combinations of a Majority against the rights of a Minority.

“The U. States have a precious advantage also in the actual distribution of property particularly the landed property, and in the universal hope of acquiring property. This latter peculiarity is among the happiest contrasts in their situation to that of the old world, where no anticipated change in this respect, can generally inspire a like sympathy with the rights of property. There may be at present, a Majority of the Nation, who are even freeholders, or the heirs or aspirants to Freeholds. And the day may not be very near when such will cease to make up a Majority of the community. But they cannot always so continue. With every admissible subdivision of the Arable lands, a populousness not greater than that of England or France will reduce the holders to a Minority. And whenever the majority shall be without landed or other equivalent property and without the means or hope of acquiring it, what is to secure the rights of property agts the danger from an equality & universality of suffrage, vesting compleat power over property in hands without a share in it: not to speak of a danger in the meantime from a dependence of an increasing number on the wealth of a few? In other Countries this dependence results in some from the relations between Landlords & Tenants in others both from that source & from the relations between wealthy capitalists and indigent labourers. In the U. S. the occurrence must happen from the last source; from the connection between the great Capitalists in Manufactures & Commerce and the numbers employed by them. Nor will accumulations of Capital for a certain time be precluded by our laws of descent & of distribution; Such being the enterprise inspired by free Institutions, that great wealth in the hands of individuals and associations may not be unfrequent. But it may be observed, that the opportunities may be diminished, and the permanency defeated by the equalizing tendency of our laws.

“No free Country has ever been without parties, which are a natural offspring of Freedom. An obvious and permanent division of every people is into the owners of the soil, and the other inhabitants. In a certain sense the country may be said to belong to the former. If each landholder has an exclusive property in his share, the Body of Landholders have an exclusive property in the whole. As the Soil becomes subdivided, and actually cultivated by the owners, this view of the subject derives force from the principle of natural law, which vests in individuals an exclusive right to the portions of ground with which he has incorporated his labour & improvements. Whatever may be the rights of others derived from their birth in the Country, from their interest in the highways & other parcels left open for common use, as well as in the national edifices and monuments, from their share in the public defence, and from their concurrent support of the Govt, it would seem unreasonable to extend the right so far as to give them when become the majority, a power of Legislation over the landed property without the consent of the proprietors. Some barrier agst the invasion of their rights would not be out of place in a just and provident System of Govt. The principle of such an arrangement has prevailed in all Govts where peculiar privileges or interests held by a part were to be secured agst. violation, and in the various

associations where pecuniary or other property forms the stake. In the former case a defensive right has been allowed, and if the arrangement be wrong, it is not in the defense but in the kind of privilege to be defended. In the latter case, the shares of suffrage, allotted to individuals have been with acknowledged justice apportioned more or less to their respective interests in the Common Stock.

“These reflections suggest the expediency of such a modification of Govt as would give security to the part of the Society having most at stake and being most exposed to danger. Three modifications present themselves.

“1. *Confining* the right of suffrage to freeholders, & to such as hold an equivalent property, convertible of course into freeholds. The objection to this regulation is obvious. It violates the vital principle of free Govt that those who are to be bound by laws, ought to have a voice in making them. And the violation wd. be more strikingly unjust as the law makers become the minority. The regulation would be as unpropitious, also, as it would be unjust. It would engage the numerical & physical force in a constant struggle agst the public authority; unless kept down by a standing army fatal to all parties.

“2. *Confining* the right of suffrage for one Branch to the holders of property, and for the other Branch to those without property. This arrangement which wd give a mutual defence, where there might be mutual danger of encroachment, has an aspect of equality & fairness. But it wd not be in fact either equal or fair, because the rights to be defended would be unequal, being on one side those of property as well as of persons, and on the other those of persons only. The temptation also to encroach tho’ in a certain degree mutual, wd. be felt more strongly on one side than on the other. It would be more likely to beget an abuse of the Legislative Negative in extorting concessions at the expence of property, than the reverse. The division of the State into two Classes, with distinct & independt Organs of power, and without any intermingled agency whatever, might lead to contests & antipathies not dissimilar to those between the Patricians & Plebeians at Rome.

“3. *Confining* the right of electing one Branch of the Legislature to freeholders, and admitting all others to a common right with holders of property in electing the other Branch. This wd give a defensive power to holders of property, and to the class also without property when becoming a majority of electors, without depriving them in the meantime of a participation in the Public Councils. If the holders of property would thus have a two-fold share of representation, they wd. have at the same time a two-fold stake in it, the rights of property as well as of persons, the two-fold object of political Institutions. And if no exact & safe equilibrium can be introduced, it is more reasonable that a preponderating weight shd. be allowed to the greater interest than to the lesser. Experience alone can decide how far the practice in this case would correspond with the Theory. Such a distribution of the right of suffrage was tried in N. York and has been abandoned whether from experienced evils, or party calculations, may possibly be a question. It is still on trial in N. Carolina, with what practical indications is not known. It is certain that the trial, to be satisfactory ought to be continued for no inconsiderable period, untill in fact the non-freeholders should be the majority.

“4. Should experience or public opinion require an equal & universal suffrage for each branch of the Govt such as prevails generally in the U. S., a resource favorable to the rights of the landed & other property, when its possessors become the minority, may be found in an enlargement of the Election Districts for one branch of the Legislature, and an extension of its period of service. Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitation practicable on a contracted theatre. And altho’ an ambitious candidate, of personal distinction, might occasionally recommend himself to popular choice by espousing a popular though unjust object, it might rarely happen to many districts at the same time. The tendency of a longer period of service would be, to render the Body more stable in its policy, and more capable of stemming popular currents taking a wrong direction, till reason & justice could regain their ascendancy.

“5. Should even such a modification as the last be deemed inadmissible, and universal suffrage and very short periods of elections within contracted spheres, be required for each branch of the Govt, the security for the holders of property when the minority, can only be derived from the ordinary influence possessed by property, & the superior information incident to its holders, from the popular sense of justice enlightened & enlarged by a diffusive education; and from the difficulty of combining & effectuating unjust purposes throughout an extensive country; a difficulty essentially distinguishing the U. S. & even most of the individual States, from the small communities where a mistaken interest or contagious passion, could readily unite a majority of the whole under a factious leader, in trampling on the rights of the minor party.

“Under every view of the subject, it seems indispensable that the Mass of Citizens should not be without a voice, in making the laws which they are to obey, & in choosing the Magistrates who are to administer them, and if the only alternative be between an equal & universal right of suffrage for each branch of the Govt. and a confinement of the *entire* right to a part of the Citizens, it is better that those having the greater interest at stake namely that of property & persons both, should be deprived of half their share in the Govt. than, that those having the lesser interest, that of personal rights only, should be deprived of the whole.”—Madison’s note.

[1] “In the printed Journal Pennsylvania ay.”—Madison’s Note.

[1] Madison wrote to Jefferson, July 18:

“I have taken lengthy notes of everything that has yet passed, and mean to go on with the drudgery, if no indisposition obliges me to discontinue it. It is not possible to form any judgment of the future duration of the Session. I am led by sundry circumstances to guess that the residue of the work will not be very quickly despatched. The public mind is very impatient for ye event, and various reports are circulating which tend to inflame curiosity. I do not learn however that any discontent is expressed at the concealment; and have little doubt that the people will be as ready to receive as we

shall be able to propose, a Government that will secure their liberties & happiness.”—Mad MSS.

[1] In the printed Journal Delaware did not vote.—Madison’s note.

[1] In the printed Journal N. Jersey—no—Madison’s note.

[2] The next day being Sunday, Madison wrote to his father:  
“Philada Augst 12, 1787.

“HonD Sir

“I wrote to you lately inclosing a few newspapers. I now send a few more, not because they are interesting but because they may supply the want of intelligence that might be more so. The Convention reassembled at the time my last mentioned that they had adjourned to. It is not possible yet to determine the period to which the Session will be spun out. It must be some weeks from this date at least, and possibly may be computed by months. Eleven states are on the ground, and have generally been so since the second or third week of the Session. Rhode Island is one of the absent States. She has never yet appointed deputies. N. H. till of late was the other. That State is now represented. But just before the arrival of her deputies, those of N. York left us—We have till within a few days had very cool weather. It is now pleasant, after a fine rain. Our accts from Virga. give us but an imperfect idea of the prospects with you. In particular places the drouth we hear has been dreadful. Genl. Washington’s neighbourhood is among the most suffering of them. I wish to know how your neighbourhood is off. But my chief anxiety is to hear that your health is re-established. The hope that this may procure me that information is the principal motive for writing it, having as you will readily see not been led to it by any thing worth communicating. With my love to my mother & the rest of the family I remain Dear Sir.

“YR. AffT Son.”

(Mad MSS)

Edward Carrington wrote to Madison from New York, August 11, showing the solicitude of federalist members of Congress:

“. . . The President has been requested to write to the states unrepresented, pressing upon them the objects which require the attendance of their delegations, & urging them to come forward, amongst the objects is that of the report of the convention, which, it is supposed, is now in the State of parturition—this bantling must receive the blessing of Congress this session, or, I fear, it will expire before the new one will assemble; every experiment has its critical stages which must be taken as they occur, or the whole will fail—the peoples expectations are rising with the progress of this

work, but will desert it, should it remain long with Congress—permit me to suggest one idea as to the mode of obtaining the accession of the States to the new plan of government—let the convention appoint *one* day, say the 1st of May, upon which a convention appointed by the people shall be held in each state, for the purpose of accepting or rejecting in toto, the project—supposing an act of the ordinary legislatures to be equally authentic, which would not be true, yet many reasons present themselves in favor of—special conventions—many men would be admitted who are excluded from the legislatures—the business would be taken up unclogged with any other—and it would effectually call the attention of all the people to the object as seriously affecting them. All the States being in convention at the same time, opportunities of speculating upon the views of each other would be cut off—the project should be decided upon without an attempt to alter it—you have doubtless found it difficult to reconcile the different opinions in your body—will it not be impossible then, to reconcile those which will arise amongst numerous assemblies in the different states? it is possible there never may be a general consent to the project as it goes out; but it is absolutely certain there will never be an agreement in amendments. It is the lot of but few to be able to discern the remote principles upon which their happiness & prosperity essentially depend—.”—(Mad. MSS.)

[1]“Mr. McHenry was bred a physician, but he afterwards turned Soldier and acted as Aid to Genl. Washington and the Marquis de la Fayette. He is a Man of Specious talents, with nothing of genius to improve them. As a politician there is nothing remarkable in him, nor has he any of the graces of the Orator. He is however, a very respectable young Gentleman, and deserves the honor which his country has bestowed on him. Mr. McHenry is about 32 years of age.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 330.

[2]He disapproved & till now voted agst. the exclusive privilege, he gave up his judgment he said because it was not of very material weight with him & was made an essential point with others who if disappointed, might be less cordial in other points of real weight — Madison’s note.

[1]In the printed Journ Virga—no.—Madison’s note.

[2]General Henry Knox wrote to Washington from New York under date of August 14th:

“Influenced by motives of delicacy I have hitherto forborne the pleasure my dear Sir of writing to you since my return from Philadelphia.

“I have been apprehensive that the stages of the business of the convention, might leak out, and be made an ill use of, by some people. I have therefore been anxious that you should escape the possibility of imputation. But as the subjects seem now to be brought to a point, I take the liberty to indulge myself in communicating with you.

“Although I frankly confess that the existence of the State governments is an insuperable evil in a national point of view, yet I do not well see how in this stage of the business they could be annihilated—and perhaps while they continue the frame of

government could not with propriety be much higher toned than the one proposed. It is so infinitely preferable to the present constitution, and gives such a bias to a proper line of conduct in future that I think all men anxious for a national government should zealously embrace it.

“The education, genius, and habits of men on this continent are so various even at this moment, and of consequence their views of the same subject so different, that I am satisfied with the result of the convention, although it is short of my wishes and of my judgment.

“But when I find men of the purest intentions concur in embracing a system which on the highest deliberation, seems to be the best which can be obtained, under present circumstances, I am convinced of the propriety of its being strenuously supported by all those who have wished for a national republic of higher and more durable powers.

“I am persuaded that the address of the convention to accompany their proposition will be couched in the most persuasive terms.

“I feel anxious that there should be the fullest representation in Congress, in order that the propositions should receive their warmest concurrence and strongest impulse. . . .”—Wash. MSS.

[1] “General Mifflin is well known for the activity of his mind, and the brilliancy of his parts. He is well-informed and a graceful Speaker. The General is about 40 years of age and a very handsome man.”—Pierce’s notes, *Am. Hist. Rev.*, iii., 328.

[1] Madison’s note says “See the motion at large in the Journal of this date, page 253, and insert it here.” The Journal gives it as follows.

“It was moved by Mr. Madison, and seconded, to agree to the following amendment of the thirteenth section of the sixth article.

“Every bill which shall have passed the two houses, shall, before it become a law, be severally presented to the President of the United States, and to the judges of the supreme court for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it, but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house, in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill: but if, after such reconsideration, two thirds of that house, when either the President, or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house, by which it shall likewise be reconsidered; and, if approved by two thirds, or three fourths of the other house, as the case may be, it shall become a law.”

[1] The Executive consists at this time of abt 20 members.—Madison’s note.

[1] This vote in the affirmative by Virga was occasioned by the acquiescence of Mr. Madison who became satisfied that striking out the words would not disable the Govt from the use of public notes as far as they could be safe & proper, & would only cut off the pretext for a paper currency and particularly for making the bills a tender either for public or private debts —Madison’s note.

[1] In the printed Journal, Mas. no.—Madison’s note.

[1] On the remark by Mr. King that “*make*” war might be understood to “conduct” it which was an Executive function, Mr. Elsworth gave up his objection, and the vote of Con. was changed to *ay*.—Madison’s note.

[1] This had reference to the disorders particularly that had occurred in Massachs. which had called for the interposition of the federal troops.—Madison’s note.

[1] “Governor Livingston is confessedly a Man of the first rate talents, but he appears to me rather to indulge a sportiveness of wit, than a strength of thinking. He is however equal to anything, from the extensiveness of his education and genius. His writings teem with satyr and a neatness of style. But he is no Orator, and seems little acquainted with the guiles of policy. He is about 60 years old, and remarkably healthy.”—Pierce’s notes, *Am. Hist. Rev.*, iii., 327.

[1] “Mr. Fitzsimons is a Merchant of considerable talents, and speaks very well I am told, in the Legislature of Pennsylvania. He is about 40 years old.”—Pierce’s notes, *Am. Hist. Rev.*, iii., 328.

[1] “Mr. Clymer is a Lawyer of some abilities;—he is a respectable Man and much esteemed. Mr. Clymer is about 40 years old.”—Pierce’s Notes, *Am. Hist. Rev.*, iii., 328

[1] Madison’s note says: (“Here insert Report from Journal of the Convention of the date.”) It is found on p. 227, 228, of the Journal and is as above.

[1] The proceedings on this motion involving the two questions on “attainders and ex post facto laws,” are not so fully stated in the printed Journal—Madison’s note.

[1] In the printed Journal, Geo: no—Madison’s note.

[1]

“Richmond Augt. 22. 87.

“Dear Sir,

.....

“I have still some hope that I shall hear from you of ye. reinstatement of ye. *negative*—as it is certainly ye only means by which the several Legislatures can be



restrained from disturbing ye order & harmony of ye. whole, & ye. governmt. render'd properly *national*, & *one*. I should suppose yt some of its former opponents must by this time have seen ye. necessity of advocating it, if they wish to support their own principles.”

(James McClurg to Madison—Mad. MSS.)

[1] In the printed Journals, Cont. Virga. & Georgia voted in the affirmative.—Madison’s note.

[1] The vote on this section as stated in the printed Journal is not unanimous: the statement here is probably the right one.—Madison’s note.

[1] In the printed Journal—ex post facto.—Madison’s note.

[1] August 28, 1787, New York, Hamilton wrote to King: “I wrote to you some days since [August 20] to request you to inform me when there was a prospect of your finishing, as I intended to be with you, for certain reasons, before the conclusion.

“It is whispered here that some late changes in your scheme have taken place which give it a higher tone. Is this the case?”—King’s *Life and Correspondence of Rufus King I*, 258.

[1] He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery*, had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of Genl. Pinkney & others.—Madison’s note.

[1] In the printed Journal N. Jersey—no.—Madison’s note.

[1] In printed Journal—S. C.—no—Madison’s note.

[1] In printed Journal N. H. and S. C. entered as in the negative — Madison’s note.

[1] This is an exact copy. The variations in that in the printed Journal are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.—Madison’s note. The report was copied by the Secretary of the Convention, William Jackson, into the Journal, after it had been read. Afterwards two sentences were altered by interlining with lead pencil. The alterations (indicated by italics) are as follows: Paragraph 4, “The person having the greatest number of votes . . . if such number be a majority of *the whole number* of the electors *appointed*.” Paragraph 7, “But no treaty, *except treaties of peace*, shall be made,” etc. The changes in paragraph 4 are unimportant. the change in paragraph 7 was an amendment offered by Madison September 7th, and adopted—Const. MSS.—*Journal of Federal Convention*, p. 323, *et seq.*

[1] This motion not contained in the printed Journal—Madison’s note.

[1] In printed Journal Maryland—no—Madison’s note.



[1] This explains the compromise mentioned above by Mr Govr Morris. Col Mason, Mr Gerry & other members from large States set great value on this privilege of originating money bills. Of this the members from the small States, with some from the large States who wished a high mounted Govt endeavored to avail themselves, by making that privilege, the price of arrangements in the constitution favorable to the small States, and to the elevation of the Government.—Madison’s note

[1] This is a mistake and should be fourth clause. See p. 362.

[1] An ineligibility wd have followed (tho’ it would seem from the vote not in the opinion of all) this prolongation of the term.—Madison’s note.

[1] Note.—This clause was not inserted on this day, but on the 7th of Sepr—See Friday the 7th—Madison’s note.

[2] September 6 Madison wrote to Jefferson (cipher represented by italics). “. . . As the Convention will shortly rise I should feel little scruple in disclosing what will be public here, before it could reach you, were it practicable for me to guard by Cypher against an intermediate discovery. But I am deprived of this resource by the shortness of the interval between the receipt of your letter of June 20 and the date of this. This is the first day which has been free from Committee service, both before & after the hours of the House, and the last that is allowed me by the time advertised for the sailing of the packet.

“The Convention consists now as it has generally done of Eleven States. There has been no intermission of its Sessions since a house was formed, except an interval of about ten days allowed a Committee appointed to detail the general propositions agreed on in the House. The term of its dissolution cannot be more than one or two weeks distant. A Govern will probably be submitted to the *people of the States*, consisting of a *President, cloathed with Executive power*, a *Senate chosen by the Legislatures*, and another *House chosen by the people of the States*, jointly possessing the *Legislative power*, and a regular *Judiciary* establishment. The mode of constituting the *Executive* is among the few points not yet finally settled. The *Senate* will consist of two *members* from each *State*, and *appointed sexenmally*. The other, of *members, appointed biennially by the people of the States*, in proportion to their number. The Legislative power will *extend to taxation*, trade, and sundry other general matters. The powers of Congress will be *distributed*, according to their *nature, among the several departments*. The States will be *restricted from paper money* and in *a few other instances*. These are *the outlines*. The extent of them may perhaps surprize you. I hazard an opinion nevertheless that the *plan, should it be adopted*, will neither effectually *answer its national object*, nor prevent the local *mischiefs* which everywhere *excite disgusts* agst. the *State Governments*. The grounds of this opinion will be the subject of a future letter.

“I have written to a friend in Congs intimating in a covert manner the necessity of deciding & notifying the intentions of Congs with regard to their foreign Ministers after May next, and have dropped a hint on the communications of Dumas.

“Congress have taken some measures for disposing of the public land, and have actually sold a considerable tract. Another bargain I learn is on foot for a further sale.

“Nothing can exceed the universal anxiety for the event of the meeting here. Reports and conjectures abound concerning the nature of the plan which is to be proposed. The public however is certainly in the dark with regard to it. The Convention is equally in the dark as to the reception wch. may be given to it on its publication. All the prepossessions are on the right side, but it may well be expected that certain characters will wage war against any reform whatever. My own idea is that the public mind will now or in a very little time receive anything that promises stability to the public Councils & security to private rights, and that no regard ought to be had to local prejudices or temporary considerations. If the present moment be lost, it is hard to say what may be our fate.

“Our information from Virginia is far from being agreeable. In many parts of the Country the drought has been extremely injurious to the Corn. I fear, tho’ I have no certain information, that Orange & Albemarle share in the distress. The people also are said to be generally discontented. A paper emission is again a topic among them, so is an instalment of all debts in some places and the making property a tender in others. The taxes are another source of discontent. The weight of them is complained of, and the abuses in collecting them still more so. In several Counties the prisons & Court Houses & Clerks’ offices have been wilfully burnt. In Green Briar the course of Justice has been mutinously stopped, and associations entered into agst the payment of taxes. No other County has yet followed the example. The approaching meeting of the Assembly will probably allay the discontents on one side by measures which will excite them on another

“Mr. Wythe has never returned to us. His lady whose illness carried him away, died some time after he got home. The other deaths in Virga are Col A. Cary and a few days ago, Mrs. Harrison, wife of Benjn Harrison, Junr, & sister of J. F. Mercer. Wishing you all happiness

“I remain, Dear sir, Yrs affectly

“Give my best wishes to Mazzei. I have recd his letter & book and will write by the next packet to him. Dorhman is still in Va. Congs have done nothing for him in his affair. I am not sure that 9 Sts have been assembled of late. At present, it is doubtful whether there are seven.”—Mad. MSS.

[1]The following letter was received on this day from Jonas Phillips, a Jew in Philadelphia.

“Sires

“With leave and submission I address myself To those in whome there is wisdom understanding and knowledge. they are the honourable personages appointed and

Made overseers of a part of the terrestrial globe of the Earth, Namely the 13 united states of america in Convention Assembled, the Lord preserve them amen—

“I the subscriber being one of the people called Jews of the City of Philadelphia, a people scattered and dispersed among all nations do behold with Concern that among the laws in the Constitution of Pennsylvania their is a Clause Sect 10 to viz—I do belive in one God the Creature and governour of the universe the Rewarder of the good and the punisher of the wicked—and I do acknowledge the scriptures of the old and New testement to be given by a devine inspiration—to swear and believe that the new testement was given by devine inspiration is absolutly against the Religious principle of a Jew. and is against his Conscience to take any such oath—By the above law a Jew is deprived of holding any publick office or place of Government which is a Contridictory to the bill of Right Sect 2. viz

“That all men have a natural and unalienable Right To worship almighty God according to the dectates of their own Conscience and understanding, and that no man aught or of Right can be compelled to attend any Religious Worship or Erect or support any place of worship or Maintain any minister contrary to or against his own free will and Consent nor Can any man who acknowledges the being of a God be Justly deprived or abridged of any Civil Right as a Citizen on account of his Religious sentiments or peculiar mode of Religious Worship, and that no authority Can or aught to be vested in or assumed by any power what ever that shall in any Case interfere or in any manner Controul the Right of Conscience in the free Exercise of Religious Worship—

“It is well known among all the Citizens of the 13 united States that the Jews have been true and faithfull whigs, and during the late Contest with England they have been foremost in aiding and assisting the States with their lifes and fortunes, they have supported the Cause, have bravely faught and bleed for liberty which they Can not Enjoy—

Therefore if the honourable Convention shall in ther Wisdom think fit and alter the said oath and leave out the words to viz—and I do acknowledge the scripture of the new testement to be given by devine inspiration then the Israeletes will think them self happy to live under a government where all Religious societys are on an Eaqueel footing—I solecet this favour for my self my Childreen and posterity and for the benefit of all the Israeletes through the 13 united States of america

“My prayers is unto the Lord. May the people of this States Rise up as a great and young lion, May they prevail against their Enemies, May the degrees of honour of his Excellency the president of the Convention George Washington, be Extollet and Raise up. May Every one speak of his glorious Exploits. May God prolong his days among us in this land of Liberty— May he lead the armies against his Enemy as he has done hereuntofore— May God Extend peace unto the united States—May they get up to the highest Prosperetys—May God Extend peace to them and their Seed after them so long as the Sun and moon Endureth—and may the almighty God of our father Abraham Isaac and Jacob endue this Noble Assembly with wisdom Judgement and unanimity in their Councells, and may they have the Satisfaction to see that their

present toil and labour for the wellfair of the united States may be approved of,  
Through all the world and perticular by the united States of america is the ardent  
prayer of Sires

“Your Most Devoted ObeD. Servant

“Jonas Phillips “Philadelphia 24th Ellul 5547 or Sepr 7th 1787”—Const. MSS.

[1] In the printed Journal this amendment is put into the original motion.—Madison’s note.

[1] In the printed Journal, Mr Madison is erroneously substituted for Col: Mason.—Madison’s note.

[1] Not so stated in the printed Journal; but conformable to the result afterwards appearing—Madison’s note.

[1] In the printed Journal, S. Carolina, no — Madison’s note.

[1] This was a conciliatory vote, the effect of the compromise formerly alluded to. See Note Wednesday Sepr. 5 — Madison’s note.

[1] This motion & vote are entered on the Printed journal of the ensuing morning—Madison’s note.

[2] “There is said to be a disposition generally prevalent thro’ this state to comply with ye. plan of ye. convention without much scrutiny, Hervey, who has been in Albermarle lately, says yt. Nicholas is determined to support it however contrary it may be to his own opinions I am persuaded that those who sacrifice solid and permanent advantages in this plan, to their idea of the transitory disposition of the people, will condemn themselves hereafter.”—James McClurg to Madison, September 10, 1787.—Mad. MSS.

[1] The Printed Journal makes the succeeding proviso as to sections 4 & 5, of the art: VII moved by Mr. Rutledge, part of the proposition of Mr. Madison.—Madison’s note.

[1] These motions are not entered in the printed Journal.—Madison’s note.

[1] These motions are not entered in the printed Journal.—Madison’s note.

[2] A note by Madison in the text says: “(here insert a transcript of the former from the annexed sheet as *printed* and of the latter from the draft as finally agreed to,)” and his footnote says: “This is a literal copy of the printed Report. The Copy in the printed Journal contains some of the alterations subsequently made in the House.” No transcript of the report was, however, made by Madison, but the printed copy is among his papers. It is a large folio of four pages printed on one side of each page, and is accurately reproduced here. Madison’s copy is marked by him: “as reported by

Come of revision, or stile and arrangement Sepr 12.” The report is, in fact, correctly printed in the *Journal of the Federal Convention*, 351, *et seq.*, Madison’s statement to the contrary being an error. General Bloomfield furnished Brearley’s copy to John Quincy Adams, and he printed it without the alterations and amendments which Brearley had made. The extent of Brearley’s alterations and amendments may be seen in the copy printed in the *Documentary History of the Constitution*, i., 362, *et seq.*

[1]The words, “by lot,” were not in the Report as printed, but were inserted in manuscript, as a typographical error, departing from the text of the Report referred to the Committee of style & arrangement.—Marginal note by Madison

[2]Ex officio struck out in Madison’s copy.

[1]In the entry of this Report in the printed Journal “two-thirds” are substituted for “three-fourths.” This change was made after the Report was received —Madison’s note. This is a mistake. The printed Journal has it “three fourths.”

[2]A marginal note says “two thirds.”

[3]“but all duties imposts & excises shall be uniform throughout the U. States,” interlined by Madison.

[1](punish) a typographical omission —Madison’s note.

[1]“No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another—nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another,” interlined by Madison

[1]provided that no State shall be restrained from imposing the usual duties on produce exported from such State for the sole purpose of defraying the charges of inspecting packing storing & indemnifying the losses on such produce while in the custody of public officers. But all such regulations shall in case of abuse be subject to the revision & controul of Congress.—Marginal note by Madison.

[2]“No State shall without the consent of Congress,” interlined by Madison.

[1]“and not per capita” struck out by Madison.

[2]“by the representatives” struck out by Madison.

[3]The words “day on” substituted by Madison.

[4]“but the election shall be on the same day” struck out & “which day shall be the same” inserted by Madison.

[1]“the period for chusing another president arrive” struck out and “a president be chosen” inserted by Madison.

[2] It so appears in the printed copy, but the clause “when called into the actual service of the United States” was intended to follow immediately after “militia of the several States.”

[1] “of two thirds” struck out by Madison.

[2] “of two-thirds” inserted by Madison.

[3] “three-fourths at least of” struck out by Madison.

[4] “of three-fourths” inserted by Madison.

[1] “1 & 4 clauses in the 9” inserted by Madison.

[2] “and” struck out by Madison.

[3] Changed to “sections” by Madison.

[4] “the first” inserted by Madison.

[1] The draft of the letter accompanied the draft of the Constitution, but was not printed with it. The Journal says (Sept. 12). “The draft of a letter to Congress being at the same time reported, was read once throughout, and afterwards agreed to by paragraphs.” (*Const. MSS. and Journal*, p. 367.) The draft is in the handwriting of Gouverneur Morris and was undoubtedly prepared by him. It was turned over to Washington by Jackson with the other papers of the convention. The draft of the Constitution must have been among those papers he destroyed. Probably it too was written by Morris. The letter having been accepted September 12, was printed with the final Constitution September 17. It does not appear to have caused debate.

[1] The dissensions among the Virginia delegates had leaked out, for Joseph Jones, Fredericksburg, September 13, 1787, wrote to Madison that a rumor of their disagreement was current in Virginia.—Chicago Historical Society MSS.

[1] This motion, & appointment of the Committee, not in the printed Journal. No report was made by the Come.—Madison’s note.

[1] See page 372 of the printed Journal.—Madison’s note.

[1] “By lot” had been reinstated from the Report of five Aug. 6. as a correction of the printed report by the Come of stile & arrangement — Madison’s note.

[1] This motion by Dr Franklin not stated in the printed Journal, as are some other motions.—Madison’s note.

[1] In the printed Journal N. Hampshire ay.—Madison’s note.

[1] The words “Con & S. C. only no” are in the handwriting of John C. Payne, Madison’s brother-in-law.

[1] In the printed Journal N Carolina no—S Carol omitted — Madison’s note

[2] The MS official Journal says. “It was moved and seconded to”—and here finally ends, and the minutes for September 15 are crossed out (Const MSS.). They are given in the printed Journal, and a note says the journal for that day and Monday was completed from minutes furnished by Madison (p. 379). October 22, 1818, Adams wrote to Madison asking him to complete the Journal. He replied from Montpelier, November 2

“I have received your letter of 22 ult and enclose such extracts from my notes relating to the two last days of the Constitution, as may fill in the chasm in the Journals, according to the mode in which the proceedings are recorded”—State Dept. MSS., Misc Letters

Later (June 18, 1819) Adams sent him lists of yeas and nays, and he replied (Montpelier, June 27, 1819). “I return the list of yeas & nays in the Convention, with the blanks filled in according to your request, as far as I could do it by tracing the order of the yeas & nays & their coincidence with those belonging to successive questions in my papers”—Mad. MSS

[1] This was the only occasion on which the President entered at all into the discussions of the Convention.—Madison’s note.

[1] He alluded to Mr Blount for one.—Madison’s note.

[2] “Mr. Blount is a character strongly marked for integrity and honor. He has been twice a Member of Congress, and in that office discharged his duty with ability and faithfulness. He is no Speaker, nor does he possess any of those talents that make Men shine;—he is plain, honest, and sincere. Mr. Blount is about 36 years of age.”—Pierce’s notes, *Amer. Hist. Rev.*, iii 329

[1] “Mr. Ingersol is a very able Attorney and possesses a clear legal understanding. He is well educated in the Classic’s, and is a Man of very extensive reading. Mr. Ingersol speaks well, and comprehends his subject fully. There is modesty in his character that keeps him back. He is about 36 years old”—Pierce’s notes, *Amer. Hist. Rev.*, iii 329.

[2] Genl Pinkney & Mr Butler disliked the equivocal form of the signing, and on that account voted in the negative—Madison’s note.

[1] This negative of Maryland was occasioned by the language of the instructions to the Deputies of that State, which required them to report to the State, the *proceedings* of the Convention.—Madison’s note.

[2] “Major Jackson presents his most respectful compliments to General Washington—.

“He begs leave to request his signature to forty Diplomas intended for the Rhode



Island Society of the Cincinnati.

“Major Jackson, after burning all the loose scraps of paper which belong to the Convention, will this evening wait upon the General with the Journals and other papers which their vote directs to be delivered to His Excellency.

“Monday evening”

Endorsed in Washington’s hand “Majr Wm Jackson 17th Sep. 1787.”—Wash. MSS.

[1] The few alterations and corrections made in these debates which are not in my handwriting, were dictated by me and made in my presence by John C. Payne. James Madison.—Madison’s note.

[1]

“Aug. 1. 1787 Williamsb.

“Dear Col.

“We are here & I believe every where all Impatience to know something of your conventional Deliberations. If you cannot tell us what you are doing, you might at least give us some Information of what you are not doing. This wd afford food for political conjecture, and perhaps be sufficient to satisfy present Impatience. I hope you have already discovered the means of preserving the American Empire united—& that the scheme of a Disunion has been found pregnant with ye greatest Evils—But we are not at this distance able to judge with any accuracy upon subjects so truly important & interesting as those wch must engage you at present—We can only hope, that you will all resemble Cæsar, at least in one particular 'nil actum reputans si quid superesset agendum',—& that your Exertions will be commensurate to ye great Expectations wch have been formed. . . .

“J. Madison.”\*

[\*] President of William and Mary College, and the first Bishop of the Episcopal Church in Virginia. He was a second cousin of James Madison, of Orange.

(Mad. MSS.)“Richmond Augt. 5, 87.

“Dear Sir,

“I am much obliged to you for your communication of the proceedings of ye Convention, since I left them, for I feel that anxiety about ye result, which it’s Importance must give to every honest citizen. If I thought that my return could contribute in the smallest degree to it’s Improvement, nothing should Keep me away. But as I know that the talents, knowledge, & well-established character, of our present



delegates have justly inspired the country with ye most entire confidence in their determinations; & that my vote could only operate to produce a division, & so destroy ye vote of ye State, I think that my attendance now would certainly be useless, perhaps injurious.

“I am credibly inform’d that Mr Henry has openly express’d his disapprobation of the circular letter of Congress, respecting ye payment of British debts, & that he has declared his opinion that ye. Interests of this state cannot safely be trusted with that body. The doctrine of three confederacies, or great Republics, has its advocates here. I have heard Hervie support it, along with ye extinction of State Legislatures within each great Department. The necessity of some independent power to controul the Assembly by a negative, seems now to be admitted by ye most zealous republicans—they only differ about ye mode of constituting such a power. B. Randolph seems to think that a magistrate annually elected by ye people might exercise such a controul as independently as ye King of G. B. I hope that our representative, Marshall, will be a powerful aid to Mason in the next Assembly. He has observ’d the actual depravation of mens manners, under ye corrupting Influence of our Legislature; and is convinc’d that nothing but ye adoption of some efficient plan from ye Convention can prevent anarchy first, & civil convulsions afterwards Mr. H—y has certainly converted a majority of Prince Edward, formerly ye most averse to paper money, to ye patronage of it. . . .

“Your Friend & Humble Servt

“James McClurg.”

(Mad. MSS.)

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James Madison, *The Writings, vol. 5 (1787-1790)* [1904]

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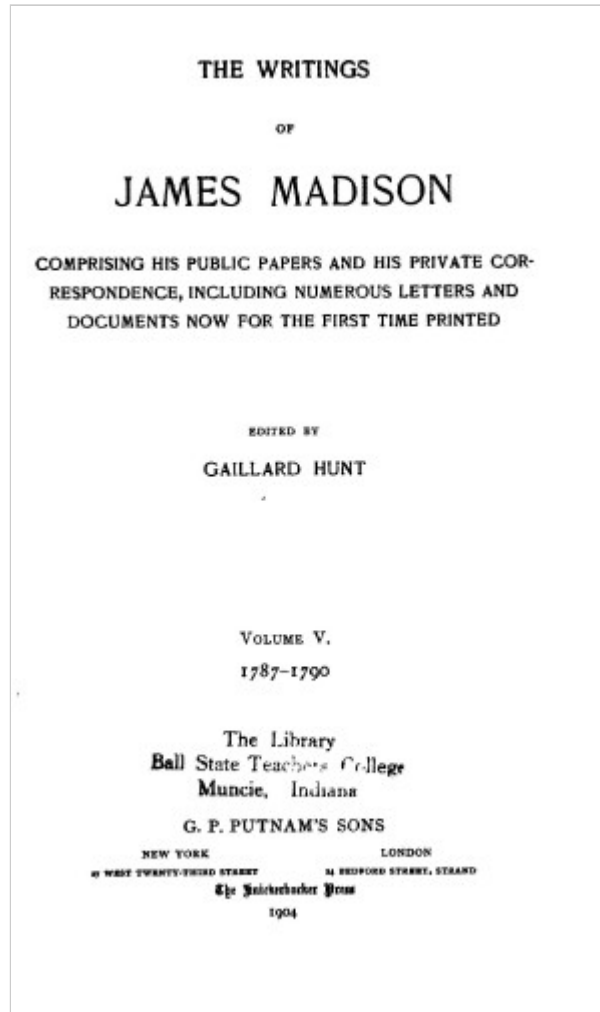
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## Edition Used:

*The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed*, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). Vol. 5.

Author: [James Madison](#)

Editor: [Gaillard Hunt](#)

## About This Title:

Volume 5 of Madison's writings in 9 volumes edited by Gaillard Hunt in 1900-10. This volume contains his public papers and his private correspondence, including speeches in the Virginia Convention and the First Congress.

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CONTENTS OF VOLUME V.

	PAGE
Chronology . . . . .	XV
1787.	
To Edmund Pendleton, September 20th . . . . . Encloses copy of the Constitution.	1
To James Madison, September 30th . . . . . Constitution forwarded to the States—Prospects of approval.	2
To George Washington, September 30th . . . . . Opposition to Constitution in Congress—Prospects of approval.	4
To Edmund Randolph, October 7th . . . . . Opposition to Constitution in Massachusetts and Pennsylvania.	8
To George Washington, October 14th . . . . . Pinckney's pamphlet—Opposition to the Constitution—Arrangements for the Western country.	9
To George Washington, October 18th . . . . . Mason's opposition—Pendleton's attitude—Henry's attitude—Opposition.	11
To Edmund Randolph, October 21st . . . . . Books for the University—Opposition in Virginia—Favorable reception of Constitution.	15
To Thomas Jefferson, October 24th . . . . . Books received—Sends copy of Constitution and explanation—Prospects of ratification—Payment of loan—Crops—Georgia.	17
To George Washington, October 28th . . . . . Reasons for ratification—Pinckney's character—Sketch of the Potomac.	42

v

## Table Of Contents

[Chronology of James Madison. 1787-1790.](#)  
[The Writings of James Madison.](#)  
[1787 - to Edmund Pendleton Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. 1](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson 1 Lib. Of. Cong. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Archibald Stuart. Va. Hist. Soc. Mss.](#)  
[To Ambrose Madison. 1 N. Y. Pub. Lib. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To George Washington. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Thomas Jefferson. Chic. Hist. Soc. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
1788 - to Edmund Randolph. Chic. Hist. Soc. Mss.  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington Wash. Mss.](#)  
[To Edmund Randolph Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)

[Speeches In the Virginia Convention. 1](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Pendleton. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Pendleton. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Philip Mazzei 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[To Edmund Pendleton. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[Questions From and Answers to the Count De Moustier, Minister  
Plenipotentiary of France, October 30, 1788. 1 Mad. Mss.](#)  
[Observations On the “draught of a Constitution For Virginia.” 1 Mad. Mss.](#)  
[To Edmund Randolph. Chic. Hist. Soc. Mss.](#)  
[Copy In Substance of a Letter to G. L. Turberville, Esq. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To Henry Lee. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Philip Mazzei. 2](#)  
[To James Madison. Mad. Mss.](#)  
[1789 - to George Washington. Wash. Mss.](#)  
[To Henry Lee. Mad. Mss. Copy of Remarks On Situation of Great Falls of  
Potowmack \[sent to Col. H. Lee At Whose Request Drawn Up\] 1 Jany 1789](#)  
[To James Madison. Mad. Mss.](#)  
[To Edmund Randolph. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[To Thomas Jefferson. 1](#)  
[To George Washington. Wash. Mss.](#)  
[Speeches In the First Congress—first Session. 1](#)  
[To George Washington. Wash. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[Memorandum. December, 1789. 1 Mad. Mss.](#)

[1790 - to Thomas Jefferson Mad. Mss.](#)  
[Speeches In the First Congress—second Session, 1790.](#)

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[\[Back to Table of Contents\]](#)



## CHRONOLOGY OF JAMES MADISON.

### 1787-1790.

1787.	
Sept. 30.	Attending Congress at New York.
Nov.	Begins Writing <i>The Federalist</i> . In Philadelphia.
Nov. 18.	Returns to New York.
1788.	
March 4.	Sets out for Virginia.
April.	Elected a Member of Virginia Convention.
June 1-27.	In the Convention.
July-Oct.	Attending Congress at New York.
Nov. 8.	Defeated in Legislature for U. S. Senate.
Nov.	In Philadelphia.
Dec.	Leaves for Orange.
1789.	
Jan.	Contesting for Election to House of Representatives.
Feb. 2.	Elected to House of Representatives.
Feb. 24.	At Mount Vernon on his Way to New York.
March.	Arrives at New York.
April 2.	Made Member of Committee on Rules of House of Representatives.
April 8.	Introduces Revenue Bill.
April 9, 21, } May 9, 12, 14. }	Speeches on Duties on Imports.
May 11.	Speech on Titles.
May 19.	Speech on Removals from Office.
May 22.	Speech on Citizenship.
June 6, 17, 18, 22. }	Speeches on Removals from Office.
June 8.	Speech on Amendments to the Constitution.
June 29.	Speech on the Duties of the Comptroller.
Aug. 13.	Speech on Amendments to the Constitution.
Sept. 3, 18, 28. }	Speeches on Location of Capital.
Oct.	Returns to Orange.
1790.	
January.	In New York Attending Congress.
Feb. 3.	Speech on Naturalization.
Feb. 11.	Introduces Resolution to Provide for Public Debt. Speech on Public Debt.
Feb. 24.	Speech on Assumption of State Debts.

[\[Back to Table of Contents\]](#)

***THE WRITINGS OF JAMES MADISON.***

TO EDMUND PENDLETON

Philad<sup>a</sup>, Sep<sup>r</sup> 20 1787.

Mad. Mss.

Dear Sir

The privilege of franking having ceased with the Convention, I have waited for this opportunity of inclosing you a copy of the proposed Constitution for the U. States. I forbear to make any observations on it; either on the side of its merits or its faults. The best Judges of both will be those who can combine with a knowledge of the collective & permanent interest of America, a freedom from the bias resulting from a participation in the work. If the plan proposed be worthy of adoption, the degree of unanimity attained in the Convention is a circumstance as fortunate, as the very respectable dissent on the part of Virginia is a subject of regret. The double object of blending a proper stability & energy in the Government with the essential characters of the republican Form, and of tracing a proper line of demarkation between the national and State authorities, was necessarily found to be as difficult as it was desirable, and to admit of an infinite diversity concerning the means among those who were unanimously agreed concerning the end.

I find by a letter from my father that he & my uncle Erasmus have lately paid their respects to Edmundsbury. I infer from his silence as to your health that no unfavorable change had happened in it. That this may find it perfectly re-established is the sincere and affect<sup>e</sup> wish of, D<sup>r</sup>. Sir,

Y<sup>R</sup> Friend & Humble Serv<sup>T</sup>

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

New York, Sept<sup>r</sup> 30 1787.

Mad. Mss.

Hon<sup>d</sup> Sir By Mr. Blair, who left Philad<sup>a</sup> immediately after the rising of the Convention, I sent to the care of Mr. F. Maury a copy of the new Constitution proposed for the U. S. Mr. Blair set out in such haste that I had no time to write by him, and I thought the omission of the less consequence as your last letter led me to suppose that you must about that time be absent on your trip to Frederick. I arrived here on monday last. 1 The Act of the Convention was then before Congress. It has been since taken up, & by a unanimous vote forwarded to the States to be proceeded on as recommended by the Convention. What reception this new system will generally meet with cannot yet be pronounced. For obvious reasons opposition is as likely to arise in Virginia as anywhere. The City of Philad<sup>a</sup>. has warmly espoused it. Both parties there it is said have united on the occasion. It may happen nevertheless that a country party may spring up and give a preponderancy to the opposite scale. In this City the general voice coincides with that of Philad<sup>a</sup>, but there is less apparent unanimity, and it is pretty certain that the party in power will be active in defeating the new System. In Boston the reception given to it is extremely favorable we are told, but more will depend on the Country than the Town. The echo from Connecticut & New Jersey, as far as it has reached us, denotes a favorable disposition in those States.

I inclose a few Plumb-Stones from an excellent Tree. I am aware that this is not the true mode of propagating the fruit, but it sometimes succeeds, and sometimes even improves the fruit. With my affect<sup>e</sup>. regards to my mother & the family

I remain Y<sup>r</sup>. dutif<sup>l</sup>. Son.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Sep<sup>r</sup>. 30 1787.

Wash. Mss.

Dear Sir,—

I found on my arrival here that certain ideas unfavorable to the Act of the Convention which had created difficulties in that body, had made their way into Congress. They were patronised chiefly by Mr. R. H. L[ee,] and Mr. Dane of Mass<sup>ts</sup>.. It was first urged that, as the new Constitution was more than an alteration of the Articles of Confederation under which Congress acted, and even subverted those Articles altogether, there was a constitutional impropriety in their taking any positive agency in the work. The answer given was that the Resolution of Congress in Feb<sup>y</sup> had recommended the Convention as the best mean of obtaining a firm *national Government*; that, as the powers of the Convention were defined by their Commissions in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to Concur in what was done would imply either that the Convention had done wrong in exceeding their powers, or that the Government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new Western Governments, exercised assumed powers of a very high & delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, echoed by 12 States in the Union, and confirmed by the general voice of the people. An attempt was made in the next place by R. H. L. to amend the Act of the Convention before it should go forth from Congress. 1 He proposed a bill of Rights,—provision for juries in civil cases, & several other things corresponding with the ideas of Colonel M[ason.] He was supported by Mr. M[elancthon] Smith of this state. It was contended that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds;—1. that every circumstance indicated that the introduction of Congress as a party to the reform was intended by the States merely as a matter of form and respect. 2. that it was evident, from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries. 3. that it was clearly the intention of the States that the plan to be proposed should be the act of the Convention, with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer

in existence to adopt them. 4. that as the Act of the Convention, when altered would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the Legislatures, not Conventions of the States, and require the ratification of thirteen instead of nine States, and as the unaltered act would go forth to the States directly from the Convention under the auspices of that Body,—Some States might ratify the one & some the other of the plans, and confusion & disappointment be the least evils that would ensue. These difficulties which at one time threatened a serious division in Cong<sup>s</sup> and popular alterations with the yeas and nays on the Journals, were at length fortunately terminated by the following Resolution: “Congress having rec<sup>d</sup> the Report of the Convention lately assembled in Philad<sup>a</sup>., Resol<sup>d</sup>. *unanimously* that the said Report, with the Resolutions & letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made & provided in that case.” Eleven States were present, the absent ones, R. I. & Maryland. A more direct approbation would have been of advantage in this & some other States, where stress will be laid on the agency of Congress in the matter, and a handle be taken by adversaries of any ambiguity on the subject. With regard to Virginia & some other States, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable every where.

The general voice of this City seems to espouse the new Constitution. It is supposed nevertheless that the party in power is strongly opposed to it. The country must finally decide, the sense of which is as yet wholly unknown. As far as Boston & Connecticut have been heard from, the first impression seems to be auspicious. I am waiting with anxiety for the echo from Virginia, but with very faint hopes of its corresponding with my wishes.1

With every sentiment of respect & esteem, & every wish for your health & happiness, I am Dear Sir

Your Obedient, Humble Serv<sup>T</sup>

P. S. A small packet of the size 2 Vol 8° addressed to you lately came to my hands with books of my own from France. Gen<sup>l</sup>. Pinkney has been so good as to take charge of them. He set out yesterday for S. Carolina, & means to call at Mount Vernon.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.1

New York, October 7, 1787.

Dear Sir,—

.....

We hear nothing decisive as yet concerning the general reception given to the act of the Convention. The advocates for it come forward more promptly than the adversaries. The sea coast seems every where fond of it. The party in Boston which was thought most likely to make opposition, are warm in espousing it. It is said that Mr. S. Adams objects to one point only, viz. the prohibition of a religious test. Mr. Bowdoin's objections are said to be against the great number of members composing the Legislature, and the intricate election of the President. You will no doubt have heard of the fermentation in the Assembly of Pennsylvania.1

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[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Oct<sup>r</sup>. 14, 1787.

Wash. Mss.

Dear Sir,—

The letter herewith inclosed was put into my hands yesterday by Mr. de Crevecoeur who belongs to the Consular establishment of France in this Country. I add to it a pamphlet<sup>2</sup> which Mr. Pinkney has submitted to the public, or rather as he professes, to the perusal of his friends, and a printed sheet<sup>3</sup> containing his ideas on a very delicate subject, too delicate in my opinion to have been properly confided to the press. He conceives that his precautions against any further circulation of the piece than he himself authorizes, are so effectual as to justify the step. I wish he may not be disappointed. In communicating a copy to you, I fulfil his wishes only.

No decisive indications of the public mind in the North<sup>n</sup> & Middle States can yet be collected. The Reports continue to be rather favorable to the Act of the Convention from every quarter; but its adversaries will naturally be latest in shewing themselves. Boston is certainly friendly. An opposition is known to be in petto in Connecticut, but it is said not to be much dreaded by the other side. Rhode Island will be divided on this subject in the same manner that it has been on the question of paper money. The Newspapers here have contained sundry publications animadverting on the proposed Constitution & it is known that the Government party are hostile to it. There are on the other side so many able & weighty advocates, and the conduct of the Eastern States if favorable, will add so much force to their arguments, that there is at least as much ground for hope as for apprehension. I do not learn that any opposition is likely to be made in N. Jersey. The temper of Pennsylvania will be best known to you from the direct information which you cannot fail to receive through the Newspapers & other channels.

Congress have been of late employed chiefly in settling the requisition, and in making some arrangements for the Western Country. The latter consist of the appointment of a Gov<sup>t</sup> & Secretary, and the allotment of a sum of money for Indian Treaties, if they should be found necessary. The Requisition so far as it varies our fiscal system, makes the proportion of indents receivable independently of specie, & those of different years indiscriminately receivable for any year, and does not as heretofore tie down the States to a particular mode of obtaining them. Mr. Adams has been permitted to return home after Feb<sup>y</sup>. next, & Mr. Jefferson's appointment continued for three years longer.

With the most perfect esteem & most affectionate regard, I remain D<sup>t</sup> Sir,

Your Obed<sup>t</sup> Friend & Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Oct<sup>r</sup> 18, 1787.

Wash. Mss.

Dear Sir,—

I have been this day honored with your favor of the 10<sup>th</sup> instant, under the same cover with which is a copy of Col. Mason's objections to the Work of the Convention. 1 As he persists in the temper which produced his dissent it is no small satisfaction to find him reduced to such distress for a proper gloss on it; for no other consideration surely could have led him to dwell on an objection which he acknowledged to have been in some degree removed by the Convention themselves—on the paltry right of the Senate to propose alterations in money bills—on the appointment of the vice President President of the Senate instead of making the President of the Senate the vice President, which seemed to be the alternative—and on the *possibility*, that Congress may misconstrue their powers & betray their trust so far as to grant monopolies in trade &c—. If I do not forget too some of his other reasons were either not at all or very faintly urged at the time when alone they ought to have been urged, such as the power of the Senate in the case of treaties & of impeachments; and their duration in office. With respect to the latter point I recollect well that he more than once disclaimed opposition to it. My memory fails me also if he did not acquiesce in if not vote for, the term allowed for the further importation of slaves, 1 and the prohibition of duties on exports by the States. What he means by the dangerous tendency of the Judiciary I am at some loss to comprehend. It was never intended, nor can it be supposed that in ordinary cases the inferior tribunals will not have final jurisdiction in order to prevent the evils of which he complains. The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance. Notwithstanding the stress laid on the necessity of a Council to the President I strongly suspect, tho' I was a friend to the thing, that if such an one as Col. Mason proposed, had been established, and the power of the Senate in appointments to offices transferred to it, that as great a clamour would have been heard from some quarters which in general echo his objections. What can he mean by saying that the Common law is not secured by the new Constitution, though it has been adopted by the State Constitutions. The common law is nothing more than the unwritten law, and is left by all constitutions equally liable to legislative alterations. I am not sure that any notice is particularly taken of it in the Constitutions of the States. If there is, nothing more is provided than a general declaration that it shall continue along with other branches of law to be in force till legally changed. The Constitution of Virg<sup>a</sup>. drawn up by Col. Mason himself, is absolutely silent on the subject. An *ordinance* passed during the same Session, declared the common law as heretofore & all Statutes of prior date to the 4 of James I to be still the law of the land, merely to obviate pretexts that the separation from G. Britain threw us into a State of nature, and abolished all civil rights and objections. Since the Revolution every State has made great inroads & with great propriety in many instances on this *monarchical* code. The "revisal of the laws" by a Com<sup>it</sup>tee of w<sup>ch</sup> Col. Mason was a member, though not an



acting one, abounds with such innovations. The abolition of the *right of primogeniture*, which I am sure Col. Mason does not disapprove, falls under this head. What could the Convention have done? If they had in general terms declared the Common law to be in force, they would have broken in upon the legal Code of every State in the most material points; they w<sup>d</sup>. have done more, they would have brought over from G. B. a thousand heterogeneous & antirepublican doctrines, and even the *ecclesiastical Hierarchy itself*, for that is a part of the Common law. If they had undertaken a discrimination, they would have formed a digest of laws, instead of a Constitution. This objection surely was not brought forward in the Convention, or it w<sup>d</sup> have been placed in such a light that a repetition of it out of doors would scarcely have been hazarded. Were it allowed the weight which Col. M. may suppose it deserves, it would remain to be decided whether it be candid to arraign the Convention for omissions which were never suggested to them—or prudent to vindicate the dissent by reasons which either were not previously thought of, or must have been wilfully concealed. But I am running into a comment as prolix as it is out of place.

I find by a letter from the Chancellor (Mr. Pendleton) that he views the act of the Convention in its true light, and gives it his unequivocal approbation. His support will have great effect. The accounts we have here of some other respectable characters vary considerably. Much will depend on Mr. Henry, and I [am] glad to find by your letter that his favorable decision on the subject may yet be hoped for. 1 —The Newspapers here begin to teem with vehement & violent calumniations of the proposed Gov<sup>t</sup>.. As they are chiefly borrowed from the Pennsylvania papers, you see them of course. The reports however from different quarters continue to be rather flattering.

With the highest respect & sincerest attachment I remain Dear Sir, Y<sup>r</sup> Obed<sup>t</sup> & Affect<sup>e</sup> Serv<sup>t</sup>

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, October 21, 1787.

Chic. Hist. Soc.  
Mss.

My Dear Friend.

I mentioned in a late letter that I had addressed to your care a small box of books for the University. I now enclose the Bill of lading. I enclosed also a bill of lading for another box destined for Mr. W. Hay. Will you be so good as to have it handed to him? I paid two dollars for its freight from France to this port, which he may repay to you. The money you remitted by me to Col. Carrington having somewhat exceeded the amount of his demand, the two dollars may the more properly pass into your hands.

I have received no letter from you since your halt at the Bolling Green. We hear that opinions are various in Virginia on the plan of the Convention. I have received, within a few days, a letter from the Chancellor, by which I find that he gives it his approbation; and another from the President of William and Mary, which, though it does not absolutely reject the Constitution, criticises it pretty freely. The newspapers in the Northern and Middle States begin to teem with controversial publications. The attacks seem to be principally levelled against the organization of the Government, and the omission of the provisions contended for in favor of the press, and juries, &c. A new combatant, however, with considerable address and plausibility, strikes at the foundation. He represents the situation of the United States to be such as to render any government improper and impracticable which forms the States into one nation, and is to operate directly on the people. Judging from the newspapers, one would suppose that the adversaries were the most numerous and the most earnest. But there is no other evidence that it is the fact. On the contrary, we learn that the Assembly of New Hampshire, which received the Constitution on the point of their adjournment, were extremely pleased with it. All the information from Massachusetts denotes a favorable impression there. The Legislature of Connecticut have unanimously recommended the choice of a Convention in that State, and Mr. Baldwin, who is just from the spot, informs me, that, from present appearances, the opposition will be inconsiderable; that the Assembly, if it depended on them, would adopt the system almost unanimously; and that the clergy and all the literary men are exerting themselves in its favor. Rhode Island is divided; the majority being violently against it. The temper of this State cannot yet be fully discerned. A strong party is in favor of it. But they will probably be outnumbered, if those whose numbers are not yet known should take the opposite side. New Jersey appears to be zealous. Meetings of the people in different counties are declaring their approbation, and instructing their representatives. There will probably be a strong opposition in Pennsylvania. The other side, however, continue to be sanguine. Doctor Carroll, who came hither lately from Maryland, tells me, that the public voice there appears at present to be decidedly in favor of the Constitution. Notwithstanding all these circumstances, I am far from considering the public mind as fully known, or finally settled on the subject. They amount only to a strong

presumption that the general sentiment in the Eastern and Middle States is friendly to the proposed system at this time.

Present me respectfully to Mrs. R. and accept the most fervent wishes for your happiness, from your affect. friend.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON<sup>1</sup>

New York, Oct<sup>r</sup> 24, 1787.

Lib. Of. Cong.  
Mss.

Dear Sir,—

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Your favor of June 20 has been already acknowledged. The last Packet from France brought me that of August 2<sup>d</sup>. I have rec<sup>d</sup> also by the *Mary* Capt. Howland the three Boxes for W. H., <sup>1</sup>B.F. <sup>2</sup> and myself. The two first have been duly forwarded. The contents of the last are a valuable addition to former literary remittances and lay me under additional obligations, which I shall always feel more strongly than I express. The articles for Congress have been delivered & those for the two Universities<sup>3</sup> and for General Washington have been forwarded, as have been the various letters for your friends in Virginia and elsewhere. The parcel of rice referred to in your letter to the Delegates of S. Carolina has met with some accident. No account whatever can be gathered concerning it. It probably was not shipped from France. Ubbo's book I find was not omitted as you seem to have apprehended. The charge for it however is, which I must beg you to supply. The duplicate vol of the Encyclopedie, I left in Virginia, and it is uncertain when I shall have an opportunity of returning it. Your Spanish duplicates will I fear be hardly vendible. I shall make a trial whenever a chance presents itself. A few days ago I rec<sup>d</sup> your favor of 15 of Aug<sup>st</sup>. via L'Orient & Boston. The letters inclosed along with it were immediately sent to Virg<sup>a</sup>

You will herewith receive the result of the Convention, which continued its session till the 17th of September. I take the liberty of making some observations on the subject, which will help to make up a letter, if they should answer no other purpose.

It appeared to be the sincere and unanimous wish of the Convention to cherish and preserve the Union of the States. No proposition was made, no suggestion was thrown out, in favor of a partition of the Empire into two or more Confederacies.

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of Sovereign States. A *voluntary* observance of the federal law by all the members could never be hoped for. A *compulsive* one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general a scene resembling much more a civil war than the administration of a regular Government.

Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive, and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

The first of these objects, as respects the Executive, was peculiarly embarrassing. On the question whether it should consist of a single person, or a plurality of co-ordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place. The plurality of co-ordinate members had finally but few advocates. Governour Randolph was at the head of them. The modes of appointment proposed were various, as by the people at large—by electors chosen by the people—by the Executives of the States—by the Congress, some preferring a joint ballot of the two Houses—some a separate concurrent ballot, allowing to each a negative on the other house—some, a nomination of several candidates by one House, out of whom a choice should be made by the other. Several other modifications were started. The expedient at length adopted seemed to give pretty general satisfaction to the members. As to the duration in office, a few would have preferred a tenure during good behaviour—a considerable number would have done so in case an easy & effectual removal by impeachment could be settled. It was much agitated whether a long term, seven years for example, with a subsequent & perpetual ineligibility, or a short term with a capacity to be re-elected, should be fixed. In favor of the first opinion were urged the danger of a gradual degeneracy of re-elections from time to time, into first a life and then a hereditary tenure, and the favorable effect of an incapacity to be reappointed on the independent exercise of the Executive authority. On the other side it was contended that the prospect of necessary degradation would discourage the most dignified characters from aspiring to the office, would take away the principal motive to y<sup>e</sup> faithful discharge of its duties—the hope of being rewarded with a reappointment would stimulate ambition to violent efforts for holding over the Constitutional term—and instead of producing an independent administration, and a firmer defence of the constitutional rights of the department, would render the officer more indifferent to the importance of a place which he would soon be obliged to quit forever, and more ready to yield to the encroachm<sup>ts</sup> of the Legislature of which he might again be a member. The questions concerning the degree of power turned chiefly on the appointment to offices, and the controul on the Legislature. An *absolute* appointment to all offices—to some offices—to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative, as the only possible mean of reducing to practice the theory of a free Government which forbids a mixture of the Legislative & Executive powers. Others would be content with a revisionary power, to be overruled by three fourths of both Houses. It

was warmly urged that the judiciary department should be associated in the revision. The idea of some was that a separate revision should be given to the two departments—that if either objected two thirds, if both, three fourths, should be necessary to overrule.

In forming the Senate, the great anchor of the Government the questions, as they came within the first object, turned mostly on the mode of appointment, and the duration of it. The different modes proposed were 1. by the House of Representatives. 2. by the Executive. 3. by electors chosen by the people for the purpose. 4. by the State Legislatures.—On the point of duration, the propositions descended from good behavior to four years, through the intermediate terms of nine, seven, six, & five years. The election of the other branch was first determined to be triennial, and afterwards reduced to biennial.

The second object, the due partition of power between the General & local Governments, was perhaps of all, the most nice and difficult. A few contended for an entire abolition of the States; Some for indefinite power of Legislation in the Congress, with a negative on the laws of the States; some for such a power without a negative; some for a limited power of legislation, with such a negative; the majority finally for a limited power without the negative. The question with regard to the negative underwent repeated discussions, and was finally rejected by a bare majority. As I formerly intimated to you my opinion in favor of this ingredient, I will take this occasion of explaining myself on the subject. Such a check on the States appears to me necessary 1. to prevent encroachments on the General authority. 2. to prevent instability and injustice in the legislation of the States.

1. Without such a check in the whole over the parts, our system involves the evil of imperia in imperio. If a compleat supremacy somewhere is not necessary in every Society, a controuling power at least is so, by which the general authority may be defended against encroachments of the subordinate authorities, and by which the latter may be restrained from encroachments on each other. If the supremacy of the British Parliament is not necessary as has been contended, for the harmony of that Empire; it is evident I think that without the royal negative or some equivalent controul, the unity of the system would be destroyed. The want of some such provision seems to have been mortal to the antient Confederacies, and to be the disease of the modern. Of the Lycian confederacy little is known. That of the Amphyctions is well known to have been rendered of little use whilst it lasted, and in the end to have been destroyed, by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achæan League. The Helvetic System scarcely amounts to a confederacy, and is disguised by too many peculiarities, to be a ground of comparison. The case of the United Netherlands is in point. The authority of a Stadtholder, the influence of a Standing Army, the common interest in the conquered possessions, the pressure of surrounding danger, the guarantee of foreign powers, are not sufficient to secure the authority and interest of the generality ag<sup>st</sup>. the anti-federal tendency of the provincial sovereignties. The German Empire is another example. A Hereditary chief with vast independent resources of wealth and power, a federal Diet, with ample parchment authority, a regular Judiciary establishment, the influence of the neighbourhood of great &

formidable Nations have been found unable either to maintain the subordination of the members, or to prevent their mutual contests & encroachments. Still more to the purpose is our own experience both during the war and since the peace.

Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system. It may be said that the new Constitution is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained in some instances by one, in others, by the other of them. In one respect indeed there is a remarkable variance between the two cases. In the feudal system the sovereign, though limited, was independent; and having no particular sympathy of interests with the Great Barons, his ambition had as full play as theirs in the mutual projects of usurpation. In the American Constitution The general authority will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capacity. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. This dependence of the General on the local authorities, seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgement of their power, and be stimulated by ambition to resume the surrendered portion of it. We find the representatives of Counties and Corporations in the Legislatures of the States, much more disposed to sacrifice the aggregate interest, and even authority, to the local views of their constituents, than the latter to the former. I mean not by these remarks to insinuate that an esprit de corps will not exist in the National Government or that opportunities may not occur of extending its jurisdiction in some points. I mean only that the danger of encroachments is much greater from the other side, and that the impossibility of dividing powers of legislation, in such a manner, as to be free from different constructions by different interests, or even from ambiguity in the judgment of the impartial, requires some such expedient as I contend for. Many illustrations might be given of this impossibility. How long has it taken to fix, and how imperfectly is yet fixed the legislative power of corporations, though that power is subordinate in the most compleat manner? The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found on fair discussion, to be absolutely undefinable. No distinction seems to be more obvious than that between spiritual and temporal matters. Yet wherever they have been made objects of Legislation, they have clashed and contended with each other, till one or the other has gained the supremacy. Even the boundaries between the Executive, Legislative, & Judiciary powers, though in general so strongly marked in themselves, consist in many instances of mere shades of difference. It may be said that the Judicial authority, under our new system will keep the States within their proper limits, and supply the place of a negative on their laws. The answer is, that it is more convenient to prevent the passage of a law than to declare it void after it is passed; that this will be particularly the case, where the law

aggrieves individuals, who may be unable to support an appeal ag<sup>st</sup> a State to the supreme Judiciary; that a State which would violate the Legislative rights of the Union, would not be very ready to obey a Judicial decree in support of them, and that a recurrence to force, which, in the event of disobedience would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

2. A constitutional negative on the laws of the States seems equally necessary to secure individuals ag<sup>st</sup> encroachments on their rights. The mutability of the laws of the States is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the Public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform therefore which does not make provision for private rights, must be materially defective. The restraints ag<sup>st</sup>. paper emissions, and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative expedients, that where the disposition exists it can only be controuled by some provision which reaches all cases whatsoever. The partial provision made, supposes the disposition which will evade it. It may be asked how private rights will be more secure under the Guardianship of the General Government than under the State Governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished rather by the extent within which they will operate, than by any material difference in their structure. A full discussion of this question would, if I mistake not, unfold the true Principles of Republican Government, and prove in contradiction to the concurrent opinions of the theoretical writers, that this form of Government, in order to effect its purposes, must operate not within a small but an extensive sphere. I will state some of the ideas which have occurred to me on the subject. Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea, that the people composing the Society, enjoy not only an equality of political rights; but that they have all precisely the same interests, and the same feelings in every respect. Were this in reality the case, their reasoning would be conclusive. The interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which the major voice would be the safest criterion; and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed. We know however that no society ever did or can consist of so homogeneous a mass of Citizens. In the savage state indeed, an approach is made towards it; but in that state little or no Government is necessary. In all civilized societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations & soils, & according to different branches of commerce and of manufactures. In addition to these natural distinctions, artificial ones will be founded,



on accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals. However erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman or the benevolent philosopher, the bulk of mankind who are neither Statesmen nor Philosophers, will continue to view them in a different light. It remains then to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. An individual is never allowed to be a judge or even a witness, in his own cause. If two individuals are under the bias of interest or enmity ag<sup>st</sup>. a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress one thousand, or two hundred thousand one hundred thousand? Three motives only can restrain in such cases: 1. a prudent regard to private or partial good, as essentially involved in the general and permanent good of the Whole. This ought no doubt to be sufficient of itself. Experience however shews that it has little effect on individuals, and perhaps still less on a collection of individuals, and least of all on a majority with the public authority in their hands. If the former are ready to forget that honesty is the best policy; the last do more. They often proceed on the converse of the maxim, that whatever is politic is honest. 2. respect for character. This motive is not found sufficient to restrain individuals from injustice. And loses its efficacy in proportion to the number which is to divide the pain or the blame. Besides as it has reference to public opinion, which is that of the majority, the standard is fixed by those whose conduct is to be measured by it. 3. Religion. The inefficacy of this restraint on individuals is well known. The conduct of every popular Assembly, acting on oath, the strongest of religious ties, shews that individuals join without remorse in acts ag<sup>st</sup>. which their consciences would revolt, if proposed to them separately in their closets. When Indeed Religion is kindled into enthusiasm, its force like that of other passions is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of Religion, and whilst it lasts will hardly be seen with pleasure at the helm. Even in its coolest state, it has been much oftener a motive to oppression than a restraint from it. If then there must be different interests and parties in society; and a majority when united by a common interest or passion cannot be restrained from oppressing the minority, what remedy can be found in a republican Government, where the majority must ultimately decide, but that of giving such an extent to its sphere, that no common interest or passion will be likely to unite a majority of the whole number in an unjust pursuit. In a large Society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority and have the power, other sects will be sure to be depressed. Divide et impera, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles. It must be observed however that this doctrine can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed ag<sup>st</sup>. the weaker party; so in too extensive a one, a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration. The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to controul one part from invading the rights of another, and at the same time sufficiently

controuled itself, from setting up an interest adverse to that of the entire Society. In absolute monarchies, the Prince may be tolerably neutral towards different classes of his subjects but may sacrifice the happiness of all to his personal ambition or avarice. In small republics, the sovereign will is controuled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States. The General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained by its dependence on the community, from betraying its general interests.

Begging pardon for this immoderate digression I return to the third object above mentioned, the adjustments of the different interests of different parts of the Continent. Some contended for an unlimited power over trade including exports as well as imports, and over slaves as well as other imports; some for such a power, provided the concurrence of two thirds of both Houses were required; Some for such a qualification of the power, with an exemption of exports and slaves, others for an exemption of exports only. The result is seen in the Constitution. S. Carolina & Georgia were inflexible on the point of the slaves.

The remaining object created more embarrassment, and a greater alarm for the issue of the Convention than all the rest put together. The little States insisted on retaining their equality in both branches, unless a compleat abolition of the State Governments should take place; and made an equality in the Senate a sine qua non. The large States on the other hand urged that as the new Government was to be drawn principally from the people immediately and was to operate directly on them, not on the States; and consequently as the States w<sup>d</sup> lose that importance which is now proportioned to the importance of their voluntary compliances with the requisitions of Congress, it was necessary that the representation in both Houses should be in proportion to their size. It ended in the compromise which you will see, but very much to the dissatisfaction of several members from the large States.

It will not escape you that three names only from Virginia are subscribed to the Act. Mr. Wythe did not return after the death of his lady. Doc<sup>t</sup> M'Clurg left the Convention some time before the adjournment. The Governour and Col. Mason refused to be parties to it. Mr. Gerry was the only other member who refused. The objections of the Gov<sup>t</sup> turn principally on the latitude of the general powers, and on the connection established between the President and the Senate. He wished that the plan should be proposed to the States with liberty to them to suggest alterations which should all be referred to another general Convention, to be incorporated into the plan as far as might be judged expedient. He was not inveterate in his opposition, and grounded his refusal to subscribe pretty much on his unwillingness to commit himself, so as not to be at liberty to be governed by further lights on the subject. Col. Mason left Philad<sup>a</sup>. in an exceeding ill humour indeed. A number of little circumstances arising in part from the impatience which prevailed towards the close of the business, conspired to whet his acrimony. He returned to Virginia with a fixed disposition to prevent the adoption of the plan if possible. He considers the want of a Bill of Rights as a fatal objection. His other objections are to the substitution of the Senate in place of an Executive Council & to the powers vested in that body—to the powers of the Judiciary—to the vice President being made President of the Senate—to the smallness

of the number of Representatives—to the restriction on the States with regard to ex post facto laws—and most of all probably to the power of regulating trade, by a majority only of each House. He has some other lesser objections. Being now under the necessity of justifying his refusal to sign, he will of course muster every possible one. His conduct has given great umbrage to the County of Fairfax, and particularly to the Town of Alexandria. He is already instructed to promote in the Assembly the calling of a Convention, and will probably be either not deputed to the Convention, or be tied up by express instructions. He did not object in general to the powers vested in the National Government, so much as to the modification. In some respects he admitted that some further powers would have improved the system. He acknowledged in particular that a negative on the State laws, and the appointment of the State Executive ought to be ingredients; but supposed that the public mind would not now bear them, and that experience would hereafter produce these amendments.

The final reception which will be given by the people at large to the proposed system cannot yet be decided. The Legislature of N. Hampshire was sitting when it reached that State and was well pleased with it. As far as the sense of the people there has been expressed, it is generally favorable. Boston is warm and almost unanimous in embracing it. The impression on the country is not yet known. No symptoms of disapprobation have appeared. The Legislature of that State is now sitting, through which the sense of the people at large will soon be promulgated with tolerable certainty. The paper money faction in R. Island is hostile. The other party zealously attached to it. Its passage through Connecticut is likely to be very smooth and easy. There seems to be less agitation in this State N. York than anywhere. The discussion of the subject seems confined to the Newspapers. The principal characters are known to be friendly. The Governour's party which has hitherto been the popular & most numerous one, is supposed to be on the opposite side; but considerable reserve is practiced, of which he sets the example. N. Jersey takes the affirmative side of course. Meetings of the people are declaring their approbation and instructing their representatives. Penn<sup>a</sup>. will be divided. The City of Philad<sup>a</sup>., the Republican party, the Quakers, and most of the Germans espouse the Constitution. Some of the Constitutional leaders, backed by the Western Country will oppose. An unlucky ferment on the subject in their Assembly just before its late adjournment has irritated both sides, particularly the opposition, and by redoubling the exertions of that party may render the event doubtful. The voice of Maryland I understand from pretty good authority, is, as far as it has been declared, strongly in favor of the Constitution. Mr. Chase is an enemy, but the Town of Baltimore which he now represents, is warmly attached to it, and will shackle him as far as it can. Mr. Paca will probably be, as usual, in the politics of Chase. My information from Virginia is as yet extremely imperfect. I have a letter from Gen<sup>l</sup> Washington which speaks favorably of the impression within a circle of some extent; and another from Chancellor Pendleton which expresses his full acceptance of the plan, and the popularity of it in his district, I am told also that Innes and Marshall are patrons of it. In the opposite scale are Mr. James Mercer, Mr. R. H. Lee, Doc<sup>f</sup> Lee and their connections of course, Mr. M. Page according to Report, and most of the Judges & Bar of the general Court. The part which Mr. Henry will take is unknown here. Much will depend on it. I had taken it for granted from a variety of circumstances that he w<sup>d</sup>. be in the opposition, and still think that will be the case. There are reports however which favor a contrary supposition. From the States South

of Virginia nothing has been heard. As the deputation from S. Carolina consisted of some of its weightiest characters, who have returned unanimously zealous in favor of the Constitution, it is probable that State will readily embrace it. It is not less probable that N. Carolina will follow the example unless that of Virginia should counterbalance it. Upon the whole, although, the public mind will not be fully known, nor finally settled, for a considerable time, appearances at present augur a more prompt, and general adoption of the plan than could have been well expected.

When the plan came before Congress for their sanction, a very serious effort was made by R. H. Lee & Mr. Dane, from Mass<sup>ts</sup>. to embarrass it. It was first contended that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the Constitution under which they acted. This ground of attack failing, the former gentleman urged the expediency of sending out the plan with amendments, & proposed a number of them corresponding with the objections of Col. Mason. This experiment had still less effect. In order however to obtain unanimity it was necessary to couch the resolution in very moderate terms.

Mr. Adams has rec<sup>d</sup> permission to return, with thanks for his services. No provision is made for supplying his place, or keeping up any representation there. Your reappointment for three years will be notified from the office of F. Aff<sup>ts</sup>. It was *made* without a negative, eight States being present. Connecticut, notwithstanding put in a blank ticket, the sense of that State having been declared against embassies. Massachus<sup>ts</sup>. betrayed some scruple on like ground. Every personal consideration was avowed, & I believe with sincerity, to have militated against these scruples. It seems to be understood that letters to & from the foreign Ministers of the U. S. are not free of Postage; but that the charge is to be allowed in their accounts.

The exchange of our French for Dutch Creditors has not been countenanced either by Congress or the Treasury Board. The paragraph in your last letter to Mr. Jay, on the subject of applying a loan in Holland to the discharge of the pay due to the foreign officers has been referred to the Board since my arrival here. No report has yet been made. But I have little idea that the proposition will be adopted. Such is the state & prospect of our fiscal department, that any new loan however small, that should now be made, would probably subject us to the reproach of premeditated deception. The balance of Mr. Adams's last loan will be wanted for the interest due in Holland, and with all the income here, will it is feared, not save our credit in Europe from farther wounds. It may well be doubted whether the present Government can be kept alive during the ensuing year, or until the new one may take its place.

Upwards of 100,000 Acres of the lands of the U. S. have been disposed of in open market. Five millions of unsurveyed have been sold by private contract to a N. England company, at ? of a dollar per Acre, payment to be made in the principal of the public securities. A negotiation is nearly closed with a N. Jersey company for two millions more on like terms, and another commenced with a company of this City for four millions. Col. Carrington writes more fully on this subject.

You will receive herewith the desired information from Alderman Broome in the case of Mr. Burke, also the Virg<sup>a</sup>. Bill on Crimes & punishments. Sundry alterations

having been made in conformity to the sense of the House in its latter stages, it is less accurate & methodical than it ought to have been. To these papers I add a Speech of Mr. C. P. on the Missipi business. It is printed under precautions of secrecy, but surely could not have been properly exposed to so much risk of publication.<sup>1</sup> You will find also among the pamphlets & papers I send by Com<sup>o</sup>dore Jones, another printed speech of the same Gentleman. The Museum [?], Magazine, & Philad<sup>a</sup> Gazettes will give you a tolerable idea of the objects of present attention.

The summer crops in the Eastern & Middle States have been extremely plentiful. Southward of Virg<sup>a</sup>.—They differ in different places. On the whole I do not know that they are bad in that region. In Virginia the drought has been unprecedented, particularly between the falls of the Rivers & the Mountains. The crops of Corn are in general alarmingly short. In Orange I find there will be scarcely subsistence for the inhabitants. I have not heard from Albemarle. The crops of Tob<sup>o</sup>. are every where said to be pretty good in point of quantity, & the quality unusually fine. The crops of wheat were also in general excellent in quality & tolerable in quantity.

*Nov<sup>r</sup>*. 1. Commodore Paul Jones having preferred another vessel to the packet, has remained here till this time. The interval has produced little necessary to be added to the above. The Legislature of Mass<sup>ts</sup>. has it seems taken up the act of the Convention, and has appointed or probably will appoint an early day for its State Convention. There are letters also from Georgia which denote a favorable disposition. I am informed from Richmond that the New Electionlaw from the Revised Code produced a pretty full House of Delegates, as well as a Senate, on the first day. It had previously had equal effect in producing full meetings of the freeholders for the County elections. A very decided majority of the Assembly is said to be zealous in favor of the New Constitution. The same is said of the Country at large. It appears however that individuals of great weight both within & without the Legislature are opposed to it. A letter I just have from Mr. A. Stuart,<sup>1</sup> names Mr. Henry, Gen<sup>l</sup>. Nelson, W. Nelson, the family of Cabels, S<sup>t</sup>. George Tucker, John Taylor, and the Judges of the Gen<sup>l</sup>. Court except P. Carrington. The other opponents he describes as of too little note to be mentioned, which gives a negative information of the Characters on the other side. All are agreed that the plan must be submitted to a Convention.

We hear from Georgia that that State is threatened with a dangerous war with the Creek Indians. The alarm is of so serious a nature that law-martial has been proclaimed, and they are proceeding to fortify even the Town of Savannah. The idea there is, that the Indians derive their motives as well as their means from their Spanish neighbours. Individuals complain also that their fugitive slaves are encouraged by East Florida. The policy of this is explained by supposing that it is considered as a discouragement to the Georgians to form settlements near the Spanish boundaries.

There are but few States on the spot here which will survive the expiration of the federal year, and it is extremely uncertain when a Congress will again be formed. We have not yet heard who are to be in the appointment of Virginia for the next year

With the most affectionate attachment I remain Dear Sir

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Oct<sup>r</sup>. 28, 1787.

Wash. Mss.

Dear Sir,—

The mail of yesterday brought me your favor of the 22<sup>d</sup>. instant. The communications from Richmond give me as much pleasure, as they exceed my expectations. <sup>1</sup> As I find by a letter from a member of the Assembly, however, that Col. Mason has not got down, and it appears that Mr. Henry is not at bottom a friend, I am not without fears that the combined influence and management may yet create difficulties. There is one consideration which I think ought to have some weight in the case, over and above the intrinsic inducements to embrace the Constitution, and which I have suggested to some of my correspondents. There is at present a very strong probability that nine States at least will pretty speedily concur in establishing it. What will become of the tardy remainder? They must be either left as outcasts from the society to shift for themselves, or be compelled to come in, or must come in of themselves when they will be allowed no credit for it. Can either of these situations be as eligible as a prompt and manly determination to support the Union, and share its common fortunes?

My last stated pretty fully the information which had arrived here from different quarters, concerning the proposed Constitution. I recollect nothing that is now to be added farther than that the Assembly of Massachusetts now sitting certainly gives it a friendly reception. I inclose a Boston paper by which it appears that Governour Hancock has ushered it to them in as propitious a manner as could have been required.

Mr. C. P.'s <sup>1</sup> character is as you observe well marked by the publications which I inclosed. His printing the secret paper at this time could have no motive but the appetite for expected praise; for the subject to which it relates has been dormant a considerable time, and seems likely to remain so.

A foreign gentleman of merit, and who, besides this general title, brings me a letter which gives him a particular claim to my civilities, is very anxious to obtain a sketch of the Potomac and the route from the highest navigable part of it to the western waters which are to be connected with the potomac by the portage, together with a sketch of the works which are going on, and a memorandum of the progress made in them. Knowing of no other channel through which I could enable myself to gratify this gentleman, I am seduced into the liberty of resorting to your kindness; and of requesting that if you have such a draught by you, your amanuensis may be permitted to take a *very rough copy* of it for me. In making this request I beseech you Sir to understand that I do it with not more confidence in your goodness than with the sincerest desire that it may be disregarded if it cannot be fulfilled with the most perfect convenience.

With sentiments of the most perfect esteem & the most Affect<sup>e</sup>. regard I remain Dear Sir, your Obed<sup>t</sup>. friend & hbl<sup>e</sup> Serv<sup>t</sup>.

The British Packet has arrived but I do not learn that any news comes by her. Her passage has been a tedious one.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, Oct<sup>r</sup>. 28, 1787.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. and acknowledge with great pleasure your favor of the 8th inst: The remarks which you make on the Act of the Convention appear to me to be in general extremely well founded. Your criticism on the clause exempting vessels bound to or from a State from being obliged to enter &c., in another is particularly so. This provision was dictated by the jealousy of some particular States, and was inserted pretty late in the Session. The object of it was what you conjectured. The expression is certainly not accurate. Is not a religious test as far as it is necessary, or would operate, involved in the oath itself? If the person swearing believes in the Supreme Being who is invoked, and in the Penal consequences of offending him, either in this or a future world or both, he will be under the same restraint from perjury as if he had previously subscribed a test requiring this belief. If the person in question be an unbeliever in these points and would, notwithstanding take the oath, a previous test could have no effect. He would subscribe it as he would take the oath, without any principle that could be affected by either.

I find, by a letter from Mr. Dawson<sup>1</sup> that the proposed Constitution is received by the Assembly with a more prompt & general approbation than could well have been expected. The example of Virginia will have great weight, and the more so, as the disagreement of the deputation will give it more the appearance of being the unbiassed expression of the public mind. It would be truly mortifying if anything should occur to prevent or retard the concurrence of a State which has generally taken the lead on great occasions. And it would be the more so in this case as it is generally believed that nine of the States at least will embrace the plan, and consequently that the tardy remainder must be reduced to the dilemma of either shifting for themselves, or coming in without any credit for it. There is reason to believe that the Eastern States, R. Island excepted, will be among the foremost in adopting the System. No particular information is yet received from N. Hampshire. The presumptive evidence of its good disposition however is satisfactory. The Legislature of Mass<sup>ts</sup>. is now sitting, and letters from good authority say that everything goes well. Connecticut has unanimously called a Convention, and left no room to doubt her favorable disposition. This State has long had the character of being anti-federal. Whether she will purge herself of it on this occasion, or not, is yet to be ascertained. Most of the respectable characters are zealous on the right side. The party in power is suspected on good grounds to be on the wrong one. N. Jersey adopts eagerly the Constitution. Penn<sup>a</sup>. is considerably divided<sup>1</sup>; but the majority are as yet clearly with the Convention. I have no very late information from Maryland. The reports are that the opposition will make no great figure.<sup>2</sup> Not a word has been heard from the States South of Virginia, except from the lower parts of N. Carol<sup>a</sup>, where the Constitution was well received. There



can be little doubt I think that the three Southern States will go right unless the conduct of Virginia were to mislead them.

I enclose two of the last Newspapers of this place, to which I add one of Philadelphia, containing a report of a late important decision of the Supreme Court there. If the report be faithful, I suspect it will not give you a high idea of the chancery knowledge of the Chief Justice.

I Am Dear Sir, With Sincere Affection,  
Your Obed<sup>T</sup> Friend & Serv<sup>T</sup> ..

[\[Back to Table of Contents\]](#)

## TO ARCHIBALD STUART.

N. Y. Oct. 30, 1787.

Va. Hist. Soc.  
Mss.

Dear Sir,—

I have been this day favored with yours of the 21<sup>st</sup> instant & beg you to accept my acknowledgements for it. I am truly sorry to find so many respectable names on your list of adversaries to the federal Constitution. 1 The diversity of opinion on so interesting a subject among men of equal integrity & discernment is at once a melancholy proof of the fallibility of the human judgement and of the imperfect progress yet made in the Science of government. 1 Nothing is more common here and I presume the case must be the same with you than to see companies of intelligent people equally divided, and equally earnest in maintaining on one side that the general government will overwhelm the state governments, and on the other hand that it will be a prey to their encroachments; on one side that the structure of the government is too firm & too strong, and on the other that it partakes too much of the weakness & instability of the Governments of the particular states. What is the proper conclusion from all this? That unanimity is not to be expected in any great political question. That the danger is probably exaggerated on each side, when an opposite danger is concerned on the opposite side, that if any constitution is to be established by deliberation & choice it must be examined with many allowances, and must be compared not with the theory, which each individual may frame in his own mind, but with the system which it is meant to take the place of; and with any other which there might be a possibility of obtaining.

I cannot judge so well as yourself of the propriety of mixing with an adoption of the Federal Constitution a revision of that of the State. If the latter could be effected without risks or inconveniency of the former, it is no doubt desirable. 1 The practicability of this will depend upon the unanimity with which it could be undertaken. I should doubt extremely whether the experiment could safely be made. Might not the blending of those two things together unite those who are unfriendly to either and thus strengthen the opposition you have to contend with? In case the general government should be established it will perhaps be easy to follow it with an amendment of our own Constitution. The example will have some influence by proving the practicability & safety of such experiments. And if the convention think fit they may lay a proper train of themselves for bringing the matter about.

The public mind in this quarter seems not finally settled as yet with regard to the proposed Constitution. The first impression has been every where favorable except in Rd. Island. Nor is there any reason to suspect that the generality of States will not embrace the measure.

The character of this State has long been antifederal & [it] is known that a very powerful party continue so. Penn<sup>a</sup>. is also divided into parties but it is supposed that a majority will pretty certainly [be] on the right side.

With great respect & regard I am D<sup>r</sup>. Sir

Y<sup>r</sup> ob<sup>t</sup> Serv<sup>t</sup>

[\[Back to Table of Contents\]](#)

## TO AMBROSE MADISON.1

New York, Nov<sup>r</sup>. 8<sup>th</sup>. 1787

N. Y. Pub. Lib.  
Mss.

Dear Brother,—

Having mislaid your last favor, I cannot acknowledge it by reference to its date. It contained two requests, the one relating to M<sup>r</sup> House's rule of calculating the weight of Tobacco: the other to my being a candidate in Orange for the Convention.2 In answer to the first point I inclose the rule exemplified. If this should not suffice, I will send you a calculation in detail for the whole account. In answer to the second point, I am to observe that it was not my wish to have followed the act of the general convention into the convention of the State; supposing that it would be as well that the final decision thereon should proceed from men who had no hand in preparing and proposing it. As I find however that in all the States the members of the Gen<sup>l</sup>. Convention are becoming members of the State Conventions, as I have been applied to on the subject by sundry very respectable friends, as I have reason to believe that many objections in Virginia proceed from a misconception of the plan or of the causes which produced the objectionable parts of it, and as my attendance at Philadelphia may enable me to contribute some explanations and informations which may be of use, I shall not decline the representation of the County if I should be honored with the appointment. You may let this be known in such way as my father or yourself may judge best. I shall be glad to hear from you on the subject, and to know what competition there will probably be and by whom.

As far as present appearances denote, the N. England States R. Island excepted, will all adopt the new Constitution. N. Jersey certainly will. So will Penn<sup>a</sup>. according to the best opinions, by a very decided majority. I have favorable information also from Maryland; though it is not improbable that the opposition likely to be made in Virginia will have some effect on that side, as well as on the side of N. Carolina, which in general has been said to be well disposed. Like information has been rec<sup>d</sup>. from the two more Southern States; but it is too early to pronounce on their disposition. This State (N. York) is much divided. The party in power are willing to surrender any portion of it. The other party is composed of the more respectable citizens, and is warmly attached to the proposed constitution. Whatever may be the sense of the Majority the State will scarcely have a will of its own, if New England on one side and N. Jersey & Pen<sup>a</sup>. on the other come heartily into the measure.1 . . .

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

New York, Nov<sup>r</sup> 18, 1787.

Wash. Mss.

Dear Sir,—

Your favor of the 5th instant found me in Philad<sup>a</sup>, whither I had proceeded, under arrangements for proceeding to Virginia or returning to this place, as I might there decide. I did not acknowledge it in Philad<sup>a</sup>, because I had nothing to communicate which you would not receive more fully and correctly from the Mr. Morris, who were setting out for Virginia.

All my informations from Richmond concur in representing the enthusiasm in favor of the new Constitution as subsiding, and giving place to a spirit of criticism. I was fearful of such an event from the influence and co-operation of some of the adversaries. I do not learn however that the cause has lost its majority in the Legislature, and still less among the people at large.

I have nothing to add to the information heretofore given concerning the progress of the Constitution in other States. Mr. Gerry has presented his objections to the Legislature in a letter addressed to them,<sup>1</sup> and signified his readiness if desired, to give the particular reasons on which they were founded. The Legislature it seems decline the explanation, either from a supposition that they have nothing further to do in the business, having handed it over to the Convention, or from an unwillingness to countenance Mr. Gerry's conduct; or from both of these considerations. It is supposed that the promulgation of this letter will shake the confidence of some, and embolden the opposition of others in that State; but I cannot discover any ground for distrusting the prompt & decided concurrence of a large majority.

I inclose herewith the 7 first numbers of the federalist,<sup>2</sup> a paper addressed to the people of this State. They relate entirely to the importance of the Union. If the whole plan should be executed, it will present to the public a full discussion of the merits of the proposed Constitution in all its relations. From the opinion I have formed of the views of a party in Virginia I am inclined to think that the observations on the first branch of the subject may not be superfluous antidotes in that State, any more than in this. If you concur with me, perhaps the papers may be put into the hands of some of your confidential correspondents at Richmond who would have them reprinted there. I will not conceal *from you* that I am likely to have such a *degree* of connection with the publication here as to afford a restraint of delicacy from interesting myself directly in the republication elsewhere. You will recognize one of the pens concerned in the task. There are three in the whole. A fourth may possibly bear a part.

The intelligence by the packet as far as I have collected it, is contained in the gazette of yesterday.

Virginia is the only State represented as yet. When a Congress will be formed is altogether uncertain. It is not very improbable I think that the interregnum may continue throughout the winter.

With every sentiment of respect & attachment I remain dear Sir y<sup>e</sup> affect<sup>e</sup>. & hble  
Servant.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, November 18, 1787.

Chic. Hist. Soc.  
Mss.

My Dear Friend,

I. I returned hither from Philadelphia to which place I had proceeded under arrangements for either going on to Virginia or coming back as I might there decide. Your very affectionate favor of the twenty-third ultimo found me in Philadelphia, after traveling to New York, and I should have answered before my return, had any matters for communication occurred worth the expense of postage. I did not make any observations on the scheme mentioned in your letter from the Bolling Green,<sup>1</sup> because it had an object which I thought it unadvisable to pursue; because I conceived that my opinion had been fully made known on the subject, and I wished not unnecessarily to repeat or dwell on points, on which our ideas do not accord; and because I considered part of your letter merely as a friendly communication, and a pleasing pledge of your confidence, and not as subject on which my ideas were wished. So much indeed was this the case, that at the time of answering that letter, I had not considered the expedient with sufficient accuracy, as a means of attaining the end proposed, to justify any opinion or remarks touching its fitness. The difficulty which struck me on a subsequent attention to it, and which seem insuperable was that several legislatures would necessarily have provided for a convention, and even adjourned before amendatory propositions from Virginia could be transmitted.

I have not since my arrival collected any additional information concerning the progress of the Federal Constitution. I discovered no evidence on my journey through New Jersey, that any opposition whatever would be made in that State. The Convention of Pennsylvania is to meet on Tuesday next. The members returned, I was told by several persons, reduced the adoption of the plan in that State to absolute certainty, and by a greater majority than the most sanguine advocates had calculated. One of the counties which had been set down by all on the list of opposition, had elected deputies of known attachment to the Constitution. I enclose herewith sundry letters which came by the French Packet just arrived. The letter from Col. H. Lewis, Mr. Jefferson tells me is of great consequence. You will have frequent opportunities during the assembly, of giving it a safe conveyance. I have myself no public information by the packet, and have not yet learnt that any of moment has been received at the Office of Foreign Affairs. The intelligence passing in conversation is that the Porte has declared war against Russia, that notwithstanding the advance of the Prussian troops into Holland, it is not certain that an accommodation may not prevent actual hostilities, and that in general it remains doubtful whether war or peace in the western parts of Europe is to result from the present crisis of affairs. A great change has taken place again in the French ministry. The Count de la (Luzerne), brother of the Chavelier, succeeds the Marshall de Castries in the Department of Marine. The provincial assemblies are established, and some of them have already met. The Marquis de la Fayette is a leading member in that of Auvergne. The Parlemont has

returned to Paris and it is supposed that the court will not enforce either the stamp duty or the territorial impost. The Count de Moustier is appointed to the U. States and may shortly be expected.

I do not find that a single State is represented except Virginia, and it seems very uncertain when a Congress will be made. There are individual members present from several States; and the attendance of this and the neighbouring States may, I suppose, be obtained when it will produce a quorum.

With the most sincere and invariable affection

I Remain My Dear Friend  
Yours



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Nov<sup>r</sup>. 20, 1787.

Wash. Mss.

Dear Sir,—

My last inclosed the seven first numbers of the paper of which I gave you some account. I now add the seven following numbers, which close the first branch of the subject, the importance of the Union. The succeeding papers shall be forwarded from time to time as they come out.

The latest authentic information from Europe, places the Dutch in a wretched situation. The patriots will probably depend in the event on external politics for the degree of Security and power that may be left them. The Turks & Russians have begun a war in that quarter. And a general one is not improbable.

I have heard nothing of consequence lately concerning the progress of the New Constitution.<sup>1</sup> The pennsylvania Convention has probably by this time come to a decision; but it is not known here.

Not more than two or three States are yet convened. The prospect of a quorum during the winter continues precarious.

With every sentiment of respect & attachment, I remain, Dear Sir Y<sup>r</sup> affect<sup>e</sup>, humble serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO EDMUND RANDOLPH.

New York, December 2, 1787.

Chic. Hist. Soc.  
Mss.

My Dear Friend<sup>1</sup>

.....

We have not more than two or three states attending. It is altogether conjectural when the deficiency of a quorum will be made up.

No recent indications of the views of the States as to the Constitution have come to my knowledge. The elections in Connecticut are over and, as far as the returns are known, a large majority are friendly to it. Doctr. Johnson says, it will be pretty certainly adopted, but there will be opposition. The power of taxing anything but imports appears to be the most popular topic among the adversaries. The Convention of Pennsylvania is sitting. The result there will not reach you first through my hands. The divisions on preparatory questions, as they are published in the newspapers, show that the party in favor of the Constitution have 44 or 45 vs. 22 or 24 or thereabouts.

The enclosed paper contains two numbers of the Federalist. This paper was begun about three weeks ago, and proposes to go through that subject. I have not been able to collect all the numbers, since my return from Philada, or I would have sent them to you. I have been the less anxious as I understand the printer means to make a pamphlet of them, when I can give them to you in a more convenient form. You will probably discover marks of different pens. I am not at liberty to give you any other key, than that I am in myself for a few numbers & that one besides myself was a member of the Convention.

I Wish You All Happiness And Remain My Dear Sir  
Yr Affect Friend

[\[Back to Table of Contents\]](#)

TO GEORGE WASHINGTON.

New York, Decem<sup>r</sup> 7, 1787.

Mad. Mss.

Dear Sir,—

My last inclosed a continuation of the Federalist to number 14 inclusive. I now add the numbers which have succeeded.

No authentic information has yet arrived concerning the posture of Europe. Reports, with some less doubtful symptoms, countenance the suspicions of war.

I understand that the Constitution will certainly be adopted in Connecticut; the returns of the deputies being now known, and a very great majority found to be its declared and firm friends. There will be more opposition in Massachusetts, but its friends there continue to be very sanguine of victory. New Hampshire, as far as I can learn, may be set down on the right list.

I remain Dear Sir, with the highest respect and the most unfeigned attachment Your obedient humble servant.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Dec<sup>r</sup>. 9th, 1787.

Mad. Mss.

Dear Sir,—

Your favor of the 17th of Sep<sup>r</sup>., with sundry other letters and packets, came duly by the last packet. Such of them as were addressed to others were duly forwarded. The three Boxes, marked I M. G. W. and A D. it appears, were never shipped from Havre. Whenever they arrive your commands with regard to the two last shall be attended to, as well as those relating to some of the contents of the first. I have not been able to get any satisfactory account of Will<sup>m</sup> S. Browne. Alderman Broom tells me that he professed to receive the money from him for the use of Mr. Burke. I shall not lose sight of the subject, and will give you the earliest information of the result of my enquiries. The annexed list of trees will shew you that I have ventured to substitute half a dozen sorts of apples in place of the pippins alone, and to add 8 other sorts of American trees, including twenty of the Sugar maple. They were obtained from a Mr. Prince in the neighborhood of this City, who deals largely in this way, and is considered as a man of worth. I learn from him that he has executed various commissions for Europe & the West Indies, as well as places less distant; and that he has been generally very successful in preserving the trees from perishing by such distant transplantations. He does not use moss as you prescribe but encloses the roots in a bag of earth. As moss is not to be got, as he says, it is uncertain whether necessity or choice gives the preference to the latter. I inclose a catalogue of his nursery and annex the price of the sample I send you, that you may, if you incline, give orders for any other supply. I doubt whether the Virg<sup>a</sup>. Red Birds are found in this part of America. Opossums are not rare in the milder parts of New Jersey, but are very rare this far Northward. I shall nevertheless avail myself of any opportunities which may happen for procuring and forwarding both. Along with the Box of trees I send by the Packet, to the care of Mr. Limosin, 2 Barrels of New-town pippins, and 2 of Cranberries. In one of the latter the Cranberries are put up dry in the other in water; the opinions and accounts differing as to the best mode. You will note the event of the experiment.

The Constitution proposed by the late Convention engrosses almost the whole political attention of America. All the Legislatures, except that of R. Island, which has assembled, have agreed in submitting it to State Conventions. Virginia has set the example of opening a door for amendments, if the Convention there should chuse to propose them. Maryland has copied it. The States which preceded, referred the Constitution as recommended by the Gen<sup>l</sup> Convention, to be ratified or rejected as it stands. The Convention of Pennsylvania, is now sitting. There are about 44 or 45 on the affirmative and about half that number on the opposite side. A considerable number of the Constitutional party as it was called, having joined the other party in espousing the Federal Constitution. The returns of deputies for the Convention of Connecticut are known, and prove, as is said by those who know the men that a very

great majority will adopt it in that State. The event in Massachusetts lies in greater uncertainty. The friends of the New Gov<sup>t</sup> continue to eb sanguine. N. Hampshire from every account, as well as from some general inducements felt there will pretty certainly be on the affirmative side. So will new Jersey and Delaware. N. York is much divided. She will hardly dissent from N. England, particularly if the conduct of the latter should coincide with that of N. Jersey and Pennsylv<sup>a</sup>. A more formidable opposition is likely to be made in Maryland than was at first conjectured. Mr. Mercer, it seems, who was a member of the Convention, though his attendance was but for a short time, is become an auxiliary to Chase. Johnson the Carrolls, Gov<sup>r</sup>. Lee, and most of the other characters of weight, are on the other side. Mr. T. Stone died a little before the Government was promulged. The body of the people in Virgin<sup>a</sup>, particularly in the upper and lower Country, and in the Northern neck, are as far as I can gather, much disposed to adopt the New Constitution. The middle Country, and the South side of James River are principally in the opposition to it. As yet a large majority of the people are under the first description. As yet also are a majority of the Assembly. What change may be produced by the united influence and exertions of Mr. Henry, Mr. Mason, & the Governor,<sup>1</sup> with some pretty able auxiliaries, is uncertain. My information leads me to suppose there must be three parties in Virginia. The first for adopting without attempting amendments. This includes Gen<sup>l</sup> W and ye other deputies who signed the Constitution, Mr. Pendleton, (Mr. Marshall, I believe,) Mr. Nicholas, Mr. Corbin, Mr. Zach<sup>y</sup>. Johnson, Col. Innes, (Mr. B. Randolph as I understand) Mr. Harvey Mr. Gabriel Jones, Doc<sup>r</sup> Jones, &c., &c. At the head of the 2<sup>d</sup> party which urges amendments are the Gov<sup>r</sup> & Mr. Mason. These do not object to the substance of the Govern<sup>t</sup>, but contend for a few additional guards in favor of the Rights of the States and of the people. I am not able to enumerate the characters which fall in with their ideas, as distinguished from those of a third class, at the head of which is Mr. Henry. This class concurs at present with the patrons of Amendments, but will probably contend for such as strike at the essence of the System, and must lead to an adherence to the principle of the existing confederation, which most thinking men are convinced is a visionary one, or to a partition of the Union into several Confederacies. Mr. Harrison the late Gov<sup>r</sup>, is with Mr. Henry. So are a number of others. The General and Admiralty Courts with most of the Bar, oppose the Constitution, but on what particular grounds I am unable to say. Gen<sup>l</sup> Nelson, Mr. Jno page, Col. Bland, &c., are also opponents, but on what principle and to what extent I am equally at a loss to say. In general I must note, that I speak with respect to many of these names, from information that may not be accurate, and merely as I should do in a free and confidential conversation with you. I have not yet heard Mr. Wythe's sentiments on the subject. Doc<sup>r</sup>. McClurg the other absent deputy, is a very strenuous defender of the new Government. Mr. Henry is the great adversary who will render the event precarious. He is I find with his usual address, working up every possible interest into a spirit of opposition. It is worthy of remark that whilst in Virg<sup>a</sup>, and some of the other States in the middle & Southern Districts of the Union, the men of intelligence, patriotism, property, and independent circumstances, are thus divided, all of this description, with a few exceptions, in the Eastern States, & most of the Middle States, are zealously attached to the proposed Constitution. In N. England, the men of letters, the principal officers of Gov<sup>t</sup>, the Judges & lawyers, the Clergy, and men of property, furnish only here and there an adversary. It is not less worthy of remark that in Virginia where the mass of the people have been so much accustomed to be guided

by their rulers on all new and intricate questions, they should on the present which certainly surpasses the judgment of the greater part of them, not only go before, but contrary to their most popular leaders. And the phenomenon is the more wonderful, as a popular ground is taken by all the adversaries to the new Constitution. Perhaps the solution in both these cases would not be very difficult; but it would lead to observations too diffusive; and to you unnecessary. I will barely observe that the case in Virg<sup>a</sup>. seems to prove that the body of sober & steady people, even of the lower order, are tired of the vicissitudes, injustice, and follies, which have so much characterized public measures, and are impatient for some change which promises stability and repose. The proceedings of the present assembly are more likely to cherish than remove this disposition. I find Mr. Henry has carried a Resolution for *prohibiting* the importation of Rum, brandy, and other ardent spirits; and if I am not misinformed all manufactured leather, hats, and sundry other articles are included in the *prohibition*. Enormous duties at least are likely to take place on the last & many other articles. A project of this sort without the concurrence of the other States is little short of madness. With such concurrence, it is not practicable without resorting to expedients equally noxious to liberty and economy. The consequences of the experiment in a single State as unprepared for manufactures as Virginia may easily be preconceived. The Revised Code will not be resumed. Mr. Henry is an inveterate adversary to it. Col. Mason made a regular and powerful attack on the port Bill, but was left in a very small minority. I found at the last Session that that regulation was not to be shaken; though it certainly owes its success less to its principal merits, than to collateral & casual considerations. The popular ideas are that by favoring the collection of duties on imports it saves the solid property from direct taxes; and that it injures G. Britain by lessening the advantage she has over other Nations in the trade of Virginia.

We have no certain information from the three Southern States concerning the temper relative to the New Government. It is in general favorable according to the vague accounts we have. Opposition however will be made in each. Mr. Wiley Jones and Governor Caswell have been named as opponents in N. Carolina.

So few particulars have come to hand concerning the state of things in Georgia<sup>1</sup> that I have nothing to add on that subject, to the contents of my last by Commodore Jones.

We have two or three States only yet met for Cong<sup>s</sup>. As many more can be called in when their attendance will make a quorum. It continues to be problematical whether the interregnum will not be spun out through the winter.

We remain in great uncertainty here with regard to a war in Europe. Reports and suspicions are strongly on the side of one. Such an event may be considered in various relations to this Country. It is pretty certain I think that if the present lax state of our General Government should continue, we shall not only lose certain capital advantages which might be drawn from it; but be in danger of being plunged into difficulties, which may have a very serious effect on our future fortunes.

I remain Dear Sir with the most sincere esteem & affection.

Your Obed<sup>T</sup>. Serv<sup>T</sup>..

P. S. I have delivered your message to Mr. Thomas & settled the pecuniary matter with him.

The letters which you put under the same cover, with the seals of one joining the superscription of the contiguous letter, come when the weather has been warm in such a state that it is often difficult to separate them without tearing out the superscription. A bit of paper between the adjoining letters over the seal would prevent this inconveniency.

No. 1—	6 New Town Spitzenburg Apples }			
2—	20 New Town pippins Apples }			
3—	6 Esopus Spitzenburg Apples }			
4—	6 Jersey Greening Apples }			50 trees at 2s £5. 0. 0
5—	6 R. Island Greening Apples }			
6—	6 Everlasting Apples }			
7—	10. American Plumbs	1s	6	15
8—	8. Live Oaks		9d	6
9—	20. Sugar Maples	2s		£
10—	10. Candle berry Myrtles		9d	7 —6
11	6. Standard American Honey Suckles	1s	6	9
12	6 Three thorned Accacia	1s	6	9
13	6 Rhododendrons	2s		12
14	6 Dogwood Trees	1s	6	9
	Box & Matts			5 6
	Dollar at 8 shillg <sup>s</sup> .			£10—13

[\[Back to Table of Contents\]](#)

TO GEORGE WASHINGTON.

New York, Dec<sup>r</sup>. 14, 1787.

Mad. Mss.

Dear Sir,—

Along with this are inclosed a few copies of the latest Gazettes containing the additional papers in favor of the federal Constitution.

I find by letters from Richmond that the proceedings of the Assembly, are as usual, rapidly degenerating with the progress of the session<sup>1</sup>; and particularly that the force opposed to the Act of the Convention has gained the ascendance. There is still nevertheless a hope left that different characters and a different spirit may prevail in their successors who are to make the final decision. In one point of view the present Assembly may perhaps be regarded as pleading most powerfully the cause of the new government, for it is impossible for stronger proofs to be found than in their conduct, of the necessity of some such anchor against the fluctuations which threaten to shipwreck our liberty.

I am dear Sir with the most sincere & perfect esteem.

Your Affect<sup>E</sup> & Obed<sup>T</sup> Humble Servant.



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, December 20, 1787.

Wash. Mss.

Dear Sir,—

I was favored on Saturday with your letter of the 7<sup>th</sup> instant, along with which was covered the printed letter of Colonel R. H. Lee to the Governour.<sup>1</sup> It does not appear to me to be a very formidable attack on the new Constitution; unless it should derive an influence from the names of the correspondents, which its intrinsic merits do not entitle it to. He is certainly not perfectly accurate in the statement of all his facts; and I should infer from the tenor of the objections in Virginia that his plan of an Executive would hardly be viewed as an amendment of that of the Convention. It is a little singular that three of the most distinguished advocates for amendments; and who expect to unite the thirteen States in their project, appear to be pointedly at variance with each other on one of the capital articles of the System. Colonel Lee proposes that the President should chuse a Council of Eleven and with their advice have the appointment of all officers. Colonel Mason's proposition is that a Council of six should be appointed by the Congress. What degree of power he would confide to it I do not know. The idea of the Governour is that there should be a plurality of co-equal heads, distinguished probably by other peculiarities in the organization. It is pretty certain that some others who make a common cause with them in the general attempt to bring about alterations differ still more from them, than they do from each other; and that they themselves differ as much on some other great points as on the Constitution of the Executive.

You did not judge amiss of Mr. Jay. The paragraph affirming a change in this opinion of the plan of the Convention, was an arrant forgery. He has contradicted it in a letter to Mr. J. Vaughan which has been printed in the Philadelphia Gazettes. Tricks of this sort are not uncommon with the Enemies of the new Constitution. Col. Mason's objections were as I am told published in Boston mutilated of that which pointed at the regulation of Commerce. Doc<sup>r</sup>. Franklin's concluding speech which you will meet with in one of the papers herewith inclosed, is both mutilated & adulterated so as to change both the form & spirit of it.

I am extremely obliged by the notice you take of my request concerning the Potomack. I must insist that you will not consider it as an object of any further attention.

The Philad<sup>a</sup>. papers will have informed you of the result of the Convention of that State. N. Jersey is now in Convention, & has probably by this time adopted the Constitution. Gen<sup>l</sup> Irvine, of the Pen<sup>a</sup>. Delegation, who is just arrived here, and who conversed with some of the members at Trenton tells me that great unanimity reigns in the Convention.

Connecticut it is pretty certain will decide also in the Affirmative by a large majority. So, it is presumed will N. Hampshire; though her Convention will be a little later than could be wished. There are not enough of the returns in Mass<sup>ts</sup> known for a final judgment of the probable event in that State. As far as the returns are known they are extremely favorable: but as they are chiefly from the maritime parts of the State, they are a precarious index of the public sentiment. I have good reason to believe that if you are in correspondence with any Gentleman in that quarter, and a proper occasion should offer for an explicit communication of your good wishes for the plan, so as barely to warrant an explicit assertion of the fact, that it would be attended with valuable effects. I barely drop the idea. The circumstances on which the propriety of it depends, are best known to, as they will be best judged of by yourself. The information from N. Carolina gave me great pleasure. We have nothing from the States South of it.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, December 20, 1787.

Chic. Hist. Soc.  
Mss.

Dear Sir:—

The packet has been detained here since the date of the letter which you will receive along with this, by some preparations suggested by an apprehension of war. The delay is very unfavorable to the trees on board for you.

Mr. De la Forest,<sup>1</sup> the consul here, called on me a few days ago and told me he had information that the farmers general and Mr. Morris having found their contract mutually advantageous, are evading the resolution of the committee by tacit arrangements for its continuance. He observed that the object of the farmers was singly profit, that of the Government twofold, revenue and commerce. It was consequently the wish of the latter to render the monopoly as little hurtful to the trade with America as possible. He suggested as an expedient that farmers should be required to divide the contracts among six or seven houses, French and American, who should be required to ship annually to America a reasonable proportion of goods. This he supposed would produce competition in the purchases here and would introduce a competition also with British goods here. The latter condition he said could not be well required of, or executed by a single contractor, and the Government could not abolish the farm. These ideas were meant for you.

Since the date of my other letter, the Convention of Delaware have unanimously adopted the new Constitution.<sup>1</sup> That of Pennsylvania has adopted it by a majority of 46 against 23. That of New Jersey is sitting and will adopt pretty unanimously. These are all the Conventions that have met. I hear from North Carolina that the Assembly is well disposed. Mr. Henry, Mr. Mason, R. H. Lee, and the Governor continue by their influence to strengthen the opposition in Virginia. The Assembly there is engaged in several mad freaks. Among others a bill has been agreed to in the House of Delegates *prohibiting* the importation of rum, *brandy*, and all other spirits not distilled from some American production. All brewed liquors under the same description, with beef, tallow-candles, cheese, &c. are included in the prohibition. In order to enforce this despotic measure the most despotic means are resorted to. If any person be found after the commencement of the act, in the use or *possession* of any of the prohibited articles, tho' acquired previous to the law, he is to lose them, and pay a heavy fine. This is the form in which the bill was agreed to by a large majority in the House of Delegates. It is a child of Mr. Henry and said to be his favorite one. They first voted by a *majority of 30* that all legal obstruction to the Treaty of Peace should cease in Virginia as soon as laws complying with it should have passed in all the other states. This was the result of four days debate with the most violent opposition from Mr. Henry. A few days afterward he renewed his efforts, and got a vote, *by a majority of 50*, that Virginia would not comply until G. B. shall have complied.

The States seem to be either wholly omitting to provide for the federal Treasury, or to be withdrawing the scanty appropriations made to it. The latter course has been taken up by Massachusetts, Virginia and Delaware. The Treasury Board seems to be in despair of maintaining the shadow of Government much longer. Without money, the offices must be shut up, and the handful of troops on the frontier disbanded, which will probably bring on an Indian War, and make an impression to our disadvantage on the British Garrisons within our limits.

A letter from Mr. Arch<sup>d</sup> Stuart dated Rich<sup>d</sup>, Dec. 2, has the following paragraph  
“Yesterday a Boat with sixteen men was brought down the canal from Westham to its termination which is within one mile and a half of Richmond.”

I subjoin an extract from a letter from Genl. Washington dated Dec. 7th which contains the best information I can give as to the progress of the works on the Potomac.

“The survey of the Country between the Eastern & Western waters is not yet reported by the Commissioners, though promised to be made very shortly, the survey being completed—no draught that can convey the adequate idea of the work on this river has been yet taken—much of the labor, except at the great falls, has been bestowed in the bed of the river, in a removal of rocks, and deepening the water. At the great falls the labour has indeed been great. The water there (a sufficiency I mean) is taken into a Canal about two hundred yards above the cateract, & conveyed by a level cut (through a solid rock in some places, and much stone every where) more than a mile to the lock seats,—five in number by means of which when completed, the craft will be let into the River below the falls (w<sup>ch</sup>. together amount to seventy six feet.)—At the Seneca Falls, six miles above the great falls, a channel which has been formed by the river when inundated is under improvement for navigation—The same, in part, at Shanandoah.—At the lower falls, where nothing has yet been done, a level cut and locks are proposed. These constitute the principal difficulties and will be the great expense of this undertaking—The parts of the river between requiring loose stones only to be removed in order to deepen the water where it is too shallow in dry seasons.”

The triennial purge administered to the Council in Virg<sup>a</sup> 1 has removed from their seats Samson Matthews—and Mr. Selden. Col. Wm. Heth and Major Jos. Egglestone Supply their places.—I remain D<sup>r</sup>. Sir Y<sup>rs</sup>. affect.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Dec<sup>r</sup>. 26, 1787.

Wash. Mss.

Dear Sir,—

I am just informed by a Delegate from New Hampshire that he has a letter from President Sullivan which tells him that the Legislature had unanimously agreed to call a convention as recommended, to meet in February. The second wednesday is the day if I have not mistaken it. We have no further information of much importance from Massachusetts. It appears that Cambridge the residence of Mr. Gerry has left him out of the choice for the Convention, and put in Mr. Dana formerly Minister of the U. States in Europe, and another Gentleman, both of them firmly opposed to Mr. Gerry's Politics. I observe too in a Mass<sup>ts</sup> paper that the omission of Col. Mason's objection with regard to commerce in the first publication of his objections, has been supplied. This will more than undo the effect of the mutilated view of them. New Jersey the Newspapers tell us has adopted the Constitution unanimously. Our European intelligence remains perfectly as it stood at the date of my last.

With the most affectionate esteem & attachment I am, Dear Sir, Your Obedient & very hble serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, January 10, 1788.

Chic. Hist. Soc.  
Mss.

My Dear Friend,

I have put off writing from day to day for some time past, in expectation of being able to give you the news from the packets, which has been looked for every hour. Both the French & English have overstayed their usual time ten or 15 days, and are neither of them yet arrived. We remain wholly in the dark with regard to the posture of things in Europe—

I received two days ago your favor of December twenty seventh, enclosing a copy of your letter<sup>1</sup> to the Assembly. I have read it with attention, and I can add with pleasure, because the spirit of it does as much honor to your candor, as the general reasoning does to your abilities. Nor can I believe that in this quarter the opponents of the Constitution will find encouragement in it. You are already aware that your objections are not viewed in the same decisive light by me that they are by you. I must own that I differ still more from your opinion, that a prosecution of the experiment of a second Convention will be favorable, even in Virginia, to the object which I am sure you have at heart. It is to me apparent that, had your duty led you to throw your influence into the opposite scale, it would have given it a decided and unalterable preponderancy; and that Mr. Henry would either have suppressed his enmity, or been baffled in the policy which it has dictated. It appears also that the grounds taken by the opponents in different quarters forbid any hope of concord among them. Nothing can be further from your views than the principles of different sets of men who have carried on their opposition under the respectability of your name. In this State the party adverse to the Constitution notoriously meditate either a dissolution of the Union, or protracting it by patching up the Articles of Confederation. In Connecticut and Massachusetts, the opposition proceeds from that part of the people who have a repugnance in general to good government, or to any substantial abridgement of State powers, and a part of whom in Massachusetts are known to aim at confusion, and are suspected of wishing a reversal of the Revolution. The minority in Pennsylvania, as far as they are governed by any other views than an habitual opposition to their rivals, are manifestly averse to some essential ingredients in a National Government. You are better acquainted with Mr. Henry's politics than I can be, but I have for some time considered him as driving at a Southern Confederacy and not further concurring in the plan of amendments than as he hopes to render it subservient to his real designs. Viewing the matter in this light, the inference with me is unavoidable that were a second trial to be made, the friends of a good constitution for the Union would not only find themselves not a little differing from each other as to the proper amendments; but perplexed and frustrated by men who had objects totally different. A second Convention would, of course, be formed under the influence, and composed in a great measure of the members of the opposition in the several States. But were the first difficulties overcome, and the Constitution re-edited with amendments, the event

would still be infinitely precarious. Whatever respect may be due to the rights of private judgment, and no man feels more of it than I do, there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal, and on which they must and will be governed by those with whom they happen to have acquaintance and confidence. The proposed Constitution is of this description. The great body of those who are both for and against it must follow the judgment of others, not their own. Had the Constitution been framed and recommended by an obscure individual, instead of a body possessing public respect and confidence, there cannot be a doubt, that although it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Colonel Mason, Colonel R. H. L., Mr. Henry, and a few others, seen the Constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been as zealous and unanimous, as she is now divided, on the subject. I infer from these considerations, that, if a government be ever adopted in America, it must result from a fortunate coincidence of leading opinions, and a general confidence of the people in those who may recommend it. The very attempt at a second Convention strikes at the confidence in the first; and the existence of a second, by opposing influence to influence would in a manner destroy an effectual confidence in either, and give a loose rein to human opinions; which must be as various and irreconcilable concerning theories of government, as doctrines of religion; and give opportunities to designing men which it might be impossible to counteract.

The Connecticut Convention has probably come to a decision before this; but the event is not known here. <sup>1</sup> It is understood that a great majority will adopt the Constitution. The accounts from Massachusetts vary extremely according to the channels through which they come. *It is said* that S. Adams, who has hitherto been reserved, begins to make open declaration of his hostile views. His influence is not great, but this step argues an opinion that he can calculate on a considerable party. It is said here, and I believe on good ground, that North Carolina has postponed her Convention till July, in order to have the previous example of Virginia. Should North Carolina fall into Mr. Henry's politics, which does not appear to me improbable, it will endanger the Union more than any other circumstance that could happen. My apprehensions of this danger increase every day. The multiplied inducements at this moment to the local sacrifices necessary to keep the States together, can never be expected to coincide again, and they are counteracted by so many unpropitious circumstances, that their efficacy can with difficulty be confided in. I have no information from South Carolina or Georgia, on which any certain opinion can be formed of the temper of those States. The prevailing idea has been, that both of them would speedily and generally embrace the Constitution. It is impossible, however, that the example of Virginia and North Carolina should not have an influence on their politics. I consider every thing therefore problematical from Maryland southward.

I am surprised that Col. H. Lea who is a well-wisher of the Constitution should have furnished Wilkinson with the alarm concerning the Mississippi, but the political connections of the latter in Pennsylvania would account for his bias on the subject.

We have no Congress yet. The number of States on the spot does not exceed five. It is probable that a quorum will now be soon made. A delegate from New Hampshire is expected, which will make up a representation from that State. The termination of the Connecticut Convention will set her Delegates at liberty, and the meeting of the Assembly of this State, will fill the vacancy which has some time existed in her Delegation.

I Wish You Every Happiness,  
And Am With The Sincerest Affection,  
Yrs.



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Jan<sup>y</sup>. 14, 1788.

Wash. Mss.

Dear Sir,

The Daily Advertiser of this date contains several important articles of information, which need only to be referred to. I inclose it, with a few other late papers. Neither French nor English packet is yet arrived; and the present weather would prevent their getting in if they should be on the Coast. I have heard nothing of consequence from Massachusetts since my last. The accounts from New Hampshire continue to be as favorable as could be wished. From South Carolina we get no material information. A letter from Georgia of the 25 of Dec<sup>r</sup>. says that the Convention was getting together at Augusta and that everything wore a federal complexion. 1 N. Carolina, it seems, has been so complaisant to Virginia as to postpone her Convention till July. We are without a Congress.

With perfect esteem & attachment I remain, Dear Sir Your Obed<sup>t</sup>. humble Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Jan<sup>y</sup>. 20, 1788.

Wash. Mss.

Dear Sir,—

The Count de Moustier arrived here a few days ago as successor to the Chev<sup>r</sup> de la Luzerne. His passage has been so tedious that I am not sure that the despatches from Mr. Jefferson make any considerable addition to former intelligence. I have not yet seen them, but am told that this is the case. In general, it appears that the affairs of Holland are put into a pacific train. The Prussian troops are to be withdrawn, and the event settled by negotiations. But it is still possible that the war between the Russians & Turks may spread a general flame throughout Europe.

The intelligence from Massachusetts begins to be very ominous to the Constitution. The antifederal party is reinforced by the insurgents, and by the province of Mayne, which apprehends greater obstacles to the scheme of a separate Government from the new system than may be otherwise experienced. And according to the prospect at the date of the last letters, there was very great reason to fear that the voice of that State would be in the negative. The operation of such an event on this State may easily be foreseen. Its Legislature is now sitting and is much divided. A majority of the Assembly are said to be friendly to the merits of the Constitution. A majority of the Senators actually convened are opposed to a submission of it to a Convention. The arrival of the absent members will render the voice of that branch uncertain on the point of a Convention. The decision of Massachusetts either way will involve the result in this State. The minority in Penn<sup>a</sup> is very restless under their defeat. If they can get an Assembly to their wish they will endeavour to undermine what has been done there. If backed by Mass<sup>ts</sup>, they will probably be emboldened to make some more rash experiment. The information from Georgia continues to be favorable. The little we get from S. Carolina is of the same complexion.

If I am not misinformed as to the arrival of some members for Congress, a quorum is at length made up.

With the most perfect esteem & attachment I remain Dear Sir

Your Obed<sup>T</sup>. Humble Servant.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

N. York, Jan<sup>y</sup> 20 1788.

Chic. Hist. Soc.  
Mss.

### My Dear Friend

I have received your favor of the 3 inst. By a letter from M<sup>r</sup> Turberville of later date I have the mortification to find that our friend M<sup>r</sup>. Jones has not succeeded in his wish to be translated from the Executive to the Judiciary Department. I had supposed that he stood on ground that could not fail him in a case of that sort, and am wholly at a loss to account for the disappointment.

The Count de Moustier arrived a few days ago as successor to the Chev<sup>r</sup>. de la Luzerne. He had so long a passage that I do not know whether the dispatches brought by him, contain much that is new. It seems that although the affairs of Holland are put into a pacific train, those of the Russians & Turks may yet produce a general broil in Europe. The Prussian Troops are to be withdrawn & the fate of the Dutch regulated by negotiation.

The intelligence from Massach<sup>ts</sup> begins to be rather ominous to the Constitution. The interest opposed to it is reinforced by all connected with the late insurrection, and by the province of Mayne which apprehends difficulties under the new system in obtaining a separate government greater than may be otherwise experienced. Judging from the present state of the intelligence as I have it, the probability is that the voice of that State will be in the negative. The Legislature of this State is much divided at present. The House of Assembly are said to be friendly to the merits of the Constitution. The Senate, at least a majority of those actually assembled, are opposed even to the calling a Convention. The decision of Mass<sup>ts</sup>. in either way, will decide the voice of this State. The minority of Penn<sup>a</sup> are extremely restless under their defeat, will endeavor at all events if they can get an assembly to their wish to undermine what has been done there, and will it is presumed be emboldened by a negative from Mass<sup>ts</sup> to give a more direct & violent form to their attack. The accounts from Georgia are favorable to the Constitution. So they are also from S. Carolina, as far as they extend.

If I am not misinformed as to the arrival of some members of Congress in Town, a quorum is at length made up.

Yours Affect<sup>ly</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

N. York, Jan<sup>y</sup>. 25, 1788.

Wash. Mss.

Dear Sir,—

I have been favored since my last with yours of the 10th inst,<sup>1</sup> with a copy of the Governors letter to the Assembly. I do not know what impression the letter may make in Virginia. It is generally understood here that the arguments contained in it in favor of the Constitution are much stronger than the objections which prevented his assent. His arguments are forcible in all places, and with all persons. His objections are connected with his particular way of thinking on the subject, in which many of the adversaries to the Constitution do not concur.<sup>2</sup>

The information from Boston by the mail on the evening before last, has not removed our suspense. The following is an extract of a letter from Mr. King, dated on the 16th inst.<sup>1</sup>

“We may have 360 members in our Convention. Not more than 330 have yet taken their seats. Immediately after the settlement of Elections, the Convention resolved that they would consider and freely debate on each paragraph without taking a question on any of them individually, & that on the question whether they would ratify, each member should be at liberty to discuss the plan at large. This Resolution seems to preclude the idea of amendments; and hitherto the measure has not been suggested. I however do not from this circumstance conclude that it may not hereafter occur. The opponents of the Constitution moved that Mr. Gerry should be requested to take a seat in the Convention to answer such enquiries as the Convention should make concerning facts which happened in the *passing of the* Constitution. Although this seems to be a very irregular proposal, yet considering the jealousies which prevail with those who made it, (who are certainly not the most enlightened part of the Convention,) and the doubt of the issue had it been made a trial of strength, several friends of the Constitution united with the opponents and the resolution was agreed to and Mr. Gerry has taken his seat. Tomorrow we are told certain enquiries are to be moved for by the opposition, and that Mr. Gerry under the idea of stating facts is to state his reasons, &c.—this will be opposed and we shall on the division be able to form some idea of our relative strength. From the men who are in favour of the Constitution every reasonable explanation will be given, and arguments really new and in my judgment most excellent have been and will be produced in its support. But what will be its fate, I confess I am unable to discern. No question ever classed the people of this State in a more extraordinary manner, or with more apparent firmness.”

A Congress of seven States was made up on monday. Mr. C. Griffin has been placed in the chair. This is the only step yet taken.

I Remain, With The Highest Respect & Attachm<sup>T</sup>.,  
Y<sup>Rs</sup>. Affect<sup>Y</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

New York, Jan<sup>y</sup>. 28 1788.

Wash. Mss.

Dear Sir,

The information which I have by the Eastern mail rather increases than removes the anxiety produced by the last. I give it to you as I have rec<sup>d</sup>. it in the words of Mr. King:

“Boston, 20 Jan<sup>y</sup>., 1788.

“Our Convention proceeds slowly. An apprehension that the liberties of the people are in danger, and a distrust of men of property or education have a more powerful effect upon the minds of our opponents than any specific objections against the Constitution. If the opposition was grounded on any precise points, I am persuaded that it might be weakened, if not entirely overcome. But any attempt to remove their fixed and violent jealousy seems hitherto to operate as a confirmation of that baneful passion. The opponents affirm to each other that they have an unalterable majority on their side. The friends doubt the strength of their adversaries but are not entirely confident of their own. An event has taken place relative to Mr. Gerry, which without great caution may throw us into confusion. I informed you by the last post on what terms Mr. Gerry took a seat in the Convention. Yesterday in the course of debate on the Construction of the Senate, Mr. G., *unasked*, informed the Convention that he had some information to give the Convention on the subject then under discussion. Mr. Dana and a number of the most respectable members, remarked upon the impropriety of Mr. G.’s conduct. Mr. G. rose with a view to justify himself. He was immediately prevented by a number of objectors. This brought on an irregular conversation whether Mr. G. should be heard. The Hour of adjournment arrived and the President adjourned the House. Mr. Gerry immediately charged Mr. Dana with a design of injuring his reputation by partial information, and preventing his having an opportunity to communicate important truths to the Convention. This charge drew a warm reply from Mr. Dana. The members collected about them, took sides as they were for or against the Constitution, and we were in danger of the utmost confusion. However the gentlemen separated and I suppose to-morrow morning will renew the discussion before the Convention. I shall be better able to conjecture the final issue by next post.”

There are other letters of the same date from other gentlemen on the spot which exhibit rather a more favorable prospect. Some of them I am told are even flattering. Accounts will always vary in such cases, because they must be founded on different opportunities of remarking the general complexion; where they take no tincture from the opinions or temper of the writer.

I remain Dear Sir with the most perfect esteem & attachment

Your Obed<sup>T</sup>. Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Feb<sup>y</sup>. 1788.

Wash. Mss.

Dear Sir,

The Eastern mail which arrived yesterday brought me a letter from Mr. King, of which a copy follows: “Our prospects are gloomy, but hope is not entirely extinguished. Gerry has not returned to the Convention, and I think will not again be invited. We are now thinking of amendments to be submitted not as a condition of our assent & ratification, but as the opinion of the Convention subjoined to their ratification. This scheme may gain a few members but the issue is doubtful.”

In this case as in the last Mr. King’s information is accompanied with letters from other persons on the spot, which dwell more on the favorable side of the prospect. His anxiety on the subject may give a greater activity to his fears than to his hopes; and he would naturally lean to the cautious side. These circumstances encourage me to put as favorable a construction on his letter as it will bear.

A vessel is arrived here from Charleston, which brings letters that speak with confidence of an adoption of the fed Government in that State; and make it very probable that Georgia had actually adopted it. Some letters from N. Carolina speak a very equivocal language as to the prospect there.

The French Packet arrived yesterday. As she has been out since early in November little news can be expected by her. I have not yet got my letters if there be any for me and I have heard the contents of no others.

I remain D<sup>r</sup>. Sir, with the utmost respect & attachment, Y<sup>r</sup>. Affe<sup>t</sup>. Serv<sup>t</sup>.



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Feb<sup>y</sup> 3<sup>d</sup>., 1788

Wash. Mss.

Dear Sir,

Another mail has arrived from Boston without terminating the conflict between our hopes and fears. I have a letter from Mr. King, of the 27 which after dilating somewhat on the ideas in his former letters, concludes with the following paragraph<sup>1</sup> : “We have avoided every question which would have shewn the division of the House. Of consequence we are not positive of the numbers on each side. By the last calculation we made on our side, we were doubtful whether we exceeded them or they us in numbers. They however say that they have a majority of eight or twelve against us. We by no means despair.” Another letter of the same date from another member gives the following picture<sup>1</sup> : “Never was there an Assembly in this State in possession of greater ability & information than the present Convention. Yet I am in doubt whether they will approve the Constitution. There are unhappily three parties opposed to it—1. all men who are in favor of paper money & tender laws; those are more or less in every part of the State: 2. all the late insurgents & their abettors.—In the three great western Counties they are very numerous. We have in the Convention 18 or 20 who were actually in Shays’ army;—3. A great majority of the members from the province of Main. Many of them & their Constituents are only squatters on other people’s land, and they are afraid of being brought to account—they also think though erroneously that their favorite plan, of being a separate State will be defeated. Add to these the honest doubting people, and they make a powerful host. The leaders of this party are a Mr. Widgery Mr. Thomson, & Mr. Nason, from the province of Main. A Doc<sup>t</sup>. Taylor, from the County of Worster & Mr. Bishop from the neighbourhood of R. Island. To manage the cause ag<sup>st</sup> them are the present and late Gov<sup>t</sup>, 3 Judges of the supreme Court. 15 members of the Senate; 20 from among the most respectable of the Clergy, 10 or 12 of the first characters at the bar, Judges of probate, High sheriffs of Counties & many other respectable people Merchants &c. Gen<sup>ls</sup> Heath, Lincoln, Brooks, & others of the late army. With all this ability in support of the cause, I am pretty well satisfied we shall lose the question, unless we can take off some of the Opposition by amendments. I do not mean such as are to be made conditions of the ratification, but recommendations only. Upon this plan I flatter myself we may possibly get a majority of 12 or 15, if not more.”

The Legislature of this State has voted a Convention on June 17.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Feb<sup>y</sup> 8. 88.

Wash. Mss.

Dear Sir,

The prospect in Mass<sup>ts</sup>. seems to brighten, if I view in the true light the following representation of it. “This day, (Jan<sup>y</sup>. 30,) for the first our President, Mr. Hancock took his seat in Convention, and we shall probably terminate our business on Saturday or tuesday next. I cannot predict the issue, but our hopes are increasing. If Mr. Hancock does not disappoint our present expectations, our wishes will be gratified.”<sup>1</sup> Several reflections are suggested by this paragraph which countenance a favorable inference from it. I hope from the rapid advance towards a conclusion of the business, that even the project of recommendatory alterations has been dispensed with.<sup>2</sup>

The form of the ratification of Georgia is contained in one of the papers herewith inclosed. Every information from S. Carolina continues to be favorable. I have seen a letter from N. Carolina, of pretty late date which admits that a very formidable opposition exists, but leans towards a federal result in that State. As far as I can discover, the state of the question in N. Carolina, is pretty analogous to that in Virginia. The body of the people are better disposed than some of a superior order. The Resolutions of New York for calling a convention appear, by the paper to have passed by a majority of two only in the House of Assembly. I am told this proceeded in some degree from an injudicious form in which the business was conducted, and which threw some of the federalists into the opposition.

I am just informed by a gentleman who has seen another letter from Boston of the same date with mine, that the plan of recommendatory alterations has not been abandoned, but that they will be put into a harmless form, and will be the means of saving the Constitution from all risk in Mass<sup>ts</sup>

With The Highest Respect & Attachment,  
I Remain Dear Sir, Your Aff<sup>E</sup>. & Hbl<sup>E</sup> Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO GEORGE WASHINGTON.

N. York, Feb<sup>y</sup>. 11, 88.

Wash. Mss.

Dear Sir,

The newspaper inclosed with the letter which follows, comprises the information brought me by the mail of yesterday

“Boston, Feb<sup>y</sup>. 3<sup>d</sup>.

“I inclose a newspaper containing the propositions communicated by Mr. Hancock to the Convention on thursday last. Mr. Adams who contrary to his own sentiments has been hitherto silent in Convention, has given his Public and explicit approbation of Mr. Hancock’s propositions. We flatter ourselves that the weight of these two characters will ensure our success; but the event is not absolutely certain. Yesterday a committee was appointed on the motion of a doubtful character to consider the propositions submitted by Mr. Hancock and to report to-morrow afternoon. We have a majority of federalists on this Committee and flatter ourselves the result will be favorable. P. S. We shall probably decide on thursday or friday next, when our numbers will amount to about 363.”1

With Greatest Esteem & Attachment

I Am Dear Sir, Y<sup>R</sup>. Obed<sup>T</sup> & Aff<sup>E</sup>. Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

New York, Feb<sup>y</sup> 15, 1788.

Mad. Mss.

Dear Sir,

I have at length the pleasure to inclose you the favorable result of the Convention at Boston. The amendments are a blemish, but are in the least offensive form. The minority also is very disagreeably large, but the temper of it is some atonement. I am assured by Mr. King that the leaders of it as well as the members of it in general are in good humor; and will countenance no irregular opposition there or elsewhere. <sup>1</sup> The Convention of New Hampshire is now sitting. There seems to be no question that the issue there will add a *seventh* pillar, as the phrase now is, to the federal Temple.

With The Greatest Respect & Attachment,  
I Am, D<sup>R</sup> Sir Yrs.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Feb<sup>y</sup>. 19, 1788.

Mad. Mss.

Dear Sir,

By the Count de Moustier I received your favour of the 8<sup>th</sup>. of October. I rec'd by his hands also the watch which you have been so good as to provide for me, and for which I beg you to accept my particular thanks. During the short trial I have made she goes with great exactness. Since the arrival of the Count de Moustier, I have rec'd also by the Packet Mr. Calonui's publication for myself, and a number of the Mercuries for Mr. Banister. The bearer was a Mr. Stuart. I had a conveyance to Mr. Banister a few days after the Mercuries came to hand.

The Public here continues to be much agitated by the proposed federal Constitution and to be attentive to little else. At the date of my last, Delaware Pennsylvania, and New Jersey, had adopted it. It has been since adopted by Connecticut, Georgia, and Massachusetts. In the first the minority consisted of 40 against 127. In Georgia, the adoption was unanimous. In Massachusetts the conflict was tedious and the event extremely doubtful. On the final question the vote stood 187 against 168; a majority of 19 only being in favor of the Constitution.

The prevailing party comprized however all the men of abilities, of property, and of influence. In the opposite multitude there was not a single character capable of uniting their wills or directing their measures. It was made up partly of deputies from the province of Maine, who apprehended difficulties from the New Government to their scheme of separation, partly of men who had espoused the disaffection of Shay's; and partly of ignorant and jealous men, who had been taught or had fancied, that the Convention at Philad<sup>a</sup>. had entered into a conspiracy against the liberties of the people at large, in order to erect an aristocracy for the rich the *well born*, and the men of Education. They had no plan whatever. They looked no farther than to put a negative on the Constitution and return home. The amendments as recommended by the Convention, were as I am well informed not so much calculated for the minority in the Convention, on whom they had little effect, as for the people of the State. You will find the amendments in the Newspapers which are sent from the office of foreign affairs. It appears from a variety of circumstances that disappointment had produced no asperity in the minority, and that they will probably not only acquiesce in the event, but endeavour to reconcile their constituents to it. This was the public declaration of several who were called the leaders of the party. The minority of Connecticut behaved with equal moderation. That of Pennsylvania has been extremely intemperate and continues to use a very bold and menacing language. Had the decision in Massachusetts been averse to the Constitution, it is not improbable that some very violent measures would have followed in that State. The cause of the inflammation however is much more in their State factions, than in the system proposed by the Convention. New Hampshire is now deliberating on the Constitution.

It is generally understood that an adoption is a matter of certainty. South Carolina & Maryland have fixed on April or May for their Conventions. The former it is currently said will be one of the ratifying States. Mr. Chace and a few others will raise a considerable opposition in the latter. But the weight of personal influence is on the side of the Constitution, and the present expectation is that the opposition will be outnumbered by a great majority. This State is much divided in its sentiment. Its Convention is to be held in June. The decision of Mass<sup>ts</sup> will give the turn in favor of the Constitution unless an idea should prevail or the fact should appear, that the voice of the State is opposed to the result of its Convention. North Carolina has put off her Convention till July. The State is much divided, it is said. The temper of Virginia, as far as I can learn, has undergone but little change of late. At first there was an enthusiasm for the Constitution. The tide next took a sudden and strong turn in the opposite direction. The influence and exertions of Mr. Henry and Col. Mason and some others will account for this. Subsequent information again represented the Constitution as regaining in some degree its lost ground. The people at large have been uniformly said to be more friendly to the Constitution than the Assembly. But it is probable that the dispersion of the latter will have a considerable influence on the opinions of the former. The previous adoption of nine States must have a very persuasive effect on the minds of the opposition, though I am told that a very bold language is held by Mr. H—y and some of his partizans. Great stress is laid on the self-sufficiency of that State, and the prospect of external props is alluded to.

Congress have done no business of consequence yet, nor is it probable that much more of any sort will precede the event of the great question before the public.

The Assembly of Virginia have passed the district Bill of which I formerly gave you an account. There are 18 districts, with 4 new Judges, Mr. Gab<sup>l</sup> Jones, Rich<sup>d</sup>. Parker, S<sup>t</sup> George Tucker and Jo<sup>s</sup> Prentis. They have reduced much the taxes, and provided some indulgences for debtors. The question of British debts underwent great vicissitudes. It was, after long discussion resolv<sup>d</sup> by a majority of 30 ag<sup>st</sup> the utmost exertions of Mr. Henry that they sh<sup>d</sup> be paid as soon as the other States sh<sup>d</sup>. have complied with the treaty. A few days afterwards he carried his point by a majority of 50 that G. B. should first comply.

Adieu. Y<sup>Rs</sup>. Affect<sup>Y</sup>.

P. S. Mr. St. John has given me a very interesting description of a System of Nature, lately published at Paris. Will you add it for me. The Boxes which were to have come for myself G. W. & [illegible] have not yet arrived.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Feb<sup>y</sup>. 20, 1788.

Wash. Mss.

Dear Sir,

I am just favored with yours of the 7th inst; and will attend to your wishes as to the political essays in the press.

I have given notice to my friends in Orange that the County may command my services in the Convention if it pleases. 1 I can say with great truth however that in this overture I sacrifice every private inclination to considerations not of a selfish nature. I foresee that the undertaking will involve me in very laborious and irksome discussions; that public opposition to several very respectable characters whose esteem and friendship I greatly prize may unintentionally endanger the subsisting connection; and that disagreeable misconstructions, of which samples have been already given, may be the fruit of those exertions which fidelity will impose. But I have made up my determination on the subject, and if I am informed that my presence at the election in the County be indispensable, shall submit to that condition also; though it is my particular wish to decline it, as well to avoid apparent solicitude on the occasion; as a journey of such length at a very unpleasant season.

I had seen the extract of your letter to Col. Carter, and had supposed from the place where it first made its appearance that its publication was the effect of the zeal of a correspondent. I cannot but think on the whole that it may have been of service, notwithstanding the scandalous misinterpretations of it which have been attempted. As it has evidently the air of a paragraph to a familiar friend, the omission of an argumentative support of the opinion given will appear to no candid reader unnatural or improper.

We have no late information from Europe except through the English papers, which represent the affairs of France as in the most ticklish state. The facts have every appearance of authenticity, and we wait with great impatience for the packet which is daily expected. It can be little doubted that the patriots have been abandoned; whether from impotency in France, misconduct in them, or from what other cause is not altogether clear. The French apologists are visibly embarrassed by the dilemma of submitting to the appearance of either weakness or the want of faith. They seem generally to allege that their engagements being with the Republic, the nation could not oppose the regular Authority of the Country by supporting a single province, or perhaps a party in it only. The validity of this excuse will depend much on the real connection between France and the patriots, and the assurances given as an encouragement to the latter. From the British King's speech, it would seem that France had avowed her purpose of supporting her Dutch friends, though it is *possible* her menaces to England might be carried further than her real promises to the patriots. All these circumstances however must have galled the pride of France, and I have

little doubt that a war will prove it as soon as her condition will admit of it; perhaps she may be the sooner forced into it on account of her being in a contrary situation.

I hear nothing yet from the Convention of N. Hampshire.

I remain, yours most respectfully & Affect<sup>ly</sup>.,



[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, Feb<sup>y</sup>. 21, 88.

Mad. Mss.

Dear Sir,

The receipt of your favor of the 29<sup>th</sup> Ult.<sup>1</sup> which did not come to hand till a few days ago was rendered particularly agreeable to me by the prospect it gives of a thorough reestablishment of your health. I indulge the reflection and the hope that it denotes a remaining energy in the constitution, which will long defend it against the gradual waste of time.

Your representation of the politics of the State coincides with the information from every other quarter. Great fluctuations and divisions of opinion, naturally result in Virginia from the causes which you describe; but they are not the less ominous on that account. I have for some time been persuaded that the question on which the proposed Constitution must turn, is the simple one whether the Union shall or shall not be continued. There is in my opinion no middle ground to be taken. The opposition with some has disunion assuredly for its object; and with all for its real tendency. Events have demonstrated that no coalition can ever take place in favor of a new Plan among the adversaries to the proposed one. The grounds of objection among the non-signing members of the Convention are by no means the same. The disapproving members who were absent but who have since published their objections differ irreconcilably from each of them. The writers against the Constitution are as little agreed with one another; and the principles which have been disclosed by the several minorities where the Constitution has not been unanimously adopted, are as heterogeneous as can be imagined. That of Massachusetts, as far as I can learn was averse to any Government that deserved the name, and it is certain looked no farther than to reject the Constitution in toto and return home in triumph. Out of the vast number which composed it there was scarce a man of respectability, and not a single one capable of leading the formidable band. The men of abilities, of property, of character, with every judge, lawyer of eminence, and the clergy of all sects, were with scarce an exception deserving notice, as unanimous in that State as the same description of characters are divided and opposed to one another in Virginia. This contrast does not arise from circumstances of local interest, but from causes which will in my opinion produce much regret hereafter in the opponents in Virginia, if they should succeed in their opposition. N. Hampshire is now in Convention. It is expected that the result will be in favor of the Constitution. R. Island takes no notice of the matter. N. York is much divided. The weight of abilities and of property is on the side of the Constitution. She must go with the Eastern States let the direction be what it may. By a vessel just from Charleston we understand that opposition will be made there. Mr. Lowndes is the leader of it.

A *British* packet brings a picture of affairs in France which indicates some approaching events in that Kingdom which may almost amount to a Revolution in the

form of its Government. The authority is in itself suspicious; but it coincides with a variety of proofs that the spirit of liberty has made a progress which must lead to some remarkable conclusion of the scene. The Dutch patriots seem to have been the victims partly of their own folly, and partly of something amiss in their friends. The present state of that Confederacy is or ought to be, a very emphatic lesson to the U. States. The want of Union and a capable Government is the source of all their calamities; and particularly of that dependence on foreign powers which is as dishonorable to their character as it is destructive of their tranquillity.

I remain D<sup>r</sup> Sir Yours very Affe<sup>ly</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, March 3, 1788.

Mad. Mss.

Dear Sir,

The Convention of N. Hampshire have disappointed much the general expectation. Instead of adopting the Constitution they have adjourned, without any final decision until June, this expedient being found necessary to prevent a rejection. It seems that a majority of 3 or 4 members would have voted in the negative, but in this majority were a number who had been proselyted by the discussions, but were bound by positive instructions. These concurred with the federalists in the adjournment, and carried [it] by a majority of 57 ag<sup>st</sup> 47. It is not much doubted that in the event N. Hampshire will be among the adopting States. But the influence of this check will be very considerable in this State, (N. York,) and in several others. 1 I have enquired whether June was preferred for the 2<sup>d</sup>. meeting from any reference to Virg<sup>a</sup>. or N. York, and am informed that it was merely an accommodation to the intermediate annual elections & Courts.

I am just setting out for Virg<sup>a</sup> and shall not write again from this place. I wish you every happiness & am D<sup>r</sup>. Sir

Y<sup>R</sup>. Affe<sup>E</sup>. Friend

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

N. York, March 3<sup>d</sup> 1788.

Wash. Mss.

Dear Sir,

The Convention of N. Hampshire has afforded a very disagreeable subject of communication. It has not rejected the Constitution, but it has failed to adopt it. Contrary to all calculations that had been made it appeared on a meeting of the members that a majority of 3 or four was adverse to the object before them, and that on a final question on the merits, the decision would be in the negative. In this critical state of things, the federalists thought it best to attempt an adjournment, and having proselyted some of the members who were positively instructed ag<sup>st</sup>. the Constitution, the attempt succeeded by a majority of 57 ag<sup>st</sup>. 47, if my information as to the numbers be correct. It seems to be fully expected that some of the instructed members will prevail on their towns to unfetter them and that in the event N. Hampshire will be among the adopting States. The mischief elsewhere will, in the mean time be of a serious nature. The second meeting is to be in June. This circumstance will probably be construed in Virg<sup>a</sup>. as making cotemporary arrangements with her. It is explained to me however as having reference merely to the conveniency of the members whose attendance at their annual elections & courts would not consist with an earlier period. The opposition I understand is composed precisely of the same description of characters with that of Mass<sup>ts</sup>., and stands contrasted to all the wealth, abilities, and respectability of the State.

I am preparing to set out for Orange,1 and promise myself the pleasure of taking Mount Vernon in the way.

I remain, yours most respectfully & Affect<sup>ly</sup>

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, March 3, 1788.

Chic. Hist. Soc.  
Mss.

Dear Sir,

The Convention of New Hampshire have disappointed the general expectation. They have not rejected the Constitution, but they have adjourned without adopting it. It was found that, on a final question, there would be a majority of three or four in the negative; but in this number were included some who, with instructions from their towns against the Constitution, had been proselyted by the discussions. These concurring with the Federalists in the adjournment, carried it by fifty-seven against forty-seven, if I am rightly informed as to the numbers. The second meeting is not to be till the last week in June. I have inquired of the gentlemen from that quarter, what particularly recommended so late a day, supposing it might refer to the times fixed by New York and Virginia. They tell me it was governed by the intermediate annual elections and courts. If the Opposition in that State be such as they are described, it is not probable that they pursue any sort of plan, more than that of Massachusetts. This event, whatever cause may have produced it, or whatever consequences it may have in New Hampshire, is no small check to the progress of the business. The Opposition here, which is unquestionably hostile to every thing beyond the *federal* principle, will take new spirits. The event in Massachusetts had almost extinguished their hopes. That in Pennsylvania will probably be equally encouraged.

Col. Heth arrived a day or so ago with the proceedings of the Commissioners. They will be laid before Congress to-day. I have been detained from setting out for Virginia by this circumstance, having fixed on yesterday for the purpose. I shall probably get away to-morrow and possibly this afternoon.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON

Orange April 10 1788.

Wash. Mss.

Dear Sir,

Having seen a part only of the names returned for the Convention, and being unacquainted with the political characters of many of them, I am a very incompetent prophet of the fate of the Constitution. My hopes however are much encouraged by my present conjectures. Those who have more data for their calculations than I have, augur a flattering issue to the deliberations of June. I find that Col. Nicholas,<sup>1</sup> who is among the best judges, thinks on the whole, that a majority in the Convention will be on the list of federalists; but very properly takes into view the turn that may be given to the event by the weight of Kentucky if thrown into the wrong scale, and by the proceedings of Maryland and South Carolina, if they should terminate in either a rejection or postponement of the question. The impression on Kentucky, like that on the rest of the State was at first answerable to our wishes; but, as elsewhere, the torch of discord has been thrown in and has found the materials but too inflammable. I have written several letters since my arrival to correspondents in that district, with a view to counteract anti-federal machinations. I have little expectation however that they will have much effect, unless the communications that may go from Mr. Brown in Congress, should happen to breathe the same spirit; and I am not without apprehensions that his mind may have taken an unlucky tincture from the difficulties thrown in the way of the separation of the district, as well as from some antecedent proceedings of Congress. I have taken the liberty of writing also to a friend in South Carolina on the critical importance of a right decision there to a favorable one here. The inclosed letter which I leave unsealed will shew you that I am doing the same with respect to Maryland. Will you be so good as to put a wafer in it and to send it to the post office for George Town, or to change the address to Annapolis, if you should have reason to conclude that Mr. Carrol will be there? I have written a similar letter to Doc<sup>F</sup> McHenry. The difference between even a postponement and adoption in Maryland, may in the nice balance of parties here, possibly give a fatal advantage to that which opposes the Constitution.

I have done nothing yet in preparing answers to the queries. As facts are to be ascertained as well as opinions formed delay will be of course counted upon.

With every sentiment of respect and attachment

I Remain Dear Sir,  
Your Obedient & Humble Serv<sup>T</sup>

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH

Orange, April 10th, 1788.

Mad. Mss.

My Dear Friend,

Since I got home which was on the day preceding our election, I have received your favor of the 29<sup>th</sup>. of Feb<sup>y</sup>, which did not reach New York before I had left it.

I view the amendments of Massachusetts pretty nearly in the same light that you do. They were meant for the people at large, not for the minority in the Convention. The latter were not affected by them; their objections being levelled against the very essence of the proposed Government. I do not see that the 2<sup>d</sup>. amendment, 1 if I understand its scope, can be more exceptionable to the S. Sts than the others. I take it to mean that the number of Reps shall be limited to 200. who will be apportioned from time to time according to a census; not that the apportionment first made when the Rep<sup>s</sup>. amount to that number shall be perpetual. The 9<sup>th</sup>. amendment 1 I have understood was made a very serious point of by S. Adams.

I do not know of anything in the new Constitution that can change the obligations of the public with regard to the old money. The principle on which it is to be settled, seems to be equally in the power of that as of the existing one. The claim of the Indiana Company cannot I should suppose be any more validated by the new System, than that of all the creditors and others who have been aggrieved by unjust laws. You do not mention what part of the Constitution, could give colour to such a doctrine. The condemnation of retrospective laws, if that be the part, does not appear to me, to admit on any principle of such a retrospective construction. As to the religious test, I should conceive that it can imply at most nothing more than that without that exception, a power would have been given to impose an oath involving a religious test as a qualification for office. The constitution of necessary offices being given to the Congress, the proper qualifications seem to be evidently involved. I think too there are several other satisfactory points of view in which the exception might be placed.

I shall be extremely happy to see a coalition among all the real federalists. Recommendatory alterations are the only ground that occurs to me. A conditional ratification or a second convention appears to me utterly irreconcilable in the present state of things with the dictates of prudence and safety. I am confirmed, by a comparative view of the publications on the subject, and still more of the debates in the several conventions, that a second experiment would be either wholly abortive, or would end in something much more remote from your ideas and those of others who wish a salutary Government, than the plan now before the public. It is to be considered also that besides the local & personal pride that w<sup>d</sup> stand in the way, it could not be a very easy matter to bring about a reconsideration and rescision of what will certainly have been done in six and probably eight States, and in several of them by unanimous votes. Add to all this the extreme facility with which those who

secretly aim at disunion (and there are probably some such in most if not all the States) will be able to carry on their schemes, under the mask of contending for alterations popular in some places and known to be inadmissible in others. Every danger of this sort might be justly dreaded from such men as this State & N. York only could furnish, playing for such a purpose into each others hands. The declaration of H—y, mentioned in your letter, is a proof to me that desperate measures will be his game. If report does not more than usually exaggerate Mason also is ripening fast for going every length.<sup>1</sup> His licentiousness of animadversion it is said, no longer spares even the *moderate opponents* of the Constitution.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Virginia Orange, April 22, 1788.

Mad. Mss.

Dear Sir,

Being just acquainted by letter from President Griffin that Mr. Paradise is in N. York and proposes to sail on the first packet for France I drop you a few lines which will go by that conveyance if they arrive at N. York in time; which however I do not much expect.

The proposed Constitution still engrosses the public attention. The elections for the Convention here are but just over and promulged. From the returns (excepting those from Kentucky which are not yet known,) it seems probable, though not absolutely certain that a majority of the members elect are friends to the Constitution. The superiority of abilities at least seems to lie on that side. The characters of most note which occur to me, are marshalled thus. For the Constitution, Pendleton, Wythe Blair, Innes, Marshal, Doc<sup>r</sup> W. Jones, G. Nicholas, Wilson Nicholas, Gab<sup>l</sup>. Jones, Tho<sup>s</sup> Lewis, F. Corbin, Ralph Wormley Jr., White of Frederick, Gen<sup>l</sup>. Gates, Gen<sup>l</sup>. A. Stephens, Arch<sup>d</sup>. Stuart, Zach<sup>y</sup>. Johnson, Doc<sup>r</sup> Stuart Parson Andrews, H. Lee Jr., Bushrod Washington, considered as a young gentleman of talents: Ag<sup>st</sup>. the Constitution, Mr. Henry, Mason, Harrison, Grayson, Tyler, M. Smith, W. Ronald, Lawson, Bland, Wm. Cabell, Dawson.

The Governor is so temperate in his opposition and goes so far with the friends of the Constitution that he cannot properly be classed with its enemies. Monroe is considered by some as an enemy; but I believe him to be a friend though a cool one.<sup>1</sup> There are other individuals of weight whose opinions are unknown to me. R. H. Lee is not elected. His brother, F. L. Lee is a warm friend to the Constitution, as I am told, but also is not elected. So are J<sup>no</sup> & Man Page.

The adversaries take very different grounds of opposition. Some are opposed to the substance of the plan; others, to particular modifications only. Mr. H—y is supposed to aim at disunion. Col. M—n is growing every day more bitter, and outrageous in his efforts to carry his point; and will probably in the end be thrown by the violence of his passions into the politics of Mr. H—y. The preliminary question will be whether previous alterations shall be insisted on or not? Should this be carried in the affirmative, either a conditional ratification, or a proposal for a new Convention will ensue. In either event, I think the Constitution and the Union will be both endangered. It is not to be expected that the States which have ratified will reconsider their determinations, and submit to the alterations prescribed by Virg<sup>a</sup>. And if a second Convention should be formed, it is as little to be expected that the same spirit of compromise will prevail in it as produced an amicable result to the first. It will be easy also for those who have latent views of disunion, to carry them on under the

mask of contending for alterations popular in some but inadmissible in other parts of the U. States.

The real sense of the people of this State cannot be easily ascertained. They are certainly attached and with warmth to a continuance of the Union; and I believe a large majority of the most intelligent and independent, are equally so to the plan under consideration. On a geographical view of them, almost all the Counties in the N. Neck have elected federal Deputies. The Counties on the South side of James River have pretty generally elected adversaries to the Constitution. The intermediate district is much chequered in this respect. The Counties between the blue ridge & the Alleghany have chosen friends to the Constitution without a single exception. Those Westward of the latter have as I am informed, generally though not universally pursued the same rule. Kentucky it is supposed will be divided.

Having been in Virg<sup>a</sup>. but a few weeks, I can give you little account of other matters, and none of your private affairs or connections, particularly of your two nephews. The Winter here as everywhere else in the U. S., was very severe, which, added to short crops of corn, threatened a great scarcity & a high price. It is found however that neither of these evils has taken place. Corn may be purchased for 2 dollars, and even 10s. per barrel. Tobacco is as low at Fred<sup>g</sup>. as 18s. Per C<sup>t</sup>., and not higher at Richmond than 22 or 23<sup>s</sup>. There is at present a very promising spring especially in the article of fruit. The night before last was so cold as to produce an alarm for the vegetation of all sorts; but it does not appear that anything less vulnerable than young cucumbers had been injured.

I shall ask the favor of Mr. Griffin to send you by Mr. Paradise, or if he should be gone by some other hand, the Debates of the Conventions in Penn<sup>a</sup>. & Massachusetts, and any other publications worth your reading.

I am Dear Sir your Affect friend & Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## SPEECHES IN THE VIRGINIA CONVENTION.1

### JUNE 5—NECESSITY FOR THE CONSTITUTION.

Mr. Madison then arose<sup>2</sup>—(but he spoke so low that his exordium could not be heard distinctly). I shall not attempt to make impressions by any ardent professions of zeal for the public welfare; we know the principles of every man will, and ought to be judged, not by his professions and declarations, but by his conduct; by that criterion I mean in common with every other member to be judged; and should it prove unfavorable to my reputation; yet, it is a criterion, from which I will by no means depart. Comparisons have been made between the friends of this constitution, and those who oppose it: although I disapprove of such comparisons, I trust that, in points of truth, honor, candor, and rectitude of motives, the friends of this system, here, and in other states, are not inferior to its opponents. But, professions of attachment to the public good, and comparisons of parties, ought not to govern or influence us now. We ought, sir, to examine the constitution on its own merits solely: we are to enquire whether it will promote the public happiness: its aptitude to produce this desirable object, ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by the people of this country, to decide this great question, by a calm and rational investigation. I hope that gentlemen, in displaying their abilities, on this occasion, instead of giving opinions, and making assertions, will condescend to prove and demonstrate, by a fair and regular discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the liberty to make some observations on what was said by another gentleman [Mr. Henry]. He told us, that this constitution ought to be rejected, because it endangered the public liberty, in his opinion, in many instances. Give me leave to make one answer to that observation: let the dangers which this system is supposed to be replete with, be clearly pointed out; if any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated, and let us not rest satisfied with general assertions of dangers, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested that licentiousness, has seldom produced the loss of liberty; but that the tyranny of rulers has almost always effected it. Since the general civilization of mankind, I believe there are more instances of the abridgment of the freedom of the people, by gradual and silent encroachments of those in power, than by violent and sudden usurpations: but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority have produced factions and commotions, which, in republics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the sources of that diversity of sentiment

which pervades its inhabitants, we shall find great danger to fear, that the same causes may terminate here, in the same fatal effects, which they produced in those republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear, that the only possible remedy for those evils and means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression.

I must confess, I have not been able to find his usual consistency, in the gentleman's argument on this occasion: he informs us that the people of the country are at perfect repose, that is, every man enjoys the fruits of his labor, peaceably and securely, and that every thing is in perfect tranquility and safety. I wish sincerely, sir, this were true. If this be their happy situation, why has every state acknowledged the contrary? Why were deputies from all the states sent to the general convention? Why have complaints of national and individual distresses been echoed and re-echoed throughout the continent? Why has our general government been so shamefully disgraced, and our constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members. Ours has attacked itself with impunity. Its authority has been disobeyed and despised. I think I perceive a glaring inconsistency in another of his arguments. He complains of this constitution, because it requires the consent of at least three-fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many, he urges as too great an obstacle, to the admission of salutary amendments, which he strongly insists, ought to be at the will of a bare majority—we hear this argument, at the very moment we are called upon to assign reasons for proposing a constitution, which puts it in the power of nine states to abolish the present inadequate, unsafe, and pernicious confederation! In the first case, he asserts, that a majority ought to have the power of altering the government, when found to be inadequate to the security of public happiness.

In the last case, he affirms that even three-fourths of the community have not a right to alter a government, which experience has proved to be subversive of national felicity! Nay, that the most necessary and urgent alterations, cannot be made without the absolute unanimity of all the states. Does not the thirteenth article of the confederation expressly require, that no alteration shall be made without the unanimous consent of all the states? Could any thing in theory, be more perniciously improvident and injudicious, than this submission of the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact, which I conceive must carry conviction to the mind of any one—the smallest state in the union has obstructed every attempt to reform the government—that like member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemies of its country with provisions. Twelve states had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the general government: but as these improvements, though really indispensable, could not by the confederation be introduced into it without the consent of every state, the refractory dissent of that little state prevented their adoption. The inconveniences resulting from this requisition, of unanimous concurrence in alterations in the confederation, must be known to every member in this convention, it

is therefore needless to remind them of them. Is it not self-evident, that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?

He next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any one member of the union? If any state had the power of legislation over the place where congress should fix the general government, this would impair the dignity, and hazard the safety of congress. If the safety of the union were under the control of any particular state, would not foreign corruption probably prevail in such a state, to induce it to exert its controlling influence over the members of the general government? Gentlemen cannot have forgotten the disgraceful insult which congress received some years ago. When we also reflect, that the previous session of particular states is necessary, before congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

But, the honorable member sees great danger in the provision concerning the militia: this, I conceive, to be an additional security to our liberty, without diminishing the power of the states, in any considerable degree; it appears to me so highly expedient, that I should imagine it would have found advocates even in the warmest friends of the present system: the authority of training the militia, and appointing the officers, is reserved to the states. Congress ought to have the power of establishing an uniform discipline throughout the states; and to provide for the execution of the laws, suppress insurrections and repel invasions; these are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases, must convince any reflecting mind. Without uniformity of discipline, military bodies would be incapable of action: without a general controlling power to call forth the strength of the union, to repel invasions, the country might be over-run, and conquered by foreign enemies. Without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny be established.

The honorable member then told us, that there was no instance of power once transferred, being voluntarily renounced. Not to produce European examples, which may probably be done before the rising of this convention, have we not seen already in seven states (and probably in an eighth state) legislatures surrendering some of the most important powers they possessed? But, Sir, by this government, powers are not given to any particular set of men, they are in the hands of the people; delegated to their representatives chosen for short terms, to representatives responsible to the people, and whose situation is perfectly similar to our own; as long as this is the case we have no danger to apprehend. When the gentleman called our recollection to the usual effects of the concession of powers, and imputed the loss of liberty generally to open tyranny I wish he had gone on farther. Upon his review of history he would have found, that the loss of liberty very often resulted from factions and divisions; from local considerations, which eternally lead to quarrels, he would have found internal

dissentions to have more frequently demolished civil liberty, than a tenacious disposition in rulers, to retain any stipulated powers.

(Here Mr. Madison enumerated the various means whereby nations had lost their liberties.)

The power of raising and supporting armies is exclaimed against, as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But, suppose a foreign nation to declare war against the United States, must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations, that the general government of the United States of America has no power to raise and support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited, by our weakness, to attack us; and such an attack, by disciplined veterans, would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and harbours, and the uncommon facility of attacking it, however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the union were exposed, and many states were in the most deplorable situation, by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection, that the relinquishment of territorial advantages, was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those states who expected advantages from it. The crisis however at length arrived when it was judged necessary for the salvation of this country, to make certain cessions to Spain; whether wisely, or otherwise, is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose.—How it terminated is well known. This fact shews the extremities to which nations will go in cases of imminent danger, and demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be excluded.

The honorable member then told us, that there are heart-burnings in the adopting states, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with the adopting states. I wish as seldom as possible to contradict the assertions of gentlemen, but I can venture to affirm, without danger of being in an error, that there is the most satisfactory evidence, that the satisfaction of those states is increasing every day, and that, in that state, where it was adopted only by a majority of nineteen, there is not one-fifth of the people dissatisfied. There are some reasons which induce us to conclude, that the grounds of proselytism extend every where; its principles begin to be better understood; and the inflammatory violence, wherewith it was opposed by designing, illiberal, and unthinking minds begins to subside. I will not enumerate the causes from which in my conception, the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all they were founded on a misconception of its nature and tendency. Had it been

candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States would have opposed it. With respect to the Swiss, which the honorable gentleman has proposed for our example, as far as historical authority may be relied on, we shall find their government quite unworthy of our imitation. I am sure if the honorable gentleman had adverted to their history and government, he never would have quoted their example here; he would have found that instead of respecting the rights of mankind, their government (at least of several of their cantons) is one of the vilest aristocracies that ever was instituted: the peasants of some of their cantons are more oppressed and degraded than the subjects of any monarch in Europe: may, almost as much so, as those of any eastern despot. It is a novelty in politics, that from the worst of systems the happiest consequences should ensue. Their aristocratical rigor, and the peculiarity of their situation, have so long supported their union: without the closest alliance and amity, dismemberment might follow, their powerful and ambitious neighbors would immediately avail themselves of their least jarrings. As we are not circumstanced like them, no conclusive precedent can be drawn from their situation. I trust, the gentleman does not carry his idea so far as to recommend a separation from the adopting states. This government may secure our happiness; this is at least as probable, as that it shall be oppressive. If eight states have, from a persuasion of its policy and utility, adopted it, shall Virginia shrink from it, without a full conviction of its danger and inutility? I hope she will never shrink from any duty: I trust she will not determine without the most serious reflection and deliberation.

I confess to you, sir, were uniformity of religion to be introduced by this system, it would, in my opinion, be ineligible; but I have no reason to conclude, that uniformity of government will produce that of religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it—the least reflection will convince us, there is no danger to be feared on this ground.

But we are flattered with the probability of obtaining previous amendments. This calls for the most serious attention of this house. If amendments are to be proposed by one state, other states have the same right, and will also propose alterations. These cannot but be dissimilar, and opposite in their nature. I beg leave to remark, that the governments of the different states, are in many respects dissimilar, in their structure; their legislative bodies are not similar—their executive, are more different. In several of the states the first magistrate is elected by the people at large—in others, by joint ballot of the members of both branches of the legislature—and in others, in other different manners. This dissimilarity has occasioned a diversity of opinion on the theory of government, which will, without many reciprocal concessions, render a concurrence impossible. Although the appointment of an executive magistrate, has not been thought destructive to the principles of democracy in many of the states, yet, in the course of the debate, we find objections made to the federal executive: it is urged that the president will degenerate into a tyrant. I intended, in compliance with the call of the honorable member, to explain the reasons of proposing this constitution, and develop its principles; but I shall postpone my remarks, till we hear the supplement which he has informed us, he intends to add to what he has already said.

Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions; but the principal question is, whether it be a federal or consolidated government: in order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others it is of a consolidated nature. Even if we attend to the manner in which the constitution is investigated, ratified and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people—but not the people as composing one great body; but the people as composing thirteen sovereignties: were it as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment, and as a majority, have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reprobated it: were it such a government as it is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it; but, sir, no state is bound by it, as it is, without its own consent. Should all the states adopt it, it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large. In this particular respect the distinction between the existing and proposed governments is very material. The existing system has been derived from the dependent derivative authority of the legislatures of the states, whereas this is derived from the superior power of the people. If we look at the manner in which alterations are to be made in it, the same idea is in some degree attended to. By the new system a majority of the states cannot introduce amendments; nor are all the states required for that purpose; three-fourths of them must concur in alterations: in this there is a departure from the federal idea. The members to the national house of representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the senate, its members are elected by the states in their equal and political capacity; but had the government been completely consolidated, the senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature, and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy. If Virginia was separated from all the states, her power and authority would extend to all cases: in like manner were all powers vested in the general government, it would be a consolidated government; but the powers of the federal government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable member has satirised with peculiar acrimony, the powers given to the general government by this constitution. I conceive that the first question on this subject is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the inconvenience, or losing the union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally objected to. With respect to the exigencies of government, there is no question but the most easy mode of providing for them will be adopted. When,



therefore, direct taxes are not necessary, they will not be recurred to. It can be of little advantage to those in power, to raise money, in a manner oppressive to the people. To consult the conveniences of the people, will cost them nothing, and in many respects will be advantageous to them. Direct taxes will only be recurred to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be engaged in war, and I conceive we ought to provide for the possibility of such a case, how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defence? How is it possible a war could be supported without money or credit? And would it be possible for a government to have credit without having the power of raising money? No, it would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish funds for extraordinary exigencies, and give this power to the general government—for the utter inutility of previous requisitions on the states is too well known. Would it be possible for those countries, whose finances and revenues are carried to the highest perfection, to carry on the operations of Government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined, if it was known that her power to raise money was limited? Has not France been obliged, on great occasions, to use unusual means to raise funds? It has been the case in many countries, and no government can exist, unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable—if the revenue of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here; I think therefore, that it is necessary for the preservation of the union, that this power shall be given to the general government.

But it is urged, that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the state governments. I cannot think this will be the case. If the general government were wholly independent of the governments of the particular states, then indeed usurpation might be expected to the fullest extent: but, sir, on whom does this general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced, that the general, will never destroy the individual, governments; and this conviction must be strengthened by an attention to the construction of the senate. The representatives will be chosen probably under the influence of the members of the state legislatures: but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members represent this commonwealth in one branch of the

legislature, are drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature.

The reasons offered on this subject, by a gentleman on the same side [Mr. Nicholas] were unanswerable, and have been so full, that I shall add but little more on the subject. Those who wish to become federal representatives, must depend on their credit with that class of men who will be the most popular in their counties, who generally represent the people in the state governments: they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. It is almost certain, therefore, that the deliberations of the members of the federal house of representatives, will be directed to the interest of the people of America. As to the other branch, the senators will be appointed by the legislatures, and though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This election of one branch of the federal by the state legislatures, secures an absolute dependence of the former on the latter. The biennial exclusion of one third, will lessen the facility of a combination, and may put a stop to intrigues. I appeal to our past experience, whether they will attend to the interests of their constituent states. Have not those gentlemen who have been honored with seats in congress, *often signalized themselves by their attachment* to their seats? I wish this government may answer the expectation of its friends, and foil the apprehension of its enemies. I hope the patriotism of the people will continue, and be a sufficient guard to their liberties. I believe its tendency will be, that the state governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety, and will gradually increase—and if we consider their different sources of information, the number will not appear too small.

## JUNE 7—POWER TO LAY TAXES.

Mr. Madison.—Mr. Chairman, in considering this great subject I trust we shall find that part which gives the general government the power of laying and collecting taxes, indispensable and essential to the existence of any efficient, or well organized system of government: if we consult reason, and be ruled by its dictates, we shall find its justification there; if we review the experience we have had, or contemplate the history of nations, here we find ample reasons to prove its expediency. There is little reason to depend for necessary supplies on a body which is fully possessed of the power of withholding them. If a government depends on other governments for its revenues: if it must depend on the voluntary contributions of its members, its existence must be precarious. A government which relies on thirteen independent sovereignties, for the means of its existence, is a solecism in theory, and a mere nullity in practice. Is it consistent with reason, that such a government can promote the happiness of any people? It is subversive of every principle of sound policy, to trust the safety of a community with a government, totally destitute of the means of protecting itself or its members. Can congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect, that they would be hereafter effectual or productive? Will not the same local interests, and other causes, militate against a compliance? Whoever hopes the contrary must ever be disappointed. The effect, sir, cannot be changed without a removal of the cause. Let each county in this commonwealth be supposed free and independent; let

your revenues depend on requisitions of proportionate quotas from them: let application be made to them repeatedly: is it to be presumed that they would comply, or that an adequate collection could be made from partial compliances? It is now difficult to collect the taxes from them: how much would that difficulty be enhanced, were you to depend solely on their generosity? I appeal to reason or every gentleman here, whether he is not persuaded, that the present confederation is as feeble, as the government of Virginia would be in that case, to the same reason I appeal, whether it be incompatible with prudence to continue a government of such manifest and palpable debility.

If we recur to history, and review the annals of mankind, I undertake to say that no instance can be produced by the most learned man of any confederate government, that will justify a continuation of the present system; or that will not demonstrate the necessity of this change: and of substituting to the present pernicious and fatal plan, the system now under consideration, or one equally energetic. The uniform conclusion drawn from a review of ancient and modern confederacies, is, that instead of promoting the public happiness, or securing public tranquility, they have, in every instance, been productive of anarchy and confusion; ineffectual for the preservation of harmony, and a prey to their own dissensions and foreign invasions.

The Amphyctionic league resembled our confederation in its nominal powers; it was possessed of rather more power. The component states retained their sovereignty, and enjoyed an equality of suffrage in the federal council. But though its powers were more considerable in many respects than those of our present system; yet it had the same radical defect. Its powers were exercised over its individual members, in their political capacities. To this capital defect it owed its disorders, and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees.—The struggles consequent on a refusal to obey a decree, and an attempt to enforce it, produced the necessity of applying to foreign assistance; by complying with such an application, together with his intrigues, Philip of Macedon acquired sufficient influence to become a member of the league. This artful and insidious prince, soon after became master of their liberties.

The Achean league, though better constructed than the Amphyctionic, in material respects, was continually agitated with domestic dissensions, and driven to the necessity of calling in foreign aid; this, also, eventuated in the demolition of their confederacy. Had they been more closely united, their people would have been happier; and their united wisdom and strength, would not only have rendered unnecessary all sovereign interpositions in their affairs, but would have enabled them to repel the attack of an enemy. If we descend to more modern examples, we shall find the same evils resulting from the same sources.

The Germanic system is neither adequate to the external defence, nor internal felicity of the people; the doctrine of quotas and requisitions flourishes here. Without energy—without stability—the empire is a nerveless body. The most furious conflicts, and the most implacable animosities between its members, strikingly distinguish its history. Concert and co-operation are incompatible with such an injudiciously constructed system.

The republic of the Swiss is sometimes instanced for its stability, but even there, dissensions and wars of a bloody nature have been frequently seen between the cantons. A peculiar coincidence of circumstances contributes to the continuance of their political connection. Their feeble association owes its existence to their singular situation. There is a schism this moment, in their confederacy, which, without the necessity of uniting for their external defence, would immediately produce its dissolution.

The confederate government of Holland, is a further confirmation of the characteristic imbecility of such governments. From the history of this government we might derive lessons of the most important utility.

(Here Mr. Madison quoted sundry passages from De Witt, respecting the people of Holland, and the war which they had so long supported against the Spanish monarch: shewing the impolitic and injudicious structure of their confederacy; that it was entirely destitute of energy, because their revenues depended chiefly on requisitions; that during that long war, the provinces of Guelderland, and Overysseel had not paid their respective quotas, but had evaded, altogether, their payments; in consequence of which, two sevenths of the resources of the community had never been brought into action, nor contributed in the least toward the prosecution of the war; that the fear of pressing danger stimulated Holland and the other provinces to pay all the charges of the war; that those two provinces had continued their delinquencies; that the province of Holland alone, paid more than all the rest; still those provinces who paid up their proportional shares, claimed from the failing states the amounts of their arrearages; that the most fatal consequences had nearly resulted from the difficulty of adjusting those claims; and from the extreme aversion of the delinquent states to discharge even their most solemn engagements; that there are existing controversies between the provinces on this account at present; and to add to the evils consequent upon requisitions, that unanimity and the revision and sanction of their constituents, were necessary to give validity to the decisions of the states general.)

Mr. Madison then added—that these radical defects in their confederacy must have dissolved their association long ago, were it not for their peculiar position—circumscribed in a narrow territory; surrounded by the most powerful nations in the world; possessing peculiar advantages from their situation; an extensive navigation and a powerful navy—advantages which it was clearly the interest of those nations to diminish or deprive them of; and that their late unhappy dissensions were manifestly produced by the vices of their system. He then continued—We may derive much benefit from the experience of that unhappy country. Governments destitute of energy, will ever produce anarchy. These facts are worthy the most serious consideration of every gentleman here. Does not the history of these confederacies coincide with the lesson drawn from our own experience? I most earnestly pray that America may have sufficient wisdom to avail herself of the instructive information she may derive from a contemplation of the sources of their misfortunes, and that she may escape a similar fate by avoiding the causes from which their infelicity sprung. If the general government is to depend on the voluntary contribution of the states for its support, dismemberment of the United States may be the consequence. In cases of eminent danger, the states more immediately exposed to it, would only exert

themselves—those remote from it, would be too supine to interest themselves warmly in the fate of those whose distresses they did not immediately perceive. The general government ought, therefore, to be empowered to defend the whole union.

Must we not suppose, that those parts of America which are most exposed, will first be the scenes of war? Those nations whose interest is incompatible with an extension of our power, and who are jealous of our resources to become powerful and wealthy, must naturally be inclined to exert every means to prevent our becoming formidable. Will they not be impelled to attack the most exposed parts of the union? Will not their knowledge of the weakness of our government stimulate them the more readily to such an attack? Those parts to which relief can be afforded with most difficulty, are the extremities of the country, and will be the first objects of our enemies. The general government having no resources beyond what are adequate to its existing necessities, will not be able to afford any effectual succor to those parts which may be invaded.

America, in such a case, would palpably perceive the danger and folly of withholding from the union, a power sufficient to protect the whole territory of the United States. Such an attack is far from improbable, and if it be actually made, it is difficult to conceive a possibility of escaping the catastrophe of a dismemberment. On this subject we may receive an estimable and instructive lesson from an American confederacy; from an example which has happened in our country and which applies to us with peculiar force, being most analogous to our situation. I mean that species of association or union which subsisted in New England. The colonies of Massachusetts, Bristol, Connecticut, and New Hampshire, were confederated together.

The object of that confederacy was primarily to defend themselves against the inroads and depredations of the Indians. They had a common council, consisting of deputies from each party, with an equality of suffrage in their deliberations. The general expenditures and charges were to be adequately defrayed. Its powers were very similar to those of the confederation. Its history proves clearly, that a government founded on such principles must ever disappoint the hopes of those who expect its operation to be conducive to the public happiness.

There are facts on record to prove, that instead of answering the end of its institution, or the expectation of its framers, it was violated with impunity, and only regarded when it coincided perfectly with the views and immediate interests of their respective parties.

The strongest member of the union availed itself of its circumstances to infringe their confederacy. Massachusetts refused to pay its quotas. In the war between England and Holland, it was found particularly necessary to make exertions for the protection of that country.

Massachusetts being then more powerful and less exposed than the other colonies, refused its contributions to the general defence. In consequence of this, the common council remonstrated against the council of Massachusetts. This altercation terminated in the dissolution of their union. From this brief account of a system, perfectly

resembling our present one we may easily divine the inevitable consequences of a longer adherence to the latter.

(Mr. Madison then recapitulated many instances of the prevalent persuasion of the wisest patriots of the states, that the safety of all America depended on union; and that the government of the U. States must be possessed of an adequate degree of energy, or that otherwise their connection could not be justly denominated an union. He likewise enumerated the expedients that had been attempted by the people of America to form an intimate association, from the meeting at New York in the year 1754, downwards that their sentiments on this subject had been uniform, both in their colonial and independent conditions: and that a variety of courses had hitherto prevented the adoption of an adequate system.)

He then continued thus—If we take experience for our guide, we shall find still more instructive direction on this subject. The weakness of the existing articles of the union, shewed itself during the war. It has manifested itself since the peace, to such a degree, as admits of no doubt to a rational, intelligent, and unbiassed mind, of the necessity of alteration—nay, this necessity is obvious to all America—it has forced itself on the minds of the people. The committee has been informed, that the confederation was not completed till the year 1781, when a great portion of the war was ended, consequently no part of the merit of the antecedent operations of the war could justly be attributed to that system. Its debility was perceived almost as soon as it was put in operation. A recapitulation of the proofs which have been experienced of its inefficacy is necessary. It is most notorious, that feebleness universally marked its character. Shall we be safe in another war in the same situation? That instrument required the voluntary contributions of the states, and thereby sacrificed some of our best privileges. The most intolerable and unwarrantable oppressions were committed on the people during the late war. The gross enormity of those oppressions might have produced the most serious consequences, were it not for the spirit of liberty, which preponderated against every consideration.

A scene of injustice, partiality and oppression, may bring heavenly vengeance on any people. We are now by our suffering expiating the crimes of the otherwise glorious revolution. Is it not known to every member of this committee, that the great principles of a free government, were reversed through the whole progress of that scene? Was not every state harrassed? Was not every individual oppressed and subjected to repeated distresses? Was this right? Was it a proper form of government, that warranted, authorized, or overlooked, the most wanton deprivation of property? Had the government been vested with complete power to procure a regular and adequate supply of revenue, those oppressive measures would have been unnecessary. But, sir, can it be supposed that a repetition of such measures would ever be acquiesced in? Can a government that stands in need of such measures secure the liberty or promote the happiness or glory of any country? If we do not change this system, consequences must ensue that gentlemen do not now apprehend. If other testimony were necessary, I might appeal to that which I am sure is very weighty, but which I mention with reluctance. At the conclusion of the war, the man who had the most extensive acquaintance with the nature of the country, who well understood its interests, and who had given the most unequivocal and most brilliant proofs of his

attachment to its welfare—when he laid down his arms, wherewith he had so nobly and successfully defended his country publicly testified his disapprobation of the present system; and suggested that some alteration was necessary to render it adequate to the security of our happiness. I did not introduce that great name to bias any gentleman here. Much as I admire and revere the man, I consider these members as not to be actuated by the influence of any man; but I introduced him as a respectable witness to prove that the articles of the confederation were inadequate, and that we must resort to something else. His modesty did not point out what ought to be done, but said, that some great change was necessary. But, sir, testimony if wished for, may be found in abundance, and numerous conclusive reasons urged for this change. Experience was daily producing such irresistible proofs of the defects of this system, this commonwealth was induced to exert her influence to meliorate it: she began that noble work, in which I hope she will persist: she proposed to revise it—her proposition met with that concurrence, which that of a respectable party will always meet. I am sure if demonstration were necessary on the part of this commonwealth, reasons have been abundantly heard in the course of this debate, manifold and cogent enough, not only to operate conviction; but to disgust an attentive hearer. Recollect the resolution of the year 1784. It was then found that the whole burthen of the union was sustained by a few states. This state was likely to be saddled with a very disproportionate share. That expedient was proposed (to obviate this inconvenience) which has been placed in its true light. It has been painted in sufficient horrors by the honorable gentleman who spoke last.

I agree with the honorable gentleman, Mr. Henry, that national splendour and glory are not our objects—but does he distinguish between what will render us secure and happy at home, and what will render us respectable abroad? If we be free and happy at home, we shall be respectable abroad.

The confederation is so notoriously feeble, that foreign nations are unwilling to form any treaties with us—they are apprised that our general government cannot perform any of its engagements; but, that they may be violated at pleasure by any of the states. Our violation of treaties already entered into, proves this truth unequivocally. No nation will, therefore, make any stipulations with congress, conceding any advantages of importance to us: they will be the more averse to entering into engagements with us, as the imbecility of our government enables them to derive many advantages from our trade, without granting us any return. But were this country united by proper bands, in addition to other great advantages, we could form very beneficial treaties with foreign states. But this can never happen without a change in our system. Were we not laughed at by the minister of that nation, from which we may be able yet to extort some of the most salutary measures for this country? Were we not told that it was necessary to temporize till our government acquired consistency? Will any nation relinquish national advantages to us? You will be greatly disappointed, if you expect any such good effects from this contemptible system. Let us recollect our conduct to that country from which we have received the most friendly aid. How have we dealt with that benevolent ally? Have we complied with our most sacred obligations to that nation? Have we paid the interest punctually from year to year? Is not the interest accumulating, while not a shilling is discharged of the principal? The magnanimity and forbearance of that ally are so great, that she has not called upon us for her

claims, even in her own distress and necessity. This, sir, is an additional motive to increase our exertions. At this moment of time a very considerable amount is due from us to that country and others.

(Here Mr. Madison mentioned the amount of the debts due to different foreign nations.)

We have been obliged to borrow money, even to pay the interest of our debts. This is a ruinous and most disgraceful expedient. Is this a situation on which America can rely for security and happiness? How are we to extricate ourselves? The honorable member told us, we might rely on the punctuality and friendship of the states, and that they will discharge their quotas for the future. The contributions of the states have been found inadequate from the beginning, and are diminishing instead of increasing. From the month of June 1787, till June 1788, they have only paid 276,641 dollars into the federal treasury for the purposes of supporting the national government, and discharging the interest of the national debts: a sum so very insufficient, that it must greatly alarm the friends of their country. Suggestions and strong assertions dissipate before these facts. I shall no longer fatigue the committee at this time, but will resume the subject as early as I can.

## JUNE 11—POWER TO LAY TAXES. 1

Mr. Madison.—

Mr. Chairman, it was my purpose to resume before now, what I had left unfinished, concerning the necessity of a radical change of our system. The intermission which has taken place discontinued the progress of the argument, and has given opportunity to others to advance arguments on different parts of the plan. I hope we shall steer our course in a different manner from what we have hitherto done. I presume that vague discourses and mere sports of fancy, not relative to the subject at all, are very improper on this interesting occasion. I hope these will be no longer attempted, but that we shall come to the point. I trust we shall not go out of order, but confine ourselves to the clause under consideration. I beg gentlemen would observe this rule. I shall endeavor not to depart from it myself.

The subject of direct taxation is perhaps one of the most important that can possibly engage our attention, or that can be involved in the discussion of this question. If it be, to be judged by the comments made upon it, by the opposers and favorers of the proposed system, it requires a most clear and critical investigation. The objections against the exercise of this power by the general government as far as I am able to comprehend them, are founded upon the supposition of its being unnecessary, impracticable, unsafe and accumulative of expense. I shall therefore consider, 1st, how far it may be necessary; 2d, how far it may be practicable; 3dly, how far it may be safe, as well with respect to the public liberty at large, as to the state legislatures; and 4thly, with respect to economy. First, then, is it necessary? I must acknowledge that I concur in opinion with those gentlemen who told you that this branch of revenue was essential to the salvation of the union. It appears to me necessary, in



order to secure that punctuality which is necessary in revenue matters. Without punctuality individuals will give it no confidence, without which it cannot get resources. I beg gentlemen to consider the situation of this country, if unhappily the government were to be deprived of this power. Let us suppose for a moment that one of those powers which may be unfriendly to us, should take advantage of our weakness, which they will be more ready to do when they know the want of this resource in our government. Suppose it should attack us, what forces could we oppose to it? Could we find safety in such forces as we could call out? Could we call forth a sufficient number, either by draughts, or any other way, to repel a powerful enemy? The inability of the government to raise and support regular troops, would compel us to depend on militia.

It would be then necessary to give this power to the government, or run the risk of national annihilation. It is my firm belief, that if a hostile attack were made this moment on the United States, it would flash conviction on the minds of the citizens of the United States, of the necessity of vesting the government with this power, which alone can enable it to protect the community. I do not wish to frighten the members into a concession of this power, but to bring to their minds those considerations which demonstrate its necessity. If we were secured from the possibility, or probability of danger, it might be unnecessary. I shall not review that concourse of dangers which may probably arise at remote periods of futurity, nor all those which we have immediately to apprehend, for this would lead me beyond the bounds which I prescribed myself. But I will mention one single consideration, drawn from fact itself. I hope to have your attention.

By the treaty between the United States and his most Christian majesty, among other things it is stipulated, that the great principle on which the armed neutrality in Europe was founded, should prevail in case of future wars. The principle is this, that free ships shall make free goods, and that vessels and goods shall be both free from condemnation. Great Britain did not recognize it. While all Europe was against her, she held out without acting to it. It has been considered for sometime past, that the flames of war already kindled, would spread, and that France and England were likely to draw those swords which were so recently put up. This is judged probable. We should not be surprised in a short time, to consider ourselves as a neutral nation—France on one side, and Great Britain on the other. What is the situation of America? She is remote from Europe, and ought not to engage in her politics or wars. The American vessels, if they can do it with advantage, may carry on the commerce of the contending nations. It is a source of wealth which we ought not to deny to our citizens. But, Sir, is there not infinite danger, that in despite of all our caution we shall be drawn into the war? If American vessels have French property on board, Great Britain will seize them. By this means we shall be obliged to relinquish the advantage of a neutral nation, or be engaged in a war.

A neutral nation ought to be respectable, or else it will be insulted and attacked. America in her present impotent situation would run the risk of being drawn in as a party in the war, and lose the advantage of being neutral. Should it happen that the British fleet should be superior, have we not reason to conclude, from the spirit displayed by that nation to us and to all the world, that we should be insulted in our

own ports, and our vessels seized? But if we be in a respectable situation—if it be known that our government can command the whole resources of the union, we shall be suffered to enjoy the great advantages of carrying on the commerce of the nations at war: for none of them would be willing to add us to the number of their enemies. I shall say no more on this point, there being others which merit your consideration.

The expedient proposed by the gentlemen opposed to this clause, is, that requisitions shall be made, and if not complied with in a certain time, that then taxation shall be recurred to. I am clearly convinced, that whenever requisitions shall be made, they will disappoint those who put their trust in them. One reason to prevent the concurrent exertions of all the states, will arise from the suspicion, in some states, of delinquency in others. States will be governed by the motives that actuate individuals.

When a tax is in operation in a particular state, every citizen, if he knows of the energy of the laws to enforce payment, and that every other citizen is performing his duty, will cheerfully discharge his duty; but were it known that the citizens of one district were not performing their duty, and that it was left to the policy of the government to make them come up with it, the other districts would be very supine and careless in making provisions for payment. Our own experience makes the illustration more natural. If requisitions be made on thirteen different states, when one deliberates on the subject, she will know that all the rest will deliberate upon it also. This, Sir, has been a principal cause of the inefficacy of requisitions heretofore, and will hereafter produce the same evil. If the legislatures are to deliberate on this subject, (and the honorable gentleman opposed to this clause, thinks their deliberation necessary) is it not presumable, that they will consider peculiar local circumstances? In the general council, on the contrary, the sense of all America would be drawn to a single point. The collective interest of the union at large, will be known and pursued. No local views will be permitted to operate against the general welfare. But when propositions would come before a particular state, there is every reason to believe, that qualifications of the requisitions would be proposed—compliance might be promised, and some instant remittances might be made. This will cause delays, which in the first instance will produce disappointment. This also will make failures every where else. This I hope will be considered with the attention it deserves. The public creditors will be disappointed, and more pressing. Requisitions will be made for purposes equally pervading all America; but the exertions to make compliances, will probably be not uniform in the states. If requisitions be made for future occasions, for putting the states in a state of military defence, or to repel an invasion, will the exertions be uniform and equal in all the states? Some parts of the United States are more exposed than others. Will the least exposed states exert themselves equally? We know that the most exposed will be more immediately interested, and will make less sacrifices in making exertions. I beg gentlemen to consider that this argument will apply with most effect to the states which are most defenceless and exposed. The southern states are most exposed, whether we consider their situation, or the smallness of their population. And there are other circumstances which render them still more vulnerable, which do not apply to the northern states. They are therefore more interested in giving the government a power to command the whole strength of the union in cases of emergency. Do not gentlemen conceive this mode of obtaining supplies from the states, will keep alive animosities between the general government

and particular states? Where the chances of failures are so numerous as thirteen, by the thirteen states, disappointment in the first place, and consequent animosity must inevitably take place

Let us consider the alternatives proposed by gentlemen, instead of the power of laying direct taxes. After the states shall have refused to comply, weigh the consequences of the exercise of this power by congress. When it comes in the form of a punishment, great clamours will be raised among the people against the government; hatred will be excited against it. It will be considered as an ignominious stigma on the state. It will be considered at least in this light by the state where the failure is made, and these sentiments will no doubt be diffused through the other states. Now let us consider the effect, if collectors are sent where the state governments refuse to comply with requisitions. It is too much the disposition of mankind not to stop at one violation of duty. I conceive that every requisition that will be made on my part of America, will kindle a contention between the delinquent member, and the general government. Is there no reason to suppose divisions in the government (for seldom does any thing pass with unanimity) on the subject of requisitions? The parts least exposed will oppose those measures which may be adopted for the defence of the weakest parts. Is there no reason to presume, that the representatives from the delinquent state will be more likely to foster disobedience to the requisitions of the government, than study to recommend them to the public?

There is in my opinion, another point of view in which this alternative will produce great evil. I will suppose, what is very probable, that partial compliances will be made. A difficulty here arises which fully demonstrates its impolicy. If a part be paid, and the rest withheld, how is the general government to proceed? They are to impose a tax, but how shall it be done in this case? Are they to impose it by way of punishment, on those who have paid, as well as those who have not? All these considerations taken into view (for they are not visionary or fanciful speculations) will, perhaps, produce this consequence. The general government to avoid those disappointments which I first described, and to avoid the contentions and embarrassments which I last described, will in all probability, throw the public burdens on those branches of revenue which will be more in their power. They will be continually necessitated to augment the imposts. If we throw a disproportion of the burdens on that side, shall we not discourage commerce; and suffer many political evils? Shall we not increase that disproportion on the southern states, which for sometime will operate against us? The southern states, from having fewer manufactures, will import and consume more. They will therefore pay more of the imposts. The more commerce is burdened, the more the disproportion will operate against them. If direct taxation be mixed with other taxes, it will be in the power of the general government to lessen that inequality. But this inequality will be increased to the utmost extent, if the general government have not this power.

There is another point of view in which this subject affords us instruction. The imports will decrease in time of war. The honorable gentleman who spoke yesterday, said, that the imposts would be so productive, that there would be no occasion of laying taxes. I will submit two observations to him and the committee. First: in time of war the imposts will be less, and as I hope we are considering a government for a

perpetual duration, we ought to provide for every future contingency. At present our importations bear a full proportion to the full amount of our sales, and to the number of our inhabitants; but when we have inhabitants enough, our imposts will decrease; and as the national demands will increase with our population, our resources will increase as our wants increase. The other consideration which I will submit on this part of the subject is this:—I believe that it will be found in practice, that those who fix the public burdens, will feel a greater degree of responsibility when they are to impose them on the citizens immediately, than if they were to say what sum should be paid by the states. If they exceed the limits of propriety, universal discontent and clamour will arise. Let us suppose they were to collect the taxes from the citizens of America—would they not consider their circumstances? Would they not attentively consider what could be done by the citizens at large? Were they to exceed in their demands, what were reasonable burdens, the people would impute it to the right source, and look on the imposers as odious.

When I consider the nature of the various objections brought against this clause, I should be led to think, that the difficulties were such, that gentlemen would not be able to get over them, and that the power, as defined in the plan of the convention, was impracticable. I shall trouble them with a few observations on that point:

It has been said that ten men deputed from this state, and others in proportion from other states, will not be able to adjust direct taxes, so as to accommodate the various citizens in thirteen states.

I confess I do not see the force of this observation. Could not ten intelligent men, chosen from ten districts from this state lay direct taxes on a few objects in the most judicious manner? It is to be conceived, that they would be acquainted with the situation of different citizens of this country. Can any one divide this state into ten districts so as not to contain men of sufficient information? Could not one man of knowledge be found in a district? When thus selected, will they not be able to carry their knowledge into the general council? I may say with great propriety, that the experience of our own legislature demonstrates the competency of congress to lay taxes wisely. Our assembly consists of considerably more than a hundred; yet from the nature of the business, it devolves on a much smaller number. It is through their sanction, approved of by all the others. It will be found that there are seldom more than ten men who rise to high information on this subject. Our federal representatives, as has been said by the gentleman [Mr. Marshall] who entered into the subject with a great deal of ability, will get information from the state governments. They will be perfectly well informed of the circumstances of the people of the different states, and the mode of taxation that would be most convenient for them, from the laws of the states. In laying taxes, they may even refer to the state system of taxation. Let it not be forgotten, that there is a probability, that that ignorance which is complained of in some parts of America, will be continually diminishing. Let us compare the degree of knowledge which the people had in time past to their present information. Does not our own experience teach us, that the people are better informed than they were a few years ago? The citizen of Georgia knows more now of the affairs of New Hampshire, than he did before the revolution, of those of South Carolina. When the representatives from the different states are collected together, to consider this

subject, they will interchange their knowledge with one another, and will have the laws of each state on the table. Besides this, the intercourse of the states will be continually increasing. It is now much greater than before the revolution. My honorable friend, over the way [Mr. Monroe] yesterday, seemed to conceive, as an insuperable objection, that if land were made the particular object of taxation, it would be unjust, as it would exonerate the commercial part of the community—that if it were laid on trade, it would be unjust in discharging the landholders; and that any exclusive selection would be unequal and unfair. If the general government were tied down to one object, I confess the objection would have some force in it. But if this be not the case, it can have no weight. If it should have a general power of taxation, they could select the most proper objects, and distribute the taxes in such a manner, as that they should fall in a due degree on every member of the community. They will be limited to fix the proportion of each state, and they must raise it in the most convenient and satisfactory manner to the public.

The honorable member considered it as another insuperable objection, that uniform laws could not be made for thirteen states, and that dissonance would produce inconvenience and oppression. Perhaps it may not be found, on due enquiry, to be so impracticable as he supposes. But were it so, where is the evil of different states, to raise money for the general government? Where is the evil of such laws? There are instances in other countries, of different laws operating in different parts of the country, without producing any kind of opposition. The revenue laws are different in England and Scotland in several respects. Their laws relating to customs excises and trade, are similar; but those respecting direct taxation are dissimilar. There is a land tax in England, and a land tax in Scotland, but the laws concerning them are not the same. It is much heavier in proportion in the former than in the latter. The mode of collection is different—yet this is not productive of any national inconvenience. Were we to conclude from the objections against the proposed plan, this dissimilarity, in that point alone, would have involved those kingdoms in difficulties. In England itself, there is a variety of different laws operating differently in different places. I will make another observation on the objection of my honorable friend. He seemed to conclude, that concurrent collections under different authorities, were not reducible to practice. I agree that were they independent of the people, the argument would be good. But they must serve one common master. They must act in concert, or the defaulting party must bring on itself the resentment of the people. If the general government be so constructed, that it will not dare to impose such burdens, as will distress the people, where is the evil of its having a power of taxation concurrent with the states? The people would not support it, were it to impose oppressive burdens. Let me make one more comparison of the state governments, to this plan. Do not the states impose taxes for local purposes? Does the concurrent collection of taxes, imposed by the legislatures for general purposes, and of levies laid by the counties for parochial and county purposes, produce any inconvenience or oppression? The collection of these taxes is perfectly practicable, and consistent with the views of both parties. The people at large are the common superior of the state governments, and the general government. It is reasonable to conclude, that they will avoid interferences for two causes—to avoid public oppression, and to render the collections more productive. I conceive they will be more likely to produce disputes, in rendering it convenient for the people, than run into interfering regulations.

In the third place I shall consider, whether the power of taxation to be given the general government be safe: and first, whether it be safe as to the public liberty in general. It would be sufficient to remark, that they are, because I conceive, the point has been clearly established by more than one gentleman who has spoken on the same side of the question. In the decision of this question, it is of importance to examine, whether elections of representatives by great districts of freeholders be favorable to fidelity in representatives. The greatest degree of treachery in representatives, is to be apprehended where they are chosen by the least number of electors; because there is a greater facility of using undue influence, and because the electors must be less independent. This position is verified in the most unanswerable manner, in that country to which appeals are so often made, and sometimes instructively.

Who are the most corrupt members in parliament? Are they not the inhabitants of small towns and districts? The supporters of liberty are from the great counties. Have we not seen that the representatives of the city of London, who are chosen by such thousands of voters, have continually studied and supported the liberties of the people, and opposed the corruption of the crown? We have seen continually that most of the members in the ministerial majority are drawn from small circumscribed districts. We may therefore conclude, that our representatives being chosen by such extensive districts, will be upright and independent. In proportion as we have security against corruption in representatives we have security against corruption from every other quarter whatsoever.

I shall take a view of certain subjects which will lead to some reflections, to quiet the minds of those gentlemen who think that the individual governments will be swallowed up by the general government. In order to effect this, it is proper to compare the state governments to the general government, with respect to reciprocal dependence, and with respect to the means they have of supporting themselves, or of encroaching on one another. At the first comparison we must be struck with these remarkable facts. The general government has not the appointment of a single branch of the individual governments, or of any officers within the states, to execute their laws. Are not the states integral parts of the general government? Is not the president chosen under the influence of the state legislatures? May we not suppose that he will be complaisant to those from whom he has his appointment, and from whom he must have his re-appointment? The senators are appointed altogether by the legislatures.

My honorable friend apprehended a coalition between the president, senate, and house of representatives, against the states. This could be supposed only from a similarity of the component parts.

A coalition is not likely to take place, because its component parts are heterogeneous in their nature. The house of representatives is not chosen by the state governments, but under the influence of those who compose the state legislature. Let us suppose ten men appointed to carry the government into effect, there is every degree of certainty, that they would be indebted for their re-election to the members of the legislatures. If they derive their appointment from them, will they not execute their duty to them? Besides this, will not the people (whose predominant interest will ultimately prevail) feel great attachment to the state legislatures? They have the care of all local

interests—those familiar domestic objects, for which men have the strongest predilection. The general government on the contrary, has the preservation of the aggregate interest of the union—objects, which being less familiar, and more remote from men’s notice have a less powerful influence on their minds. Do we not see great and natural attachments arising from local considerations? This will be the case in a much stronger degree in the state governments, than in the general government. The people will be attached to their state legislatures from a thousand causes; and into whatever scale the people at large will throw themselves, that scale will preponderate.

Did we not perceive, in the early stages of the war, when congress was the idol of America, and when in pursuit of the object most dear to America, that they were attached to their states? Afterwards the whole current of their affection was to the states, and would be still the case, were it not for the alarming situation of America.

At one period of the congressional history, they had the power to trample on the states. When they had that fund of paper money in their hands, and could carry on all their measures without any dependence on the states, was there any disposition to debase the state governments? All that municipal authority which was necessary to carry on the administration of the government, they still retained unimpaired. There was no attempt to diminish it.

I am led by what fell from my honorable friend yesterday to take this supposed combination in another view. Is it supposed, that the influence of the general government will facilitate a combination between the members? Is it supposed, that it will preponderate against that of the state governments? The means of influence consist in having the disposal of gifts and emoluments, and in the number of persons employed by, and dependent upon a government. Will any gentleman compare the number of persons, which will be employed in the general government, with the number of those which will be in the state governments? The number of dependants upon the state governments will be infinitely greater than those on the general government. I may say with truth, that there never was a more economical government in any age or country, nor which will require fewer hands, or give less influence.

Let us compare the members composing the legislative, executive and judicial powers in the general government, with these in the states, and let us take into view the vast number of persons employed in the states; from the chief officers to the lowest, we will find the scale preponderating so much in favor of the states, that while so many persons are attached to them, it will be impossible to turn the balance against them. There will be an irresistible bias towards the state governments.

Consider the number of militia officers, the number of justices of the peace, the number of the members of the legislatures, and all the various officers for districts, towns and corporations, all intermixing with, and residing among the people at large. While this part of the community retains their affection to the state governments, I conceive that the fact will be, that the state governments, and not the general government, will preponderate. It cannot be contradicted that they have more extensive means of influence. I have my fears as well as the honorable

gentleman—but my fears are on the other side. Experience, I think, will prove (though there be no infallible proof of it here) that the powerful and prevailing influence of the states, will produce such attention to local considerations, as will be inconsistent with the advancement of the interest of the union. But I choose rather to indulge my hopes than fears, because I flatter myself, if inconveniences should result from it, that the clause which provides amendments, will remedy them. The combination of powers vested in those persons, would seem conclusive in favor of the states.

The powers of the general government relate to external objects, and are but few. But the powers in the states relate to those great objects which immediately concern the prosperity of the people. Let us observe also, that the powers in the general government are those which will be exercised mostly in time of war, while those of the state governments will be exercised in time of peace. But I hope the time of war will be little, compared to that of peace. I should not complete the view which ought to be taken of this subject, without making this additional remark, that the powers vested in the proposed government, are not so much an augmentation of powers in the general government, as a change rendered necessary, for the purpose of giving efficacy to those which were vested in it before. It cannot escape any gentleman, that this power in theory, exists in the confederation as fully as in this constitution. The only difference is this, that now they tax states, and by this plan they will tax individuals. There is no theoretic difference between the two. But in practice there will be an infinite difference between them. The one is an ineffectual power: the other is adequate to the purpose for which it is given. This change was necessary for the public safety.

Let us suppose, for a moment, that the acts of congress requiring money from the states, had been as effectual as the paper on the table—suppose all the laws of congress had complete compliance, will any gentleman say, that as far as we can judge from past experience, the state governments would have been debased, and all consolidated and incorporated in one system? My imagination cannot reach it. I conceive, that had those acts that effect which all laws ought to have, the states would have retained their sovereignty.

It seems to be supposed, that it will introduce new expenses and burdens on the people. I believe it is not necessary here to make a comparison between the expenses of the present and of the proposed government. All agree that the general government ought to have power for the regulation of commerce. I will venture to say, that very great improvements, and very economical regulations will be made. It will be a principal object to guard against smuggling, and such other attacks on the revenue as other nations are subject to. We are now obliged to defend against those lawless attempts, but from the interfering regulations of different states, with little success. There are regulations in different states which are unfavorable to the inhabitants of other states, and which militate against the revenue. New York levies money from New Jersey by her imposts. In New Jersey, instead of cooperating with New York, the legislature favors violations on her regulations. This will not be the case when uniform regulations will be made.



Requisitions, though ineffectual, are unfriendly to economy. When requisitions are submitted to the states, there are near 2,500 or 3,000 persons deliberating on the mode of payment. All these, during their deliberation, receive public pay. A great proportion of every session, in every state, is employed to consider whether they will pay at all, and in what mode. Let us suppose 1500 persons are deliberating on this subject. Let any one make a calculation—it will be found that a very few days of their deliberation will consume more of the public money, than one year of that general legislature. This is not all, Mr. Chairman. When general powers will be vested in the general government, there will be less of that mutability which is seen in the legislation of the states. The consequence will be a great saving of expense and time. There is another great advantage which I will but barely mention. The greatest calamity to which the United States can be subject, is a vicissitude of laws, and continual shifting and changing from one object to another, which must expose the people to various inconveniences. This has a certain effect, of which sagacious men always have, and always will make an advantage. From whom is advantage made? From the industrious farmers and tradesmen who are ignorant of the means of making such advantages. The people will not be exposed to these inconveniences under an uniform and steady course of legislation. But they have been so heretofore. The history of taxation of this country is so fully and well known to every member of this committee, that I shall say no more of it.

We have hitherto discussed the subject very irregularly. I dare not dictate to any gentleman, but I hope we shall pursue that mode of going through the business, which the house resolved. With respect to a great variety of arguments made use of, I mean to take notice of them when we come to those parts of the constitution to which they apply. If we exchange this mode, for the regular way of proceeding, we can finish it better in one week than one month.

## JUNE 12—POWER TO LAY TAXES.

Mr. Madison.—

Mr. Chairman, finding, Sir, that the clause more immediately under consideration still meets with the disapprobation of the honorable gentleman over the way [Mr. Grayson] and finding that the reasons of the opposition as farther developed, are not satisfactory to myself and others who are in favor of the clause, I wish that it may meet with the most thorough and complete investigation. I beg the attention of the committee, in order to obviate what fell from the honorable gentleman. He set forth, that by giving up the power of taxation, we should give up everything, and still insist on requisitions being made on the states, and then, if they be not complied with, congress shall lay direct taxes, by way of penalty. Let us consider the dilemma which arises from this doctrine. Either requisitions will be efficacious or they will not. If they will be efficacious, then I say, Sir, we gave up every thing as much as by direct taxation.

The same amount will be paid by the people as by direct taxes. If they be not efficacious, where is the advantage of this plan? In what respect will it relieve us from

the inconveniences which we have experienced from requisitions? The power of laying direct taxes by the general government is supposed by the honorable gentleman to be chimerical and impracticable. What is the consequence of the alternative he proposes? We are to rely upon this power to be ultimately used as a penalty to compel the states to comply. If it be chimerical and impracticable, in the first instance, it will be equally so when it will be exercised as a penalty. A reference was made to concurrent executions as an instance of the possibility of interference between the two governments.

(Here Mr. Madison spoke so low that he could not be distinctly heard.)

This has been experienced under the state governments without involving any inconvenience. But it may be answered, that under the state governments, concurrent executions cannot produce the inconvenience here dreaded, because they are executed by the same officer. It is not in the power of the general government to employ the state officers. Is nothing to be left to future legislation, or must every thing be immutably fixed in the constitution? Where exclusive power is given to the union, there can be no interference. Where the general and state legislatures have concurrent power, such regulations will be made, as shall be found necessary to exclude interferences and other inconveniences. It will be their interest to make regulations.

It has been said, that there is no similarity between petty corporations and independent states. I admit that in many points of view there is a great dissimilarity, but in others, there is a striking similarity between them, which illustrates what is before us. Have we not seen in our own country (as has been already suggested in the course of the debates) concurrent collections of taxes going on at once, without producing any inconvenience? We have seen three distinct collections of taxes, for three distinct purposes. Has it not been possible for collections of taxes, for parochial, county and state purposes, to go on at the same time? Every gentleman must know, that this is now the case, and though there be a subordination in these cases which will not be in the general government, yet in practice it has been found, that these different collections have been concurrently carried on, with convenience to the people, without clashing with one another, and without deriving their harmony from the circumstance of being subordinate to one legislative body. The taxes will be laid for different purposes. The members of the one government as well as of the other, are the agents of, and subordinate to, the people. I conceive that the collections of the taxes of the one will not impede those of the other, and that there can be no interference. This concurrent collection appears to me neither chimerical nor impracticable.

He compares resistance of the people to collectors, to refusal of requisitions. This goes against all government. It is as much as to urge, that there should be no legislature. The gentlemen who favored us with their observations on this subject, seemed to have reasoned on a supposition, that the general government was confined by the paper on your table to lay general uniform taxes. Is it necessary that there should be a tax on any given article throughout the United States? It is represented to be oppressive, that the states who have slaves and make tobacco, should pay taxes on these for federal wants, when other states who have them not, would escape. But does

the constitution on the table admit of this? On the contrary, there is a proportion to be laid on each state according to its population. The most proper articles will be selected in each state. If one article in any state should be deficient, it will be laid on another article. Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds. If the taxes be not uniform, and the representatives of some states contribute to lay a tax of which they bear no proportion, is not this principle reciprocal? Does not the same principle hold in our state government in some degree? It has been found inconvenient to fix on uniform objects of taxation in this state, as the back parts are not circumstanced like the lower parts of the country. In both cases the reciprocity of the principle will prevent a disposition in one part to oppress the other. My honorable friend seems to suppose that congress, by the possession of this ultimate power as a penalty, will have as much credit and will be as able to procure any sums, on any emergency, as if they were possessed of it in the first instance, and that the votes of congress will be as competent to procure loans, as the votes of the British commons. Would the votes of the British house of commons have that credit which they now have, if they were liable to be retarded on their operation, and perhaps, rendered ultimately nugatory, as those of congress must be by the proposed alternative? When their vote passes, it usually receives the concurrence of the other branch, and it is known that there is sufficient energy in the government, to carry it into effect.

But here the votes of congress are in the first place dependent on the compliance of thirteen different bodies, and after non-compliance, are liable to be opposed and defeated, by the jealousy of the states against the exercise of this power, and by the opposition of the people which may be expected, if this power be exercised by congress after partial compliances. These circumstances being known, congress could not command one shilling. My honorable friend seems to think that we ought to spare the present generation and throw our burdens upon posterity. I will not contest the equity of this reasoning, but I must say that good policy as well as views of economy, strongly urge us even to distress ourselves to comply with our most solemn engagements. We must make effectual provision for the payment of the interest of our public debts. In order to do justice to our creditors, and support our credit and reputation, we must lodge power some where or other for this purpose. As yet the United States have not been able by any energy contained in the old system, to accomplish this end.

Our creditors have a right to demand the principal, but would be satisfied with a punctual payment of the interest. If we have been unable to pay the interest, much less shall we be able to discharge the principal. It appears to me that the whole reasoning used on this occasion shews, that we ought to adopt this system to enable us to throw our burdens on posterity. The honorable member spoke of the decemviri at Rome as having some similitude to the ten representatives who are to be appointed by this state. I can see no point of similitude here, to enable us to draw any conclusion. For what purpose were the decemviri appointed? They were invested with a plenipotentiary commission to make a code of laws. By whom were they appointed? By the people at large? My memory is not infallible, but it tells me they were appointed by the senate, I believe in the name of the people. If they were appointed by

the senate, and composed of the most influential characters among the nobles, can any thing be inferred from that against our federal representatives? Who made a discrimination between the nobles and the people? The senate.

Those men totally perverted the powers which were given them for the purpose above specified, to the subversion of the public liberty. Can we suppose that a similar usurpation might be made, by men appointed in a totally different manner? As their circumstances were totally dissimilar, I conceive that no arguments drawn from that source, can apply to this government. I do not thoroughly comprehend the reasoning of my honorable friend, when he tells us, that the federal government will predominate, and that the state interest will be lost, when at the same time he tells us, that it will be a faction of seven states. If seven states will prevail, *as states*, I conceive that state influence will prevail. If state influence under the present feeble government has prevailed, I think that a remedy ought to be introduced, by giving the general government power to suppress it.

He supposed that my argument with respect to a future war between Great Britain and France was fallacious. The other nations of Europe have acceded to that neutrality, while Great Britain opposed it. We need not expect in case of such a war, that we should be suffered to participate in the profitable emoluments of the carrying trade, unless we were in a respectable situation. Recollect the last war. Was there ever a war in which the British nation stood opposed to so many nations? All the belligerent nations in Europe, with nearly one half of the British empire, were united against it. Yet that nation, though defeated, and humbled beyond any previous example, stood out against this. From her firmness and spirit in such desperate circumstances, we may divine what her future conduct may be.

I did not contend that it was necessary for the United States to establish a navy for that sole purpose, but instanced it as one reason, out of several, for rendering ourselves respectable. I am no friend to naval or land armaments in time of peace, but if they be necessary, the calamity must be submitted to. Weakness will invite insults. A respectable government will not only entitle us to a participation of the advantages which are enjoyed by other nations but will be a security against attacks and insults. It is to avoid the calamity of being obliged to have large armaments that we should establish this government. The best way to avoid danger, is to be in a capacity to withstand it.

The impost, we are told, will not diminish, because the emigrations to the westward will prevent the increase of population. He has reasoned on this subject justly to a certain degree. I admit that the imposts will increase, till population becomes so great, as to compel us to recur to manufactures. The period cannot be very far distant, when the unsettled parts of America will be inhabited. At the expiration of twenty-five years hence, I conceive that in every part of the United States, there will be as great a population as there is now in the settled parts. We see already, that in the most populous parts of the union, and where there is but a medium, manufactures are beginning to be established. Where this is the case the amount of importation will begin to diminish. Although the impost may even increase during the term of twenty-

five years, yet when we are preparing a government for perpetuity, we ought to found it on permanent principles and not on those of a temporary nature.

Holland is a favorite quotation with honorable members on the other side of the question. Had not their sentiments been discovered by other circumstances, I should have concluded from their reasonings on this occasion, that they were friends of the constitution. I should suppose that they had forgotten which side of the question they were on. Holland has been called a republic, and a government friendly to liberty. Though it may be greatly superior to some other governments in Europe, still it is not a republic, or a democracy. Their legislature consists in some degree of men who legislate for life. Their councils consist of men who hold their offices for life, who fill up offices and appoint their salaries themselves. The people have no agency mediate or immediate in the government. If we look at their history we shall find, that every mischief which has befallen them, has resulted from the existing confederacy. If the stadtholder has been productive of mischiefs—if we ought to guard against such a magistrate more than any evil, let me beseech the honorable gentleman to take notice of what produced that, and those troubles which have interrupted their tranquillity from time to time. The weakness of their confederacy produced both.

When the French arms were ready to overpower their republic, and were feeble in the means of defence, which was principally owing to the violence of parties, they then appointed a stadtholder, who sustained them. If we look at more recent events, we shall have a more pointed demonstration that their political infelicity arises from the imbecility of their government. In the late disorders the states were almost equally divided, three provinces on one side, three on the other, and the other divided. One party inclined to the Prussians, and the other to the French. The situation of France did not admit of their interposing immediately in their disputes by an army, that of the Prussians did. A powerful and large army marched into Holland and compelled the other party to surrender. We know the distressing consequences to the people. What produced those disputes and the necessity of foreign interference, but the debility of their confederacy? We may be warned by their example, and shun their fate, by removing the causes which produced their misfortunes. My honorable friend has referred to the transaction of the federal council, with respect to the navigation of the Mississippi. I wish it was consistent with delicacy and prudence to lay a complete view of the whole matter before this committee. The history of it is singular and curious, and perhaps its origin ought to be taken into consideration.

I will touch on some circumstances, and introduce nearly the substance of most of the facts relative to it, that I may not seem to shrink from explanation. It was soon perceived, sir, after the commencement of the war with Britain, that among the various objects that would affect the happiness of the people of America, the navigation of the Mississippi was one. Throughout the whole history of foreign negotiation, great stress was laid on its preservation. In the time of our greatest distresses, and particularly when the southern states were the scene of war, the southern states cast their eyes around to be relieved from their misfortunes. It was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that for so substantial a consideration, Spain might be induced to afford decisive succour. It was opposed by the northern and eastern states. They were

sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the southern states were for it, and the eastern states opposed to it. Since obtaining that happy peace, which secures to us all our claims, this subject has been taken again into consideration, and deliberated upon in the federal government. A temporary relinquishment has been agitated. Several members from the different states, but particularly from the northern, were for a temporary surrender, because it would terminate disputes, and at the end of the short period for which it was to be given, the right would revert, of course, to those who had given it up. And for this temporary surrender some commercial advantages were offered. For my part, I consider this measure, though founded on considerations plausible and honorable, was yet not justifiable, but on grounds of inevitable necessity. I must declare in justice to many characters who were in congress, that they declared that they never would enter into the measure, unless the situation of the United States was such as could not prevent it.

I suppose that the adoption of this government will be favorable to the preservation of the right to that navigation. Emigration will be made from those parts of the United States which are settled, to those parts which are unsettled. If we afford protection to the western country, we will see it rapidly peopled. Emigrations from some of the northern states have been lately increased. We may conclude, as has been said, by a gentleman on the same side [Mr. Nicholas], that those who emigrate to that country, will leave behind them all their friends and connections as advocates for this right.

What was the cause of those states being the champions of this right when the southern states were disposed to surrender it? The preservation of this right will be for the general interest of the union. The western country will be settled from the north as well as the south, and its prosperity will add to the strength and security of the union. I am not able to recollect all those circumstances which would be necessary to give gentlemen a full view of the subject. I can only add, that I conceive that the establishment of the new government will be the best possible means of securing our rights as well in the western parts, as elsewhere. I will not sit down till I make one more observation on what fell from my honorable friend. He says, that the true difference between the states lies in this circumstance—that some are carrying states, and others productive, and that the operation of the new government will be, that there will be a plurality of the former to combine against the interest of the latter, and that consequently it will be dangerous to put it in their power to do so. I would join with him in sentiments, if this were the case. Were this within the bounds of probability, I should be equally alarmed, but I think that those states, which are contradistinguished as carrying states, from the non-importing states, will be but few. I suppose the southern states will be considered by all, as under the latter description. Some other states have been mentioned by an honorable member on the same side, which are not considered as carrying states. New Jersey and Connecticut can by no means be enumerated among the carrying states. They receive their supplies through New York. Here then is a plurality of non-importing states. I could add another, if necessary. Delaware, though situated upon the water, is upon the list of non-carrying states. I might say that a great part of New Hampshire is so. I believe a majority of the people of that state receive their supplies from Massachusetts, Rhode Island, and Connecticut. Might I not add all those states which will be admitted hereafter into the

union? These will be non-carrying states, and will support Virginia in case the carrying states will attempt to combine against the rest. This objection must therefore fall to the ground. My honorable friend has made several other remarks, but I will defer saying any more till we come to those parts to which his objections refer.

## JUNE 12—POWER TO LAY TAXES—JEFFERSON'S VIEWS—RELIGIOUS FREEDOM—TREATY-MAKING POWER.

Mr. Madison.—

Mr. Chairman, pardon me for making a few remarks on what fell from the honorable gentleman last up [Henry]. I am sorry to follow the example of gentlemen in deviating from the rule of the house.—But as they have taken the utmost latitude in their objections, it is necessary that those who favor the government should answer them. But I wish as soon as possible to take up the subject regularly. I will therefore take the liberty to answer some observations which have been irregularly made, though they might be more properly answered when we come to discuss those parts of the constitution to which they respectively refer. I will, however, postpone answering some others till then. If there be that terror in direct taxation, that the states would comply with requisitions to guard against the federal legislature; and if, as gentlemen say, this state will always have it in her power to make her collections speedily and fully, the people will be compelled to pay the same amount as quickly and punctually as if raised by the general government.

It has been amply proved, that the general government can lay taxes as conveniently to the people as the state governments, by imitating the state systems of taxation. If the general government have not the power of collecting its own revenues, in the first instance, it will be still dependent on the state governments in some measure: and the exercise of this power, after refusal, will be inevitably productive of injustice and confusion, if partial compliances be made before it is driven to assume it. Thus, Sir, without relieving the people in the smallest degree, the alternative proposed will impair the efficacy of the government, and will perpetually endanger the tranquillity of the union.

The honorable member's objection with respect to requisitions of troops will be fully obviated at another time. Let it suffice now to say, that it is altogether unwarrantable, and founded upon a misconception of the paper before you. But the honorable member, in order to influence our decision, has mentioned the opinion of a citizen [Jefferson] who is an ornament to this state. When the name of this distinguished character was introduced, I was much surprised. Is it come to this, then, that we are not to follow our own reason? Is it proper to introduce the opinions of respectable men, not within these walls? If the opinion of an important character were to weigh on this occasion, could we not adduce a character equally great on our side? Are we, who (in the honorable gentleman's opinion) are not to be governed by an erring world, now to submit to the opinion of a citizen beyond the Atlantic? I believe, that were that gentleman now on this floor, he would be for the adoption of this constitution. I wish

his name had never been mentioned. I wish every thing spoken here, relative to his opinion, may be suppressed if our debates should be published. I know that the delicacy of his feelings will be wounded, when he will see in print what has and may be said, concerning him on this occasion. I am, in some measure, acquainted with his sentiments on this subject. It is not right for me to unfold what he has informed me. But I will venture to assert, that the clause now discussed, is not objected to by Mr. Jefferson. He approves of it, because it enables the government to carry on its operations.—He admires several parts of it, which have been reprobated with vehemence in this house. He is captivated with the equality of suffrage in the senate, which the honorable gentleman [Mr. Henry] calls the rotten part of this constitution. But, whatever be the opinion of that illustrious citizen, considerations of personal delicacy should dissuade us from introducing it here.

The honorable member has introduced the subject of religion. Religion is not guarded—there is no bill of rights declaring that religion should be secure. Is a bill of rights a security for religion? Would the bill of rights, in this state, exempt the people from paying for the support of one particular sect, if such sect were exclusively established by law? If there were a majority of one sect, a bill of rights would be a poor protection for liberty. Happily for the states, they enjoy the utmost freedom of religion. This freedom arises from that multiplicity of sects, which pervades America, and which is the best and only security for religious liberty in any society. For where there is such a variety of sects, there cannot be a majority of any one sect to oppress and persecute the rest. Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment—I believe it to be so in the other states. There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it, would be a most flagrant usurpation. I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular state. A particular state might concur in one religious project. But the United States abound in such a variety of sects, that it is a strong security against religious persecution, and it is sufficient to authorise a conclusion, that no one sect will ever be able to outnumber or depress the rest.

I will not travel over that extensive tract, which the honorable member has traversed. I shall not now take notice of all his desultory objections. As occasions arise, I shall answer them.

It is worthy of observation, on this occasion, that the honorable gentleman himself, seldom fails to counteract the arguments of gentlemen on that side of the question. For example, he strongly complains that the federal government, from the number of its members, will make an addition to the public expense, too formidable to be borne, and yet he and other gentlemen on the same side, object that the number of representatives is too small, though ten men are more than we are entitled to under the existing system! How can these contradictions be reconciled? If we are to adopt any efficient government at all, how can we discover or establish such a system, if it be thus attacked? Will it be possible to form a rational conclusion upon contradictory principles? If arguments of a contradictory nature were to be brought against the



wisest and most admirable system to the formation of which human intelligence is competent it never could stand them.

He has acrimoniously inveighed against the government, because such transactions as congress think require secrecy, may be concealed; and particularly those which relate to treaties. He admits that when a treaty is forming, secrecy is proper; but urges that when actually made, the public ought to be made acquainted with every circumstance relative to it. The policy of not divulging the most important transactions, and negociations of nations, such as those which relate to warlike arrangements and treaties, is universally admitted. The congressional proceedings are to be occasionally published, including all receipts and expenditures of public money, of which no part can be used but in consequence of appropriations made by law. This is a security which we do not enjoy under the existing system. That part which authorises the government to withhold from the public knowledge what in their judgement may require secrecy, is imitated from the confederation; that very system which the gentleman advocates.

No treaty has been formed, and I will undertake to say, that none will be formed under the old system, which will secure to us the actual enjoyment of the navigation of the Mississippi. Our weakness precludes us from it. We are entitled to it. But it is not under an inefficient government that we shall be able to avail ourselves fully of that right. I most conscientiously believe, that it will be far better secured under the new government, than the old, as we will be more able to enforce our right. The people of Kentucky will have an additional safeguard from the change of system. The strength and respectability of the union will secure them in the enjoyment of that right, till that country becomes sufficiently populous. When this happens, they will be able to retain it in spite of every opposition.

I can never admit that seven states are disposed to surrender that navigation. Indeed it never was the case. Some of their most distinguished characters are decidedly opposed to its relinquishment. When its cession was proposed by the southern states, the northern states opposed it. They still oppose it. New Jersey directed her delegates to oppose it, and is strenuously against it. The same sentiments pervade Pennsylvania: at least I am warranted to say so from the best information which I have. Those states, added to the southern states, would be a majority against it.

The honorable gentleman, to obviate the force of my observations with respect to concurrent collection of taxes under different authorities, said, that there was no interference between the concurrent collections of parochial, county, and state taxes, because they all irradiated from the same centre, but that this was not the case with the general government. To make use of the gentleman's own terms, the concurrent collections under the authorities of the general government and state governments, all irradiate from the people at large. The people is their common superior. The sense of the people at large, is to be the predominating spring of their actions. This is a sufficient security against interference.

Our attention was called to our commercial interest, and at the same time the landed interest was said to be in danger. If those ten men who were to be chosen, be elected

by landed men, and have land themselves, can the electors have any thing to apprehend? If the commercial interests be in danger, why are we alarmed about the carrying trade? Why is it said, that the carrying states will preponderate, if commerce be in danger? With respect to speculation, I will remark that stock-jobbing has prevailed, more or less, in all countries, and ever will, in some degree, notwithstanding any exertions to prevent it. If you judge from what has happened under the existing system, any change would render a melioration probable.

## JUNE 13—MISSISSIPPI NEGOTIATIONS.1

Mr. Madison.—

Mr. Chariman, it is extremely disagreeable to me to enter into this discussion, as it is foreign to the object of our deliberations here, and may in the opinion of some, lead to sully the reputation of our public councils. As far as my memory will enable me, I will develop the subject. We will not differ with one another with respect to facts: perhaps we may differ with respect to principles. I will take the liberty to observe, that I was led before to make some observations, which had no relation to the subject under consideration, as relative to the western country, to obviate suggestions of gentlemen, which seemed to me to be groundless. I stated that there was a period when the southern states were advocates for the alienation or suspension of the right to the Mississippi (I will not say which), and the eastern states were against both. I mention this to shew, that there was no disposition in that part, to surrender that right or dispose of that country. I do suppose that the fishery had its influence on those states. No doubt it was the case.

For that, and other reasons, they still continue against the alienation. For it might lessen the security of retaining the fishery. From the best information, it never was the sense of the people at large, or the prevailing characters of the eastern states, to approve of the measure. If interest, Sir, should continue to operate on them, I humbly conceive, that they will derive more advantage from holding the Mississippi, than even the southern states. For if the carrying business be their natural province, how can it be so much extended and advanced, as by giving the encouragement to agriculture in the western country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture for its support in a great measure. In what place is agriculture so capable of improvement and great extension, as in the western country? But whatever considerations may prevail in that quarter or any other, respecting their interest, I think we may fairly suppose that the consideration which the honorable member mentioned, and which has been repeated, I mean the emigrations which are going on to the westward, must produce the same effect as to them which it may produce with respect to us. Emigrations are now going on from that quarter as well as from this state.

I readily confess that neither the old confederation, nor the new constitution, involves a right to give the navigation of the Mississippi. It is repugnant to the law of nations. I have always thought and said so. Although the right be denied, there may be emergencies which will make it necessary to make a sacrifice. But there is a material

difference between emergencies of safety in time of war, and those which may relate in mere commercial regulations. You might on solid grounds deny in peace, what you give up in war. I do not conceive, however, that there is that extreme aversion in the minds of the people of the eastern states, to emigrate to the westward, which was insinuated by my honorable friend. Particular citizens, it cannot be doubted, may be averse to it. But it is the sense of the people at large, which will direct the public measures. We find, from late arrangements made between Massachusetts and New York, that a very considerable country to the westward of New York, was disposed of to Massachusetts, and by Massachusetts, to some individuals, to conduct emigrants to that country.

There were seven states who thought it right to give up the navigation of the Mississippi for twenty-five years, for several reasons which have been mentioned. As far as I can recollect, it was nearly as my honorable friend said. But they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there were grounds of serious negotiation between Great Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold that navigation from us, and injure us in other respects materially. The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition. It is but justice to myself to say, that however plausible the reasons urged for its temporary cession may have been, they never convinced me of its utility. I have uniformly disapproved of it, and do now.

With respect to the secretary of foreign affairs [Jay], I am intimately connected with him. I shall say nothing of his abilities and attachment to his country. His character is established in both respects. He has given a train of reasoning which governed him in his project. If he was mistaken, his integrity and probity, more than compensate for the error. I am led to think there is no settled disposition in seven states to give up that object, because New Jersey, on a further consideration of the subject, actually gave instructions to her delegates to oppose it. And what was the ground of this? I do not know the extent and particular reasons of her instructions. But I recollect, that a material consideration was, that the cession of that river, would diminish the value of the western country, which was a common fund for the United States, and would consequently, tend to impoverish their public treasury. These, Sir, were rational grounds.

Give me leave, Sir, as I am upon this subject, and as the honorable gentleman has raised a question, whether it be not more secure under the old than the new constitution—to differ from him. I shall enter into the reasoning which, in my mind, renders it more secure under the new system. Two thirds of the senators present, (which) will be nine states, (if all attend to their duty) and the president must concur in every treaty which can be made. Here are two distinct and independent branches, which must agree to every treaty; under the existing system, two thirds of the states must concur to form a treaty. But it is but one body. Gentlemen may reason and conclude differently on this subject. I own that as far as I have any rights, which are but trivial, I would rather trust them to the new, than the old government. Besides, let me observe, that the house of representatives will have a material influence on the

government, and will be additional security in this respect: but there is one thing which he mentioned, which merits attention. If commercial policy be a source of great danger, it will have less influence in the new system, than in the old. For, in the house of representatives, it will have little or no influence. They are drawn from the landed interest; taken from the states at large, and many of them from the western country. Whereas the present members of congress have been taken from the Atlantic side of the continent. When we calculate the dangers that may arise in any case, we judge from the rules of proportion and chances of numbers. The people at large choose those who elect the president. The weight of population will be to the southward, if we include the western country. There will then be a majority of the people in favor of this right. As the president must be influenced by the sense and interest of his electors, as far as it depends on him (and his agency in making treaties is equal to that of the senate) he will oppose the cession of that navigation. As far as the influence of the representative goes, it will also operate in favor of this right.—The power of treaties is not lodged in the senators of particular states. Every state has an equal weight. If ten senators can make a treaty, ten senators can prevent one from being made. It is from a supposition, that all the southern delegates will be absent, that ten senators or two thirds of a majority, can give up this river. The possibility of absence operates equally as much against the northern states. If one fifth of the members present think the measure erroneous the votes of the states are to be taken upon it, and entered on the journals. Every gentlemen here ought to recollect, that this is some security, as the people will thereby know those who advocate iniquitous measures. If we consider the number of changes in the members of the government, we will find it another security. But after all, Sir, what will this policy signify, which tends to surrender the navigation of the Mississippi? Resolutions of congress to retain it, may be repeated, and re-echoed from every part of United States. It is not resolutions of this sort, which the people of this country wish for. They want an actual possession of the right, and protection in its enjoyment. Similar resolutions have been taken under the existing system, on many occasions. But they have been, heretofore, and will be hereafter, in my opinion, nugatory and fruitless unless a change takes place, which will give energy to the acts of the government.

I will take the liberty to touch once more on the several considerations which produced the question, because perhaps the committee may not yet thoroughly comprehend it. In justice to those gentlemen who concluded in favor of the temporary cession, I mention their reasons, although I think the measure wrong. The reasons for so doing under the old system, will be done away by the new system. We could not, without national dishonor, assert our right to the Mississippi, and suffer any other nation to deprive us of it. This consideration, with others before mentioned, influenced them. I admit it was wrong. But it is sufficient to prove that they acted on principles of integrity. Will they not be bound by honor and conscience, when we are able to enjoy and retain our right, not to give it up, or suffer it to be interrupted? A weak system produced this project. A strong system will remove the inducement. For may we not suppose it will be reversed by a change of system? I was called up to say, what was its present situation. There are some circumstances within my knowledge, which I am not at liberty to communicate to this house. I will not go farther than to answer the objections of gentlemen. I wish to conceal no circumstance, which I can relate consistently with my duty. As to matters of fact, I have advanced nothing which

I presume will be contradicted. On matters of opinion, we may differ. Were I at liberty, I could develop some circumstances, which would convince this house, that this project will never be revived in congress, and that therefore no danger is to be apprehended.

## JUNE 14—ELECTION OF SENATORS AND REPRESENTATIVES.

Mr. Madison.—

Mr. Chairman, the reason of the exception was, that if congress could fix the place of choosing the senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating the elections. But it was necessary to give the general government a control over the time and manner of choosing the senators, to prevent its own dissolution.

With respect to the other point, it was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally in some states, particularly South Carolina, with respect to Charleston, which is represented by thirty members. Should the people of any state, by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government. It was found impossible to fix the time, place, and manner, of the election of representatives in the constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And considering the state governments and general governments as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the constitution.

[Mr. Monroe wished to hear an explanation of the clause which prohibits either house, during the session of congress, from adjourning for more than three days without the consent of the other.]

Mr. Madison wondered that this clause should meet with a shadow of objection. It was possible, he observed, that the two branches might not agree concerning the time of adjournment, and that this possibility suggested the power given the president of adjourning both houses to such time as he should think proper, in case of their disagreement. That it would be very exceptionable to allow the senators, or even the

representatives, to adjourn without the consent of the other house, at any season whatsoever, without any regard to the situation of public exigencies. That it was possible, in the nature of things, that some inconvenience might result from it; but that it was as well secured as possible.

## JUNE 14—COMPENSATION OF CONGRESS.

Mr. Madison.—

Mr. Chairman, I most sincerely wish to give a proper explanation on this subject, in such a manner as may be to the satisfaction of every one. I shall suggest such considerations as led the convention to approve of this clause. With respect to the right of ascertaining their own pay, I will acknowledge, that their compensations, if practicable, should be fixed in the constitution itself, so as not to be dependent on congress itself, or on the state legislatures. The various vicissitudes, or rather the gradual diminution of the value of all coins and circulating medium, is one reason against ascertaining them immutably, as what may be now an adequate compensation, might by the progressive reduction of the value of our circulating medium, be extremely inadequate at a period not far distant.

It was thought improper to leave it to the state legislatures, because it is improper that one government should be dependent on another: and the great inconveniences experienced under the old confederation, show the states would be operated upon by local considerations, as contradistinguished from general and national interests.

Experience shows us that they have been governed by such heretofore, and reason instructs us that they would be influenced by them again. This theoretic inconvenience of leaving to Congress the fixing their compensations is more than counterbalanced by this in the Confederation—that the state legislatures had a right to determine the pay of the members of Congress, which enabled the states to destroy the general government. There is no instance where this power has been abused. In America, legislative bodies have reduced their own wages lower, rather than augmented them. This is a power which cannot be abused without rousing universal attention and indignation. What would be the consequence of the Virginia legislature raising their pay to four or five pounds each per day? The universal indignation of the people. Should the general Congress annex wages disproportionate to their services, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse.

It was conceived that the great danger was in creating new offices, which would increase the burdens of the people; and not in a uniform admission of all meritorious characters to serve their country in the old offices. There is no instance of any state constitution which goes as far as this. It was thought to be a mean between two extremes. It guards against abuse by taking away the inducement to create new offices, or increase the emolument of old offices; and it gives them an opportunity of enjoying, in common with other citizens, any of the existing offices which they may be capable of executing; to have precluded them from this, would have been to

exclude them from a common privilege to which every citizen is entitled, and to prevent those who had served their country with the greatest fidelity and ability from being on a par with their fellow-citizens. I think it as well guarded as reason requires; more so than the constitution of any other nation.

## JUNE 14—COMPENSATION OF CONGRESS.

Mr Madison—

Mr Chairman, let me ask those who oppose this part of the system, whether any alteration would not make it equally, or more liable to objections? Would it be better to fix their compensations? Would not this produce inconveniences? What authorises us to conclude, that the value of coins will continue always the same? Would it be prudent to make them dependent on the state governments for their salaries—on those who watch them with jealous eyes, and who consider them as encroaching, not on the people, but on themselves? But the worthy member supposes, that congress will fix their wages so low, that only the rich can fill the offices of senators and representatives. Who are to appoint them? The rich? No, sir, the people are to choose them. If the members of the general government were to reduce their compensations to a trifle, before the evil suggested could happen, the people could elect other members in their stead, who would alter that regulation. The people do not choose them for their wealth. If the state legislatures choose such men as senators, it does not influence the people at large in their election of representatives.—They can choose those who have the most merit and least wealth. If Congress reduce their wages to a trifle, what shall prevent the states from giving a man of merit, so much as will be an adequate compensation? I think the evil very remote, and if it were now to happen, the remedy is in our own hands, and may, by ourselves, be applied.

Another gentleman seems to apprehend infinite mischief from a possibility that any member of congress may be appointed to an office, although he ceases to be a member the moment he accepts it. What will be the consequence of precluding them from being so appointed? If you have in your country, one man whom you could in time of danger trust above all others, with an office of high importance, he cannot undertake it till two years expire if he be a representative; or till the six years elapse, if a senator. Suppose America was engaged in war, and the man of the greatest military talents and approved fidelity, was a member of either house—would it be right that this man, who could lead us to conquer, and who could save his country from destruction, could not be made general till the term of his election expired? Before that time, we might be conquered by our enemies. This will apply to civil as well as military officers. It is impolitic to exclude from the service of his country, in any office, the man who may be most capable of discharging its duties, when they are most wanting.

The honorable gentleman said, that those who go to Congress, will look forward to offices as a compensation for their services, rather than salaries. Does he recollect that they shall not fill offices created by themselves? When they go to congress, the old offices will be filled.—They cannot make any probable calculation that the men in

office will die, or forfeit their offices. As they cannot get any new offices, one of those contingencies must happen, before they can get any office at all. The chance of getting an office is, therefore, so remote, and so very distant, that it cannot be considered as a sufficient reason to operate on their minds, to deviate from their duty.

Let any man calculate in his own mind, the improbability of a member of the general government getting into an office, when he cannot fill any office newly created, and when he finds all the old offices filled at the time he enters into congress. Let him view the danger and impolicy of precluding a member of congress from holding existing offices, and the danger of making one government dependent on another, and he will find that both clauses deserve applause.

The observations made by several honorable members, illustrate my opinion, that it is impossible to devise any system agreeable to all.—When objections so contradictory are brought against it, how shall we decide? Some gentlemen object to it, because they may make their wages too high—others object to it, because they may make them too low. If it is to be perpetually attacked by principles so repugnant, we may cease to discuss. For what is the object of our discussion? Truth, sir. To draw a true and just conclusion. Can this be done without rational premises, and syllogistic reasoning?

As to the British parliament, it is nearly as he says. But how does it apply to this case? Suppose their compensations had been appointed by the state governments, or fixed in the constitution—would it be a safe government for the union, if its members depended on receiving their salaries from other political bodies at a distance, and fully competent to withhold them? Its existence would, at best, be but precarious. If they were fixed in the constitution, they might become extremely inadequate, and produce the very evil which gentlemen seem to fear.—For then a man of the highest merit could not act unless he were wealthy. This is the most delicate part in the organization of a republican government. It is the most difficult to establish on unexceptionable grounds. It appears to me most eligible as it is. The constitution has taken a medium between the two extremes, and perhaps with more wisdom than either the British or the state governments, with respect to their eligibility to offices. They can fill no new offices created by themselves, nor old ones of which they increased the salaries. If they were excluded altogether, it is possible that other disadvantages might accrue from it, besides the impolicy and injustice of depriving them of a common privilege. They will not relinquish their legislative, in order to accept other offices. They will more probably confer them on their friends and connections. If this be an inconvenience, it is incident to all governments. After having heard a variety of principles developed, I thought that on which it is established the least exceptionable, and it appears to me sufficiently well guarded.



## JUNE 14—ORIGINATING OF MONEY BILLS.

Mr. Madison.

Mr. Chairman, the criticism made by the honorable member, is, that there is an ambiguity in the words, and that it is not clearly ascertained where the origination of money bills may take place. I suppose the first part of the clause is sufficiently expressed to exclude all doubts. The gentlemen who composed the convention divided in opinion, concerning the utility of confining this to any particular branch. Whatever it be in Great Britain, there is a sufficient difference between us and them to render it inapplicable to this country. It has always appeared to me, to be a matter of no great consequence, whether the senate had a right of originating, or proposing amendments to money bills or not. To withhold it from them would create disagreeable disputes. Some American constitutions make no difference. Virginia and South Carolina, are, I think, the only states, where this power is restrained. In Massachusetts, and other states, the power of proposing amendments is vested, unquestionably, in their senates. No inconvenience has resulted from it. On the contrary, with respect to South Carolina, this clause is continually a source of disputes. When a bill comes from the other house, the senate entirely rejects it, and this causes contentions. When you send a bill to the senate, without the power of making any alteration, you force them to reject the bill altogether, when it would be necessary and advantageous that it should pass.

The power of proposing alterations, removes this inconvenience, and does not appear to me at all objectionable. I should have no objection to their having a right of originating such bills. People would see what was done, and it would add the intelligence of one house to that of the other. It would be still in the power of the other house to obstruct any injudicious measure proposed by them. There is no land mark or constitutional provision in Great Britain, which prohibits the house of lords from intermeddling with money bills; but the house of commons have established this rule. Yet the lords insist on their having a right to originate them, as they possess great property, as well as the commons, and are taxed like them. The house of commons object to their claim, lest they should too lavishly make grants to the crown, and increase the taxes. The honorable member says, that there is no difference between the right of originating bills, and proposing amendments. There is some difference, though not considerable. If any grievances should happen in consequence of unwise regulations in revenue matters, the odium would be divided, which will now be thrown on the house of representatives. But you may safely lodge this power of amending with the senate. When a bill is sent with proposed amendments to the house of representatives, if they find the alterations defective, they are not conclusive. The house of representatives are the judges of their propriety, and the recommendation of the senate is nothing. The experience of this state justifies this clause. The house of delegates has employed weeks in forming a money bill; and because the senate had no power of proposing amendments, the bill was lost altogether; and a new bill obliged to be again introduced, when the insertion of one line by the senate would have done. Those gentlemen who oppose this clause will not object to it, when they recollect that the senators are appointed by the states, as the present members of congress are

appointed. For, as they will guard the political interests of the states in other respects, they will attend to them very probably in their amendments to money bills. I think this power, for these considerations, is useful and necessary.

## JUNE 14—POWER OVER THE MILITIA.

Mr Madison.—

Mr Chairman, I most cordially agree with the honorable member last up [Mason], that a standing army is one of the greatest mischiefs that can possibly happen. It is a great recommendation for this system, that it provides against this evil more than any other system known to us, and particularly more than the old system of confederation. The most effectual way to guard against a standing army, is to render it unnecessary. The most effectual way to render it unnecessary, is to give the general government full power to call forth the militia, and exert the whole natural strength of the union when necessary. Thus you will furnish the people with sure and certain protection, without recurring to this evil; and the certainty of this protection from the whole, will be a strong inducement to individual exertion. Does the organization of the government warrant a belief, that this power will be abused? Can we believe that a government of a federal nature, consisting of many coequal sovereignties, and particularly having one branch chosen from the people, would drag the militia unnecessarily to an immense distance? This, Sir, would be unworthy the most arbitrary despot. They have no temptation whatever to abuse this power; such abuse could only answer the purpose of exciting the universal indignation of the people, and drawing on themselves the general hatred and detestation of their country.

I cannot help thinking that the honorable gentleman has not considered in all its consequences, the amendment he has proposed. Would this be an equal protection, Sir? Or would it not be a most partial provision? Some states have three or four states in contact. Were this state invaded, as it is bounded by several states, the militia of three or four states would, by this proposition, be obliged to come to our aid; and those from some of the states would come a far greater distance than those of others. There are other states, which if invaded, could be assisted by the militia of one state only, there being several states which border but on one state. Georgia and New-Hampshire would be infinitely less safe than those of the other states. Were we to adopt this amendment, we should set up those states as butts for invasions, invite foreign enemies to attack them, and expose them to peculiar hardships and dangers. Were the militia confined to any limited distance from their respective places of abode, it would produce equal, nay, more, inconveniences. The principles of equality, and reciprocal aid, would be destroyed in either case.

I cannot conceive that this constitution, by giving the general government the power of arming the militia, takes it away from the state governments. The power is concurrent, and not exclusive. Have we not found from experience, that while the power of arming and governing of the militia has been solely vested in the state legislatures, they were neglected and rendered unfit for immediate service? Every state neglected too much this most essential object. But the general government can

do it more effectually. Have we not also found, that the militia of one state were almost always insufficient to succour its harrassed neighbor? Did all the states furnish their quotas of militia with sufficient promptitude? The assistance of one state will be of little avail to repel invasion. But the general head of the whole union can do it with effect, if it be vested with power to use the aggregate strength of the union. If the regulation of the militia were to be committed to the executive authority alone, there might be reason for providing restrictions. But, Sir, it is the legislative authority that has this power. They must make a law for the purpose.

The honorable member is under another mistake. He wishes martial law to be exercised only in time of war, under an idea that congress can establish it in time of peace. The states are to have the authority of training the militia according to the congressional discipline; and of governing them at all times, when not in the service of the union.—Congress is to govern such part of them as may be employed in the actual service of the United States; and such part only can be subject to martial law. The gentlemen in opposition have drawn a most tremendous picture of the constitution in this respect. Without considering that the power was absolutely indispensable, they have alarmed us with the possible abuse of it, but have shewn no inducement or motive to tempt them to such abuse. Would the legislature of the state drag the militia of the eastern shore to the western frontiers, or those of the western frontiers to the eastern shore, if the local militia were sufficient to effect the intended purpose? There is something so preposterous, and so full of mischief in the idea of dragging the militia unnecessarily from one end of the continent to the other, that I think there can be no ground of apprehension. If you limit their power over the militia you give them a pretext for substituting a standing army. If you put it in the power of the state governments to refuse the militia, by requiring their consent, you destroy the general government, and sacrifice particular states. The same principles and motives which produce disobedience to requisitions, will produce refusal in this case.

The restrictions which the honorable gentleman mentioned to be in the British constitution, are all provisions against the power of the executive magistrate. But the house of commons may, if they be so disposed, sacrifice the interest of their constituents in all those cases. They may prolong the duration of mutiny bills, and grant supplies to the king to carry on an impolitic war. But they have no motives to do so. For they have strong motives to do their duty. We have more ample security than the people of Great Britain. The powers of the government are more limited and guarded, and our representatives are more responsible than the members of the British house of commons.

## JUNE 14—POWER OVER PURSE AND SWORD.

Mr Madison—

Mr Chairman, the honorable gentleman has laid much stress on the maxim, that the purse and sword ought not to be put in the same hands, with a view of pointing out the impropriety of vesting this power in the general government. But it is totally inapplicable to this question. What is the meaning of this maxim? Does it mean that

the sword and purse ought not to be trusted in the hands of the same government? This cannot be the meaning. For there never was, and I can say there never will be an efficient government, in which both are not vested. The only rational meaning, is, that the sword and purse are not to be given to the same member. Apply it to the British government, which has been mentioned. The sword is in the hands of the British king. The purse in the hands of the parliament. It is so in America, as far as any analogy can exist. Would the honorable member say, that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether? If he says so, it will violate the meaning of that maxim. This would be a novelty hitherto unprecedented. The purse is in the hands of the representatives of the people. They have the appropriation of all monies. They have the direction and regulation of land and naval forces. They are to provide for calling for the militia—and the president is to have the command; and, in conjunction with the senate, to appoint the officers. The means ought to be commensurate to the end. The end is general protection. This cannot be effected without a general power to use the strength of the union.

We are told that both sides are distinguished by these great traits, confidence and distrust. Perhaps there may be a less or greater tincture of suspicion on one side, than the other. But give me leave to say, that where power can be safely lodged, if it be necessary, reason commands its cession. In such case it is imprudent and unsafe to withhold it. It is universally admitted that it must be lodged in some hands or other. The question then is, in what part of the government it ought to be placed; and not whether any other political body independent of the government should have it or not. I profess myself to have had an uniform zeal for a republican government. If the honorable member, or any other person, conceives that my attachment to this system arises from a different source, he is greatly mistaken. From the first moment that my mind was capable of contemplating political subjects, I never, till this moment, ceased wishing success to a well regulated republican government. The establishment of such in America was my most ardent desire. I have considered attentively (and my consideration has been aided by experience) the tendency of a relaxation of laws, and a licentiousness of manners.

If we review the history of all republics, we are justified by the supposition, that if the bands of the government be relaxed, confusion will ensue. Anarchy ever has, and I fear ever will, produce despotism. What was the state of things that preceded the wars and revolutions in Germany? Faction and confusion. What produced the disorders and commotions of Holland? The like causes. In this commonwealth, and every state in the union, the relaxed operation of the government has been sufficient to alarm the friends of their country. The rapid increase of population in every state is an additional reason to check dissipation and licentiousness. Does it not strongly call for the friends of republican government to endeavor to establish a republican organization? A change is absolutely necessary. I can see no danger in submitting to practice an experiment which seems to be founded on the best theoretic principles.

But the honorable member tells us, there is not an equal responsibility delineated on that paper, to that which is in the English government. Calculations have been made here, that when you strike off those entirely elected by the influence of the crown, the

other part does not bear a greater proportion to the number of their people, than the number fixed in that paper, bears to the number of inhabitants in the United States. If it were otherwise, there is still more responsibility in this government. Our representatives are chosen for two years. In Great Britain they are chosen for seven years. Any citizen may be elected here. In Great Britain no one can be elected to represent a county, without having an estate of the value of £600, sterling a year, nor to represent a corporation without an annual estate of £300. Yet we are told, there is no sympathy or fellow-feeling between the people here, and their representatives; but that in England they have both:—A just comparison will show, that if confidence be due to the government there, it is due ten fold here.

(Mr Madison made many other observations, but spoke so very low that he could not be distinctly heard.)

## JUNE 14—POWER OVER ELECTIONS.

Mr Madison.—

Mr Chairman, I cannot think that the explanation of the gentleman last up, is founded in reason. It does not say that the militia shall be called out in all cases, but in certain cases. There are cases in which the execution of the laws may require the operation of militia, which cannot be said to be an invasion or insurrection. There may be a resistance to the laws which cannot be termed an insurrection.

My honorable friend over the way has opened a new source of argument. He has introduced the assertions of gentlemen out of doors. If we thus depart from regularity, we will never be able to come to a decision.

If there be any gentleman who is a friend to the government, and says, that the elections may, or ought to be held in one place, he is an enemy to it on that ground. With respect to the time, place, and manner of elections, I cannot think, notwithstanding the apprehensions of the honorable gentleman, that there is any danger, or if abuse should take place, that there is not sufficient security. If all the people, of the United States should be directed to go to elect in one place, the members of the government would be execrated for the infamous regulation. Many would go to trample them under foot for their conduct—and they would be succeeded by men who would remove it. They would not dare to meet the universal hatred and detestation of the people, and run the risk of the certain dreadful consequences. We must keep within the compass of human probability. If a possibility be the cause of objection, we must object to every government in America. But the honorable gentleman may say, that better guards may be provided. Let us consider the objection. The power of regulating the time, place, and manner of elections, must be vested some where. It could not be fixed in the constitution without involving great inconveniences. They could then have no authority to adjust the regulation to the changes of circumstances. The question then is, whether it ought to be fixed unalterably in the state governments, or subject to the control of the general government. Is it not obvious, that the general government would be destroyed

without this control? It has already been demonstrated that it will produce many conveniences. Have we not sufficient security against abuse? Consider fully the principles of the government. The sum of the powers given up by the people of Virginia is divided into two classes: One to the federal and the other to the state government. Each is subdivided into three branches. These may be kept independent of each other in the one as well as the other. In this system they are as distinct as is consistent with good policy. This, in my opinion, instead of diminishing, increases the security of liberty more than any government that ever was. For the powers of government which in every other country are given to one body, are here given to two; and are favorable to public liberty. With respect to secrecy, if every thing in which it is necessary, could be enumerated, I would have no objection to mention them. All the state legislatures can keep secret what they think ought to be concealed. The British house of commons can do it. They are in this respect under much less restraint than congress. There never was any legislative assembly without a discretionary power of concealing important transactions, the publication of which might be detrimental to the community. There can be no real danger as long as the government is constructed on such principles.

He objects also to the clause respecting adjournment that neither house shall, without the consent of the other, adjourn for more than three days. It was before remarked, that if a difference should take place between the houses about the time of adjournment, the president could still determine it: from which no danger could arise, as he is chosen in a secondary degree by the people, and would consequently fix no time which would be repugnant to the sense of the representatives of the people. Another, and more satisfactory answer is this: suppose the senate wished to chain down the house of representatives, what is to hinder them from going home? How bring them back again? It would be contrary to the spirit of the constitution to impede the operations of the government, perhaps at a critical period. I cannot conceive that such difference will often happen. Were the senate to attempt to prevent an adjournment, it would but serve to irritate the representatives, without having the intended effect, as the president could adjourn them. There will not be occasion for the continual residence of the senators at the seat of government. What business have they more than the house of representatives? The appointment of officers and treaties. With respect to the appointment of officers, a law may be made to grant it to the President alone. It must be supposed there will be but few and subordinate officers to be appointed, as the principal offices will be filled. It is observed that the President, when vacancies happen during the recess of the senate, may fill them till it meets. With respect to treaties, the occasions of forming them will not be many, and will mean but a small proportion of the time of session.

## JUNE 16—POWER OVER THE MILITIA.

Mr Madison—

Mr Chairman, I will endeavor to follow the rule of the house; but must pay due attention to the observations which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded. I should think, that if there were any

object, which the general government ought to command, it would be the direction of the national forces. And as the force which lies in militia is most safe, the direction of that part ought to be submitted to, in order to render another force unnecessary. The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given that the want of such authority in the government, protracted the late war, and prolonged its calamities.

He says, that one ground of complaint at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country—without the consent of the people of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though in one or two of them, there is something like a prohibition, yet in most of them it is only provided, that no armies shall be kept without the legislative authority; that is, without the consent of the community itself. Where is the impropriety of saying that we shall have an army, if necessary? Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say that the only possible way to provide for standing armies, is to make them unnecessary.

The way to do this, is to organize and discipline our militia, so as to render them capable of defending the country against external invasions, and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against possibility of abuses? It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection in the militia was at an end. Was there ever a constitution, in which, if authority was vested, it must not have been executed by force, if resisted? Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be established, that will answer any purpose whatever, unless force be provided for executing its laws? The constitution does not say that a standing army shall be called out to execute the laws. Is not this a more proper way? The militia ought to be called forth to suppress smugglers. Will this be denied? The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who, otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be combinations of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The parliament found the evil so great, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration proves the contrary. There never was a government without force. What is the meaning of government? An institution to make people do their duty. A government leaving it to a man to do his duty, or not as

he pleases, would be a new species of government, or rather no government at all. The ingenuity of the gentleman is remarkable, in introducing the riot act of Great Britain. That act has no connection, or analogy, to any regulation of the militia; nor is there any thing in the constitution to warrant the general government to make such an act. It never was a complaint in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland, is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. An observation fell from a gentleman on the same side with myself, which deserves to be attended to. If we be dissatisfied with the national government, if we should choose to renounce it, this is an additional safeguard to our defence. I conceive that we are peculiarly interested in giving the general government as extensive means as possible to protect us. If there be a particular discrimination between places in America, the southern states are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

(Here Mr Madison made some other observations; but spoke so very low, that his meaning could not be comprehended.)

An act passed a few years ago in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act also in this state, empowering the officers of the customs to summon any persons to assist them when they meet with obstruction in executing their duty. This shews the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the union, and which is necessary to every government. He then moved, that the clerk should read those acts—which were accordingly read.

## JUNE 16—POWER OVER THE MILITIA.

Mr Madison.—

Mr Chairman, let me ask this committee, and the honorable member last up [Henry], what we are to understand from this reasoning? The power must be vested in congress, or in the state governments. Or there must be a division or concurrence. He is against division—It is a political monster. He will not give it to congress, for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall



successively. It will prevent them from giving aid to their sister states. For as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states. If it must be divided, let him shew a better manner of doing it than that which is in the constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia, when not called forth for general national purposes; and congress is to govern such part only as may be in the actual service of the union. Nothing can be more certain and positive than this. It expressly empowers congress to govern them when in the service of the United States. It is then clear, that the states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman, are compatible with a concurrence of the power. By the first, congress is to call them forth to suppress insurrections and repel invasions of foreign powers. A concurrence in the former case, is necessary, because a whole state may be in insurrection against the union. What has passed, may perhaps justify this apprehension. The safety of the union and particular states, requires that the general government should have power to repel foreign invasions. The fourth section of the fourth article, is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence." The word invasion here, after power had been given in the former clause to repel invasions may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guaranteed to each state, and they are to be protected from invasion from other states, as well as from foreign powers: And on application by the legislature or executive as the case may be, the militia of the other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No; but it gives them a supplementary security to suppress insurrection and domestic violence.

The other clause runs in these words, "No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, *or in imminent danger*. When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

## JUNE 16—POWER OVER SEAT OF GOVERNMENT.

Mr Madison.—

Mr Chairman, I did conceive, sir, that the clause under consideration, was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask, whether there would not be much larger scope for those dangers? I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers which he apprehends. If there be any knowledge in my mind, of the nature of man, I should think it would be the last thing that would enter into the mind of any man, to grant exclusive advantages in a very circumscribed district to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, &c., will concur to sacrifice the privileges of their friends? I believe, that whatever state may become the seat of the general government, it will become the object of jealousy, and of the envy of the other states. Let me remark, if not already remarked, that there must be a cession by particular states, of the district to congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and if they apprehend any danger, they may refuse it altogether. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the cession and deliberations of congress, would they be secure from insults, or the influence of such state? If this commonwealth depended for the freedom of deliberation, or the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to congress? With respect to the government of Holland, I believe the states general have no jurisdiction over the Hague. But I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause, are extremely improbable: nay, almost impossible.

## JUNE 16—POWER OVER SEAT OF GOVERNMENT.

Mr. Madison—

Mr Chairman, I am astonished that the honorable member should launch out into such strong descriptions without any occasion. Was there ever a legislature in existence that held their sessions at a place where they had not jurisdiction? I do not mean such a legislature as they have in Holland; for it deserves not the name.—Their powers are such as congress have now; which we find not reducible to practice. If you be satisfied with the shadow and form instead of the substance, you will render them dependent on the local authority. Suppose the legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular

country, would this country think it safe that the general good should be subject to the paramount authority of a part of the community?

The honorable member asks, why ask for this power, and if the subsequent clause be not fully competent for the same purpose? If so what new terrors can arise from this particular clause? It is only a superfluity. If that latitude of construction which he contends for, were to take place with respect to the sweeping clause, there would be room for those horrors. But it gives no supplementary power: It only enables them to execute the delegated powers. If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper, all those particular cases and circumstances in which legislation by the general legislature would be necessary and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers which are found necessary to be given, are therefore delegated generally, and particular and minute specification is left to the legislature.

(Here Mr Madison spoke of the distinction between regulation of police and legislation; but so low he could not be heard.)

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might at a critical moment seize it? I should have thought that this clause would have met with the most cordial approbation. As the consent of the state in which it may be, must be obtained, and as it may stipulate the terms of the grant, should they violate the particular stipulations, it would be an usurpation: So that if the members of congress were to be guided by the laws of their country, none of those dangers could arise.

(Mr Madison made several other remarks, which could not be heard.)

## JUNE 17—IMPORTATION OF SLAVES.

Mr Madison—

Mr Chairman, I should conceive this clause [permitting importation of slaves] to be impolitic, if it were one of those things which could be excluded without encountering greater evils. The southern states would not have entered into the union of America, without the temporary permission of that trade. And if they were excluded from the union, the consequences might be dreadful to them and to us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The union in general is not in a worse situation. Under the articles of confederation, it might be continued forever: but by this clause an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances. A tax may be laid in the meantime, but it is limited, otherwise congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation,

congress cannot lay such a tax on slaves as will amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to any of those states where slaves are free, he becomes emancipated by their laws. For the laws of the states are uncharitable to one another in this respect. But in this constitution, “no person held to service, or labor, in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.” This clause was expressly inserted to enable owners of slaves to reclaim them.

This is a better security than any that now exists. No power is given to the general government to interpose with respect to the property in slaves now held by the states. The taxation of this state being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period they can. The gentlemen from South Carolina and Georgia argued in this manner: “We have now liberty to import this species of property, and much of the property now possessed, had been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we would be obliged to go to your markets. I need not expatiate on this subject. Great as the evil is, a dismemberment of the union, would be worse. If those states should disunite from the other states, for not indulging them in the temporary continuance of this traffic, they might solicit and obtain aid from foreign powers.

## JUNE 17—IMPORTATION OF SLAVES.

Mr. Madison replied, that even the southern states, who were most affected, were perfectly satisfied with this provision, and dreaded no danger to the property they now hold. It appeared to him, that the general government would not intermeddle with that property for twenty years, but to lay a tax on every slave imported, not exceeding ten dollars; and that after the expiration of that period, they might prohibit the traffic altogether. The census in the constitution was intended to introduce equality in the burdens to be laid on the community. No gentleman objected to laying duties, imposts, and excises, uniformly. But uniformity of taxes would be subversive to the principles of equality: for that it was not possible to select any article which would be easy for one state, but what would be heavy for another. That the proportion of each state being ascertained, it would be raised by the general government in the most convenient manner for the people, and not by the selection of any one particular object. That there must be some degree of confidence put in agents, or else we must reject a state of civil society altogether. Another great security to this property, which he mentioned, was, that five states were greatly interested in that species of property; and there were other states which had some slaves, and had made no attempt, or taken any step to take them from the people. There were a few slaves in New York, New Jersey, and Connecticut: these states would, probably, oppose any attempts to annihilate this species of property. He concluded, by observing, that he would be glad to leave the decision of this to the committee.

## JUNE 17—THE VICE PRESIDENCY.

Mr Madison.—

Mr Chairman, I think there are some peculiar advantages incident to this office [the Vice Presidency], which recommend it to us. There is in the first place a great probability this officer will be taken from one of the largest states, and if so, the circumstance of his having an eventual vote will be so far favorable. The consideration which recommends it to me, is, that he will be the choice of the people at large.—There are to be ninety-one electors, each of whom has two votes: if he have one fourth of the whole number of votes, he is elected vice-president. There is much more propriety in giving this office to a person chosen by the people at large, than to one of the senate who is only the choice of the legislature of one state.—His eventual vote is an advantage too obvious to comment upon. I differ from the honorable member in the case which enables congress to make a temporary appointment. When the president and vice-president die, the election of another president will immediately take place, and suppose it would not, all that congress could do, would be to make an appointment, between the expiration of the four years and the last election, and to continue only to such expiration. This can rarely happen. This power continues the government in motion, and is well guarded.

## JUNE 18—ELECTION OF PRESIDENT.1

Mr Madison.—

Mr Chairman, I will take the liberty of making a few observations, which may place this in such a light as may obviate objections. It is observed, that none of the honorable members objecting to this, have pointed out the right mode of election. It was found difficult in the convention, and will be found so by any gentleman who will take the liberty of delineating a mode of electing the president, that would exclude those inconveniences which they apprehend. I would not contend against some of the principles laid down by some gentlemen if the interests of some states only were to be consulted. But there is a great diversity of interests. The choice of the people ought to be attended to. I have found no better way of selecting the man in whom they place the highest confidence, than that delineated in the plan of the convention—nor has the gentleman told us. Perhaps it will be found impracticable to elect him by the immediate suffrages of the people. Difficulties would arise from the extent and population of the states. Instead of this, the people chose the electors.

This can be done with ease and convenience, and will render the choice more judicious. As to the eventual voting by states, it has my approbation. The lesser states, and some large states, will be generally pleased by that mode. The deputies from the small states argued, (and there is some force in their reasoning) that when the people voted, the large states evidently had the advantage over the rest, and without varying the mode, the interest of the little states might be neglected or sacrificed. Here is a compromise.—For in the eventual election, the small states will have the advantage.

In so extensive a country, it is probable that many persons will be voted for, and the lowest of the five highest on the list may not be so inconsiderable as he supposes. With respect to the possibility, that a small number of votes may decide his election, I do not know how, nor do I think that a bare calculation of possibility ought to govern us.—One honorable gentleman has said, that the eastern states may, in the eventual election, choose him. But in the extravagant calculation he has made, he has been obliged to associate North Carolina and Georgia, with the five smallest northern States. There can be no union of interest or sentiments between states so differently situated.

The honorable member last up has committed a mistake in saying there must be a majority of the whole number of electors appointed. A majority of votes, equal to a majority of the electors appointed, will be sufficient. Forty-six is a majority of ninety one, and will suffice to elect the president.

## JUNE 18—TREATY-MAKING POWER.

Mr. Madison.—

Mr. Chairman, I am persuaded that when this power comes to be thoroughly and candidly viewed, it will be found right and proper. As to its extent, perhaps it will be satisfactory to the committee, that the power is precisely in the new constitution, as it is in the confederation. In the existing confederacy, congress are authorized indefinitely to make treaties. Many of the states have recognised the treaties of congress to be the supreme law of the land. Acts have passed within a year, declaring this to be the case. I have seen many of them. Does it follow, because this power is given to congress, that it is absolute and unlimited? I do not conceive that power is given to the president and senate to dismember the empire, or to alienate any great essential right. I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation.

One objection against the amendment proposed, is this; that by implication, it would give power to the legislative authority to dismember the empire—a power that ought not to be given, but by the necessity that would force assent from every man. I think it rests on the safest foundation as it is. The object of treaties is the regulation of intercourse with foreign nations, and is external. I do not think it possible to enumerate all the cases in which such external regulations would be necessary. Would it be right to define all the cases in which congress could exercise this authority? The definition might, and probably would be defective. They might be restrained by such a definition, from exercising the authority where it would be essential to the interest and safety of the community. It is most safe, therefore, to leave it to be exercised as contingencies may arise.

It is to be presumed, that in transactions with foreign countries, those who regulate them, will feel the whole force of national attachment to their country. The contrast being between their own nation and a foreign nation, is it not presumable they will, as far as possible, advance the interest of their own country? Would it not be considered

as a dangerous principle in the British government, were the king to have the same power in internal regulations, as he has in the external business of treaties? Yet, as among other reasons, it is natural to suppose he will prefer the interest of his own, to that of another country, it is thought proper to give him this external power of making treaties. This distinction is well worthy the consideration of gentlemen. I think the argument of the gentleman who restrained the supremacy of these to the laws of particular states, and not to congress, is rational. Here the supremacy of a treaty is contrasted with the supremacy of the laws of the states. It cannot be otherwise supreme. If it does not supersede their existing laws, as far as they contravene its operation, it cannot be of any effect. To counteract it by the supremacy of the state laws would bring on the union the just charge of national perfidy, and involve us in war.

Suppose the king of Great Britain should make a treaty with France, where he had a constitutional right; if the treaty should require an internal regulation, and the parliament should make a law to that effect, that law would be binding on the one, though not on the other nation. Suppose there should be a violation of right by the exercise of this power by the president and senate; if there was apparent merit in it, it would be binding on the people: for where there is a power for any particular purpose, it must supersede what may oppose it, or else it can be no power. For instance, where there is a power of declaring war, that power as to declaring war supersedes every thing. This would be an unfortunate case, should it happen; but should it happen, there is a remedy; and there being a remedy, they will be restrained against abuses.

But let us compare the responsibility in this government to that of the British government. If there be an abuse of this royal prerogative, the minister who advises him, is liable to impeachment. This is the only restraint on the sovereign. Now, Sir, is not the minister of the United States under restraint? Who is the minister?—The president himself, who is liable to impeachment. He is responsible in person. But for the abuse of the power of the king, the responsibility is in his advisers. Suppose the constitution had said, that this minister alone could make treaties, and when he violated the interest of the nation, he would be impeached by the senate; then the comparison would hold good between the two governments. But is there not an additional security by adding to him the representatives and guardians of the political interest of the states? If he should seduce a part of the senate to a participation in his crimes, those who were not seduced would pronounce sentence against him; and there is this supplementary security, that he may be convicted and punished afterwards, when other members come in the senate, one-third being excluded every second year. So that there is a two-fold security. The security of impeachment and conviction by those senators that they may be innocent, should no more than one-third be engaged with the president in the plot; and should there be more of them engaged in it, he may be tried and convicted by the succeeding senators, and the upright senators who were in the senate before.

As to the case of the Russian ambassador, I shall say nothing. It is as inapplicable as many other quotations made by the gentleman. I conceive that as far as the bills of rights in the states, do not express any thing foreign to the nature of such things, and express fundamental principles essential to liberty, and those privileges which are

declared necessary to all free people, these rights are not encroached on by this government.

(Mr. Madison added other remarks which could not be heard.)

## JUNE 20—POWER OF JUDICIARY.1

Mr Madison—

Mr Chairman, permit me to make a few observations which may place this part in a more favorable light than the gentleman placed it in yesterday. It may be proper to remark, that the organization of the general government for the United States was in all its parts, very difficult. There was a peculiar difficulty in that of *the Executive*. Every thing incident to it must have participated of that difficulty. That mode which was judged most expedient was adopted, till experience should point out one more eligible. This part was also attended with difficulties. It claims the indulgence of a fair and liberal interpretation. I will not deny that according to my view of the subject, a more accurate attention might place it in terms which would exclude some of the objections now made to it. But if we take liberal construction, I think we shall find nothing dangerous or inadmissible in it. In compositions of this kind, it is difficult to avoid technical terms which have the same meaning. An intention to this may satisfy gentlemen, that precision was not so easily obtained as may be imagined. I will illustrate this by one thing in the constitution. There is a general power to provide courts to try felonies and piracies committed on the high seas. Piracy is a word which may be considered as a term of the law of nations. Felony is a word unknown to the law of nations, and is to be found in the British laws, and from thence adopted in the law of these states. It was thought dishonorable to have recourse to that standard. A technical term of the law of nations is therefore used that we should find ourselves authorised to introduce it into the laws of the United States. The first question which I shall consider, is whether the subjects of its cognizance be proper subjects of a federal jurisdiction. The second will be, whether the provisions respecting it be consistent with safety and impropriety, will answer the purposes intended, and suit local circumstances.

The first class of cases to which its jurisdiction extends, are those which may arise under the constitution; and this is to extend to equity as well as law. It may be a misfortune, that in organizing any government, the explication of its authority should be left to any of its co-ordinate branches. There is no example in any country where it is otherwise. There is a new policy in submitting it to the judiciary of the United States. That causes of a federal nature will arise, will be obvious to every gentleman, who will recollect that the states are laid under restrictions; and that the rights of the union are secured by these restrictions. They may involve equitable as well as legal controversies. With respect to the laws of the union, it is so necessary and expedient that the judicial power should correspond with the legislative, that it has not been objected to. With respect to treaties, there is a peculiar propriety in the judiciary expounding them.



These may involve us in controversies with foreign nations. It is necessary therefore, that they should be determined in the courts of the general government. There are strong reasons why there should be a supreme court to decide such disputes. If in any case uniformity be necessary, it must be in the exposition of treaties. The establishment of one revisionary superintending power, can alone secure such uniformity. The same principles hold with respect to cases affecting ambassadors, and foreign ministers. To the same principles may also be referred their cognizance in admiralty and maritime cases. As our intercourse with foreign nations will be affected by decisions of this kind, they ought to be uniform. This can only be done by giving the federal judiciary exclusive jurisdiction. Controversies affecting the interest of the United States ought to be determined by their own judiciary, and not be left to partial local tribunals.

The next case, where two or more states are the parties, is not objected to. Provision is made for this by the existing articles of confederation, and there can be no impropriety in referring such disputes to this tribunal.

Its jurisdiction in controversies between a state and citizens of another state, is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that if a state should wish to bring suit against a citizen, it must be brought before the federal court. This will give satisfaction to individuals, as it will prevent citizens on whom a state may have a claim, being dissatisfied with the state courts. It is a case which cannot often happen, and if it should be found improper, it will be altered. But it may be attended with good effects. This may be illustrated by other cases. It is provided, that cases of citizens of different states may be carried to the federal courts.

But this will not go beyond the cases where they may be parties. A *femme covert* may be a citizen of another state, but cannot be a party in this court. A subject of a foreign power having a dispute with a citizen of this state, may carry it to the federal court; but an alien enemy cannot bring suit at all. It appears to me, that this can have no operation but this—to give a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it.

As to its cognizance of disputes between citizens of different states, I will not say it is a matter of such importance. Perhaps it might be left to the state courts. But I sincerely believe this provision will be rather salutary, than otherwise. It may happen that a strong prejudice may arise in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective administration of justice, has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured.

To the next clause there is no objection.

The next case provides for disputes between a foreign state, and one of our states, should such a case ever arise; and between a citizen and a foreign citizen or subject. I do not conceive that any controversy can ever be decided in these courts, between an

American state and a foreign state, without the consent of the parties. If they consent, provision is here made. The disputes ought to be tried by the national tribunal. This is consonant to the law of nations. Could there be a more favorable or eligible provision to avoid controversies with foreign powers? Ought it to be put in the power of a member of the union to drag the whole community into war? As the national tribunal is to decide, justice will be done. It appears to me from this review, that, though on some of the subjects of this jurisdiction, it may seldom or never operate, and though others be of inferior consideration, yet they are mostly of great importance, and indispensably necessary.

The second question which I proposed to consider, was, whether such organization be made as would be safe and convenient for the states and the people at large. Let us suppose that the subjects of its jurisdiction had only been enumerated, and power given to the general legislature to establish such courts as might be judged necessary and expedient, do not think that in that case any rational objection could be made to it, any more than would be made to a general power of legislation in certain enumerated cases. If that would be safe, this appears to me better and more restrictive, so far as it may be abused by extension of power. The most material part is the discrimination of superior and inferior jurisdiction, and the arrangement of its powers; as, where it shall have original, and where appellate cognizance. Where it speaks of appellate jurisdiction, it expressly provides, that such regulations will be made as will accommodate every citizen; so far as practicable in any government. The principal criticism which has been made, was against the appellate cognizance, as well of fact as law. I am happy that the honorable member who presides, and who is familiarly acquainted with the subject, does not think it involves any thing unnecessarily dangerous. I think that the distinction of fact as well as law, may be satisfied by the discrimination of the civil and common law. But if gentlemen should contend, that appeals, as to fact, can be extended to jury cases, I contend, that by the word regulations, it is in the power of congress to prevent it, or prescribe such a mode as will secure the privilege of jury trial. They may make a regulation to prevent such appeals entirely: or they may remand the fact, or send it to an inferior contiguous court, to be tried; or otherwise preserve that ancient and important trial.

Let me observe, that so far as the judicial power may extend to controversies between citizens of different states, and so far as it gives them power to correct by another trial, a verdict obtained by local prejudices, it is favorable to those states who carry on commerce. There are a number of commercial states, who carry on trade, for other states.—Should the states in debt to them make unjust regulations, the justice that would be obtained by the creditors, might be merely imaginary and nominal. It might be either entirely denied, or partially granted. This is no imaginary evil. Before the war, New York was to a great amount a creditor of Connecticut: while it depended on the laws and regulations of Connecticut, she might withhold payment. If I be not misinformed, there were reasons to complain. These illiberal regulations and causes of complaint, obstruct commerce. So far as this power may be exercised, Virginia will be benefitted by it. It appears to me from the most correct view, that by the word regulations, authority is given them to provide against the inconveniences, and so far as it is exceptionable, they can remedy it. This they will do if they be worthy of the trust we put in them. I think them worthy of that confidence which that paper puts in

them. Were I to select a power which might be given with confidence, it would be judicial power. This power cannot be abused, without raising the indignation of all the people of the states. I cannot conceive that they would encounter this odium. Leaving behind them their character and friends, and carrying with them local prejudices, I cannot think they would run such a risk. That men should be brought from all parts of the union to the seat of government, on trivial occasions, cannot reasonably be supposed. It is a species of possibility; but there is every degree of probability against it. I would as soon believe, that by virtue of the power of collecting taxes or customs, they would compel every man to go and pay the money for his taxes with his own hands to the federal treasurer, as I would believe this. If they would not do the one, they would not the other.

I am of opinion, and my reasoning and conclusions are drawn from facts, that as far as the power of congress can extend, the judicial power will be accommodated to every part of America. Under this conviction, I conclude, that the legislation, instead of making the supreme federal court absolutely stationary, will fix it in different parts of the continent, to render it more convenient. I think this idea perfectly warrantable. There is an example, within our knowledge which illustrates it. By the confederation, congress have an exclusive right of establishing rules for deciding in all cases, what captures should be legal, and establishing courts for determining such cases finally. A court was established for that purpose, which was at first stationary.—Experience, and the desire of accommodating the decision of this court to the convenience of the citizens of the different parts of America, had this effect—it soon became a regulation, that this court should be held in different parts of America, and was held accordingly. If such a regulation was made, when only the interest of the small number of people who are concerned with captures was affected, will not the public convenience be consulted, when that of a very considerable proportion of the people of America will be concerned? It will be also in the power of congress to vest this power in the state courts, both inferior and superior. This they will do, when they find the tribunals of the states established on a good footing.

Another example will illustrate this subject further. By the confederation, congress are authorized to establish courts for trying piracies and felonies committed on the high seas. Did they multiply courts unnecessarily in this case? No, sir, they invested the admiralty courts of each state with this jurisdiction. Now, sir, if there will be as much sympathy between congress and the people, as now, we may fairly conclude, that the federal cognizance will be vested in the local tribunals.

I have observed, that gentlemen suppose, that the general legislature will do every mischief they possibly can, and that they will omit to do every thing good which they are authorized to do. If this were a reasonable supposition, their objections would be good. I consider it reasonable to conclude, that they will as readily do their duty, as deviate from it: nor do I go on the grounds mentioned by gentlemen on the other side—that we are to place unlimited confidence in them, and expect nothing but the most exalted integrity and sublime virtue. But I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks—no form of government can render us secure. To suppose that any

form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men. So that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.

Having taken this general view on the subject, I will now advert to what has fallen from the honorable gentleman who presides. His criticism is, that the judiciary has not been guarded from an increase of the salary of the judges. I wished myself, to insert a restraint on the augmentation, as well as diminution, of their compensation: and supported it in the convention. But I was overruled. I must state the reasons which were urged. They had great weight. The business must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen that there would be such an accumulation of business as would reduce the pay to a most trivial consideration. This reason does not hold as to the president, for in the short period which he presides, this cannot happen. His salary ought not, therefore, to be increased. It was objected yesterday, that there was no provision for a jury from the vicinage. If it could have been done with safety, it would not have been opposed. It might so happen, that a trial would be impracticable in the country. Suppose a rebellion in a whole district, would it not be impossible to get a jury? The *trial by jury* is held as sacred in England as in America.—There are deviations of it in England; yet greater deviations have happened here since we established our independence, than have taken place there for a long time, though it be left to the legislative discretion. It is a misfortune in any case that this trial should be departed from, yet in some cases it is necessary. It must be, therefore, left to the discretion of the legislature to modify it according to circumstances. This is a complete and satisfactory answer.

It was objected, that this jurisdiction would extend to all cases, and annihilate the state courts. At this moment of time it might happen, that there are many disputes between citizens of different states. But in the ordinary state of things, I believe that any gentlemen will think that the far greater number of causes—ninety-nine out of an hundred, will remain with the state judiciaries. All controversies directly between citizen and citizen, will still remain with the local courts. The number of cases within the jurisdiction of these courts are very small when compared to those in which the local tribunals will have cognizance. No accurate calculation can be made but I think that any gentleman who will contemplate the subject at all, must be struck with this truth. [Here Mr Madison spoke too low to be understood.]

As to vexatious appeals, they can be remedied by congress. It would seldom happen that mere wantonness would produce such an appeal, or induce a man to sue unjustly. If the courts were on a good footing in the states, what can induce them to take so much trouble? I have frequently, in the discussion of this subject, been struck with one remark. It has been urged, that this would be oppressive to those who by imprudence, or otherwise are under the denomination of debtors. I know not how this can be conceived. I will venture one observation. If this system should have the effect of establishing universal justice, and accelerating it throughout America, it will be one of the most fortunate circumstances that could happen for those men. With respect to that class of citizens, compassion is their due. To those, however, who are involved in

such incumbrances, relief cannot be granted. Industry and economy are the only resources.—It is vain to wait for money, or temporise. The great desiderata are public and private confidence. No country in the world can do without them. Let the influx of money be ever so great, if there be no confidence, property will sink in value, and there will be no inducements or emulation to industry. The circulation of confidence is better than the circulation of money. Compare the situations of nations in Europe, where the justice is administered with celerity, to that of those where it is refused, or administered tardily. Confidence produces the best effects in the former. The establishment of confidence will raise the value of property, and relieve those who are so unhappy as to be involved in debts. If this be maturely considered, I think it will be found that as far as it will establish uniformity of justice, it will be of real advantage to such persons. I will not enter into those considerations which the honorable gentleman added. I hope some other gentleman will undertake to answer.

## JUNE 24—NECESSITY FOR RATIFICATION. [1](#)

Mr. Madison.—

Mr. Chairman, nothing has excited more admiration in the world, than the manner in which free governments have been established in America. For it was the first instance from the creation of the world to the American revolution, that free inhabitants have been seen deliberating on a form of government, and selecting such of their citizens as possessed their confidence, to determine upon, and give effect to it. But why has this excited so much wonder and applause? Because it is of so much magnitude, and because it is liable to be frustrated by so many accidents. If it has excited so much wonder, that the United States have in the middle of war and confusion, formed free systems of government, how much more astonishment and admiration will be excited, should they be able, peaceably, freely and satisfactorily, to establish one general government, when there is such a diversity of opinions, and interests, when not cemented or stimulated by any common danger? How vast must be the difficulty of concentrating in one government, the interests, and conciliating the opinions of so many different heterogeneous bodies?

How have the confederacies of ancient and modern times been formed? As far as ancient history describes the former to us, they were brought about by the wisdom of some eminent sage. How was the imperfect union of the Swiss Cantons formed? By danger. How was the confederacy of the United Netherlands formed? By the same. They are surrounded by dangers. By these and one influential character, they were stimulated to unite. How was the Germanic system formed? By danger in some degree, but principally by the overruling influence of individuals.

When we consider this government, we ought to make great allowances. We must calculate the impossibility that every state should be gratified in its wishes, and much less that every individual should receive this gratification. It has never been denied by the friends of the paper on the table, that it has effects. But they do not think that it contains any real danger. They conceive that they will in all probability be removed, when experience will shew it to be necessary. I beg that gentlemen in deliberating on

this subject, would consider the alternative. Either nine states shall have ratified it or they will not. If nine states will adopt it, can it be reasonably presumed or required, that nine states having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single state, agree that they acted wrong, and could not see its defect—tread back the steps which they have taken and come forward and reduce it to uncertainty, whether a general system shall be adopted or not? Virginia has always heretofore spoken the language of respect to the other states, and she has always been attended to. Will it be that language, to call on a great majority of the states to acknowledge that they have done wrong? Is it the language of confidence to say, that we do not believe that amendments for the preservation of the common liberty and general interests of the state, will be consented to by them? This is neither the language of confidence nor respect. Virginia when she speaks respectfully, will be as much attended to, as she has hitherto been when speaking this language.

It is a most awful thing that depends on our decision—no less than whether the thirteen states shall unite freely, peaceably, and unanimously, for security of their common happiness and liberty, or whether every thing is to be put in confusion and disorder. Are we to embark in this dangerous enterprise, uniting various opinions to contrary interests, with the vain hope of coming to an amicable concurrence?

It is worthy of our consideration, that those who prepared the paper on the table, found difficulties not to be described, in its formation—mutual deference and concession were absolutely necessary. Had they been inflexibly tenacious of their individual opinions they would never have concurred. Under what circumstances was it formed? When no party was formed, or particular proposition made, and men's minds were calm and dispassionate. Yet under these circumstances, it was difficult, extremely difficult, to agree to any general system.

Suppose eight states only should ratify, and Virginia should propose certain alterations, as the previous condition of her accession. If they should be disposed to accede to her proposition, which is the most favorable conclusion, the difficulty attending it will be immense. Every state, which has decided it, must take up the subject again. They must not only have the mortification of acknowledging that they had done wrong, but the difficulty of having a reconsideration of it among the people, and appointing new conventions to deliberate upon it. They must attend to *all* the amendments, which may be dictated by as great a diversity of political opinions, as there are local attachments. When brought together in one assembly, they must go through, and accede to every one of the amendments. The gentlemen who, within this house, have thought proper to propose previous amendments, have brought no less than forty amendments—a bill of rights which contains twenty amendments, and twenty other alterations, some of which are improper and inadmissible. Will not every state think herself equally entitled to propose as many amendments? And suppose them to be contradictory, I leave it to this convention, whether it be probable that they can agree, or agree to any thing, but the plan on the table; or whether greater difficulties will not be encountered, than were experienced in the progress of the formation of the constitution.

I have said that there was a great contrariety of opinions among the gentlemen in the opposition. It has been heard in every stage of their opposition. I can see from their amendments, that very great sacrifices have been made by some of them. Some gentlemen think that it contains too much state influence: others, that it is a complete consolidation, and a variety of other things. Some of them think that the equality in the senate, is not a defect; others, that it is the bane of all good governments. I might, if there were time, show a variety of other cases, where their opinions are contradictory. If there be this contrariety of opinions in this house, what contrariety may not be expected, when we take into view, thirteen conventions equally or more numerous? Besides, it is notorious from the debates which have been published, that there is no sort of uniformity in the grounds of the opposition.

The state of New York has been adduced. Many in that state are opposed to it from local views. The two who opposed it in the general convention from that state, are in the state convention. Every step of this system was opposed by those two gentlemen. They were unwilling to part with the old confederation. Can it be presumed then, sir, that gentlemen in this state, who admit the necessity of changing, should ever be able to unite in sentiments with those who are totally averse to any change.

I have revolved this question in my mind, with as much serious attention, and called to my aid as much information as I could, yet I can see no reason for the apprehensions of gentlemen, but I think that if Virginia will agree to ratify this system, I shall look upon it as one of the most fortunate events that ever happened for human nature. I cannot, therefore, without the most excruciating apprehensions, see a possibility of losing its blessings. It gives me infinite pain to reflect, that all the earnest endeavors of the warmest friends of their country, to introduce a system promotive of our happiness, may be blasted by a rejection, for which I think with my honorable friend, that previous amendments are but another name. The gentlemen in opposition seem to insist on those amendments, as if they were all necessary for the liberty and happiness of the people. Were I to hazard an opinion on the subject, I would declare it infinitely more safe in its present form, than it would be after introducing into it that long train of alterations, which they call amendments.

With respect to the proposition of the honorable gentleman to my left [Mr. Wythe] gentlemen apprehend, that by enumerating three rights, it implied there were no more. The observations made by a gentleman lately up, on that subject, correspond precisely with my opinion. That resolution declares, that the powers granted by the proposed constitution, are the gift of the people, and may be resumed by them when perverted to their oppression, and every power not granted thereby, remains with the people, and at their will. It adds likewise, that no right of any denomination, can be cancelled, abridged, restrained or modified, by the general government, or any of its officers, except in those instances in which power is given by the constitution for these purposes. There cannot be a more positive and unequivocal declaration of the principles of the adoption, that every thing not granted, is reserved. This is obviously and self-evidently the case, without the declaration.—Can the general government exercise any power not delegated? If an enumeration be made of our rights, will it not be implied, that every thing omitted, is given to the general government? Has not the honorable gentleman himself, admitted, that an imperfect enumeration is dangerous?

Does the constitution say that they shall not alter the law of descents, or do those things which would subvert the whole system of the state laws? If he did, what was not excepted, would be granted. Does it follow from the omission of such restrictions, that they can exercise powers not delegated? The reverse of the proposition holds. The delegation alone warrants the exercise of any power.

With respect to *the amendments*, proposed by the honorable gentleman, it ought to be considered how far they are good. As far as they are palpably and insuperably objectionable, they ought to be opposed. One amendment he proposes is, that any army which shall be necessary, shall be raised by the consent of two-thirds of the states. I most devoutly wish, that there may never be an occasion for having a single regiment. There can be no harm in declaring, that standing armies in time of peace, are dangerous to liberty, and ought to be avoided, as far as it may be consistent with the protection, of the community. But when we come to say, that the national security shall depend not on a majority of the people of America, but that it may be frustrated by less than one-third of the people of America, I ask if this be a safe or proper mode? What part of the United States are most likely to stand in need of this protection? The weak parts, which are the southern states. Will it be safe to leave the United States at the mercy of one-third of the states, a number, which may comprise a very small proportion of the American people? They may all be in that part of America which is least exposed to danger. As far as a remote situation from danger, would render exertions for public defence less active, so far the southern states would be endangered.

The regulation of *commerce*, he further proposed, should depend on two-thirds of both houses. I wish I could recollect the history of this matter; but I cannot call it to mind with sufficient exactness. But I recollect the reasoning of some gentlemen on that subject. It was said, and I believe with truth, that every part of America, does not stand in equal need of security. It was observed, that the northern states were most competent to their own safety. Was it reasonable, asked they, that they should bind themselves to the defence of the southern states, and still be left at the mercy of the minority for commercial advantages? Should it be in the power of the minority to deprive them of this and other advantages, when they were bound to defend the whole union, it might be a disadvantage for them to confederate.

These were his arguments. This policy of guarding against political inconveniences, by enabling a small part of the community to oppose the government, and subjecting the majority to a small minority is fallacious. In some cases it may be good; in others it may be fatal. In all cases it puts it in the power of the minority to decide a question which concerns the majority.

I was struck with surprise when I head him express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should even attempt it, if it will not be an usurpation of power? There is no power to warrant it, in that paper. If there be, I know it not. But why should it be done? Says the honorable gentleman, for the general welfare—it will infuse strength into our system. Can any member of this committee suppose, that it will increase our strength? Can any one believe, that the American councils will come into a measure which will strip them of their property,



discourage, and alienate the affections of five-thirteenths of the union. Why was nothing of this sort aimed at before? I believe such an idea never entered into any American breast, nor do I believe it ever will enter into the heads of those gentlemen who substitute unsupported suspicions for reasons.

I am persuaded that the gentlemen who contend for previous amendments are not aware of the dangers which must result. Virginia, after having made opposition, will be obliged to recede from it. Might not the nine states say with a great deal of propriety—"It is not proper, decent, or right in you, to demand that we should reverse what we have done. Do as we have done—place confidence in us, as we have done in one another—and then we shall freely, fairly and dispassionately consider and investigate your propositions, and endeavour to gratify your wishes; but if you do not do this, it is more reasonable that you should yield to us, than we to you. You cannot exist without us—you must be a member of the union."

The case of Maryland, instanced by the gentleman, does not hold. She would not agree to confederate, because the other states would not assent to her claims of the western lands. Was she gratified? No—she put herself like the rest. Nor has she since been gratified. The lands are in the common stock of the union.

As far as his amendments are not objectionable, or unsafe, so far they may be subsequently recommended. Not because they are necessary, but because they can produce no possible danger, and may gratify some gentlemen's wishes. But I never can consent to his previous amendments, because they are pregnant with dreadful dangers.

[\[Back to Table of Contents\]](#)

TO GEORGE WASHINGTON.

Richm<sup>d</sup>, June 27, 1788.

Wash. Mss.

Dear Sir,

The Convention came to a final adjournment today. The inclosed is a copy of their Act of ratification with the yeas & nays. A variety of amendments have been since recommended; several of them highly objectionable, but which could not be parried. The Minority are to sign an address this evening which is announced to be of a peace-making complexion. Having not seen it I can give no opinion of my own. I wish it may not have a further object. Mr. H—y declared previous to the final question that altho' he should submit as a quiet citizen, he should seize the first moment that offered for shaking off the yoke in a *Constitutional way*. I suspect the plan will be to engage ? of the Legislatures in the task of undoing the work; or to get a Congress appointed in the first instance that will commit suicide on their own Authority.

Yrs, Most Affect<sup>Y</sup> & Respectf<sup>Y</sup>.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

N. York July 2<sup>d</sup>, 1788.

Chic. Hist. Soc.  
Mss.

### My Dear Friend

Some of the letters herewith enclosed have been here for some time without my knowing it. The others came to hand yesterday. I have also in hand for you the Marquis Condorcet's *essai* on the probability of decisions resulting from plurality of voices,<sup>1</sup> which I understand from Mazzei is a gift from the author. I shall forward it by the first conveyance.

There are public letters just arrived from Jefferson. The contents are not yet known. His private letters to me & others refer to his public political views. I find that he is becoming more and more a friend to the new Constitution, his objections being gradually dispelled by his own further reflections on the subject. He particularly renounces his opinion concerning the expediency of a ratification by 9 & a refusal by 4 States, considering the mode pursued by Mass<sup>ts</sup>. as the only rational one, but disapproving some of the alterations recommended by that State. He will see still more room for disapprobation in the reconsideration of other States. The defects of the Constitution which he continues to criticize are the omission of a bill of right, and of the principle of rotation at least in the Ex. Departm<sup>t</sup>.

Congress have been some days on the question where the first meeting of the new Cong<sup>s</sup>. shall be placed. Philad<sup>a</sup>. failed by a single voice from Delaware which ultimately aimed at that place, but wished to bring Wilmington into view. In that vote N. Hampshire & Connecticut both concurred. N. York is now in nomination and if those States accede which I think probable, and Rhode Island which has as yet refused to sit in the Question can be prevailed on to vote which I also think probable, the point will be carried. In this event a great handle I fear will be given to those who have opposed the new Gov<sup>t</sup>. on account of the Eastern preponderancy in the federal system.

Y<sup>Rs</sup>. Affe<sup>Ly</sup>.

I enclose a copy of the ratification as proposed of N. York. What think you of some of the expository articles?

[\[Back to Table of Contents\]](#)

TO EDMUND RANDOLPH.

New York, July 16, 1788.

Chic. Hist. Soc.  
Mss.

Dear Sir,

The enclosed papers will give you the latest intelligence from Poughkeepsie. It seems by no means certain what the result there will be. Some of the most sanguine calculate on a ratification. The best informed apprehend some clog that will amount to a condition. The question is made peculiarly interesting in this place, by its connexion with the question relative to the place to be recommended for the meeting of the first Congress under the new Government.

Thirteen States are at present represented. A plan for setting this new machine in motion has been reported some days, but will not be hurried to a conclusion. Having been but a little time here, I am not yet fully in the politics of Congress.

I had on the road several returns of a bilious lax which made my journey more tedious and less agreeable than it would otherwise have been—at present I am pretty well again. Hoping this will find you and yours more completely so,

I Remain &C.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, July 21, 1788.

Wash. Mss.

Dear Sir,

I have deferred writing since my arrival here in the hourly hope of being enabled to communicate the final news from Poughkepsie. By a letter from Hamilton dated the day before yesterday I find that it is equally uncertain when the business will be closed, and what will be its definitive form.<sup>1</sup> The inclosed gazette states the form which the depending proposition bears. It is not a little strange that the antifederal party should be reduced to such an expedient, and yet be able to keep their numbers together in the opposition. Nor is it less strange that the other party, as appears to be the case, should hesitate in deciding that the expedient as effectually keeps the State for y<sup>e</sup> present, out of the New Union as the most unqualified rejection could do. The intelligent citizens see clearly that this would be its operation and are agitated by the double motives of federalism and a zeal to give this City a fair chance for the first meeting of the new Government.

Congress have deliberated in part on the arrangements for putting the new Machine into operation, but have concluded on nothing but the times for choosing electors &c. Those who wish to make N. York the place of meeting studiously promote delay, others who are not swayed by this consideration do not urge dispatch. They think it would be well to let as many States as possible have an opportunity of deciding on the Constitution; and what is of more consequence, they wish to give opportunities where they can take place for as many elections of State Legislatures as can precede a reasonable time for making the appointments and arrangements referred to them. If there be too great an interval between the acts of Congress on this Subject and the next election or next meeting of a State Legislature, it may afford a pretext for an intermediate summoning of the existing members, who are every where less federal than their successors hereafter to be elected will probably be. This is particularly the case in Maryland, where the antifederal temper of the Executive would render an intermediate and extraordinary meeting of the Assembly of that State the more likely to be called. On my way thro' Maryland I found such an event to be much feared by the friends and wished by the adversaries of the Constitution. We have no late news from Europe, nor anything from N. Carolina.

With Every Sentiment Of Esteem & Attachment,  
I Remain D<sup>R</sup> Sir, Your Obed<sup>T</sup> & Affect. Serv<sup>T</sup>.

[\[Back to Table of Contents\]](#)

TO EDMUND RANDOLPH.

New York, July 22, 1788.

Chic. Hist. Soc.  
Mss.

Dear Sir,

The enclosed papers will give you a view of the business in the Convention at Poughkeepsie. It is not as yet certain that the ratification will take any final shape that can make New York *immediately* a member of the new Union. The opponents cannot come to that point without yielding a complete victory to the Federalists, which must be a severe sacrifice of their pride. It is supposed too, that *some* of them would not be displeased at seeing a bar to the pretensions of this city to the first meeting of the new Government. On the other side, the zeal for an unconditional ratification is not a little increased by contrary wishes.

There have been no late arrivals from Europe nor any news from any Quarter. Don't omit sending me the papers containing the series of articles announced in a late one.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, 24 July, 1788.

Mad. Mss.

Dear Sir,

Your two last unacknowledged favors were of Dec<sup>r</sup> 20 and Feb<sup>y</sup> 6. They were received in Virginia, and no opportunity till the present precarious one by the way of Holland, has enabled me to thank you for them.

I returned here about ten days ago from Richmond which I left a day or two after the dissolution of the Convention. The final question on the new Government was put on the 25th of June. It was twofold 1. whether previous amendments should be made a condition of ratification. 2. directly on the Constitution in the form it bore. On the first the decision was in the negative, 88 being no, 80 only ay. On the second & definitive question, the ratification was affirmed by 89 ays ag<sup>st</sup> 79 noes. A number of alterations were then recommended to be considered in the mode pointed out in the Constitution itself. The meeting was remarkably full; Two members only being absent and those known to be on the opposite sides of the question. The debates also were conducted on the whole with a very laudable moderation and decorum, and continued until both sides declared themselves ready for the question. And it may be safely concluded that no irregular opposition to the System will follow in that State, at least with the countenance of the leaders on that side. What local eruptions may be occasioned by ill-timed or rigorous executions of the Treaty of peace against British debtors, I will not pretend to say. But altho. the leaders, particularly H—y & M—s—n, will give no countenance to popular violences it is not to be inferred that they are reconciled to the event, or will give it a positive support. On the contrary both of them declared they could not go that length, and an attempt was made under their auspices to induce the minority to sign an address to the people which, if it had not been defeated by the general moderation of the party would probably have done mischief.

Among a variety of expedients employed by the opponents to gain proselytes, Mr. 1Henry first, and after him Col<sup>o</sup>. Mason, introduced the opinions expressed in a letter from a correspondent (Master Donald or Skipwith, I believe) and endeavored to turn the influence of your name even against parts of which I knew you approved. In this situation I thought it due to truth, as well as that it would be most agreeable to yourself, and accordingly took the liberty to state some of your opinions on the favorable side. I am informed that copies or extracts of a letter from you were handed about at the Mary<sup>ld</sup>. Convention, with a like view of impeding the ratification.

N. Hampshire ratified the Constitution on the 20<sup>th</sup> Ult;2 and made the ninth State. The votes stood 57 for and 46 ag<sup>st</sup> the measure. S. Carolina had previously ratified by a very great majority.3 The Convention of N. Carolina is now sitting. At one moment the sense of that State was considered as strongly opposed to the system. It is now said that the time has been for some time turning, which with the example of other

States and particularly of Virginia prognosticates a ratification there also. [1](#) The Convention of New York has been in Session ever since the 17th Ult., without having yet arrived at any final vote. Two thirds of the members assembled with a determination to reject the Constitution, and are still opposed to it in their hearts. The local situation of N. York, the number of ratifying States and the hope of retaining the federal Government in this City afford however powerful arguments to such men as Jay, Hamilton, the Chancellor, [2](#) Duane and several others; and it is not improbable that some form of ratification will yet be devised, by which the dislike of the opposition may be gratified, and the State, notwithstanding, made a member of the new Union.

At Fredericksburg on my way hither I found the box with Cork Acorns Sulla & peas addressed to me. I immediately had it forwarded to Orange from whence the contents will be disposed of according to your order. I fear the advanced season will defeat the experiments. The few seeds taken out here by the President at my request & sown in his garden have not come up. I left directions in Virginia for obtaining acorns of the Willow Oak this fall, which shall be sent you as soon as possible. Col. Carrington tells me your request as to the Philosophical Transactions was complied with in part only, the 1<sup>st</sup>. volume being not to be had. I have enquired of a Delegate here from Rhode Island for further information concerning W. S. Brown, but can learn nothing precise. I shall continue my enquiries, and let you know hereafter the result.

*July 26.*—We just hear that the Convention of this State have determined by a small majority to exclude from the ratification anything involving a condition & to content themselves with recommending the alterations wished for. [1](#)

As this will go by way of Holland I consider its reaching you as extremely uncertain. I forbear therefore to enter further into our public affairs at this time. If the packets should not be discontinued, which is surmised by some, I shall soon have an opportunity of writing again. In the mean time I remain with the sincerest affection

Your Friend & Serv<sup>T</sup>

P. S. Crops in Virginia of all sorts were very promising when I left the State. This was the case also generally through<sup>t</sup> the States I passed thro', with local exceptions produced in the wheat fields by a destructive insect which goes under the name of the Hessian fly. It made its first appearance several years ago on Long Island, from which it has spread over half this State and a great part of New Jersey, and seems to be making an annual progress in every direction.



[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

New York, Aug<sup>st</sup> 10, 1788.

Mad. Mss.

Dear Sir,

Mr. Warville Brissot has just arrived here, and I seize an opportunity suddenly brought to my knowledge to thank you for your several favors, and particularly for the pedometer. Answers to the letters must be put off for the next opportunity.

My last went off just as a vote was taken in the Convention of this State which foretold the ratification of the new Government. The latter act soon followed and is inclosed. The form of it is remarkable. I inclose also a circular address to the other States on the subject of amendments, from which mischiefs are apprehended. The great danger in the present crisis is that if another Convention should be soon assembled it would terminate in discord, or in alterations of the federal system which would throw back *essential* powers into the State Legislatures. The delay of a few years will assuage the jealousies which have been artificially created by designing men and will at the same time point out the faults which really call for amendment. At present the public mind is neither sufficiently cool nor sufficiently informed for so delicate an operation.

The Convention of North Carolina met on the 21st Ult: Not a word has yet been heard from its deliberations. Rhode Island has not resumed the subject since it was referred to & rejected by the people in their several Towns.

Congress have been employed for several weeks on the arrangement of times & place for bringing the new Government into agency. <sup>1</sup> The first has been agreed on though not definitively, & make it pretty certain that the first meeting will be held in the third week in March. The place has been a subject of much discussion and continues to be uncertain. Philad<sup>a</sup> as least eccentric of any place capable of affording due accommodations and a respectable outset to the Government was the first proposed. The affirmative votes were N. Hampshire, Connecticut, Pen<sup>a</sup>, Mary<sup>d</sup>, Virg<sup>a</sup>, and N. Carolina. Delaware was present & in favor of that place, but one of its Delegates wishing to have a question on Wilmington previous to a final determination divided that State and negatived the motion. N. York came next in view, to which was opposed first Lancaster which failed and then Baltimore, which to the surprise of every body was carried by seven States. S. Carolina which had preferred N. York to the two other more Southern positions unexpectedly concurring in this. The vote however was soon rescinded, the State of S. Carolina receding the Eastern States remonstrating against, and few seriously urging, the eligibility of Baltimore. At present the question lies as it was originally supposed to do, between N. York & Philad<sup>a</sup>, and nothing can be more uncertain than the event of it. Rhode Island which alone was disposed to give the casting vote to N. York, has refused to give any final

vote for arranging & carrying into effect a system to which that State is opposed, and both the delegates have returned home.

Col. Carrington tells me [he] has sent you the first volume of the federalist, and adds the 2<sup>d</sup>. by this conveyance. I believe I never have yet *mentioned* 1 *to you that publication. It was undertaken last fall by Jay, Hamilton, and myself. The proposal came from the two former. The execution was thrown, by the sickness of Jay, mostly on the two others. Though carried on in concert, the writers are not mutually answerable for all the ideas of each other, there being seldom time for even a perusal of the pieces by any but the writer before they were wanted at the press, and sometimes hardly by the writer himself.*

I have not a moment for a line to Mazzei. Tell him I have rec<sup>d</sup> his books & shall attempt to get them disposed of. I fear his calculations will not be fulfilled by the demand for them here in the French language. His affair with Dorhman stands as it did. Of his affair with Foster Webb I can say nothing. I suspect it will turn out badly.

Y<sup>Rs</sup> Affec<sup>Ly</sup>

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, August 11, 1788.

Chic. Hist. Soc.  
Mss.

Dear Sir,

The length of the interval since my last has proceeded from a daily expectation of being able to communicate the arrangements for introducing the new Government. The times necessary to be fixed by Congress have been many days agreed on. The place of meeting has undergone many vicissitudes and is still as uncertain as ever. Philadelphia was first named by a member from Connecticut, and was negatived by the voice of one from Delaware, who wished to make an experiment for Wilmington. New York came next into view. Lancaster was opposed to it and failed. Baltimore was next tried and to the surprize of every one had seven votes, South Carolina joining the Southern States and Pennsylvania in the question. It was not difficult to foresee that such a vote could not stand. Accordingly the next day, New York carried it on a second trial, and at present fills the blank. Its success however was owing to Rhode Island whose Delegates have refused to vote on the final question and have actually gone home. There are not at present seven States for any place, and the result must depend (unless Rhode Island should return with instructions as is *given out*) on the comparative flexibility of the Northern and Southern delegations. In ordinary cases this would not augur well to the latter. In the existing one something may be hoped from the palpable unreasonableness of the pretensions of N. York, which has 17 Rep<sup>s</sup> & 8 Senators on one side agst. 42 Rep<sup>s</sup>. & 16 Senators on the other; which is not more than three hundred miles from the Eastern Extreme Metropolis; and not less than 4 times that distance from the Southern, and which has no reference at all to the accommodation of the Western Country. I am persuaded also that if the first position be taken here the second will not be taken on the Potowmac & that this consideration is among the motives of those who advocate N. York. Indeed I *know* the latter to be one of the motives.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York Aug<sup>st</sup> 15 1788.1

Wash. Mss.

Dear Sir

I have been duly favored with yours of the 3<sup>d</sup>. instant. The length of the interval since my last has proceeded from a daily expectation of being able to communicate the final arrangement for introducing the new Government. The place of meeting has undergone much discussion as you conjectured and still remains to be fixed. Philad<sup>a</sup> was first named, & negatived by a voice from Delaware. N. York came forward next. Lancaster was opposed to it & failed. Baltimore was next tried and to the surprise of every one had seven votes. It was easy to see that that ground had it been free from objection was not maintainable, accordingly the next day N. York was inserted in the place of it with the aid of the vote of Rhode Island. Rhode Island has refused to give a final vote in the business and has actually retired from Congress. The question will now be resumed between N. York & Philad<sup>a</sup>. It was much to be wished that a fit place for a respectable outset to the Gov<sup>t</sup>. could be found more central than either. The former is inadmissible if any regard is to be had to the Southern or Western Country. It is so with me for another reason, that it tends to stop the final & permanent seat short of the Potowmac certainly, and probably in the State of N. Jersey. I *know* this to be one of the views of the Advocates for N. York. The only chance the Potowmac has is to get things in such a train that a coalition may take place between the Southern & Eastern States on the subject and still more than the final seat may be undecided for two or three years, within which period the Western & S Western population will enter more into the estimate. Wherever Congress may be, the choice if speedily made will not be sufficiently by that consideration. In this point of view I am of opinion Baltimore would have been unfriendly to the true object. It would have retained Congress but a moment, so many states being North of it, and dissatisfied with it, and would have produced a coalition among those States & a precipitate election of the permanent seat & an intermediate removal to a more northern position.

You will have seen the circular letter from the Convention of this State. It has a most pestilent tendency. If an early General Convention cannot be parried, it is seriously to be feared that the system which has resisted so many direct attacks may be at last successfully undermined by its enemies. It is now perhaps to be wished that Rho. Island may not accede till this new crisis of danger be over.1 Some think it would have been better if even N. York had held out till the operation of the Government could have dissipated the fears which artifice had created and the attempts resulting from those fears & artifices. We hear nothing yet from N. Carolina more than comes by way of Petersburg.

With highest respect & attachment

I Remain D<sup>R</sup> Sir Your Affect<sup>E</sup> Serv<sup>T</sup>

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

N. York Aug 18, 88.

Mad. Mss.

Hon<sup>D</sup> Sir

I have rec<sup>d</sup>. your favor of the 9<sup>th</sup> inclosing a paper from Mr. Triplet. The case is stated so imperfectly that it is impossible for me to take any steps for bringing it before Congress if that should be proper. Mr R Morris I am told will be here soon, and I shall endeavor then to supply the omitted circumstances. In the mean time Mr Triplet may either make out a fuller statement & forward it or wait till he hears from me on the subject.

I have had no opportunity of doing any thing as to Anthony, since my last. John continues to decline. I think he is in a consumption, and will not stand it very long.

No late news of consequence has come from Europe. The war appears to be going on between the two imperial Courts & the Turks. And the affairs of France portend a serious struggle between the royal authority & the spirit of liberty.

We just learn the fate of the Constitution in N. Carolina. Rho Island is however her only associate in the opposition and it will be hard indeed if those two States should endanger a system which has been ratified by the eleven others. Congress have not yet finally settled the arrangements for putting the new Government in operation. The place for its first meeting excites the difficulty. The Eastern States with N. York contend for this City [illegible] of the other States unite on a more central position.

Tell my brother Ambrose if you please that he must draw on Mr Shepherd for the price of the Negro boy for the French Marchioness. On a second & more accurate examination of my papers I have found your loan office certificates. With affect<sup>e</sup> regards to the family I remain

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York Aug. 22 88.

Chic. Hist. Soc.  
Mss.

### My Dear Friend

I have your favor of the 13th. The effect of Clinton's circular letter in Virg<sup>a</sup>. does not surprise me.<sup>1</sup> It is a signal of concord and hope to the enemies of the Constitution every where, and will I fear prove extremely dangerous. Notwithstanding your remarks on the subject I cannot but think that an *early* convention will be an unavoided measure. It will evidently be the offspring of party & passion, and will probably for that reason alone be the parent of error and public injury. It is pretty clear that a majority of the people of the Union are in favor of the Constitution as it stands, or at least are not dissatisfied with it in p<sup>t</sup>. form; or if this be not the case it is at least clear that a greater proportion unite in that system than are likely to unite in any other theory. Should radical alterations take place therefore they will not result from the deliberate sense of the people, but will be obtained by management, or extorted by menaces, and will be a real sacrifice of the public will as well as of the public good, to the views of individuals & perhaps the ambition of the State Legislature.

Congress have come to no final decision as to the place for Convening the new Govern<sup>t</sup>. It is unfortunate because a question now between N. & South, and notwithstanding the palpable unreasonableness of the thing, an adherence to N. York in preference to any more central position seems to grow stronger & stronger, and upon grounds which tend to keep Congress here till a permanent seat be established. In this point of view I own the business has a serious aspect, considering the injustice & oppression to the S. Western and Western parts of the Union.

Y<sup>R</sup>. Afec<sup>T</sup>

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Aug<sup>st</sup> 23, 1788.

Mad. Mss.

Dear Sir,

My last went via England, in the hands of a Swiss gentleman who had married an American lady, and was returning with her to his own Country. He proposed to take Paris in his way. By that opportunity I inclosed copies of the proceedings of this State on the subject of the Constitution.

North Carolina was then in Convention, and it was generally expected would in some form or other have fallen into the general stream. The event has disappointed us. It appears that a large majority has decided against the Constitution as it stands, and according to the information here received has made the alterations proposed by Virginia the conditions on which alone that State will unite with the others. Whether this be the precise state of the case I cannot say. It seems at least certain that she has either rejected the Constitution, or annexed conditions precedent to her ratification. It cannot be doubted that this bold step is to be ascribed in part to the influence of the minority in Virginia which lies mostly in the Southern part of the State, and to the management of its leader. It is in part ascribed also by some to assurances transmitted from leading individuals here, that New York would set the example of rejection. The event, whatever may have been its cause, with the tendency of the circular letter from the Convention of N. York, has somewhat changed the aspect of things and has given fresh hopes and exertions to those who opposed the Constitution. The object with them now will be to effect an early Convention composed of men who will essentially mutilate the system, particularly in the article of taxation, without which in my opinion the System cannot answer the purposes for which it was intended. An early Convention is in every view to be dreaded in the present temper of America. A very Short period of delay would produce the double advantage of diminishing the heat and increasing the light of all parties. A trial for one year will probably suggest more real amendments than all the antecedent speculations of our most sagacious politicians.

Congress have not yet decided on the arrangements for inaugurating the new Government. The place of its first meeting continues to divide the Northern and Southern members, though with a few exceptions to these general descriptions of the parties. The departure of Rho. Island and the refusal of N. Carolina in consequence of the late event there to vote in the question, threatens a disagreeable issue to the business, there being now an apparent impossibility of obtaining seven States for any one place. The three Eastern States & N. York, reinforced by S. Carolina, and as yet by N. Jersey, give a plurality of votes in favor of this City. The advocates for a more central position however though less numerous, seemed very determined not to yield to what they call a shameful partiality to one extremity of the Continent. It will be certainly of far more importance under the proposed than the present system that

regard should be had to centrality whether we consider the number of members belonging to the Government, the diffusive manner in which they will be appointed, or the increased resort of individuals having business with the Legislative, Executive, & Judiciary departments.

If the Western Country be taken into view, as it certainly ought the reasoning is still further corroborated. There is good ground to believe that a very *jealous* eye will be kept in that *quarter on inattention to it, and particularly when involving a seeming advantage to the eastern States, which have been rendered extremely suspicious and obnoxious by the Mississippi project.* There is even good ground to believe that *Spain is taking advantage of this disgust in kentucky, and is actually endeavoring to seduce them from the union, holding out a darling object which will never be obtained by them as part of the union.* This is a *fact as certain as it is important but which I hint in strict confidence, and with a request that no suspicion may be excited of its being known, particularly thro the channel of me.* I have this moment notice that I must send off my letter instantly, or lose the conveyance. I must consequently defer further communications till another opportunity.

Along with this you will receive a copy of the report you desired from Mr. Thomson, and a copy of the Federalist, a publication mentioned in my last.



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Aug<sup>st</sup> 24, 1788.

Wash. Mss.

Dear Sir,—

I was yesterday favored with yours of the 17th, 18th, under the same cover with the papers from Mr. Pleasants. The circular letter from this State is certainly a matter of as much regret as the *unanimity* with which it passed is matter of surprize. I find it is every where, and particularly in Virginia laid hold of as the signal for united exertions in pursuit of *early* amendments. In Pennsylv<sup>a</sup>, the antifederal leaders are I understand soon to have a meeting at Harrisburg, in order to concert proper arrangements on the part of that State. I begin now to accede to the opinion, which has been avowed for some time by many, that the circumstances involved in the ratification of New York will prove more injurious than a rejection would have done. The latter w<sup>d</sup> have rather alarmed the well meaning antifederalists elsewhere, would have had no ill effect on the other party, would have excited the indignation of the neighbouring States, and would have been necessarily followed by a speedy reconsideration of the subject. I am not able to account for the concurrence of the federal part of the Convention in the circular address, on any other principle than the determination to purchase an immediate ratification in any form or at any price, rather than disappoint this City of a chance for the new Congress. This solution is sufficiently justified by the eagerness displayed on this point, and the evident disposition to risk and sacrifice everything to it. Unfortunately the disagreeable question continues to be undecided, and is now in a state more perplexing than ever. By the last vote taken, the whole arrangement was thrown out, and the departure of Rho. Island & the refusal of N. Carolina to participate further in the business, has left eleven States only to take it up anew. In this number there are not seven States for any place, and the disposition to relax as usually happens, decreases with the progress of the contest. What and when the issue is to be is really more than I can foresee. It is truly mortifying that the outset of the new Government should be immediately preceded by such a display of locality, as portends the continuance of the evil which has dishonored the old and gives countenance to some of the most popular arguments which have been inculcated by the southern antifederalists.

New York has appeared to me extremely objectionable on the following grounds. It violates too palpably the simple and obvious principle that the seat of public business should be made as equally convenient to every part of the public, as the requisite accommodations for executing the business will permit. This consideration has the more weight, as well on account of the catholic spirit professed by the Constitution, as of the increased resort which it will require from every quarter of the continent. It seems to be particularly essential that an eye should be had in all our public arrangements to the accommodation of the Western Country, which, perhaps cannot be sufficiently gratified at any rate, but which might be furnished with new fuel to its jealousy by being summoned to the sea shore & almost at one end of the Continent.

There are reasons, but of too confidential a nature for any other than verbal communication, which make it of critical importance that neither cause nor pretext should be given for distrusts in that quarter of the policy towards it in this. I have apprehended also that a preference so favorable to the Eastern States would be represented in the Southern as a decisive proof of the preponderance of that scale, and a justification of all the antifederal arguments drawn from that danger. Adding to all this, the recollection that the first year or two will produce all the great arrangements under the new system, and which may fix its tone for a long time to come, it seems of real importance that the temporary residence of the new Congress, apart from its relation to the final residence, should not be thrown too much towards one extremity of the Union. It may perhaps be the more necessary to guard ag<sup>st</sup> suspicions of partiality in this case, as the early measures of the new Government, including a navigation Act will of course be most favorable to this extremity.

But I own that I am much influenced by a view to the final residence, which I conceive to be more likely to be properly chosen in Philad<sup>a</sup> than in New York. The extreme excentricity of the latter will certainly in my opinion bring on a premature, and consequently an improper choice. This policy is avowed by some of the sticklers for this place, and is known to prevail with the bulk of them. People from the interior parts of Georgia, S. C., N. C., & V<sup>a</sup> & Kentucky will never patiently repeat their trips to this remote situation, especially as the Legislative Sessions will be held in the Winter Season. Should no other consequence take place than a frequent or early agitation of this contentious subject, it would form a strong objection ag<sup>st</sup> N. York.

Were there reason to fear a repugnance to the establishment of a final seat, or a choice of a commercial City for the purpose, I should be strongly tempted to shun Philad at all events. But my only fear on the first head is of a precipitancy in carrying that part of the federal Constitution into effect, and on the second the public sentiment as well as other considerations is so fixedly opposed as to banish the danger from my apprehensions. Judging from my own experience on this subject. I conclude that from motives of one sort or another ten States at least, (that is, 5 from each end of the Union,) to say nothing of the Western States will at any proper time be ready to remove from Philad<sup>a</sup>. The only difficulty that can arise will be that of agreeing on the place to be finally removed to and it is from that difficulty alone, and the delay incident to it, that I derive my hope in favor of the banks of the Potowmac. There are some other combinations on the subject into which the discussion of it has led me, but I have already troubled you with more I fear than may deserve your attention.

The Newspapers herewith inclosed contain the European intelligence brought by the last packets from England.

With every sentiment of esteem & attachment I remain Dear Sir, your Obed<sup>t</sup> & Affect<sup>e</sup> serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

N. York Sep<sup>r</sup>. 6, 1788.

Mad. Mss.

Hon<sup>D</sup> Sir

I forward this by the mail expecting it will be at Fred<sup>g</sup>. in time for Mr A Shepherd who left this a day or two ago. Nothing much of consequence has occurred since my last. The current intelligence you will find in the inclosed gazettes. The Antifederalists are everywhere exerting themselves for an early Convention. The circular letter from this State, and the rejection of N. Carolina, give them great spirits. Virginia, I suppose from the temper of the present Legislature will co-operate in the plan.

Congress have not yet settled the place for the meeting of the new Gov<sup>t</sup>. It is most probable that the advocates for N. York who form at present the greater number, will prevail. In that case, altho. I think it a very unreasonable thing for the South<sup>n</sup> & Western parts of the Union, the best face must be put on it.

I have not yet been able to determine whether Anthony is still in Philad<sup>a</sup>. I am inclined to believe he is not. Indeed some circumstances w<sup>d</sup>. almost tempt me to think he never has been there. On this supposition John must have practiced a gross deception on us. He could have no motive for this unless it were a spite to Billey, which I fancy he entertained. But the deception could hardly promise a gratification that would prompt it. He is still very sick, and his recovery not very probable.

I find on enquiry that the loan office Certificates which I told you I had only mislaid, not lost, must go to N. Carolina for settlement. If an opp<sup>y</sup> offers I shall accordingly send them thither unless otherwise directed by you.—I have not yet seen Mr Morris & have therefore not been able to do any thing in the affair of Mr Triplets. Remember me affect<sup>y</sup> to my mother & the family and believe me y<sup>t</sup> dutiful son.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, Sep<sup>t</sup>. 14, 1788.

Chic. Hist. Soc.  
Mss.

My Dear Friend:

Your favor of the 3<sup>rd</sup> instant would have been acknowledged two days ago but for the approaching completion of the arrangement for the new Gov<sup>t</sup>. which I wished to give you the earliest notice of. This subject has long employed Cong<sup>s</sup> and has in its progress assumed a variety of shapes, some of them not a little perplexing. The times as finally settled are, Jan<sup>y</sup>., for the choice of Electors, Feb<sup>y</sup>. for the choice of a President, and March for the meeting of the Congress, the place, the present seat of the fed<sup>l</sup>. gov<sup>t</sup>. The last point was carried by the yielding of the smaller to the inflexibility of the greater number. I have myself been ready for bringing it to this issue for some time, perceiving that further delay, could only discredit Cong<sup>s</sup> and injure the object in view. Those who had opposed N. York along with me could not overcome their repugnance so soon. Maryland went away before the question was decided in a temper which I believe would never have yielded. Delaware was equally inflexible, previous to our final assent a motion was made which tendered a blank for any place the majority would choose between the North River and the Potowmac. This being rejected the alternative remaining was to agree to N. York or to strangle the Gov<sup>t</sup>. in its birth. The former as the lesser evil was of course preferred and must now be made the best of. I acknowledge at the same time that I anticipate serious inconveniences from it. It will I fear be regarded as at once a proof of a preponderancy in the Eastern Scale, and of a disposition to profit of that advantage. It is but just however to remark that the event is in great degree to be charged on the South<sup>n</sup> States which went into that scale. It will certainly entail the discussion on the new Govern<sup>t</sup>. which ought if possible to be exempt from such an additional cause of ferment in its councils. N. York will never be patiently suffered to remain even the temporary seat of Gov<sup>t</sup> by those who will be obliged to resort to it from the Western & South<sup>n</sup>. parts of the Union. This temporary period must continue for several years, perhaps seven or eight, and within that period all the great business of the Union will be settled. I take it for granted that the first session will not pass without a renewal of the question, and that it will be attended with all the unpleasing circumstances which have just been experienced. In the last place, I consider the decision in favor of N. York as in a manner fatal to the just pretensions of the Potowmac to the permanent seat of the Gov<sup>t</sup>. This is unquestionably the light in which many of the advocates for N. York view the matter. The Legislature of N. Jersey which lately met approved of the part taken by her delegates on the principle that the first meeting of the Gov<sup>t</sup>. at N. York would give the best possible chance for an early choice of the permanent seat, as this would do for a preference of Trenton. As the case now stands, the Susquehanna is probably the most that can be hoped for with no small danger of being stopped on the Delaware. Had any place South of the Delaware been obtained the Susquehanna at least would have been secured with a favorable chance for the Potowmac.

The result of the meeting at Harrisburg is I am told in the press & will of course be soon before the public. I am not acquainted with the particulars, or indeed with the general complexion of it. It has been said here that the meeting was so thin as to disappoint much the patrons of the scheme.

I am glad to hear that Mazzei's book is likely to be vendible. The copies allotted for this and several other markets will not I fear be so fortunate.

Y<sup>Rs</sup>. Affec<sup>Ly</sup>.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Sept<sup>r</sup> 21, 1788.

Mad. Mss.

Dear Sir,

Being informed of a circuitous opportunity to France I make use of it to forward the inclosures. By one of them you will find that Congress have been at length brought into the true policy which is demanded by the situation of the Western Country. An additional resolution on the *secret* journal puts an *end to all negociation with Spain*, referring the subject of a *treaty, after this assertion of right to the Mississippi, to the new government.*<sup>2</sup> The communication in my last will have shewn you the *crisis of things* in that *quarter, a crisis* however not particularly *known to Congress*, and will be a *key to some of the Kentucky toasts in the Virg<sup>a</sup> Gazette.*

The Circular letter from the New York Convention has rekindled an ardor among the opponents of the federal Constitution for an *immediate* revision of it by another General Convention. You will find in one of the papers inclosed the result of the consultations in Pennsylvania on that subject. Mr. Henry and his friends in Virginia enter with great zeal into the scheme. Governor Randolph also espouses it; but with a wish to prevent if possible danger to the article which extends the power of the Government to internal as well as external taxation. It is observable that the views of the Pennsylv<sup>a</sup> meeting do not rhyme very well with those of the Southern advocates for a Convention; the objects most eagerly pursued by the latter being unnoticed in the Harrisburg proceedings. The effect of the circular letter on other States is less known. I conclude that it will be the same everywhere among those who opposed the Constitution, or contended for a conditional ratification of it. Whether an early Convention will be the result of this united effort, is more than can at this moment be foretold. The measure will certainly be industriously opposed in some parts of the Union, not only by those who wish for no alterations, but by others who would prefer the other mode provided in the Constitution, as most expedient at present, for introducing those supplemental safeguards to liberty ag<sup>st</sup> which no objections can be raised; and who would moreover approve of a Convention for amending the frame of the Government itself, as soon as time shall have somewhat corrected the feverish state of the public mind, and trial have pointed its attention to the true defects of the system.

You will find also by one of the papers inclosed that the arrangements have been compleated for bringing the new Government into action. The dispute concerning the place of its meeting was the principal cause of delay, the Eastern States with N. Jersey & S. Carolina being attached to N. York, and the others strenuous for a more central position. Philadelphia, Wilmington, Lancaster & Baltimore were successively tendered without effect by the latter, before they finally yielded to the superiority of members in favor of this City. I am afraid the decision will give a great handle to the Southern Antifederalists who have inculcated a jealousy of this end of the Continent.

It is to be regretted also as entailing this pernicious question on the New Cong<sup>s</sup>, who will have enough to do in adjusting the other delicate matters submitted to them. Another consideration of great weight with me is that the temporary residence here will probably end in a permanent one at Trenton, or at the farthest on the Susquehannah. A removal in the first instance beyond the Delaware would have removed the alternative to the Susquehannah and the Potowmac. The best chance of the latter depends on a delay of the permanent establishment for a few years, untill the Western and South Western population comes more into view. This delay cannot take place if so excentric a place as N. York is to be the intermediate seat of business.

To the other papers is added a little pamphlet on the Mohegan language. The observations deserve the more attention as they are made by a man of known learning and character, and may aid researches into the primitive structure of language, as well as those on foot for comparing the American tribes with those on the Eastern frontier of the other continent.

In consequence of your letter to Mr. Jay on the subject of “outfit” &c., I had a conference with him, and he agreed to suggest the matter to Congress. This was done and his letter referred back to be reported on. The idea between us was that the reference should be *to* 1 *a Committee his letter coming in at a moment when I happened to be out it was as in course referred to his department. His answer suggested that as he might be thought eventually concerned in the question, it was most proper for the consideration of a committee. I had discovered that he was not struck with the peculiarities of your case even when insinuated to him. How far the committee will be so is more than I can yet say. In general I have no doubt that both it and Congress are well disposed. But it is probable that the idea of a precedent will beget much caution and what is worse there is little probability of again having a quorum of States for the business.*

I learn from Virginia that our crops both of corn & Tobacco (except in the lower Country where a storm has been hurtful) are likely to be very good. The latter has suffered in some degree from superfluous rains, but the former has been proportionally benefited. Accept my most fervent wishes for your happiness.

Y<sup>Rs</sup> Affect<sup>Y</sup>

[\[Back to Table of Contents\]](#)

## TO PHILIP MAZZEI<sup>1</sup>

New York Oct<sup>r</sup>. 8th. 1788.

Dear Sir,

I have been favored with several letters from you since the date of my last; but some of them having been rec<sup>d</sup> in Virginia I am not able now to acknowledge all of them by their respective dates. The date of the last was in May.

You ask me why I agreed to the constitution proposed by the Convention of Philad<sup>a</sup>. I answer because I thought it safe to the liberties of the people, and the best that could be obtained from the jarring interests of States, and the miscellaneous opinions of Politicians; and because experience has proved that the real danger to America & to liberty lies in the defect of *energy & stability* in the present establishments of the United States.—Had you been a member of that assembly and been impressed with the truths which our situation discloses, you would have concurred in the necessity which was felt by the other members. In your closet at Paris and with the evils resulting from too much Government all over Europe fully in your view it is natural for you to run into criticisms dictated by an extreme on that side. Perhaps in your situation I should think and feel as you do. In mine I am sure you would think and feel as I do.

To the paragraph in your letter of the 9th. of May on the subject of a mission to Holland or Italy, I can say nothing more than that it is a business which belongs now to the new Gov<sup>t</sup>. or if I were to say more my friendship would guard you ag<sup>st</sup>. any reliance on such an event. In the first place nothing can be more uncertain than the nature of the system which will be adopted with regard to foreign affairs. And in the next place activity is a sort of merit which prejudice rates too high to be outweighed by any other sort of merit. The Americans are an enlightened and liberal people, compared with other nations, but they are not all philosophers. I have rec<sup>d</sup> the copies of your book and have taken the measures proper for disposing of them. The number allowed to Virginia are selling there I am told very well. I am afraid the other portions will not be equally successful. The French language is the greater obstacle as many who can read it expect the work will be translated into a language they can read still better.

Derliman tells he means to remit you forthwith via London about £300 Sterling. If he does, and I flatter myself he will not fail, it will pass thro' the hands of Mr. Jefferson. His affairs here do not produce ready means but I hope you will be ultimately secured ag<sup>st</sup>. loss.

Are we ever to see you again in America? Here or elsewhere God bless you.



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

New York, Oc<sup>r</sup> 17, 1788.

Mad. Mss.

Dear Sir,—

I have written a number of letters to you since my return here, and shall add this by another casual opportunity just notified to me by Mr. St. John. Your favor of July 31 came to hand the day before yesterday. The pamphlets of the Marquis Condorcet & Mr. Dupont referred to in it have also been received. Your other letters inclosed to the Delegation have been and will be disposed of as you wish; particularly those to M<sup>r</sup> Eppes & Col. Lewis.

Nothing has been done on the subject of the *outfit*, there not having been a Congress of nine States for some time, nor even of seven for the last week. It is pretty certain that there will not again be a quorum of either number within the present year, and by no means certain that there will be one at all under the old Confederation. The Committee finding that nothing could be done have neglected to make a report as yet. I have spoken with a member of it in order to get one made, that the case may fall of course and in a favorable shape within the attention of the New Government. The fear of a precedent will probably lead to an allowance for a limited time of the *salary*, *as enjoyed originally by foreign ministers, in preference to a separate allowance for outfit*. One of the *members of the treasury board*, who ought, if certain facts have *not escaped his memory, to witness the reasonableness of your calculations, takes occasion I find to impress a contrary idea*. Fortunately *his influence will not be a very formidable obstacle to right*.

The States which have adopted the New Constitution are all proceeding to the arrangements for putting it into action in March next. Pennsylv<sup>a</sup>. alone has as yet actually appointed deputies & that only for the Senate. My last mention that these were Mr. R. Morris & a Mr. McClay. How the other elections there & elsewhere will run is matter of uncertainty. The Presidency alone unites the conjectures of the public. The vice president is not at all marked out by the general voice. As the President will be from a Southern State, it falls almost of course for the other part of the Continent to supply the next in rank. South Carolina may however think of Mr. Rutledge unless it should be previously discovered that votes will be wasted on him. The only candidates in the Northern States brought forward with their known consent are *Handcock* and *Adams*, and *between these it seems probable the question will lie*. Both of them *are objectionable & would I think be postponed by the general suffrage to several others if they would accept the place*. *Handcock is weak ambitious a courtier of popularity, given to low intrigue, and lately reunited by a factious friendship with S. Adams. J. Adams has made himself obnoxious to many, particularly in the Southern States by the political principles avowed in his book. Others recollecting his cabal during the war against general Washington, knowing his extravagant self-importance, and considering his preference of an unprofitable*

*dignity to some place of emolument better adapted to private fortune as a proof of his having an eye to the presidency, conclude that he would not be a very cordial second to the General, and that an impatient ambition might even intrigue for a premature advancement. The danger would be the greater if particular factious characters, as may be the case, should get into the public councils. Adams it appears, is not unaware of some of the obstacles to his wish, and thro a letter to Smith has thrown out popular sentiments as to the proposed president.*

The little pamphlet herewith inclosed will give you a collective view of the alterations which have been proposed for the new Constitution. Various and numerous as they appear they certainly omit many of the true grounds of opposition. The articles relating to Treaties, to paper money, and to contracts, created more enemies than all the errors in the System positive & negative put together. It is true nevertheless that not a few, particularly in Virginia have contended for the proposed alterations from the most honorable & patriotic motives; and that among the advocates for the Constitution there are some who wish for further guards to public liberty & individual rights. As far as these may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. There is scarce any point on which the party in opposition is so much divided as to its importance and its propriety. My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light—1. because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. 2 because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England was that the Constitution by prohibiting religious tests, opened a door for Jews Turks & infidels. 3. because the limited powers of the federal Government and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. 4. because experience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of Conscience, it is well known that a religious establishment w<sup>d</sup> have taken place in that State, if the Legislative majority had found as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the

majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents. This is a truth of great importance, but not yet sufficiently attended to; and is probably more strongly impressed on my mind by facts, and reflections suggested by them, than on yours which has contemplated abuses of power issuing from a very different quarter. Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince. The difference so far as it relates to the superiority of republics over monarchies, lies in the less degree of probability that interest may prompt more abuses of power in the former than in the latter; and in the security in the former ag<sup>st</sup> an oppression of more than the smaller part of the Society, whereas in the former [latter] it may be extended in a manner to the whole. The difference so far as it relates to the point in question—the efficacy of a bill of rights in controuling abuses of power—lies in this: that in a monarchy the latent force of the nation is superior to that of the Sovereign, and a solemn charter of popular rights must have a great effect, as a standard for trying the validity of public acts, and a signal for rousing & uniting the superior force of the community; whereas in a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and, consequently the tyrannical will of the Sovereign is not [to] be controuled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular Governments? I answer the two following which, though less essential than in other Governments, sufficiently recommend the precaution: 1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho. it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter source; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. Perhaps too there may be a certain degree of danger, that a succession of artful and ambitious rulers may by gradual & well timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist at all, it is prudent to guard ag<sup>st</sup> it, especially when the precaution can do no injury. At the same time I must own that I see no tendency in our Governments to danger on that side. It has been remarked that there is a tendency in all Governments to an augmentation of power at the expence of liberty. But the remark as usually understood does not appear to me well founded. Power when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only is it, in my opinion applicable to the Governments in America. It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power, and that the line which divides these extremes should be so inaccurately defined by experience.

Supposing a bill of rights to be proper the articles which ought to compose it, admit of much discussion. I am inclined to think that *absolute* restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided. The restrictions however strongly marked on paper will never be regarded when opposed to the decided sense of the public, and after repeated violations in extraordinary cases they will lose even their ordinary efficacy. Should a Rebellion or insurrection alarm the people as well as the Government, and a suspension of the Hab. Corp. be dictated by the alarm, no written prohibitions on earth would prevent the measure. Should an army in time of peace be gradually established in our neighborhood by Brit<sup>n</sup>. or Spain, declarations on paper would have as little effect in preventing a standing force for the public safety. The best security ag<sup>st</sup> these evils is to remove the pretext for them. With regard to Monopolies, they are justly classed among the greatest nuisances in Government. But is it clear that as encouragements to literary works and ingenious discoveries, they are not too valuable to be wholly renounced? Would it not suffice to reserve in all cases a right to the public to abolish the privilege at a price to be specified in the grant of it? Is there not also infinitely less danger of this abuse in our Governments than in most others? Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power as with us is in the many not in the few the danger cannot be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many.

I inclose a paper containing the late proceedings in Kentucky. I wish the ensuing Convention may take no step injurious to the character of the district, and favorable to the views of those who wish ill to the U. States. One of my late letters communicated some circumstances which will not fail to occur on perusing the objects of the proposed Convention in next month. Perhaps however there may be less connection between the two cases than at first one is ready to conjecture.

I am, D<sup>r</sup> sir with the sincerest esteem & affect<sup>n</sup>,

Yours

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

New York, October 17, 1788.

Chic. Hist. Soc.  
Mss.

Dear Sir,

I have a letter from Mazzei & one from Mr. Jefferson which you will be good enough to dispose of. I have one from the former in which he begs me to add my importunities to you and Mr. Blair for speedy succour if possible. I have one from the latter but it contains nothing of much consequence. His public letters to which it refers have not yet been communicated from the office of Foreign Affairs. Through other authentic channels I learn that the States General will pretty certainly be convened in May next. The efficacy of that cure for the public maladies will depend materially on the mode in which the deputies may be selected, which appears to be not yet settled. There is good reason also to presume, that, as the spirit which at present agitates the nation has been in a great measure caught from the American Revolution, so the result of the struggle there will be not a little affected by the character which liberty may receive from the experiment now on foot here. The tranquil and successful establishment of a great reform by the reason of the community, must give as much force to the doctrines urged on one side as a contrary event would do to the policy maintained on the other.

As Col. Carrington will be with you before this gets to hand, I leave it with him to detail all matters of a date previous to his departure. Of a subsequent date I recollect nothing worth adding. I requested him also to confer with you in full confidence on the appointments to the Senate and House of Representatives, so far as my friends may consider me in relation to either. He is fully possessed of my real sentiments, and will explain them more conveniently than can be done on paper. I mean not to decline an agency in launching the new Government if such should be assigned me in one of the Houses, and I prefer the House of Representatives, chiefly because, if I can render any service there, it can only be to the public, and, not even in imputation, to myself. At the same time my preference, I own, is somewhat founded on the supposition that the arrangements for the popular elections may secure me against any competition which would require on my part any step that would speak a solicitude which I do not feel, or have the appearance of a spirit of electioneering which I despise.

I am led not only by a want of matter but by a cut I have just given my thumb and which makes writing tedious and disagreeable to conclude, with assurances of affection I am &c.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

New York, Oct<sup>r</sup> 20th, 1788.

Mad. Mss.

Dear Sir,

I acknowledge with much pleasure your favor of the 6th instant. The “balmy” nature of the resolutions concerning the Mississippi will I hope have the effect you suggest; though the wounds given to some & the pretexts given to others by the proceedings which rendered them necessary, will not I fear be radically removed. The light in which the temporary seat of the new Government is viewed & represented by those who were governed by antecedent jealousies of this end of the Union, is a natural one, and the apprehension of it was among the most persuasive reasons with me for contending with some earnestness for a less eccentric position. A certain degree of impartiality or the appearance of it, is necessary in the most despotic Governments. In republics this may be considered as the vital principle of the Administration. And in a *federal* Republic founded on local distinctions involving local jealousies, it ought to be attended to with a still more scrupulous exactness.

I am glad to find you concurring in the requisite expedients for preventing anti federal elections, and a premature Convention. The circular letter from this State has united and animated the efforts on the adverse side with respect to both these points. An early Convention threatens discord and mischief. It will be composed of the most heterogeneous characters—will be actuated by the party spirit reigning among their constituents—will comprehend men having insidious designs ag<sup>st</sup> the Union—and can scarcely therefore terminate in harmony or the public good. Let the enemies to the System wait until some experience shall have taken place, and the business will be conducted with more light as well as with less heat. In the mean time the other mode of amendments may safely be employed to quiet the fears of many by supplying those further guards for private rights which can do no harm to the system in the judgment even of its most partial friends, and will even be approved by others who have steadily supported it.

It appears from late foreign intelligence that war is likely to spread its flames still farther among the unfortunate inhabitants of the old world. France is certainly enough occupied already with her internal fermentations. At present the struggle is merely between the Aristocracy and the Monarchy. The only chance in favor of the people lies in the mutual attempts of the Competitors to make their side of the question the popular one. The late measures of the Court have that tendency. The nobility and Clergy who wish to accelerate the States General wish at the same time to have it formed on the antient model established on the feudal idea, which excluded the people almost altogether. The Court has at length agreed to convene this assembly in May, but is endeavouring to counteract the aristocratic policy, by admitting the people to a greater share of representation. In both the parties there are some real friends to liberty who will probably take advantage of circumstances to promote their object. Of

this description on the anti court side is our friend the Marquis. It is not true I believe that he is in the Bastile but true that he is in *disgrace*, as the phrase there is.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Oc<sup>r</sup> 21, 1788.

Wash. Mss.

Dear Sir,

I send you the enclosed paper chiefly for the sake of the Edict which fixes on May for the meeting of the States general in France. Letters from Mr. Jefferson authenticate the document. They mention also the disgrace as it is called of the Marquis. The struggle at present in that Kingdom seems to be entirely between the Monarchy & aristocracy, and the hopes of the people merely in the competition of their enemies for their favor. It is probable however that both the parties contain real friends to liberty who will make events subservient to their object.

The Count Moustier and the Marchioness Brehan are to set out this day for Mount Vernon. I take it for granted you are not only apprised of the intended visit, but of the time at which the guests may be expected.

The State of Connecticut has made choice of Doc<sup>r</sup>. Johnson and Mr. Elsworth for its Senators, and has referred that of its representatives to the people at large, every individual citizen to vote for every Representative.

I have not heretofore acknowledged your last favor, nothing material having turned up for some time, and the purpose of Col. Carrington to see you on his way to Virginia superseding all the ordinary communications through the epistolary channel. It gives me much pleasure to find that both the opposition at first and finally the accession to the vote fixing N. York for the first meeting of the New Congress has your approbation. My fears that the measure would be made a handle of by the opposition are confirmed in some degree by my late information from Virg<sup>a</sup>. Mr. Pendleton the Chancellor tells me he has already met taunts from that quarter on this specimen of Eastern equity & impartiality. Whether much noise will be made will depend on the policy which Mr. Henry may find it convenient to adopt. As N. York is at the head of his party, he may be induced by that circumstance not to make irritating reflections; though the fact is that the party in this [State] which is with him is supposed to be indifferent & even secretly averse to the residence of Congress here. This however may not be known to him.

I am Dear Sir Yours most respectfully & Affecte<sup>ly</sup>.



[\[Back to Table of Contents\]](#)

## QUESTIONS FROM AND ANSWERS TO THE COUNT DE MOUSTIER, MINISTER PLENIPOTENTIARY OF FRANCE, OCTOBER 30, 1788.<sup>1</sup>

1. It is not easy to give a precise answer to this question, many of the best informed not having been led to communicate their opinions, and others having been directly or indirectly interested on one side or the other. It seems to have been rather the prevailing opinion that the Contract was more hurtful to the price of Tobacco, than a supply of the Farmer Gen<sup>l</sup> by purchases made in the English or other Foreign Markets. This opinion must be founded on a supposition that the mercantile sellers in Europe could more easily combine and counteract the monopoly than the Planters of America. It does not appear that those who dislike y<sup>e</sup> contract have particularly turned y<sup>f</sup> thoughts to a system proper to be substituted. The general idea seems to have been that some arrangement in France disarming the monopoly there of its influence direct or indirect on the market here could alone effectually answer the purpose.

Mad. Mss.

1. Quelle est l'opinion des habitans les plus instruits de la Virginie, sur le contrat de la ferme avec Mons. Rob. Morris et quel est le système qu'ils voudroient y substituer?

2. The manufacture of this article being extremely simple & easily accommodated to the use the event of a competition must depend on the comparative price of the material. The cloathing of Negroes is made of the coarsest materials. It is at present supplied in part by family manufacture, especially where a few negroes only belong to the same master, and this resource is daily increasing. Principal part however comes from G. Britain and if no foreign competition interferences this must be the case for a considerable time.

2. Ne pourrions nous pas fournir à très bon marché le gros lainage pour l'habillement des nègres?

3. Virginia produces Tobacco Wheat, Indian Corn, Lumber, salt provisions, coal, Iron, Hemp, tar, pitch turpentine, flax-seed. Ship-building can be carried on also advantageously. It is the interest of Virginia to find encouragement for all these articles; and of France to give encouragement so far at least as she does not herself produce them. Tobacco naval stores, ready-built Vessels, flax-seed, and occasionally wheat and flour also, are wanted in France. Flour Bread, Indian Corn, salt provisions, lumber and ready-built vessels of inferior size, are adapted to the wants of the Islands.

3. Quels sont en général les objects de commerce, dont il pourroit être interessant d'encourager l'importation soit en France, soit aux Antilles?

4. As Virginia does not manufacture, and consumes less or more of a very great variety of articles, she may be considered as wanting most of the French Manufactures recommended by their quality and price. At present, the coarser woollens of France are inferior to those of Britain, and her coarser linens to those of Germany. In the articles of hardware & leather, the English have

4. Quelles sont d'un autre côté les marchandises du Royaume ou des Isles dont les Virginiens

also greatly the advantage. Wines, brandies, oil, Fruits,—silks, cambricks, Lawns, printed goods, Glass, Kid gloves, ribbons, superfine broadcloaths &c are articles which may be best obtained from France. The goods imported as valued at the ports of delivery, between Sep<sup>r</sup> 1, '86, & July 20, '87, amounted to 949,444.00-7, excluding Salt, distilled spirits, wine, malt liquors, Cheese, Tea, Sugar, Coffee. These paid a duty ad quantitatem, & therefore the value does not appear. It need not be remarked that in all cases the entries subject to duty fall short of y<sup>e</sup> truth. The productions of the Islands most wanted in Virginia are Sugar & Coffee. Between Sep<sup>r</sup> 1, '86, & July 20, '87, were entered 2,126,673<sup>lbs</sup> Sugar, & 147,591 of Coffee. Molasses also is wanted; and Taffia perhaps, in a small degree. Cotton is raised in Virginia as far as it is needed for domestic manufacture.

paroissent avoir le plus grand besoin?

5. It would be very difficult for brandy *entirely* to supplant Rum. A moderate preference however would soon make it a formidable rival. The small encouragement hitherto given to brandy has had a very sensible effect in promoting the use of it, and as antecedent habits become weakened the use will spread of itself. The brandies (doubtless from France with very trifling exceptions) entered on the Custom House books between Sept. 1, 86, & July 20, 87, amounted to 10,630 Gallons; and it is conjectured that the direct importations not entered with the considerable quantity introduced by the way of Maryland where the duty has been lower, may amount to half as much. The rum entered within that period amounted to 499,083 Gallons the Gin to 9102½ Gal<sup>s</sup>; & the cordials & other spirits to 4,169½ Gals.

5. Est-il vraisemblable que les eaux de vie de France fassent tomber entièrement le Rum des Isles? A quoi peut se monter la consommation annuelle des vins de France en Virginie?

The Wines entered within the above periods amounted to 109,948 Gal<sup>s</sup>, on which quantity ab<sup>t</sup> 40,000 Gal<sup>s</sup> were French.

6. French Salt is little if at all used in Virginia. The eye is displeased at its colour, and the supposition is favored by that circumstance that it is dirty and inferior to the British & other white Salt. The objection suggests the means of rendering the use more common.

6. Se sert-on beaucoup du sel de France pour les salaisons et que faut-il faire pour en rendre l'usage plus commun?

7. of the Vessels entered between the above dates—The American amounted to 26,705 tons The British & those of other nations not in alliance, 26,903 The French & those of other nations in alliance 2,664. The law having required no other discriminations, the Custom House books do not furnish a more particular answer.

7. La Virg<sup>e</sup> commence-t-elle à exporter elle même ses denrées et quelle est la proportion de sa navigation avec celle des autres nations pour le transport des Tabacs et autres articles?

8. The answer to this important question ought to be the result of much information as well as consideration. At present Mr. M. is not prepared with such an one. Whenever he shall have formed an opinion on the subject which he thinks worth the attention of C<sup>t</sup>. M. it shall be communicated.

8. Comme les  
Américains desirent  
beaucoup d'obtenir de  
nouvelles faveurs  
dans nos Antilles, que  
pourroient-ils  
proposer pour faciliter  
un arrangement de  
cette nature sans trop  
préjudicier aux  
avantages que la  
France ne cesse de  
tirer de ses Colonies?

[\[Back to Table of Contents\]](#)

## OBSERVATIONS ON THE “DRAUGHT OF A CONSTITUTION FOR VIRGINIA.”<sup>1</sup>

Mad. Mss.

Senate.

The term of two years is too short. Six years are not more than sufficient. A Senate is to withstand the occasional impetuosities of the more numerous branch. The members ought therefore to derive a firmness from the tenure of their places. It ought to supply the defect of knowledge and experience incident to the other branch, there ought to be time given therefore for attaining the qualifications necessary for that purpose. It ought finally to maintain that system and steadiness in public affairs without which no Government can prosper or be respectable. This cannot be done by a body undergoing a frequent change of its members. A Senate for six years will not be dangerous to liberty, on the contrary it will be one of its best guardians. By correcting the infirmities of popular Government, it will prevent that disgust ag<sup>st</sup> that form which may otherwise produce a sudden transition to some very different one. It is no secret to any attentive & dispassionate observer of y<sup>e</sup> pol: situation of y<sup>e</sup> U. S., that the real danger to republican liberty has lurked in that cause.

The appointment of Senators by districts seems to be objectionable. A spirit of *locality* is inseparable from that mode. The evil is fully displayed in the County representations, the members of which are everywhere observed to lose sight of the aggregate interests of the Community, and even to sacrifice them to the interests or prejudices of their respective constituents. In general these local interests are miscalculated. But it is not impossible for a measure to be accommodated to the particular interests of every County or district, when considered by itself, and not so, when considered in relation to each other and to the whole State; in the same manner as the interests of individuals may be very different in a state of nature and in a Political union. The most effectual remedy for the local bias is to impress on the minds of the Senators an attention to the interest of the whole Society, by making them the choice of the whole Society, each citizen voting for every Senator. The objection here is that the fittest characters would not be sufficiently known to the people at large. But in free governments, merit and notoriety of character are rarely separated, and such a regulation would connect them more and more together. Should this mode of election be on the whole not approved, that established in Maryland presents a valuable alternative. The latter affords perhaps a greater security for the selection of merit. The inconveniences chargeable on it are two: first that the Council of electors favors cabal. Against this the shortness of its existence is a good antidote, secondly that in a large State the meeting of the Electors must be expensive if they be paid, or badly attended if the service is onerous. To this it may be answered that in a case of such vast importance, the expence, which could not be great, ought to be disregarded. Whichever of these modes may be preferred, it cannot be amiss so far to admit the plan of districts as to restrain the choice to persons residing in different parts of the State. Such a regulation will produce a diffusive confidence in the Body, which is not less necessary than the other means of rendering it useful. In a State having large towns which can easily unite their votes the precaution would be

essential to an immediate choice by the people at large. In Maryland no regard is paid to residence. And what is remarkable vacancies are filled by the Senate itself. This last is an obnoxious expedient and cannot in any point of view have much effect. It was probably meant to obviate the trouble of occasional meetings of the Electors. But the purpose might have been otherwise answered by allowing the unsuccessful candidates to supply vacancies according to the order of their standing on the list of votes, or by requiring provisional appointments to be made along with the positive ones. If an election by districts be unavoidable and the ideas here suggested be sound, the evil will be diminished in proportion to the extent given to the districts, taking two or more Senators from each district.

The first question arising here is how far property ought to be made a qualification. There is a middle way to be taken which corresponds at once with the Theory of free Government and the lessons of experience. A freehold or equivalent of a certain value may be annexed to y<sup>e</sup> right of voting for Senators, & y<sup>e</sup> right left more at large in y<sup>e</sup> election of the other House. Examples of this distinction may be found in the Constitutions of several States particularly if I mistake not, of North Carolina & N. York. This middle mode reconciles and secures the two cardinal objects of Government; the rights of persons, and the rights of property. The former will be sufficiently guarded by one branch, the latter more particularly by the other. Give all power to property, and y<sup>e</sup> indigent will be oppressed. Give it to the latter and the effect may be transposed. Give a defensive share to each and each will be secure. The necessity of thus guarding the rights of property was for obvious reasons unattended to in the commencement of the Revolution. In all the Governments which were considered as beacons to republican Patriots & lawgivers the rights of persons were subjected to those of property. The poor were sacrificed to the rich. In the existing state of American population & American property the two classes of rights were so little discriminated that a provision for the rights of persons was supposed to include of itself those of property, and it was natural to infer from the tendency of republican laws, that these different interests would be more and more identified. Experience and investigation have however produced more correct ideas on this subject. It is now observed that in all populous countries, the smaller part only can be interested in preserving the rights of property. It must be foreseen that America, and Kentucky itself will by degrees arrive at this stage of Society that in some parts of y<sup>e</sup> Union a very great advance is already made towards it. It is well understood that interest leads to injustice as well where the opportunity is presented to bodies of men as to individuals; to an interested majority in a Republic, as to the interested minority in any other form of Government. The time to guard ag<sup>st</sup> this danger is at the first forming of the Constitution, and in the present state of population when the bulk of the people have a sufficient interest in possession or in prospect to be attached to the rights of property, without being insufficiently attached to the rights of persons. Liberty not less than justice pleads for the policy here recommended. If *all* power be suffered to slide into hands not interested in the rights of property which must be the case whenever a majority fall under that description, one of two things cannot fail to happen; either they will unite against the other description and become the dupes & instruments of ambition, or their poverty & dependence will render them the mercenary instruments of wealth. In

Electors.

either case liberty will be subverted: in the first by a despotism growing out of anarchy, in the second, by an oligarchy founded on corruption.

The second question under this head is whether the ballot be not a better mode than that of voting viva voce. The comparative experience of the States pursuing the different modes is in favor of the first. It is found less difficult to guard against fraud in that than against bribery in the other.

Does not The exclusion of Ministers of the Gospel as such violate a fundamental principle of liberty by punishing a religious profession with the privation of a civil right? does it [not] violate another article of the plan itself which exempts religion from the cognizance of Civil power? does it not violate justice by at once taking away a right and prohibiting a compensation for it? does it not in fine violate impartiality by shutting the door ag<sup>st</sup> the Ministers of one Religion and leaving it open for those of every other.

Exclusions.

The re-eligibility of members after accepting offices of profit is so much opposed to the present way of thinking in America that any discussion of the subject would probably be a waste of time.

It is at least questionable whether death ought to be confined to "Treason and murder." It would not therefore be prudent to tie the hands of Government in the manner here proposed. The prohibition of pardon, however specious in theory would have practical consequences which render it inadmissible. A single instance is a sufficient proof. The crime of treason is generally shared by a number, and often a very great number. It would be politically if not morally wrong to take away the lives of all even if every individual were equally guilty. What name would be given to a severity which made no distinction between the legal & the moral offence—between the deluded multitude and their wicked leaders. A second trial would not avoid the difficulty; because the oaths of the jury would not permit them to hearken to any voice but the inexorable voice of the law.

Limits of power.

The power of the Legislature to appoint any other than their own officers departs too far from the Theory which requires a separation of the great Dep<sup>ts</sup> of Government. One of the best securities against the creation of unnecessary offices or tyrannical powers is an exclusion of the authors from all share in filling the one, or influence in the execution of the other. The proper mode of appointing to offices will fall under another head.

An election by the Legislature is liable to insuperable objections. It not only tends to faction intrigue and corruption, but leaves the Executive under the influence of an improper obligation to that department. An election by the people at large, as in this 1 & several other States—or by Electors as in the appointment of the Senate in Maryland, or, indeed, by the people through any other channel than their legislative representatives, seems to be far preferable. The ineligibility a second time, though not perhaps without advantages, is also liable to a variety of strong objections. It takes away one powerful motive to a faithful & useful administration, the desire of acquiring that title to a reappointment. By rendering a

Executive Governour.



periodical change of men necessary, it discourages beneficial undertakings which require perseverance and system, or, as frequently happened in the Roman Consulate, either precipitates or prevents the execution of them. It may inspire desperate enterprises for the attainment of what is not attainable by legitimate means. It fetters the judgment and inclination of the Community; and in critical moments would either produce a violation of the Constitution or exclude a choice [which] might be essential to the public safety. Add to the whole, that by putting the Executive Magistrate in the situation of the tenant of an unrenovable lease, it would tempt him to neglect the constitutional rights of his department, and to connive at usurpations by the Legislative department, with which he may connect his future ambition or interest.

The clause restraining the first magistrate from the immediate command of the military force would be made better by excepting cases in which he should receive the sanction of the two branches of the Legislature.

The following variations are suggested. 1. The election to be made by the people immediately, or thro' some other medium than the Legislature. 2. A distributive choice should perhaps be secured as in the case of the Senate. 3. Instead of an ineligibility a second time, a rotation in the federal Senate, with an abridgm<sup>t</sup> of the term, to be substituted.

Council of State.

The appointment to offices is, of all the functions of Republican & perhaps every other form of Government, the most difficult to guard against abuse. Give it to a numerous body, and you at once destroy all responsibility, and create a perpetual source of faction and corruption. Give it to the Executive wholly, and it may be made an engine of improper influence and favoritism. Suppose the power were divided thus: let the Executive alone make all the subordinate appointments, and the Gov<sup>r</sup> and Senate, as in the Fed<sup>l</sup> Const<sup>n</sup>, those of the superior order. It seems particularly fit that the Judges, who are to form a distinct department should owe their offices partly to each of the other departments, rather than wholly to either.

Much detail ought to be avoided in the Constitutional regulation of this Department, that there may be room for changes which may be demanded by the progressive changes in the state of our population. It is at least doubtful whether the number of Courts, the number of Judges, or even y<sup>e</sup> boundaries of Jurisdiction ought to be made unalterable but by a revisal of the Constitution. The precaution seems no otherwise necessary than as it may prevent sudden modifications of the establishment, or addition of obsequious Judges, for y<sup>e</sup> purpose of evading the checks of the Const<sup>n</sup> & giv<sup>g</sup> effect to some sinister policy of the Legis<sup>te</sup>. But might not the same object be otherwise attained? by prohibiting, for example, any innovations in those particulars without the consent of that department: or without the annual sanction of two or three successive Assemblies, over & above the other pre-requisites to the passage of a law.

Judiciary.

The model here proposed for a Court of Appeals is not recommended by experience. It is found as might well be presumed that the members are always warped in their appellate decisions by an attachment to the principles and jurisdiction of their respective Courts, & still more so by the previous decision on y<sup>e</sup> case removed by

appeal. The only efficient cure for the evil is to form a Court of Appeals, of distinct and select Judges. The expence ought not to be admitted as an objection 1. because the proper administration of Justice is of too essential a nature to be sacrificed to that consideration. 2. The number of inferior judges might in that case be lessened. 3. The whole department may be made to support itself by a judicious tax on law proceedings.

The excuse for non-attendance would be a more proper subject of enquiry somewhere else than in the Court to which the party belonged. Delicacy, mutual convenience &c, would soon reduce the regulation to mere form; or if not, it might become a disagreeable source of little irritations among y<sup>e</sup> members. A certificate from the local Court or some other local authority where the party might reside or happen to be detained from his duty, expressing the cause of absence as well as that it was judged to be satisfactory, might be safely substituted. Few Judges would improperly claim their wages, if such a formality stood in the way. These observations are applicable to the Council of State.

A Court of Impeachments is among the most puzzling articles of a Republican Constitution; and it is far more easy to point out defects in any plan than to supply a cure for them. The diversified expedients adopted in the Constitutions of the several States prove how much the compilers were embarrassed on this subject. The plan here proposed varies from all of them, and is perhaps not less than any a proof of the difficulties which pressed the ingenuity of its author. The remarks arising on it are 1. That it seems not to square with reason that the right to impeach should be united to that of trying the impeachment, & consequently in a proportional degree, to that of sharing in the appointment of, or influence on the Tribunal to which the trial may belong. 2. As the Executive & Judiciary would form a majority of the Court, and either have a right to impeach, too much might depend on a combination of these departments. This objection would be still stronger if the members of the Assembly were capable as proposed of holding offices, and were amenable in that capacity to the Court. 3. The H. of Delegates and either of those departments could app<sup>t</sup> a majority of y<sup>e</sup> Court. Here is another danger of combination, and the more to be apprehended as that branch of y<sup>e</sup> Legisl w<sup>d</sup> also have the right to impeach, a right in their hands of itself sufficiently weighty; and as the power of the Court w<sup>d</sup> extend to the head of the Ex, by whose independence the constit<sup>l</sup> rights of that department are to be secured ag<sup>st</sup> Legislative usurpations. 4. The dangers in the two last cases would be still more formidable, as the power extends not only to deprivation, but to future incapacity of office. In the case of all officers of sufficient importance to be objects of factious persecution, the latter branch of power is in every view of a delicate nature. In that of the Chief Magistrate it seems inadmissible, if he be chosen by the Legislature; and much more so, if immediately by the people themselves. A temporary incapacitation is y<sup>e</sup> most that c<sup>d</sup> be properly authorised.

The 2 great desiderata in a Court of Impeach<sup>ts</sup> are 1. impartiality. 2. respectability—the first in order to a right, the second in order to a satisfactory decision. These characteristics are aimed at in the following modification. Let the Senate be denied the right to impeach. Let ? of the members be struck out, by alternate nominations of the prosecutors & party impeached; the remaining ? to be the



*stamen* of the Court. When the H. of Del: impeach let the Judges, or a certain proportion of them—and the Council of State be associated in the trial, when the Gov<sup>t</sup> or Council impeaches, let the Judges only be associated; when the Judges impeach let the Council only be associated. But if the party impeached by the H. of Del<sup>s</sup> be a member of the Ex. or Judic<sup>y</sup>, let that of which he is a member not be associated. If the party impeached belong to one & be impeached by the other of these branches, let neither of them be associated the decision being in this case left with the Senate alone; or if that be thought exceptionable, a few members might be added by y<sup>e</sup> H. of D<sup>s</sup>. ? of the Court should in all cases be necessary to a conviction, & the Chief Magistrate *at least* should be exempt from a sentence of perpetual if not of temporary incapacity. It is extremely probable that a critical discussion of this outline may discover objections which do not occur. Some do occur; but appear not to be greater than are incident to any different modification of the Tribunal.

The establishment of trials by Jury & viva voce testimony in *all* cases and in *all* Courts, is, to say the least, a delicate experiment; and would most probably be either violated, or be found inconvenient.

A revisionary power is meant as a check to precipitate, to unjust, and to unconstitutional laws. These important ends would it is conceded be more effectually secured, without disarming the Legislature of its requisite authority, by requiring bills to be separately communicated to the Exec: & Judic<sup>y</sup> dep<sup>ts</sup>. If either of these object, let ?, if both  $\frac{3}{4}$  of each House be necessary to overrule the objection; and if either or both protest ag<sup>st</sup> a bill as violating the Constitution, let it moreover be suspended notwithstanding the overruling proportion of the Assembly, until there shall have been a subsequent election of the H. of D<sup>s</sup> and a re-passage of the bill by ? or  $\frac{3}{4}$  of both Houses, as the case may be. It s<sup>d</sup> not be allowed the Judges or y<sup>e</sup>. Executive to pronounce a law thus enacted unconstitu<sup>l</sup> & invalid.

Council of Revision.

In the State Constitutions & indeed in the Fed<sup>l</sup> one also, no provision is made for the case of a disagreement in expounding them; and as the Courts are generally the last in making y<sup>e</sup> decision, it results to them by refusing or not refusing to execute a law, to stamp it with its final character. This makes the Judiciary Dep<sup>t</sup> paramount in fact to the Legislature, which was never intended and can never be proper.

The extension of the Hab<sup>s</sup> Corp<sup>s</sup> to the cases in which it has been usually suspended, merits consideration at least. If there be emergencies which call for such a suspension, it can have no effect to prohibit it, because the prohibition will assuredly give way to the impulse of the moment; or rather it will have the bad effect of facilitating other violations that may be less necessary. The Exemption of the press from liability in every case for *true facts* is also an innovation and as such ought to be well considered. This essential branch of liberty is perhaps in more danger of being interrupted by local tumults, or the silent awe of a predominant party, than by any direct attacks of Power.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

N. York Nov<sup>r</sup> 2, 1788.

Chic. Hist. Soc.  
Mss.

My Dear Friend,

I rec'd yesterday your favor of the 23<sup>d</sup>. ult. The first countenance of the assembly corresponds with the picture which my imagination had formed of it. The views of the greater part of the opposition to the federal government, and particularly of its principal leader, have ever since the Convention, been regarded by me as permanently hostile, and likely to produce every effort that might endanger or embarrass it. <sup>1</sup> The defects which drew forth objections from many quarters, were evidently of little consequence in the eye of M<sup>r</sup> H—ry. His own arguments proved it. His enmity was levelled, as he did not *scruple* to insinuate ag<sup>st</sup> the *whole system*; and the destruction of the whole system I take to be still the secret wish of his heart, and the real object of his pursuit. If temperate and rational alterations only were his plan, is it conceivable that his coalition and patronage would be extended to men whose particular ideas on the subject must differ more from his own than of others who share most liberally in his hatred?

My last letter with Col. Carrington's communications to which it referred will have sufficiently explained my sentiments with regard to the Legislative Service under the new Constitution. My first wish is to see the Government put into quiet and successful operation; and to afford any service, that may be acceptable from me, for that purpose. My second wish if that were to be consulted, would prefer, for reasons formerly hinted, an opportunity of contributing that service in the House of Rep<sup>s</sup>. rather than in the Senate; provided the opportunity be attainable from the spontaneous suffrage of the Constituents. Should the real friends to the Constitution think this preference inconsistent with any primary object, as Col. Carrington tells me is the case with some who are entitled to peculiar respect, and view my renouncing it as of any material consequence, I shall not hesitate to comply.—You will not infer from the freedom with which these observations are made, that I am in the least unaware of the probability that whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the assembly are enemies to the Gov<sup>t</sup>. and I have no reason to suppose that I can be less obnoxious than others on the opposite side. An election into the Senate therefore can hardly come into question. I know also that a good deal will depend on the arrangements for the election of the other branch; and that much may depend moreover on the steps to be taken by the candidates which will not be taken by me. Here again therefore there must be great uncertainty, if not improbability of my election. With these circumstances in view it is impossible that I can be the dupe of false calculations even if I were in other cases disposed to indulge them. I trust it is equally impossible for the result whatever it may be, to rob me of any reflections which enter into the internal fund of comfort and happiness. Popular favor or disfavor, is no criterion of the character maintained with those whose esteem an honorable

ambition must court. Much less can it be a criterion of that maintained with oneself. And when the spirit of party directs the public voice, it must be a little mind indeed that can suffer in its own estimation, or apprehend danger of suffering in that of others.

The Sep<sup>r</sup>. British Packet arrived yesterday, but I do not find that she makes any addition to the stock of European intelligence. The change in the French Minister is the only event of late date of much consequence; and that had arrived through several other channels. I do not know that it is even yet authenticited; but it seems to be doubted by no one, particularly among those who can best decide on its credibility.

With the utmost affection I am my dear sir

Y<sup>Rs</sup> Sincerely.

[\[Back to Table of Contents\]](#)

## COPY IN SUBSTANCE OF A LETTER TO G. L. TURBERVILLE, ESQ.

N. York, Nov<sup>r</sup>. 2, 1788.

Mad. Mss.

Dear Sir,

Your favor of the 20th Ult. not having got into my hands in time to be acknowledged by the last mail, I have now the additional pleasure of acknowledging along with it your favor of the 24, which I rec<sup>d</sup> yesterday.

You wish to know my sentiments on the project of another general Convention as suggested by New York. I shall give them to you with great frankness, though I am aware they may not coincide with those in fashion at Richmond or even with your own. I am not of the number if there be any such, who think the Constitution lately adopted a faultless work. On the contrary there are amendments w<sup>ch</sup> I wished it to have received before it issued from the place in which it was formed. These amendments I still think ought to be made, according to the apparent sense of America and some of them at least, I presume will be made. There are others concerning which doubts are entertained by many, and which have both advocates and opponents on each side of the main question. These I think ought to receive the light of actual experiment, before it would be prudent to admit them into the Constitution. With respect to the first class, the only question is which of the two modes provided be most eligible for the discussion and adoption of them. The objections ag<sup>st</sup>. a Convention which give a preference to the other mode in my judgment are the following 1. It will add to the difference among the States on the merits, another and an unnecessary difference concerning the mode. There are amendments which in themselves will probably be agreed to by all the States, and pretty certainly by the requisite proportion of them. If they be contended for in the mode of a Convention, there are unquestionably a number of States who will be so averse and apprehensive as to the mode, that they will reject the merits rather than agree to the mode. A Convention therefore does not appear to be the most convenient or probable Channel for getting to the object. 2. A Convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of ? of the State legislatures, if the forms of the Constitution are to be pursued. The difficulties in either of these cases must evidently be much greater than will attend the origination of amendments in Congress, which may be done at the instance of a single State Legislature, or even without a single instruction on the subject. 3. If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partizans on both sides; it w<sup>d</sup> probably consist of the most heterogeneous characters; would be the very focus of that flame which has

already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America and under all the disadvantages I have mentioned. 4. It is not unworthy of consideration that the prospect of a second Convention would be viewed by all Europe as a dark and threatening Cloud hanging over the Constitution just established, and, perhaps over the Union itself; and w<sup>d</sup> therefore suspend at least the advantages this great event has promised us on that side. It is a well-known fact that this event has filled that quarter of the Globe with equal wonder and veneration, that its influence is already secretly but powerfully working in favor of liberty in France, and it is fairly to be inferred that the final event there may be materially affected by the prospect of things here. We are not sufficiently sensible of the importance of the example which this Country may give to the world, nor sufficiently attentive to the advantages we may reap from the late reform, if we avoid bringing it into danger. The last loan in Holland and that alone, saved the U. S. from Bankruptcy in Europe; and that loan was obtained from a belief that the Constitution then depending w<sup>d</sup> be certainly speedily, quietly, and finally established, & by that means put America into a permanent capacity to discharge with honor & punctuality all her engagements.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, Nov<sup>r</sup> 5<sup>th</sup>, 1788.

Wash. Mss.

Dear Sir,

The inclosed memorandum was put into my hands by Mr. St. John, the French Consul. He is a very worthy man & entitled, by his philanthropy and zealous patronage of whatever he deems useful, to much esteem and regard. You will therefore oblige me by putting it in my power to afford him the little gratification he asks. I have another request to trouble you with, which concerns myself. Col. H. Lee tells me that he has purchased the tract of land thro' which the Canal at the great falls is to run, and on which the basin will be, for £4000. The tract contains 500 Acres only and is under the incumbrance of a Rent of £150 Sterl<sup>g</sup> per annum; but, on the other hand derives from its situation, as he supposes, a certain prospect of becoming immensely valuable. He paints it in short as the seat of an early Town, the lots of which will be immediately productive, and possessing other peculiar advantages which make the bargain inestimable. In addition to many instances of his friendship he tenders me a part in it, and urges my acceptance on grounds of advantage to myself alone. I am thoroughly persuaded that I am indebted for the proposal to the most disinterested and affectionate motives; but knowing that the fervor with which he pursues his objects sometimes affects the estimate he forms of them, and being in no condition to make hazardous experiments, it is advisable for me to have the sanction of other judgments to his opinions. You are well acquainted with the situation and can at once decide whether it presents the material and certain advantages on which Col. Lee calculates. A *general intimation* therefore of the light in which the matter strikes you, will lay me under a very particular obligation. I am by no means sure that in any result it will be in my power to profit by Col. Lee's friendship, but it may be of some consequence whether the opportunity be worth attending to or not.

My information from Richmond is very unpropitious to federal policy. Yours is no doubt more full and more recent. A decided and malignant majority may do many things of a disagreeable nature; but I trust the Constitution is too firmly established to be now materially vulnerable. The elections for the Legislature of Penn<sup>a</sup>. N. Jersey, & Maryland, ensure measures of a contrary complexion in those States. Indeed Virginia is the only instance among the ratifying States in which the Politics of the Legislature are at variance with the sense of the people, expressed by their Representatives in Convention. We hear nothing from Massachu<sup>ts</sup> or N. Hampshire since the meeting of their General Courts. It is understood that both the appointments & arrangements for the Government will be calculated to support and as far as possible to dignify it. The public conversation seems to be not yet settled on the Vice President. Mr. Hancock & Mr. Adams have been most talked of. The former *it is said* rejects the idea of any secondary station; and the latter does not unite the suffrages of his own State, and is unpopular in many other places. As other candidates however are not likely to present themselves, and New England will be considered as having strong pretensions, it

seems not improbable that the question will lie between the Gentlemen above named. Mr. Jay & Gen<sup>l</sup> Knox have been mentioned; but it is supposed that neither of them will exchange his present situation for an unprofitable dignity.

I shall leave this in a day or two, and am not yet finally determined how far my journey may be continued Southward. A few lines on the subject above mentioned will either find me in Philad<sup>a</sup>, or be there taken care of for me. Should anything occur here or elsewhere worth your attention, it shall be duly communicated by, Dear Sir your very respectful and Affectionate Servant.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Philad<sup>a</sup>, Nov<sup>r</sup> 23, 1788.

Mad. Mss.

My Dear Friend,

Your two favors of the 5th & 10th instant have been duly rec<sup>d</sup>. The appointments for the Senate communicated in the latter, answer to the calculations I had formed, notwithstanding the contrary appearances on which the former was founded. My only surprise is that in the present temper and disproportionate number of the anti federal part of the Assembly, my name should have been honored with so great a vote as it received. 1 When this circumstance is combined with that of the characters which I have reason to believe concurred in it, I should be justly chargeable with a very mistaken ambition, if I did not consider the event in the light which you anticipated. I shall not be surprised if the attempt should be equally successful to shut the door of the other House ag<sup>st</sup> me, which was the real object of my preference as well for the reason formerly suggested to you, as for the additional one that it will less require a stile of life with which my circumstances do not square, & for which an inadequate provision only will probably be made by the public. Being not yet acquainted with the allotment of Orange in the districts, I can form no estimate of the reception that will be given to an offer of my services. The district in which I am told it is likely to be thrown, for the choice of an Elector, is a very monitory sample of what may & probably will be done in that way.

My present situation embarrasses me somewhat. When I left N. York, I not only expected that the Choice for the Senate would be as it is, but was apprehensive y<sup>t</sup> the spirit of party might chuse to add the supposed mortification of dropping my name from the deputation to Congress for the fraction of a year remaining. I accordingly left that place under arrangements which did not require my return. At the same time, I had it in view, if left entirely to my option, to pass the Winter or part of it there, being desirous of employing some of the time in matters which need access to the papers of Congress, & supposing moreover that I should be there master more of my time y<sup>n</sup> in Virginia. The opportunity of executing my plan is given me I find by one of the votes of the Assembly. On the other hand I am now pressed by some of my friends to repair to Virginia, as a requisite expedient for counteracting the machinations ag<sup>st</sup> my election into the H. of Rep<sup>s</sup>. To this again I am extremely disinclined for reasons additional to the one above mentioned. It will have an electioneering appearance which I always despised and wish to shun. And as I should shew myself in Orange only, where there will probably be little difficulty, my presence could have no very favorable effect; whilst it is very possible that such a mark of solicitude strengthened by my not declining a reappointment to Congress, and now declining to serve in it, might by a dexterous misinterpretation, be made to operate on the other side. These considerations are strong inducements to join my colleagues at N. York, and leave things to their own course in Virginia. If Orange should fall into a federal district it is



probable I shall not be opposed; if otherwise a successful opposition seems unavoidable. My decision however is not finally taken.

Mr Dawson arrived here this morning. He took Anapolis in his way, where he tells me the disputed election of Baltimore engages the whole attention at present.

Will you be good eno' to enable me to answer the inclosed paper. I do not chuse to trust my recollection of the law on the subject. The enquiry comes from the French Consul at N. York.

You may continue to address y<sup>r</sup>. letters to N. York till I give you other notice as they will not be lost whatever direction I may take, and will be highly grateful if I should go thither.

Y<sup>Rs</sup> Most Affect<sup>Y</sup>.

[\[Back to Table of Contents\]](#)

TO HENRY LEE.

Philadelphia Nov. 30<sup>th</sup> 1788.

Mad. Mss.

My Dear Sir

Your favor of the 29<sup>th</sup> ult: was received in N. York—the pleasing one of the 19<sup>th</sup> Inst. found me in this city, whither I had come with a view either to return to N. York or proceed to Virginia as circumstances might determine—I have not sooner acknowledged your first favor, because it intimated that the subject of it admitted of delay, and I did not wish to precipitate a determination on it—although I did not foresee any addition of lights to guide me—The truth is I am fully satisfied that your calculations of advantage in the purchase are in substance at least well founded—I cannot be less so, that the proposition to me is the genuine offspring of a friendship, which demands the warmest returns and acknowledgements—an opportunity of bettering my private circumstances cannot be prudently disregarded by me—and I need not add that one more acceptable could not be found, than that in which every instance of profit to myself would be a pleasing proof of concurrent profit to you. To these considerations nothing is opposed but an inability to make the contributions which would be due & necessary on my part—and a fixt aversion to becoming a burden in the contract, and to stand in the way perhaps of other friends, who have an equal title to gratification, with the requisite means of giving effect to the plan—I do not know that within 12 months I could command more than one or two hundred pounds, unless I could dispose of property, which is not at present practicable.

You will see from the above explanation that notwithstanding my inclination, I dare not avail myself of your friendship on this occasion—any further than arrangements can be engrafted in the Bargain which will make the bargain contribute itself the means of fulfilling its obligations, and its objects. So far I shall be happy in partaking its benefits in such proportion as you may think fit—not exceeding the reparation in your own behalf—How far the means can be extracted out of the bargain you alone can determine. I apprehend that one at least of the gentlemen on whom you have cast an eye, is in no condition at present to enter into such a speculation. Wadsworth is probablyable—but I cannot even guess his dispositions on the subject—of the other I know nothing—The measures pursued at Richmond are as impolitic as they are otherwise exceptionable—if alterations of a reasonable sort are really in view, they are much more attainable from Congress than from attempts to bring about another convention. It is already decided that the latter mode is a hopeless pursuit—N. H—Mass—Con. N. J. Pen<sup>a</sup>. & Delaware having appointed Senators known to be Bona fide friends to the constitution—From the 1<sup>st</sup> State will be Langdon & Bartlett—from the 2<sup>d</sup> Bowdoin & Strong—from N. Jersey, Patterson & Elmer—the others you know—Maryland, S. Carolina & Georgia will make appointments of the like complexions. The elections of Rep<sup>s</sup> for Pen<sup>a</sup> is over, but the result is not yet known from all the counties, little doubt is entertained on one side, that it will prove favorable, though the other side do not renounce its hopes. In the city the majority

was nearly as five to one—In Lancaster county still greater I am told, and in one or two others, the proportion not less—The antifederal counties however are farthest off, and have not yet been heard from—In Berks where unanimity almost prevailed on that side, the badness of the day and the height of the waters reduced the number of voters to about 400—although the county must contain several more—In general a small proportion of the people seemed to have voted—How far this is to be charged on the weather or an indifference to the occasion I am not able to say.

I am not yet entirely recovered from the complaint which was reproduced by the journey from N. York hither—Nor am I yet absolutely decided whether I shall go back in consequence of the reappointment to Con<sup>g</sup>.—or proceed forthwith to Virg<sup>a</sup>—I mean to be a member of the H. of Rep<sup>s</sup> if elected to that service—and to take the proper steps for offering my services. Those of a contrary character I shall certainly decline. Even the electioneering appearance of a trip to Virg<sup>a</sup>. at this crisis is not a little grating to me. Present me in the best manner to M<sup>rs</sup> Lee. I am yrs aff<sup>y</sup>

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philadelphia, Dec<sup>r</sup>. 8, 1788.

Mad. Mss.

Dear Sir,

This will be handed to you by Mr. Gouverneur Morris who will embark in a few days for Havre, from whence he will proceed immediately to Paris. He is already well known to you by character; and as far as there may be a defect of personal acquaintance I beg leave to supply it by this introduction.

My two last were of Oc<sup>r</sup>. 8 & 17th. They furnished a state of our affairs as they then stood. I shall here add the particulars of most consequence, which have since taken place; remembering however that many details will be most conveniently gathered from the conversation of Mr. Morris who is thoroughly possessed of American transactions.

Notwithstanding the formidable opposition made to the New federal Government, first in order to prevent its adoption, and since in order to place its administration in the hands of disaffected men, there is now both a certainty of its peaceable commencement in March next, and a flattering prospect that it will be administered by men who will give it a fair trial. General Washington will certainly be called to the Executive department. Mr. Adams, who is *pledged to support him*, will probably be the vice president. The enemies to the Government, at the head & the most inveterate, of whom, is Mr. Henry are laying a train for the election of Governor Clinton, but it cannot succeed unless the federal votes be more dispersed than can well happen. Of the seven States which have appointed their Senators, Virginia alone will have anti-federal members in that branch. Those of N. Hampshire are President Langdon & Judge Bartlett—of Massachusetts Mr. Strong and Mr. Dalton—of Connecticut Doc<sup>r</sup> Johnson and Mr. Elseworth—of N. Jersey Mr. Patterson and Mr. Elmer—of Penn<sup>a</sup> Mr. R. Morris and Mr. McClay—of Delaware Mr. Geo. Reed and Mr. Bassett—of Virginia Mr. R. H. Lee and Col. Grayson. Here is already a majority of the ratifying States on the side of the Constitution. And it is not doubted that it will be reinforced by the appointments of Maryland, S. Carolina and Georgia. As one branch of the Legislature of N. York is attached to the Constitution, it is not improbable that one of the Senators from that State also will be added to the majority. In the House of Representatives the proportion of anti federal members will of course be greater, but cannot if present appearances are to be trusted, amount to a majority, or even a very formidable minority. The election for this branch has taken place as yet no where except in Penn<sup>a</sup>., and here the returns are not yet come in from all the Counties. It is certain however that seven out of the eight, and probable that the whole eight representatives will bear the federal stamp. Even in Virginia where the enemies to the Government form ? of the *legislature* it is computed that more than half the number of Representatives, who will be elected by the *people*, formed into districts for the

purpose, will be of the same stamp. By some, it is computed that 7 out of the 10 allotted to that State will be opposed to the politics of the present Legislature.

The questions which divide the public at present relate 1. to the extent of the amendments that ought to be made to the Constitution. 2. to the mode in which they ought to be made. The friends of the Constitution, some from an approbation of particular amendments, others from a spirit of conciliation, are generally agreed that the System should be revised. But they wish the revisal to be carried no farther than to supply additional guards for liberty, without abridging the sum of power transferred from the States to the general Government or altering previous to trial, the particular structure of the latter and are fixed in opposition to the risk of another Convention whilst the purpose can be as well answered, by the other mode provided for introducing amendments. Those who have opposed the Constitution, are on the other hand, zealous for a second Convention, and for a revisal which may either not be restrained at all, or extend at least as far as alterations have been proposed by any State. Some of this class, are no doubt, friends to an effective Government, and even to the substance of the particular Government in question. It is equally certain that there are others who urge a second Convention with the insidious hope, of throwing all things into Confusion, and of subverting the fabric just established, if not the Union itself. If the first Congress embrace the policy which circumstances mark out, they will not fail to propose of themselves, every desirable safeguard for popular rights; and by thus separating the well meaning from the designing opponents fix on the latter their true character, and give to the Government its due popularity and stability.

*1Moustier*<sup>2</sup>*proves a most unlucky appointment. He is unsocial proud and niggardly and betrays a sort of fastidiousness towards this country. . . . At Boston he imprudently suffered etiquette to prevent even an interview with governor Hancock. The inhabitants, taking part with the governor, neither visited nor invited the count. They were then less apprehensive of a misinterpretation of the neglect as the most cordial intercourse had just preceeded between the town and the French squadron. Both the count and the Marchioness are particularly unpopular among their countrymen here. Such of them as are not under restraint make very free remarks and are anxious for a new diplomatic arrangement. It is but right to add to these particulars, that there is reason to believe that unlucky impressions were made on the count at his first probably by de la Forest the consul a cunning disciple I take it of marbois' politics and by something in his communication with Jay which he considered as the effect of coldness and sourness toward France.*

*I am a stranger to the errand on which G. morris goes to Europe. It relates I presume to the affairs of R. Morris, which are still much deranged.*

I have received and paid the draught in favor of Doc<sup>f</sup>. Ramsay. I had before paid the order in favor of Mr. Thompson, immediately on the receipt of your letter. About 220 dollars of the balance due on the last state of our account were left in Virginia for the use of your Nephews. There are a few lesser sums which stand on my side of the account which I shall take credit for, when you can find leisure to forward another statement of your friendly advances for me.

I shall leave this place in a day or two for Virg<sup>a</sup>, where my friends who wish me to co-operate in putting our political machine into activity as a member of the House of Representatives, press me to attend. They made me a candidate for the Senate, for which I had not allotted my pretensions. The attempt was defeated by Mr. Henry, who is omnipotent in the present Legislature and who added to the expedients common on such occasions a public philippic ag<sup>st</sup> my federal principles. He has taken equal pains in forming the Counties into districts for the election of Rep<sup>s</sup>. to associate with Orange such as are most devoted to his politics, and most likely to be swayed by the prejudices excited ag<sup>st</sup>. me. 1 From the best information I have of the prevailing temper of the District, I conclude that my going to Virg<sup>a</sup>. will answer no other purpose than to satisfy the Opinions and entreaties of my friends. The trip is in itself very disagreeable both on account of its electioneering appearance, and the sacrifice of the winter for which I had assigned a task which the intermission of Congressional business would have made convenient at New York.

With the sincerest affection & the highest esteem I am Dear Sir,

Yours.

The letter herewith inclosed for Mr Gordon is from Mr Cyrus Griffin. The other from Mr. Mccarty an American Citizen settled in France, but at present here on business. He appears to be a very worthy man & I have promised to recommend his letter to your care, as a certain channel of conveyance

[\[Back to Table of Contents\]](#)

## TO PHILIP MAZZEI.2

Philadelphia, 10 December, 1788.

Your book, as I prophesied, sells nowhere but in Virginia. A very few copies only have been called for either in New York or in this city. The language in which it is written will account for it. In order to attract notice, I translated the panegyric in the French *Mercure*, and had it made part of the advertisement. I did not translate the comment on the Federal Constitution, as you wished, because I could not spare the time, as well as because I did not approve the tendency of it. Some of your remarks prove that Horace's "*Cœlum non animum mutant qui trans mare currunt*" does not hold without exception. In Europe, the abuses of power continually before your eyes have given a bias to your political reflections which you did not feel in equal degree when you left America, and which you would feel less of if you had remained in America. Philosophers on the old continent, in their zeal against tyranny, would rush into anarchy; as the horrors of superstition drive them into Atheism. Here, perhaps, the inconveniences of relaxed government have reconciled too many to the opposite extreme. If your plan of a single Legislature, as in Pennsylvania, &c., were adopted, I sincerely believe that it would prove the most deadly blow ever given to Republicanism. Were I an enemy to that form, I would preach the very doctrines which are preached by the enemies to the government proposed for the United States. Many of our best citizens are disgusted with the injustice, instability, and folly, which characterize the American Administrations. The number has for some time been rapidly increasing. Were the evils to be much longer protracted, the disgust would seize citizens of every description.

It is of infinite importance to the cause of liberty to ascertain the degree of it which will consist with the purposes of society. An error on one side may be as fatal as on the other. Hitherto, the error in the United States has lain in the excess.

All the States except North Carolina and Rhode Island have ratified the proposed Constitution. Seven of them have appointed their Senators, of whom those of Virginia, R. H. Lee and Col. Grayson, alone are among the opponents of the system. The appointments of Maryland, South Carolina, and Georgia will pretty certainly be of the same stamp with the majority. The House of Representatives is yet to be chosen everywhere except in Pennsylvania. From the partial returns received, the election will wear a federal aspect, unless the event in one or two particular counties should contradict every calculation. If the eight members from this State be on the side of the Constitution, it will in a manner secure the majority in that branch of the Congress also. The object of the Anti-Federalists is to bring about another general Convention, which would either agree on nothing, as would be agreeable to some, and throw everything into confusion, or expunge from the Constitution parts which are held by its friends to be essential to it. The latter party are willing to gratify their opponents with every supplemental provision for general rights, but insist that this can be better done in the mode provided for amendments.

I remain, with great sincerity, your friend and servant.



[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Alexandria Dec<sup>r</sup>. 18<sup>th</sup>. 1788.

Mad. Mss.

I arrived here this morning on my way home. I did not write you my intentions sooner because they are rather of recent date, and I wished to be able at the same time to let you know the day on which I should get to Fredg. This I have not till now been able to fix. I now find that I shall get there on Friday week, and shall accordingly then stand in need of your assistance for the completion of my Journey. It will be necessary for me to have the use of the chair, as well on account of my baggage which consists of a Portmanteau Trunk and a Portmanteau, as on acc<sup>t</sup> of some remains of the piles which for some weeks past have been very troublesome. Whoever brings the chair must bring a saddle proper for the portmanteau. No horse need be brought for a servant, John having been left in N. York given over as incurable, and another having been engaged. I wish the chair to be in Town certainly on that day, and shall request the favor of M<sup>r</sup>. Ramsy to send this by a hired messenger, if no other conveyance can be secured.—I shall remain in this neighbourhood till thursday next when I shall fall into the stage at Colchester & proceed on Friday from Dumfries for Fredg.—I could reach Fredg. on no day so well as on that above mentioned. An earlier day would be too soon for the carriage to meet me; and a later one would leave me on the road on Sunday, or oblige me to postpone my resuming my journey till the tuesday following.

I have nothing to add on the subject of news, but what may be better communicated verbally on my arrival. In the mean time with my affect<sup>n</sup>. regards to all the family I conclude your dutiful son.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Orange, Jan<sup>y</sup> 14<sup>th</sup>, 1789.

Wash. Mss.

Dear Sir,

Your favor of the 2d instant, with the letters attending it never came to hand 'till last evening. I have good reason to believe that the delay happened between Alexand<sup>a</sup> & Fred<sup>g</sup>, rather than at or from the latter place. Mr. F. Maury pays particular attention to all letters which arrive there for me, and forwards them to Orange by opportunities which are frequent & safe. I apprehend there will be no impropriety in committing a confidential letter to that channel. As an additional precaution, I will desire him to be particularly attentive to any letter which may have your name on it.

I have heard from two only of the returns from the Electoral districts; 1 the one in favor of Mr. Gilchrist—the other of General Stephens. He succeeded ag<sup>st</sup> Col. Cabel by a majority of 82 votes. He owes his success to the coalition between the two parties in Spotsylv<sup>a</sup>. My situation is unfavorable for intelligence from the State at large, and therefore I can say little of the prospects as to the Feb<sup>y</sup> election.

I fear, from the vague accounts which circulate, that the federal candidates are likely to stand in the way of one another. This is not the case however in my district. The field is left entirely to Monroe & myself. The event of our competition will probably depend on the part to be taken by two or three descriptions of people, whose decision is not known, if not yet to be ultimately formed. I have pursued my pretensions much further than I had premeditated; having not only made great use of epistolary means, but actually visited two Counties, Culpeper & Louisa, and publicly contradicted the erroneous reports propagated ag<sup>st</sup> me. It has been very industriously inculcated that I am dogmatically attached to the Constitution in every clause, syllable & letter, and therefore not a single amendment will be promoted by my vote, either from conviction or a spirit of accommodation. 1 This is the report most likely to affect the election, and most difficult to be combated with success within the limited period. There are a number of others however which are auxiliaries to it.—With my respectful compliments to Mrs. Washington, & the others of your family,

I remain, Dear Sir, your most obed<sup>t</sup> & affect<sup>e</sup>. Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO HENRY LEE.

Mad. Mss.

COPY OF REMARKS ON SITUATION OF GREAT FALLS  
OF POTOWMACK [SENT TO COL. H. LEE AT WHOSE  
REQUEST DRAWN UP]1 JANUARY 1789

The importance of the spot at the Great Falls of the Potowmack and the value of the property including it appear from the following considerations—

First: The singular fitness of the situation for every species of water works, merchants mills, Forges, Slitting & Plating [sic] mills, Sawmills &c, &c, may be erected here with greater advantages from nature than at any place perhaps within the whole compass of the United States. The spot was long ago marked out by a very sagacious undertaker, for these purposes, and has been left unimproved from no other cause than the want of Funds. The addition made to the natural advantages of the place, by the opening of the navigation above requires no explanation. Wheat, Timber &<sup>c</sup>. can by that means be collected from an extent of Country which is capable of supplying them in the most ample quantities that can be desired. Iron ore also & mineral coal are distributed along the main River & its branches in great abundance, and can be brought to the works on the best terms.

Secondly the importance of the situation as a resting place for an extensive commerce.—That the commerce through this Channel will be extensive, will be best shewn, if all proof be not superfluous, by a few plain & known facts. The main river is already navigable NA miles above the falls. A Boat of NA tons burden came down last fall from NA with a load of NA and the navigation of that part of the river will be ready for general use as soon as the spring season comes on, or at farthest before the ensuing Summer is over. The Shanandoah branch may and probably will be, very soon, made navigable for 150 miles from its mouth which is miles above the Falls. The south branch is equally capable of the same improvement for 100 miles from its mouth which is NA miles above the falls. There are a number of smaller streams running into the Potowmack above the falls, which are either already navigable, or may easily be made so, not only on the Virginia but also on the Maryland sides. By means of the latter no small part of the produce now transported by land to Baltimore, from the upper parts of Maryland & the skirts of Penn<sup>a</sup>. will be drawn into the navigation of the Potowmack. The great region of country embrac'd by these several waters is in general extremely fertile, particularly in the parts through which they immediately flow, is already settled and cultivated, and is found excellently adapted to almost every article which has been raised within this State. But the commerce of the Potomack will not be limited to this region, extensive as it is. Another prospect presents itself on the western side of the Alleghany mountains. The communication between the Atlantic and the western country, can be more easily established through the Potomac than through any other channel, the source of this river lies nearest to the

sources of those which run westerly; its course forms the most direct line with the course of the latter; and having such of its natural obstructions as require locks all at one spot, it has commanded advantages over other channels for attracting the produce & supplying the consumption of great part of the fertile country on the Ohio and its upper branches, if not on the lakes also and the streams running into them.—That the scite in question will be one of the resting places for this extensive commerce results from several circumstances. 1. Wheat the staple article to be exported through this channel, will be here most conveniently turned into flour for the purpose. It will therefore be here purchased by the merchants or rather agents of the merchants, residing at the Seaport Towns; who will of course, keep at the same place mechanize, in order the more easily to pay for the produce, one side of commerce necessarily attracts the other. The place of buying will always become the place of selling also. There may be other articles, which will undergo some manufacturing process before exportation, and to which the same remark may be applied, But the arrangements established for a principal article will extend themselves to others which would otherwise require or produce them. 2. The navigation above being open two weeks earlier than below the falls, and the Town of Alexandria to which a good road may be made being not more than 17 miles distant there will be a farther inducement to make the falls a place of Exchange for exports and imports. 3. The navigation above being already fitted for use, & that below being not likely to be open for some time, and on account of its peculiar difficulties, perhaps a long time, the Falls will if proper measures be accelerated, have the habit of commerce in its favour & might be continued as the entrepôt from causes not otherwise entirely equal to the effect.

Thirdly. The convenience of the place for a manufacturing Town. This advantage is evident from the remarks already made. In no place can materials or provisions be more cheaply or plentifully assembled. Every branch of manufacture with Iron or other water works, must be particularly favoured at this spot, and as such are numerous and have mutual relations again with many other branches, a better seat for manufactories can scarcely be fancied. The place is moreover healthy, is surrounded by a fertile and well wooded country, and admits of an easy supply of every foreign implement & article which manufactures may stand in need of.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Mount Vernon Feb<sup>y</sup>. 24, 89<sup>1</sup>

Mad. Mss.

Hon<sup>D</sup>. Sir

The obstructions to my journey from the Snow, the River at Fredericksberg, and the unparalleled badness of the roads, prevented my arrival here sooner than the evening before last. Harry will be able to give the particulars of the Journey. I detained him yesterday in order to give both him & the horses a little rest after their fatigue; and shall leave it in some measure to himself, to return either by way of Fred<sup>g</sup>. or Norman's Ford, according to the state of the weather & the information he may receive concerning the latter route.—I am not yet decided as to the day on which I shall go forward from this place. Being now convinced from the state of the weather & the rivers that I could not possibly reach New York by the day fixed for the meeting of Cong<sup>s</sup>. and if I could that there will not be a sufficient number of members for business, I shall think myself more at liberty to consult my own conveniency. By waiting a few days I promise myself also the company of some of my colleagues, particularly M<sup>f</sup>. Page who will I think be sure to call on the General. M<sup>f</sup>. R. B. Lee is the only member who has yet set out, according to my information. He has gone on to Alexand<sup>f</sup>. but will wait I presume for company, at least untill the weather shall invite him to proceed.

I meet here with no news worth communicating. The inclosed papers, I rec<sup>d</sup>. at Fredericksb<sup>g</sup>. and may be read as a continuation of the intelligence from New York.

I find myself perfectly well after my ride, & hoping that this will find my mother in better health, and the rest of the family still well, I remain Y<sup>f</sup>. affc<sup>t</sup>. Son.

[\[Back to Table of Contents\]](#)

## TO EDMUND RANDOLPH.

Alexandria, March 1st, 1789.

Mad. Mss.

My Dear Friend,

This is the first convenient opportunity I have had for dropping you a line since I last came into the State. Your sanction to my remaining in N. York during the crisis of the elections, conveyed through Col. Carrington, never came to hand till I had arrived in Orange. It coincided so fully with my inclination, and indeed with my judgment, that had it been received in due time, I do not know but I should have disregarded all the pressing exhortations which stood opposed to your opinion. I am persuaded however that my appearance in the district was more necessary to my election than you then calculated. In truth it has been evinced by the experiment, that my absence would have left a room for the calumnies of antifederal partizans which would have defeated much better pretensions than mine. In Culpeper which was the critical County, a continued attention was necessary to repel the multiplied falsehoods which circulated. Whether I ought to be satisfied or displeased with my success, I shall hereafter be more able to judge. My present anticipations are not flattering. I see on the lists of Representatives a very scanty proportion who will share in the drudgery of business. And I foresee contentions first between federal and antifederal parties, and then between Northern & Southern Parties, which give additional disagreeableness to the prospect. Should the State Elections give an antifederal colour to the Legislatures, which from causes not antifederal in the people, may well happen, difficulties will again start up in this quarter, which may have a still more serious aspect on the Congressional proceedings.

In my last or one of my last letters was inclosed a Quere from Mr. St. John the French Consul at New York, relating to the law here which regulates the recording of deeds &c. As I shall on my return be applied to for an answer, I will thank you for the proper one as soon as your leisure will allow.

I shall go on from this tomorrow. On my arrival I shall attend as far as I can to whatever may deserve your perusal. Besides the private satisfaction which I shall have in the continuance of our correspondence, I promise myself the benefit of your suggestions on public subjects.

Present me respectfully to Mrs. R. and rely on the Affection with which I remain, Y<sup>rs</sup> truly.

As your neighborhood gives you frequent interviews with the Presid<sup>t</sup> of W<sup>m</sup> & Mary, remind him of my best regards for him.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Baltimore, March 5th, 1789.

Wash. Mss.

Dear Sir,

On our Journey hither we have fallen in with the Bearer of the Electoral Votes of Georgia. They are unanimous as to the President and are all thrown away on Individuals of the State as to the Vice President. The Representatives were not chosen when the Gentleman set out, but the election was to take place in a day or two after. General Matthews, he tells us will be one, Mr. Baldwin another, & the third either Mr. Osborne or Gen<sup>l</sup> Jackson. All the Candidates I understand are well affected to the Constitution. In South Carolina the Votes for Presid<sup>t</sup> were also unanimous, as the Gentleman informs us. Of the others 5 were given to Mr. Rutledge, and the remaining two not to Mr. Adams.

The badness of the Roads & the weather prevented our getting to this place sooner than last Evening, by which means we lose two days. R. H. Lee left this on his way to New York on Monday morning. Mr. White had preceded him a day or two.

With the highest respect & mo. affect. attach<sup>t</sup>,

I am D<sup>f</sup> Sir,

Y<sup>R</sup>s.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Philad<sup>a</sup>, March 8<sup>th</sup>, 1789.

Wash. Mss.

Dear Sir,

We arrived here yesterday evening where we have met with Mr. Dawson just from New York. When he left it, 18 representatives and 8 senators had assembled. It is not certain when the deficiencies will be made up. The most favorable conjectures postpone it to Monday se'nnight. The members attending are chiefly from the Eastward. I do not learn that a single member, except Mr. White is from a State South of Pennsylv<sup>a</sup>; unless, indeed, D<sup>r</sup> Tucker is to be included in the exception. The N. Jersey Rep<sup>s</sup> are not yet announced. Mr. Clarke it is supposed will be one, Mr. Cadwallader, Mr. Boudinot, and Mr. Skureman, are talked of as the others.

I find that the communication made you from Kentucky corresponds with an official letter to Cong<sup>s</sup> from Gov<sup>r</sup>. St. Clair, which speaks of the same emissary, and the same errand. Notice has been transmitted of the affair to the Executive of Virg<sup>a</sup>, in order that regular steps may be taken, if sufficient ground be afforded, for apprehending the incendiary. The project of G. M. 1 for establishing a Colony beyond the Mississippi is also going on. It is the opinion of Mr. Brown, as explained to Mr. Griffin, that emigrations to the Spanish territory will be enticed from Kentucky, as rapidly, as the allurements of the latter place have obtained them from the Atlantic States. All these circumstances point out the conduct which the New Gov<sup>t</sup> ought to pursue with regard to the Western Country & Spain.

I dropped you a few lines from Baltimore mentioning the unanimity of the Electoral Votes of S. Carol<sup>a</sup> & Georgia for a Presid, & the manner in which the Secondary votes were disposed of.

I am D<sup>r</sup> Sir Y<sup>r</sup> truly Affect<sup>e</sup>.



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

N. York, March 19, 1789.

Wash. Mss.

Dear Sir,

On our arrival here we found that the number of Representatives on the spot had been stationary from the second day of the meeting. Mr. Page, Mr. Lee, & myself raised it to 21, and Mr. S. Griffin and Mr. Moore have been since added. The number of attending Senators continues at 8. When a Quorum will be made up in either House rests on vague conjecture, rather than on any precise information. It is not improbable I think that the present week will supply the deficiency in one, if not in both of them. The States most convenient, are among the defaulters. It will not be known, I am told, in this State, who the Representatives are, till some time next month. The federal party calculate on an equal division of the six. Mr. Lawrence for the City district, Mr. Floyd for the Long Island district, and Mr. Benson for a third. In New Jersey the election has been conducted in a very singular manner. The law having fixed no time expressly for closing the polls, they have been kept open three or four weeks in some of the Counties, by a rival jealousy between the Eastern & Western divisions of the State, and it seems uncertain when they would have been closed if the Governor had not interposed by fixing on a day for receiving the returns, and proclaiming the successful candidates. The day is passed, but I have not heard the result. The Western ticket in favor of Skureman, Boudinot, Cadwallader, & Sennickson if this be the name, is supposed to have prevailed; but an impeachment of the election by the unsuccessful competitors has been talked of. Two of the Representatives from Massachusetts, are also unknown to us. In one of the districts, it is supposed that a disaffected man has prevailed.

An English Packet has been long expected, and is not yet arrived. The state of foreign news remains of consequence little altered. The accounts of latest date through other channels shew that the progress in France towards a Constitutional establishment, is unchecked, and that a coalition between the King and the Commons ag<sup>st</sup> the Nobility & Clergy, will direct the innovations.

With respectful Compliments to Mrs. Washington & the rest of the family, I am Dear Sir truly & affect<sup>y</sup> Y<sup>r</sup> Obed<sup>t</sup> Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, Mar. 26, 1789.

Wash. Mss.

Dear Sir,

The inclosed copy of Morgan's invitation<sup>1</sup> to his fellow Citizens was obtained from one of his friends, and forwarded to me from Pennsylvania. It is the most authentic & precise evidence of the Spanish project that has come to my knowledge. The instrument referred to as retained in Morgan's hands in order to be signed by the adventurers, would still further explain the transaction.

No Quorum is yet formed in either House. The Senate want two members; the House of Rep<sup>s</sup> four. It is probable that the members from N. Jersey, who are at length proclaimed, two remaining members from Penn<sup>a</sup>, and Col. Coles, who halted in Philad<sup>a</sup>, will come in this evening and supply the deficiency in one branch. The Senate have no precise prospect of the small addition required to their numbers.

With unfeigned attachment, I am Dear Sir, respectfully

Your Obed<sup>T</sup>. Hble Serv<sup>T</sup>,

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

New York, March 29th, 1789.

Dear Sir,—

My last was committed in December to Mr. Gouverneur Morris. I was then on my way to Virginia. The elections for the new government commenced shortly after my arrival. The first was of Electors, to Ballot for a President and Vice President. The successful candidates were General Wood, Mr. Zach<sup>y</sup> Johnson, Gen<sup>l</sup> Edward Stephens, Doctor David Stuart, Mr. W. Fitzhugh of Chatham, Mr. Warner Lewis of Gloucester, Mr. Jno. Harvey, Mr. Walk, of or near Norfolk, Mr. Kello of Southampton. These nine were federalists. The remaining three, Mr. Patrick Henry, Mr. Roane of King and Queen, and Mr. Pride of Amelia, were of the adverse party. Two of the former party did not attend. The votes were unanimous with respect to General Washington, as appears to have been the case in each of the States. The secondary votes were given, among the federal members, chiefly to Mr. J. Adams, one or two being thrown away in order to prevent a possible competition for the Presidency. Governor Clinton was the secondary choice of the anti-federal members. In the succeeding election of Representatives, federalism was also proved to be the prevailing sentiment of the people. The successful candidates on this list are Mr. Moore, late of the Executive Council (from Rockingham,) Mr. Alexander White, Mr. Richard Bland Lee, Mr. John Page, (Rosewell,) Mr. Samuel Griffin, Mr. Brown, member of the old Congress, (from Kentucky,) J. Madison, Col. Parker, (late nav. officer at Norfolk,) Col. Isaac Coles, (of Halifax,) and Col. Bland. Of these, the seven first have been on the side of the Constitution; the three last in the opposition. Col. Parker appears to be very temperate, and it is not probable that both the others will be very inveterate. It was my misfortune to be thrown into a contest with our friend, Col. Monroe. The occasion produced considerable efforts among our respective friends. Between ourselves, I have no reason to doubt that the distinction was duly kept in mind between political and personal views, and that it has saved our friendship from the smallest diminution. On one side I am sure it is the case.

Notwithstanding the lapse of time since the birthday of the new Government, (the 4th of March,) I am under the necessity of informing you that a quorum is not yet formed, either in the Senate or House of Representatives. The season of the year, the peculiar badness of the weather, and the short interval between the epoch of election and that of meeting, form a better apology for the delay than will probably occur on your side of the Atlantic. The deficiency at present in the House of Representatives requires two members only for a Quorum, and in the Senate one only. A few days will, therefore, fit the Body for the first step, to wit, opening the Ballots for the President and Vice President. I have already said that General Washington will be the first by a unanimous suffrage. It is held to be certain that Mr. Adams, though refused a great many votes from different motives, will have the second appointment. A considerable delay will be unavoidable, after the ballots are counted, before the President can be on

the spot, and, consequently, before any Legislative act can take place. Such a protraction of the inactivity of the Government is to be regretted on many accounts, but most on account of the loss of revenue. A prospect of the Spring importations led to the appointment of the first meeting at a time which, in other respects, was unseasonable.

It is not yet possible to ascertain precisely the complexion of the new Congress. A little time will be necessary to unveil it, and a little will probably suffice. With regard to the Constitution, it is pretty well decided that the disaffected party in the Senate amounts to two or three members only; and that in the other House it does not exceed a very small minority, some of which will also be restrained by the federalism of the States from which they come. Notwithstanding this character of the Body, I hope and expect that some conciliatory sacrifices will be made, in order to extinguish opposition to the system, or at least break the force of it, by detaching the deluded opponents from their designing leaders. With regard to the system of policy to which the Government is capable of rising, and by which its genius will be appreciated, I wait for some experimental instruction. Were I to advance a conjecture, it would be, that the predictions of an antidemocratic operation will be confronted with at least a sufficient number of the features which have marked the State Governments.

Since my arrival here I have received your favor of November 18th. It had been sent on to Virginia; but not reaching Fredericksburg before I passed that place, it followed me back hither. I am much concerned that your scheme of passing the ensuing summer in your native country has been defeated. Mr. Jay, with whom I have conversed on the subject, tells me that his answer to your public letter has explained the impossibility of giving effect to your wishes, no Congress having been formed under the old Confederation since the receipt of your letter, or, indeed, since the expiration of the last federal year. The most that can now be done will be to obtain from the new authority, as early as possible, some act which may leave the matter to your own discretion. Perhaps it may be neither more inconvenient to your private nor to the public affairs to make your visit in the fall instead of the Spring, and to pass the Winter instead of the Summer in America. The same cause on which you are to charge your disappointment in this instance prevented a decision on the question of outfit, stated in one of your former communications.

With some printed papers containing interesting articles, I inclose a manuscript copy of Col. Morgan's invitation to persons disposed to seek their fortunes on the Spanish side of the Mississippi. There is no doubt that the project has the sanction of Gardoqui. It is a silly one on the part of Spain, and will probably end like the settlements on the Roman side of the Danube, with the concurrence of the declining empire. But it clearly betrays the plan suggested to you in a former letter, of making the Mississippi the bait for a defection of the Western people. Some of the leaders in Kentucky are known to favor the idea of connection with Spain. The people are as yet inimical to it. Their future disposition will depend on the measures of the new Government.

I omitted to mention that a dispute between the Senate of this State, which was federal, and the other branch, which was otherwise, concerning the manner of

appointing Senators for the Congress, was so inflexibly persisted in that no appointment was made during the late session, and must be delayed for a considerable time longer, even if the dispute should on a second trial be accommodated. It is supposed by some that the superintending power of Congress will be rendered necessary by the temper of the parties. The provision for the choice of electors was also delayed until the opportunity was lost; and that for the election of Representatives so long delayed that the result will not be decided till tuesday next. It is supposed that at least three out of the six will be of the federal party. In New Jersey, the inaccuracy of the law providing for the choice of Representatives has produced an almost equal delay, and left room for contests, which, if brought by the disappointed candidates into the House, will add a disagreeable article to the list of its business.

I am much obliged for the two estimates on the subject of our foreign debt, and shall turn your ideas to the account which they deserve.

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

New York, *April/March* 6th, 1789.

Wash. Mss.

Dear Sir,

The arrival of R. H. Lee yesterday has made up a Quorum of the Senate. A Quorum in the other House was made on wednesday last. The ballots will be opened to-day, unless an indisposition of Mr. Basset should prevent, which was not probable yesterday afternoon. The notifications of the President & Vice President will be left to the Senate. Mr. Charles Thomson will be the messenger to the former.

The papers will have made known that Mr. Mulenburg was the choice of the Representatives for their Speaker, & Mr. Beckley for their Clerk. The competitor of the former was Mr. Trumbul who had a respectable vote; of the latter Mr. S. Stockton, of new Jersey, who, on the first ballot, had the same number with Mr. Beckley.

A British Packet arrived some days ago, but has not brought as far as I have learned, any public letters. The other information brought has passed into our Gazettes, and will have reached you thro' that channel.

I am Dear Sir with the highest respect & attachment Your Obed<sup>t</sup> & very h<sup>ble</sup> Servt.

Your favor, inclosing a letter rec<sup>d</sup> at Mount Vernon for me has been duly received.

[\[Back to Table of Contents\]](#)

## SPEECHES IN THE FIRST CONGRESS—FIRST SESSION.[1](#)

### APRIL 9. DUTIES ON IMPORTS.

From what has been suggested by the gentlemen that have spoken on the subject before us, I am led to apprehend we shall be under the necessity of travelling further into an investigation of principles than what I supposed would be necessary, or had in contemplation when I offered the propositions before you.

It was my view to restrain the first essay on this subject principally to the object of revenue, and make this rather a temporary expedient than any thing permanent.[2](#) I see, however, that there are strong exceptions against deciding immediately on a part of the plan, which I had the honor to bring forward, as well as against an application to the resources mentioned in the list of articles just proposed by the gentleman from Pennsylvania. (Mr. Hartley.)

I presume, that, however much we may be disposed to promote domestic manufactures, we ought to pay some regard to the present policy of obtaining revenue. It may be remarked also, that by fixing on a temporary expedient for this purpose, we may gain more than we shall lose by suspending the consideration of the other subject until we obtain fuller information of the state of our manufactures. We have at this time the strongest motives for turning our attention to the point I have mentioned; every gentleman sees that the prospect of our harvest from the Spring importations is daily vanishing; and if the committee delay levying and collecting an impost until a system of protecting duties shall be perfected, there will be no importations of any consequence on which the law is to operate, because, by that time, all the Spring vessels will have arrived. Therefore, from a pursuit of this policy, we shall suffer a loss equal to the surplus which might be expected from a system of higher duties.

I am sensible that there is great weight in the observation that fell from the honorable gentleman from South Carolina, (Mr. Tucker,) that it will be necessary, on the one hand, to weigh and regard the sentiments of the gentlemen from the different parts of the United States; but, on the other hand, we must limit our consideration on this head, and, notwithstanding all the deference and respect we pay to those sentiments, we must consider the general interest of the Union; for this is as much every gentleman's duty to consider as is the local or State interest—and any system of impost that this committee may adopt must be founded on the principles of mutual concession.

Gentlemen will be pleased to recollect, that those parts of the Union which contribute more under one system than the other, are also those parts more thinly planted, and consequently stand most in need of national protection; therefore they will have less reason to complain of unequal burdens.

There is another consideration: the States that are most advanced in population, and ripe for manufactures, ought to have their particular interests attended to in some degree. While these States retained the power of making regulations of trade, they had the power to protect and cherish such institutions; by adopting the present Constitution they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here.

I am afraid, sir, on the one hand, that if we go fully into a discussion of the subject, we shall consume more time than prudence would dictate to spare; on the other hand, if we do not develop it, and see the principles on which we mutually act, we shall subject ourselves to great difficulties. I beg leave, therefore, to state the grounds on which my opinion, with respect to the matter under consideration, is founded, namely, whether our present system should be a temporary or a permanent one? In the first place, I own myself the friend to a very free system of commerce, and hold it as a truth, that commercial shackles are generally unjust, oppressive, and impolitic; it is also a truth, that if industry and labor are left to take their own course, they will generally be directed to those objects which are the most productive, and this in a more certain and direct manner than the wisdom of the most enlightened Legislature could point out. Nor do I think that the national interest is more promoted by such restrictions than that the interest of individuals would be promoted by legislative interference directing the particular application of its industry. For example, we should find no advantage in saying that every man should be obliged to furnish himself, by his own labor, with those accommodations which depend on the mechanic arts, instead of employing his neighbor, who could do it for him on better terms. It would be of no advantage to the shoemaker to make his own clothes to save the expense of the tailor's bill, nor of the tailor to make his own shoes to save the expense of procuring them from the shoemaker. It would be better policy to suffer each of them to employ his talents in his own way. The case is the same between the exercise of the arts and agriculture—between the city and the country—and between city and town; each capable of making particular articles in abundance to supply the other: thus all are benefited by exchange, and the less this exchange is cramped by Government, the greater are the proportions of benefit to each. The same argument holds good between nation and nation, and between parts of the same nation.

In my opinion it would be proper also for gentlemen to consider the means of encouraging the great staple of America, I mean agriculture; which I think may justly be styled the staple of the United States, from the spontaneous productions which nature furnishes, and the manifest advantage it has over every other object of emolument in this country. If we compare the cheapness of our land with that of other nations, we see so decided an advantage in that cheapness, as to have full confidence of being unrivalled. With respect to the object of manufactures, other countries may and do rival us; but we may be said to have a monopoly in agriculture; the possession of the soil, and the lowness of its price, give us as much a monopoly in this case as any nation or other parts of the world have in the monopoly of any article whatever; but with this advantage to us, that it cannot be shared nor injured by rivalry.

If my general principle is a good one, that commerce ought to be free, and labor and industry left at large to find its proper object, the only thing which remains will be to



discover the exceptions that do not come within the rule I have laid down. I agree with the gentleman from Pennsylvania, that there are exceptions important in themselves, and which claim the particular attention of the committee. Although the freedom of commerce would be advantageous to the world, yet, in some particulars, one nation might suffer to benefit others, and this ought to be for the general good of society.

If America was to leave her ports perfectly free, and make no discrimination between vessels owned by her citizens and those owned by foreigners, while other nations make this discrimination, it is obvious that such policy would go to exclude American shipping altogether from foreign ports, and she would be materially affected in one of her most important interests. To this we may add another consideration, that by encouraging the means of transporting our productions with facility, we encourage the raising them: and this object, I apprehend, is likely to be kept in view by the General Government.

Duties laid on imported articles may have an effect which comes within the idea of national prudence. It may happen that materials for manufactures may grow up without any encouragement for this purpose; it has been the case in some of the States, but in others regulations have been provided, and have succeeded in producing some establishments, which ought not to be allowed to perish, from the alteration which has taken place: it would be cruel to neglect them and divert their industry to other channels; for it is not possible for the hand of man to shift from one employment to another without being injured by the change. There may be some manufactures, which, being once formed, can advance towards perfection without any adventitious aid, while others, for want of the fostering hand of Government, will be unable to go on at all. Legislative attention will therefore be necessary to collect the proper objects for this purpose, and this will form another exception to my general principle.

I observe that a sumptuary prohibition is within the view of some of the proposed articles, and forms another exception. I acknowledge that I do not, in general, think any great national advantage arises from restrictions passed on this head, because, as long as a distinction in point of value subsists, sumptuary duties, in some form or other, will prevail and take effect.

Another exception is embargoes in time of war. These may necessarily occur and shackle the freedom of commerce; but the reasons for this are so obvious, that it renders any remark unnecessary.

The next exception that occurs, is one on which great stress is laid by some well informed men, and this with great plausibility. That each nation should have within itself the means of defence, independent of foreign supplies: that in whatever relates to the operations of war, no State ought to depend upon a precarious supply from any part of the world. There may be some truth in this remark, and therefore it is proper for legislative attention. I am, though, well persuaded that the reasoning on this subject has been carried too far. The difficulties we experienced a few years ago of obtaining military supplies, ought not furnish too much in favor of an establishment which would be difficult and expensive; because our national character is now

established and recognised throughout the world, and the laws of war favor national exertion more than intestine commotion, so that there is good reason to believe that, when it becomes necessary, we may obtain supplies from abroad as readily as any other nation whatsoever. I have mentioned this because I think I see something among the enumerated articles that seems to favor such a policy.

The impost laid on trade for the purpose of obtaining revenue may likewise be considered as an exception; so far, therefore, as revenue can be more conveniently and certainly raised by this than any other method, without injury to the community, and its operation will be in due proportion to the consumption, which consumption is generally proportioned to the circumstances of individuals, I think sound policy dictates to use this means; but it will be necessary to confine our attention at this time peculiarly to the object of revenue, because the other subject involves some intricate questions, to unravel which we perhaps are not prepared. I have no objection to the committee's accepting the propositions offered by the gentleman from Pennsylvania, because so far as we can enumerate the proper objects, and apply specific duties to them, we conform to the practice prevalent in many of the States, and adopt the most laudable method of collecting revenue, at least preferable to laying a general tax. Whether, therefore, we consult ease and convenience in collection, or pursuing habits already adopted and approved, specific duties, as far as the articles can be properly enumerated, is the most eligible mode of obtaining the end in contemplation. Upon the whole, as I think some of the propositions may be productive of revenue, and some may protect our domestic manufactures, though the latter subject ought not to be too confusedly blended with the former, I hope the committee will receive them, and let them lie over, in order that we may have time to consider how far they are consistent with justice and policy.<sup>1</sup>

## APRIL 21. DUTIES ON IMPORTS.

Some gentlemen have seemed to call in question the policy of discriminating between nations in commercial alliance with the United States, and those with whom no treaties exist. For my own part, I am well satisfied that there are good and substantial reasons for making it. In the first place, it may not be unworthy of consideration, that the public sentiments of America will be favorable to such discrimination. I am sure, with respect to that part from which I come, it will not be a pleasing ingredient in your laws, if they find foreigners of every nation put on a footing with those in alliance with us. There is another reason, which, perhaps, is more applicable to some parts of the Union than others; one of the few nations with which America has formed commercial connexions has relaxed considerably in that rigid policy it before pursued—not so far, to be sure, as America could wish, with respect to opening her ports to our trade; but she has permitted our ready built ships a sale, and entitles them to the same advantage, when owned by her own citizens, as if they had been built in France, subjecting the sale to a duty of five per cent. The British market receives none; the disabilities of our ships to trade with their colonies continue, even if they are purchased by the subjects of Great Britain; of consequence, they cannot be sold without a considerable loss. Nay, so cautious are they to prevent the advantages we naturally possess, that they will not suffer a British ship to be repaired in America,

beyond a certain proportion of her value; they even will not permit our vessels to be repaired in their ports.

Another consideration has some weight with me in deciding the question of discrimination. The policy of our ally, from the views of the minister employed, has frequently been adverse to the interest of this country. The person who has had the charge of our affairs at that Court has long been soliciting a relaxation in our favor, and although it cannot be declared that he has succeeded, yet there is reason to believe he has made some impressions, which our conduct ought to avoid effacing; they are such as merit national attention, and might justify a discrimination at this time, although it may be proper to hold ourselves at liberty to pursue that policy which a change may make necessary. There are also other considerations which ought to be taken into view. From artificial or adventitious causes, the commerce between America and Great Britain exceeds what may be considered its natural boundary. I find from an examination of the accounts of tonnage for the three large States of Massachusetts, Virginia, and South Carolina, that the tonnage of nations in alliance with us holds no proportion with that of Great Britain, or of the United States. This is a proof that a very small direct commerce takes place between those countries and this; that there is less of direct intercourse than there would naturally be if those extraneous and adventitious causes did not prevent it; such as the long possession of our trade, their commercial regulations calculated to retain it, their similarity of language and manners, their conformity of laws and other circumstances—all these concurring have made their commerce with us more extensive than their natural situation would require it to be. I would wish, therefore, to give such political advantages to those nations, as might enable them to gain their proportion of our direct trade from the nation who has acquired more than it is naturally her due. From this view of the subject, I am led to believe it would be good policy to make the proposed discrimination between them. Is it not also of some importance, that we should enable nations in treaty with us to draw some advantage from our alliance, and thereby impress those Powers that have hitherto neglected to treat with us, with the idea that advantages are to be gained by a reciprocity of friendship? If we give every thing equally to those who have or have not formed treaties, surely we do not furnish to them any motive for courting our connexion.

It has been objected, that the price of our produce at foreign markets would not bear this additional burden, and that the freight must be paid by the planters. It will be unnecessary, after what was said by the gentleman from Pennsylvania, (Mr. Fitzsimons,) to take up the time of the committee in observing that foreigners must receive our tobacco, rice, &c., in American shipping, if they cannot be otherwise got. There may be a discrimination made in other respects besides in tonnage, so that a very high impost on this article need not be insisted upon. But will any gentleman say, British vessels ought to enjoy in American ports greater advantages than are enjoyed by Americans in British ports? Yet were the duties laid equal in both cases, the British merchant would have a very great superiority. In the first place, some of the most valuable ports which she possesses, and most conducive to our interest, are absolutely closed, while every port in the United States is open to her without restriction or limitation. Again, even in those which it is permitted America to enter her vessels, she must bring nothing but the produce of her own soil, whilst the British ship makes

circuitous voyages, and brings with her the produce of every quarter of the globe. These are material advantages; and take the whole of these observations together, I think they furnish substantial reasons for making the proposed discrimination.

## APRIL 21. DUTIES ON IMPORTS.

I am a friend to free commerce, and, at the same time, a friend to such regulations as are calculated to promote our own interest, and this on national principles. The great principle of interest is a leading one with me, and yet my combination of ideas on this head leads me to a very different conclusion from that made by the gentleman from New York, (Mr. Lawrence.) I wish we were under less necessity than I find we are to shackle our commerce with duties, restrictions, and preferences; but there are cases in which it is impossible to avoid following the example of other nations in the great diversity of our trade. Some reasons for this were mentioned on a former occasion; they have been frequently illustrated in the progress of this business, and the decision of the committee has proved them to be necessary.

I beg leave to remark, in answer to a train of ideas which the gentleman last up has brought into view, that although interest will, in general, operate effectually to produce political good, yet there are causes in which certain factitious circumstances may divert it from its natural channel, or throw or retain it in an artificial one. Have we not been exercised on this topic for a long time past? Or why has it been necessary to give encouragement to particular species of industry, but to turn the stream in favor of an interest that would not otherwise succeed? But laying aside the illustration of these causes, so well known to all nations, where cities, companies, or opulent individuals engross the business from others, by having had an uninterrupted possession of it, or by the extent of their capitals being able to destroy a competition, let us proceed to examine what ought to be our conduct on this principle, upon the present occasion. Suppose two commercial cities, one possessed of enormous capitals and long habits of business, whilst the other is possessed of superior natural advantages, but without that course of business and chain of connexions which the other has: is it possible, in the nature of things, that the latter city should carry on a successful competition with the former? Thus it is with nations; and when we consider the vast quantities of our produce sent to the different parts of Europe, and the great importations from the same places; that almost all of this commerce is transacted through the medium of British ships and British merchants, I cannot help conceiving that, from the force of habit and other conspiring causes, that nation is in possession of a much greater proportion of our trade than she is naturally entitled to. Trade, then, being restrained to an artificial channel, is not so advantageous to America as a direct intercourse would be; it becomes therefore the duty of those to whose care the public interest and welfare are committed, to turn the tide to a more favorable direction.

In the trade of South Carolina is employed annually about 56,977 tons of shipping. The proportion of French and Dutch is about 2,100 tons, while that of Great Britain is about 19,000. In Massachusetts the quantity is about 85,551 tons; it is stated, that there are belonging to the State, 76,857, the remainder is foreign, and mostly British. In Virginia we have 56,272 tons; 26,903 British, and only 2,664 of the French and

Dutch. I cannot, from this view of the subject, be persuaded to believe that every part of our trade flows in those channels which would be most natural and profitable to us, or those which reason would dictate to us, if we were unincumbered of old habits and other accidental circumstances that hurry us along.

It has been asked by the gentleman from New York (Mr. Lawrence) what evidence we had that the public sentiments of America were in favor of discrimination? Perhaps it would be improper on this occasion to adduce any other proof of the fact than from the transactions of public bodies; and here, I think, is abundant proof to be found. The State of Virginia, if I am not mistaken, lays a double duty on tonnage; French and Dutch vessels pay half a dollar per ton, while the vessels of Great Britain are subjected to one dollar. There are other distinctions in our revenue laws manifesting the same principle; some of them establish a preference to French wines and brandy. In Maryland, a similar policy has prevailed. I believe the difference there is about one-third in favor of our allies, (if I err, the gentlemen from that State can set me right;) in Pennsylvania, there is a discrimination of about a fourth. I do not certainly recollect, but I believe the like policy exists in other States; but I have not had an opportunity of searching their laws on this point, but what I have enumerated are facts affording substantial proof that the public sentiment does favor the discrimination.

## MAY 9. DUTIES ON IMPORTS.

The right understanding of this subject is of great importance. The discussion has been drawn out to a very considerable length on former occasions. The chain of ideas on which the subject is suspended, is not very long, nor consists of many links. The present Constitution was framed to supply the defects of the one that has preceded it. The great and material defects of it are well known to have arisen from its inability to provide for the demands of justice and security of the Union. To supply those defects, we are bound to fulfil the public engagements; expectation is anxiously waiting the result of our deliberations; it cannot be satisfied without a sufficient revenue to accomplish its purposes. We cannot obtain the money any other way but by taxation. Among the various objects of this nature, an impost on merchandise imported is preferable to all others, and among the long list of articles included in the bill, there is not one more proper for the purpose than the article under consideration. The public sentiment has strongly pointed it out as an object of revenue. I conceive, therefore, that it will be our duty to draw from this source all the money that it is capable of yielding. I am sure that it will not exceed our wants, nor extend to the injury of our commerce. How far the powers of Government are capable of going on this occasion, is matter of opinion; we have had no direct experiment of what can be done under the energy and popularity of the new system; we must recur to other sources for information, and then, unless the circumstances are alike, the comparison may not be true. We have been referred to the experience of other nations; if that is to guide us on this subject, I am sure we shall find precedents for going much further than is now proposed. If I do not mistake the calculations that I have seen of duties on importation, they amount to more on an average than fifteen per cent.; the duty on ardent spirits in all nations exceeds what is in contemplation to be laid in the United States. I am sensible that the means which are used by those nations to ensure the

collection, would be odious and improper in this country; but I believe the means which this country is capable of using, without exciting complaint or incurring too much expense, would be as adequate to secure a duty of fifteen per cent. as the powers of any other nation could be to obtain ninety or one hundred per cent. If we consult the experience of the United States, it does not admonish us that we are proceeding too far; there are duties now under collection, in some States, that amount nearly to the same as those we have in contemplation. A duty collected under the feeble operation of the State Governments, cannot be supposed beyond our powers, when those duties have been collected by them, with feeble powers, but under a competition, not to say opposition, of the neighboring States. I am led, from a knowledge of these circumstances, to believe that when we have established some general rule, and have the co-operation of all the members of the Union, we shall be able to do what is proposed by this bill, better than any one State could execute it with its separate strength. If we consult the opinion of the merchants, we shall not find them a very sure guide. Merchants do not pretend to infallibility; but if they did, they have given a proof to the contrary, by their difference of opinion on this subject. Gentlemen of that profession, both within these walls and out of doors, have been as much divided on this point as any other description of men. I believe them to be the best informed as to the probable effects of an impost system, but they are not exempt from the infirmities of human nature. We know there is an essential difference between the interest of merchants and the interest of commerce; we know there may be distinctions also between the interest of commerce and of revenue; and that in some cases we must sacrifice the one to the other. I am not sure that we are not under the necessity of doing both in the business before us. It is barely matter of opinion what revenue the General Government will be able to draw from the system now proposed. This being the case, I have endeavored to make up mine, from the best materials in my power. I pay great respect to the opinions of mercantile gentlemen, and am willing to concede much to them, so far as their opinions are regulated by experience; but if I am to be guided by this information, it will not lead me to agree to the reduction of the duties in the manner contended for. It is said, that if we reduce at all, we must go through the whole. Now I doubt whether the duty on the article of rum exceeds that proportion which pervades the long list before us. It does not amount to more than thirty per cent., while some other articles stand at forty; some articles again that are not enumerated, but which fall within the general mass at five per cent., are more likely to be introduced clandestinely than this article, if it stood at fifty per cent. I am sure, if we reduce the whole system in the manner now proposed, all the duty we shall be able to collect will be very incompetent to what the public necessities demand. We must turn our eyes, then, to some other source that will fill up the deficiency. There are but two objects to which, in this dilemma, we can have recourse—direct taxation and excises. Direct taxation is not contemplated by any gentleman on this floor, nor are our constituents prepared for such a system of revenue; they expect it will not be applied to, until it is found that sufficient funds cannot be obtained in any other way. Excises would give particular disgust in some States, therefore gentlemen will not make up the deficiency from that quarter. I think, upon the whole, it is better to try what will be produced by a plan which is favored by the public sentiment. This will give a support to our laws equal to the greatest energy of a strong execution. The citizens of America know that their individual interest is connected with the public. We shall then have the strong motive of interest acting in

favor of the Government in a peculiar manner. But I am not inclined to trust too much to this security. I would take in the aid of the best regulations in our power to provide; these, acting in concert, would give a moral certainty to the faithful collection of the revenue. But if gentlemen notwithstanding will persist in contending against such a system, and cannot offer us a substitute, we must fail of the primary object for which the Government was created. If upon experience we find that the duties cannot be safely collected, it may be proper to reduce them; but if we set them too low in the first instance, and they do not yield a sufficiency to answer the just demands of the public creditors and the expenses of Government, the public reputation must suffer.

I need not inform gentlemen we are surrounded with difficulties; they are seen on every side; but they appear as few and as surmountable on the side of the bill, as they do in any other part of the prospect. If we give way on this article, we are to do so upon all others. It is not for any reason peculiar to Jamaica spirits that the reduction is moved for; hence, I conceive, if gentlemen meet with success in opposing this duty, we shall be reduced to a system inadequate to our wants, and thereby defeat the chief object of our appointment. [1](#)

## May 11. Titles.

I may be well disposed to concur in opinion with gentlemen that we ought not to recede from our former vote on this subject, yet at the same time I may wish to proceed with due respect to the Senate, and give dignity and weight to our own opinion, so far as it contradicts theirs, by the deliberate and decent manner in which we decide. For my part, Mr. Speaker, I do not conceive titles to be so pregnant with danger as some gentlemen apprehend. I believe a President of the United States, clothed with all the powers given in the Constitution, would not be a dangerous person to the liberties of America, if you were to load him with all the titles of Europe or Asia. We have seen superb and august titles given, without conferring power and influence, or without even obtaining respect. One of the most impotent sovereigns in Europe has assumed a title as high as human invention can devise; for example, what words can imply a greater magnitude of power and strength than that of High Mightiness? This title seems to border almost upon impiety; it is assuming the pre-eminence and omnipotence of the Deity; yet this title, and many others cast in the same mould, have obtained a long time in Europe, but have they conferred power? Does experience sanction such an opinion? Look at the Republic I have alluded to, and say if their present state warrants the idea?

I am not afraid of titles, because I fear the danger of any power they could confer, but I am against them because they are not very reconcilable with the nature of our Government or the genius of the people. Even if they were proper in themselves, they are not so at this juncture of time. But my strongest objection is founded in principle; instead of increasing, they diminish the true dignity and importance of a Republic, and would in particular, on this occasion, diminish the true dignity of the first magistrate himself. If we give titles, we must either borrow or invent them. If we have recourse to the fertile fields of luxuriant fancy, and deck out an airy being of our own creation, it is a great chance but its fantastic properties would render the empty phantom ridiculous and absurd. If we borrow, the servile imitation will be odious, not

to say ridiculous also; we must copy from the pompous sovereigns of the East, or follow the inferior potentates of Europe; in either case, the splendid tinsel or grogeous robe would disgrace the manly shoulders of our chief. The more truly honorable shall we be, by showing a total neglect and disregard to things of this nature; the more simple, the more Republican we are in our manners, the more rational dignity we shall acquire; therefore, I am better pleased with the report adopted by the House, than I should have been with any other whatsoever.

The Senate, no doubt, entertain different sentiments on this subject. I would wish, therefore, to treat their opinion with respect and attention. I would desire to justify the reasonable and republican decision of this House to the other branch of Congress, in order to prevent a misunderstanding. But that the motion of my worthy colleague (Mr. Parker) has possession of the House, I would move a more temperate proposition, and I think it deserves some pains to bring about that good will and urbanity, which, for the despatch of public business, ought to be kept up between the two Houses. I do not think it would be a sacrifice of dignity to appoint a Committee of Conference, but imagine it would tend to cement that harmony which has hitherto been preserved between the Senate and this House; therefore, while I concur with the gentlemen who express, in such decided terms, their disapprobation of bestowing titles, I concur also with those who are for the appointment of a Committee of Conference, not apprehending they will depart from the principles adopted and acted upon by the House.

## MAY 12. DUTIES ON IMPORTS.

Mr. Madison said his mind was incapable of discovering any plan that would answer the purpose the committee have in view, and not produce greater evils than the one under consideration. He thought an excise very objectionable, but as no actual proposition for entering into such a system was before the committee, he forebore to say any thing further about it. He admitted an excise would obviate in part some of the difficulties; but he did not think the answer given to his argument altogether satisfactory; yet there was another argument he urged on a former occasion remaining unanswered—it was, that, at this moment, the fisheries, distilleries, and all their connexions, were laboring under heavier duties than what is now proposed; true, the duty is collected in a different mode, but it affects the consumer in the same manner. The gentlemen have said, to be sure, that the duty is evaded; but if half is collected, it will amount to more than six cents per gallon.

It is said that a tax on molasses will be unpopular, but not more so than a tax on salt. Can gentlemen state more serious apprehensions in the former than the latter case? yet the committee did not forego a productive fund, because the article was a necessary of life, and in general consumption. If there is the disposition that is represented for people to complain of the oppression of Government, have not the citizens of the Southern States more just ground of complaint than others? The system can only be acceptable to them, because it is essentially necessary to be adopted for the public good.



Gentlemen argue, that a tax on molasses is unpopular, and prove it by experience under the British Government. If this is to be adduced as a proof of the popularity of the measure, what are we to say with respect to a tax on tea? Gentlemen remembered, no doubt, how odious this kind of tax was thought to be throughout America; yet the House had, without hesitation, laid a considerable duty upon it. He did not imagine that a duty on either of those articles, was in itself objectionable; it was the principle upon which the tax was laid that made them unpopular under the British Government.

It is said that this tax is unjust; now, he had not a single idea of justice, that did not contradict the position. If it be considered as it relates to rum, he was certain the consumers of foreign rum paid a larger proportion of revenue into the Treasury than the consumers of country rum; they paid more than equal distributive justice required; if it was considered as it respected molasses, there would appear no injustice. Molasses was consumed in other States; but if it was not, sugar was used in its stead, and subjected to a duty full as high as that on molasses. But dismissing both these considerations, and even admitting the whole weight to fall on the Northern States, it would not be disproportioned, because, in the long list of enumerated articles subject to a high duty, they imported few or none; indeed, the articles were pretty generally taxed for the benefit of the manufacturing part of the northern community; see loaf sugar, candles, cheese, soap, &c. He hoped gentlemen would not infer from this observation, that he thought the encouragement held out by the bill to manufactures improper; far from it; he was glad to see their growing consequence, and was disposed to give them every aid in his power. From this view of the subject, he was inclined to adhere to the bill, and not make any reduction.

## MAY 14. DUTIES ON IMPORTS.

When he offered this amendment to the bill, he thought its propriety was so obvious and striking, that it would meet no opposition. To pass a bill, <sup>1</sup> not limited in duration, which was to draw revenue from the pockets of the people, appeared to be dangerous in the administration of any Government; he hoped, therefore, the House would not be less cautious in this particular than other nations are, who profess to act upon sound principles. He imagined it might be considered by their constituents as incompatible with the spirit of the Constitution, and dangerous to republican principles, to pass such a law unlimited in its duration.

He hoped it would not be understood by gentlemen who opposed his motion, that he supposed them to be actuated with a desire to do injury to either of those principles; he believed them to be moved only by an ardent desire to promote the general welfare, by the re-establishment of public credit. He would heartily join his labors with theirs, to effect this object, but wished to do it in a way, that while they served their country, they might secure the liberties of the people, and do honor to themselves. Besides the restoration of public credit, he thought the act had in view the encouragement of a particular description of people, which might lead them into enterprises of a peculiar nature, for the protection of which the public faith seemed to be pledged. But would gentlemen infer from hence, that no alteration ought to take place if the manufactures were well established? The subject appeared to him in a twofold point of view; first, to provide for the exigencies of Government, and second,

for the establishment of public credit; but he thought both these objects could be obtained without making the bill perpetual. If the Government showed a proper attention to the punctual performance of its engagements, it would obtain the latter; the other would be secured by making provision as the occasion demanded. If the bill was to be made perpetual, it would be continued after the purpose for which it was adopted had ceased; the error would in this case be irremediable; whereas, if its limitation was determined, it would always be in the power of the Government to make it commensurate with what the public debts and contingencies required.

The Constitution, as had already been observed, places the power in the House of originating money bills. The principal reason why the Constitution had made this distinction was, because they were chosen by the people, and supposed to be best acquainted with their interests and ability. In order to make them more particularly acquainted with these objects, the democratic branch of the Legislature consisted of a greater number, and were chosen for a shorter period, so that they might revert more frequently to the mass of the people. Now, if a revenue law was made perpetual, however unequal its operation might be, it would be out of the power of this House to effect an alteration; for if the President chose to object to the measure, it would require two-thirds of both Houses to carry it. Even if the House of Representatives were unanimous in their opinion that the law ought to be repealed, they would not be able to carry it, unless a great majority appeared in the Senate also.

He observed, that an honorable gentleman had thought that no appropriation of the public money could be made for a longer term than two years. This was true, as it related to the support of armies; but the question here did not appear to be respecting an appropriation. It was the revenue itself, which, without any appropriation, might continue flowing into the public treasury independent of the will of the people, and might thereby become a convenience in the hands of some other department of the Government, for the purpose of oppression. Experience might also forcibly suggest the necessity and importance of alterations in the law, yet, without this clause, it might never be in the power of the House to make them.<sup>1</sup>

## MAY 19. POWER OF REMOVAL FROM OFFICE.

Mr. Madison did not concur with the gentleman in his interpretation of the Constitution.<sup>2</sup> What, said he, would be the consequence of such construction? It would in effect establish every officer of the Government on the firm tenure of good behaviour; not the heads of Departments only, but all the inferior officers of those Departments, would hold their offices during good behaviour, and that to be judged of by one branch of the Legislature only on the impeachment of the other. If the Constitution means this by its declarations to be the case, we must submit; but I should lament it as a fatal error interwoven in the system, and one that would ultimately prove its destruction. I think the inference would not arise from a fair construction of the words of that instrument.

It is very possible that an officer who may not incur the displeasure of the President, may be guilty of actions that ought to forfeit his place. The power of this House may reach him by the means of an impeachment, and he may be removed even against the

will of the President; so that the declaration in the Constitution was intended as a supplemental security for the good behaviour of the public officers. It is possible the case I have stated may happen. Indeed, it may, perhaps, on some occasion, be found necessary to impeach the President himself; surely, therefore, it may happen to a subordinate officer, whose bad actions may be connived at or overlooked by the President. Hence the people have an additional security in this Constitutional provision.

I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the Constitutionality of the declaration I have no manner of doubt.

I look upon every Constitutional question, whatever its nature may be, as of great importance. I look upon the present to be doubly so, because its nature is of the highest moment to the well-being of the Government. I have listened with attention to the objections which have been stated, and to the replies that have been made, and I think the investigation of the meaning of the Constitution has supported the doctrine I brought forward. If you consult the expediency, it will be greatly against the doctrine advanced by gentlemen on the other side of the question. See to what inconsistency gentlemen drive themselves by their construction of the Constitution. The gentleman from South Carolina, (Mr. Smith,) in order to bring to conviction and punishment an offender in any of the principal offices, must have recourse to a breach of the common law, and yet he may there be found guilty, and maintain his office, because he is fixed by the Constitution. It has been said, we may guard against the inconveniency of that construction, by limiting the duration of the office to a term of years; but, during that term, there is no way of getting rid of a bad officer but by impeachment. During the time this is depending, the person may continue to commit those crimes for which he is impeached, because if his construction of the Constitution is right, the President can have no more power to suspend than he has to remove.

What fell from one of my colleagues (Mr. Bland) appears to have more weight than any thing hitherto suggested. The Constitution, at the first view, may seem to favor his opinion; but that must be the case only at the first view; for, if we examine it, we shall find his construction incompatible with the spirit and principles contained in that instrument.

It is said, that it comports with the nature of things, that those who appoint should have the power of removal; but I cannot conceive that this sentiment is warranted by the Constitution; I believe it would be found very inconvenient in practice. It is one of the most prominent features of the Constitution, a principle that pervades the whole system, that there should be the highest possible degree of responsibility in all the Executive officers thereof; any thing, therefore, which tends to lessen this responsibility, is contrary to its spirit and intention, and, unless it is saddled upon us expressly by the letter of that work, I shall oppose the admission of it into any act of the Legislature. Now, if the heads of the Executive departments are subjected to

removal by the President alone, we have in him security for the good behaviour of the officer. If he does not conform to the judgment of the President in doing the executive duties of his office, he can be displaced. This makes him responsible to the great Executive power, and makes the President responsible to the public for the conduct of the person he has nominated and appointed to aid him in the administration of his department. But if the President shall join in a collusion with this officer, and continue a bad man in office, the case of impeachment will reach the culprit, and drag him forth to punishment. But if you take the other construction, and say he shall not be displaced but by and with the advice and consent of the Senate, the President is no longer answerable for the conduct of the officer; all will depend upon the Senate. You here destroy a real responsibility without obtaining even the shadow; for no gentleman will pretend to say the responsibility of the Senate can be of such a nature as to afford substantial security. But why, it may be asked, was the Senate joined with the President in appointing to office, if they have no responsibility? I answer, merely for the sake of advising, being supposed, from their nature, better acquainted with the character of the candidates than an individual; yet even here the President is held to the responsibility—he nominates, and, with their consent, appoints. No person can be forced upon him as an assistant by any other branch of the Government.

There is another objection to this construction, which I consider of some weight, and shall therefore mention to the committee. Perhaps there was no argument urged with more success, or more plausibly grounded against the Constitution, under which we are now deliberating, than that founded on the mingling of the Executive and Legislative branches of the Government in one body. It has been objected, that the Senate have too much of the Executive power even, by having a control over the President in the appointment to office. Now, shall we extend this connexion between the Legislative and Executive departments, which will strengthen the objection, and diminish the responsibility we have in the head of the Executive? I cannot but believe, if gentlemen weigh well these considerations, they will think it safe and expedient to adopt the clause.

## MAY 22. CITIZENSHIP OF THE UNITED STATES.

I think the merit of the question is now to be decided, whether the gentleman is eligible to a seat in this House or not; but it will depend on the decision of a previous question, whether he has been seven years a citizen of the United States or not.

From an attention to the facts which have been adduced, and from a consideration of the principles established by the Revolution, the conclusion I have drawn is, that Mr. Smith was, on the declaration of independence, a citizen of the United States; and unless it appears that he has forfeited his right, by some neglect or overt act, he had continued a citizen until the day of his election to a seat in this House. I take it to be a clear point, that we are to be guided, in our decision, by the laws and constitution of South Carolina, so far as they can guide us; and where the laws do not expressly guide us, we must be guided by principles of a general nature, so far as they are applicable to the present case.

It were to be wished, that we had some law adduced, more precisely defining the qualities of a citizen or an alien; particular laws of this kind have obtained in some of the States; if such a law existed in South Carolina, it might have prevented this question from ever coming before us; but since this has not been the case, let us settle some general principle before we proceed to the presumptive proof arising from public measures under the law, which tend to give support to the inference drawn from such principles.

It is an established maxim that birth is a criterion of allegiance. Birth, however, derives its force sometimes from place, and sometimes from parentage, but, in general, place is the most certain criterion; it is what applies in the United States; it will, therefore, be unnecessary to investigate any other. Mr. Smith founds his claim upon his birthright; his ancestors were among the first settlers of that colony.

It is well known to many gentlemen on this floor, as well as to the public, that the petitioner<sup>1</sup> is a man of talents, one who would not lightly hazard his reputation in support of visionary principles: yet I cannot but think he has erred in one of the principles upon which he grounds his charge. He supposes, when this country separated from Great Britain, the tie of allegiance subsisted between the inhabitants of America and the King of that nation, unless, by some adventitious circumstance, the allegiance was transferred to one of the United States. I think there is a distinction which will invalidate his doctrine in this particular, a distinction between that primary allegiance which we owe to that particular society of which we are members, and the secondary allegiance we owe to the Sovereign established by that society. This distinction will be illustrated by the doctrine established by the laws of Great Britain, which were the laws of this country before the Revolution. The Sovereign cannot make a citizen by any act of his own; he can confer denizenship: but this does not make a man either a citizen or subject. In order to make a citizen or subject, it is established, that allegiance shall first be due to the whole nation; it is necessary that a national act should pass to admit an individual member. In order to become a member of the British empire, where birth has not endowed the person with that privilege, he must be naturalized by an act of Parliament.

What was the situation of the people of America, when the dissolution of their allegiance took place by the declaration of independence? I conceive that every person who owed this primary allegiance to the particular community in which he was born, retained his right of birth, as a member of a new community; that he was consequently absolved from the secondary allegiance he had owed to the British Sovereign. If he were not a minor, he became bound, by his own act, as a member of the society who separated with him from a submission to a foreign country. If he were a minor, his consent was involved in the decision of that society to which he belonged by the ties of nature. What was the allegiance, as a citizen of South Carolina, he owed to the King of Great Britain? He owed his allegiance to him as a King of that society to which, as a society, he owed his primary allegiance. When that society separated from Great Britain, he was bound by that act, and his allegiance transferred to that society, or the Sovereign which that society should set up; because it was through his membership of the society of South Carolina that he owed allegiance to Great Britain.

This reasoning will hold good, unless it is supposed that the separation which took place between these States and Great Britain, not only dissolved the union between those countries, but dissolved the union among the citizens themselves: that the original compact, which made them altogether one society, being dissolved, they could not fall into pieces, each part making an independent society; but must individually revert into a state of nature; but I do not conceive that this was, of necessity, to be the case; I believe such a revolution did not absolutely take place. But in supposing that this was the case, lies the error of the memorialist. I conceive the colonies remained as a political society, detached from their former connexion with another society, without dissolving into a state of nature, but capable of substituting a new form of Government in the place of the old one, which they had, for special considerations, abolished. Suppose the State of South Carolina should think proper to revise her constitution, abolish that which now exists, and establish another form of Government: surely this would not dissolve the social compact. It would not throw them back into a state of nature. It would not dissolve the union between the individual members of that society. It would leave them in perfect society, changing only the mode of action, which they are always at liberty to arrange. Mr. Smith being then, at the declaration of independence, a minor, but being a member of that particular society, he became, in my opinion, bound by the decision of the society, with respect to the question of independence and change of Government; and if afterwards he had taken part with the enemies of his country, he would have been guilty of treason against that Government to which he owed allegiance, and would have been liable to be prosecuted as a traitor.

If it be said, that very inconvenient circumstances would result from this principle, that it would constitute all those persons who are natives of America, but who took part against the revolution, citizens of the United States, I would beg leave to observe, that we are deciding a question of right, unmixed with the question of expediency, and must, therefore, pay a proper attention to this principle. But I think it can hardly be expected by gentlemen that the principle will operate dangerously. Those who left their country, to take part with Britain, were of two descriptions—minors, or persons of mature age. With respect to the latter, nothing can be inferred with respect to them from the decision of the present case; because they had the power of making an option between the contending parties; whether this was a matter of right or not is a question which need not be agitated in order to settle the case before us. Then, with respect to those natives who were minors at the Revolution, and whose case is analogous to Mr Smith's, if we are bound by the precedent of such a decision as we are about to make, and it is declared that they owe a primary allegiance to this country, I still think we are not likely to be inundated with such characters; so far as any of them took part against us, they violated their allegiance, and opposed our laws; so, then, there can be only a few characters, such as were minors at the Revolution, and who have never violated their allegiance by a foreign connexion, who can be affected by the decision of the present question. The number, I admit, is large who might be acknowledged citizens on my principles, but there will very few be found daring enough to face the laws of the country they have violated, and against which they have committed high treason.

So far as we can judge by the laws of Carolina, and the practice and decision of that State, the principles I have adduced are supported; and I must own, that I feel myself at liberty to decide, that Mr. Smith was a citizen at the declaration of independence, a citizen at the time of his election and, consequently, entitled to a seat in this Legislature.<sup>1</sup>

## JUNE 8. AMENDMENTS TO THE CONSTITUTION.

I am sorry to be necessary to the loss of a single moment of time by the House. If I had been indulged in my motion, and we had gone into a Committee of the Whole, I think we might have rose and resumed the consideration of other business before this time; that is, so far as it depended upon what I proposed to bring forward. As that mode seems not to give satisfaction, I will withdraw the motion, and move you, sir, that a select committee be appointed to consider and report such amendments as are proper for Congress to propose to the Legislatures of the several States, conformably to the fifth article of the Constitution.

I will state my reasons why I think it proper to propose amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures, some things to be incorporated into the Constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that those who had been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism. It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the Constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it, among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty,



which, though mistaken in its object is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this Constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the Constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the Constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revisal of the Constitution, we must feel for the Constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure the Government—for a reconsideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration but is likely to meet the concurrence required by the Constitution. There have been objections of various kinds made against the Constitution. Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against the encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them



and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First. That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 1st, section 2, clause 3, these words be struck out, to wit: "The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;" and that in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to —, after which the proportion shall be so regulated by Congress, that the number shall never be less than —, nor more than —, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto."

Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: "But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldiers shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to — dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial, nor the Executive exercise the powers vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the Federal Constitution as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the Constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people

of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

But although the case may be widely different, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the Federal Constitution, we shall find, that, although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency. It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.

In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact, which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the Legislative, Executive, and Judicial branches, shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But, whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the Executive Department than any other; because it is not the stronger branch of the system, but the weaker. It therefore must be levelled against the Legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the Legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defence; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the Constitution are retained; that the Constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the Constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfil every purpose for which the Government was established. Now, may not laws be considered necessary and proper by Congress, (for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation,) which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments? I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to the several State constitutions; that those rights of the people

which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who meant and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it to be conclusive. In the first place, it is too uncertain ground to leave this provision upon, if a provision is at all necessary to secure rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this Constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said that it is unnecessary to load the Constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; because the State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people's liberty. I conclude, from this view of the subject, that it will be proper in itself, and highly politic, for the tranquillity of the public mind, and the stability of the Government, that we should offer something, in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the Constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in

the State conventions, and even in the opinion of the friends to the Constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion, which certainly is in the power of the Legislature, as the Constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unwieldy degree. I confess I always thought this part of the Constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of amendments.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose a change. We have a guide to this alteration in several of the amendments which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish, also, in revising the Constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, "No State shall pass any bill of attainder, *ex post facto* law," &c., were wise and proper restrictions in the Constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should, therefore, wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this Constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suitors from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt.

To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the Constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States. Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the Constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronised by a respectable number of our fellow-citizens; and if we can make the Constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support, I shall content myself, for the present, with moving “that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States.” By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.<sup>1</sup>

## JUNE 16. POWER OF REMOVAL FROM OFFICE.

If the construction of the Constitution is to be left to its natural course, with respect to the Executive powers of this Government, I own that the insertion of this sentiment<sup>1</sup> in law may not be of material importance, though, if it is nothing more than a mere declaration of a clear grant made by the Constitution, it can do no harm; but if it relates to a doubtful part of the Constitution, I suppose an exposition of the Constitution may come with as much propriety from the Legislature, as any other department of the Government. If the power naturally belongs to the Government, and the Constitution is undecided as to the body which is to exercise it, it is likely that it is



submitted to the discretion of the Legislature, and the question will depend upon its own merits.

I am clearly of opinion with the gentleman from South Carolina, (Mr. Smith,) that we ought in this, and every other case, to adhere to the Constitution, so far as it will serve as a guide to us, and that we ought not to be swayed in our decisions by the splendor of the character of the present Chief Magistrate, but to consider it with respect to the merit of men who, in the ordinary course of things, may be supposed to fill the Chair. I believe the power here declared is a high one, and, in some respects, a dangerous one; but, in order to come to a right decision on this point, we must consider both sides of the question: the possible abuses which may spring from the single will of the First Magistrate, and the abuse which may spring from the combined will of the Executive and Senatorial disqualification.

When we consider that the First Magistrate is to be appointed at present by the suffrages of three millions of people, and, in all human probability, in a few years' time by double that number, it is not to be presumed that a vicious or bad character will be selected. If the Government of any country on the face of the earth was ever effectually guarded against the election of ambitious or designing characters to the first office of the State, I think it may with truth be said to be the case under the Constitution of the United States. With all the infirmities incident to a popular election, corrected by the particular mode of conducting it, as directed under the present system, I think we may fairly calculate that the instances will be very rare in which an unworthy man will receive that mark of the public confidence which is required to designate the President of the United States. Where the people are disposed to give so great an elevation to one of their fellow-citizens, I own that I am not afraid to place my confidence in him, especially when I know he is impeachable for any crime or misdemeanor before the Senate, at all times; and that, at all events, he is impeachable before the community at large every four years, and liable to be displaced if his conduct shall have given umbrage during the time he has been in office. Under these circumstances, although the trust is a high one, and in some degree, perhaps, a dangerous one, I am not sure but it will be safer here than placed where some gentlemen suppose it ought to be.

It is evidently the intention of the Constitution, that the first Magistrate should be responsible for the Executive department; so far therefore as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country. Again, is there no danger that an officer, when he is appointed by the concurrence of the Senate, and has friends in that body, may choose rather to risk his establishment on the favor of that branch, than rest it upon the discharge of his duties to the satisfaction of the Executive branch, which is constitutionally authorized to inspect and control his conduct? And if it should happen that the officers connect themselves with the Senate, they may mutually support each other, and for want of efficacy reduce the power of the President to a mere vapor; in which case, his responsibility would be annihilated, and the expectation of it unjust. The high Executive officers, joined in cabal with the Senate, would lay the foundation of discord, and end in an assumption of the Executive power, only to be removed by a revolution in the Government. I believe no principle is more clearly laid down in the

Constitution than that of responsibility. After premising this, I will proceed to an investigation of the merits of the question upon Constitutional ground.

I have, since the subject was last before the House, examined the Constitution with attention, and I acknowledge that it does not perfectly correspond with the ideas I entertained of it from the first glance. I am inclined to think, that a free and systematic interpretation of the plan of Government will leave us less at liberty to abate the responsibility than gentlemen imagine. I have already acknowledged that the powers of the Government must remain as apportioned by the Constitution. But it may be contended, that where the Constitution is silent, it becomes a subject of legislative discretion; perhaps, in the opinion of some, an argument in favor of the clause may be successfully brought forward on this ground: I, however, leave it for the present untouched.

By a strict examination of the Constitution, on what appears to be its true principles, and considering the great departments of the Government in the relation they have to each other, I have my doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article, it is said, that all Legislative powers herein granted shall be vested in a Congress of the United States. In the second article, it is affirmed that the Executive power shall be vested in a President of the United States of America. In the third article, it is declared that the Judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as Congress may, from time to time, ordain and establish. I suppose it will be readily admitted, that so far as the Constitution has separated the powers of these great departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the Constitution. The Legislative powers are vested in Congress, and are to be exercised by them uncontrolled by any other department, except the Constitution has qualified it otherwise. The Constitution has qualified the Legislative power, by authorizing the President to object to any act it may pass, requiring, in this case, two-thirds of both Houses to concur in making a law; but still the absolute Legislative power is vested in the Congress with this qualification alone.

The Constitution affirms, that the Executive power shall be vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says, that in appointing to office, the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the Constitution has invested all Executive power in the President, I venture to assert that the Legislature has no right to diminish or modify his Executive authority.

The question now resolves itself into this, Is the power of displacing an Executive power? I conceive that if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office, by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his Executive power, to make such appointment? Should

we be authorized, in defiance of that clause in the Constitution,—“The Executive power shall be vested in a President,” to unite the Senate, with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an Executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the Constitution, in these words, “the Executive power shall be vested in the President.”

The Judicial power is vested in a Supreme Court; but will gentlemen say the judicial power can be placed elsewhere, unless the Constitution has made an exception? The Constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the Legislative nor Judicial powers are subjected to qualifications, other than those demanded in the Constitution, that the Executive powers are equally unabateable as either of the others; and inasmuch as the power of removal is of an Executive nature, and not affected by any Constitutional exception, it is beyond the reach of the Legislative body.

If this is the true construction of this instrument, the clause in the bill is nothing more than explanatory of the meaning of the Constitution, and therefore not liable to any particular objection on that account. If the Constitution is silent, and it is a power the Legislature have a right to confer, it will appear to the world, if we strike out the clause, as if we doubted the propriety of vesting it in the President of the United States. I therefore think it best to retain it in the bill.

## JUNE 17. POWER OF REMOVAL FROM OFFICE.

However various the opinions which exist upon the point now before us, it seems agreed on all sides, that it demands a careful investigation and full discussion. I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made, will become the permanent exposition of the Constitution; and on a permanent exposition of the Constitution will depend the genius and character of the whole Government. It will depend, perhaps, on this decision, whether the Government shall retain that equilibrium which the Constitution intended, or take a direction towards aristocracy or anarchy among the members of the Government. Hence, how careful ought we to be to give a true direction to a power so critically circumstanced! It is incumbent on us to weigh with particular attention, the arguments which have been advanced in support of the various opinions with cautious deliberation. I own to you, Mr. Chairman, that I feel great anxiety upon this question; I feel an anxiety, because I am called upon to give a decision in a case that may affect the fundamental principles of the Government under which we act, and liberty itself. But all that I can do on such an occasion is, to weigh well every thing advanced on both sides with the purest desire to find out the true meaning of the Constitution, and to be guided by that, and an attachment to the true spirit of liberty, whose influence I believe strongly predominates here.

Several constructions have been put upon the Constitution relative to the point in question. The gentleman from Connecticut (Mr. Sherman) has advanced a doctrine which was not touched upon before. He seems to think (if I understood him rightly) that the power of displacing from office is subject to Legislative discretion; because it having a right to create, it may limit or modify as it thinks proper. I shall not say but at first view this doctrine may seem to have some plausibility. But when I consider that the Constitution clearly intended to maintain a marked distinction between the Legislative, Executive, and Judicial powers of Government; and when I consider, that, if the Legislature has a power, such as is contended for, they may subject and transfer at discretion powers from one department of our Government to another; they may, on that principle, exclude the President altogether from exercising any authority in the removal of officers; they may give it to the Senate alone, or the President and Senate combined; they may vest it in the whole Congress, or they may reserve it to be exercised by this House. When I consider the consequences of this doctrine, and compare them with the true principles of the Constitution, I own that I cannot subscribe to it.

Another doctrine, which has found very respectable friends, has been particularly advocated by the gentleman from South Carolina, (Mr. Smith.) It is this: when an officer is appointed by the President and Senate, he can only be displaced for malfeasance in his office by impeachment. I think this would give a stability to the Executive department, so far as it may be described by the heads of departments, which is more incompatible with the genius of republican Governments in general, and this Constitution in particular, than any doctrine which has yet been proposed. The danger to liberty, the danger of mal-administration, has not yet been found to lie so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of the public trust. If it is said that an officer once appointed shall not be displaced without the formality required by impeachment, I shall be glad to know what security we have for the faithful administration of the Government? Every individual, in the long chain which extends from the highest to the lowest link of the Executive Magistracy, would find a security in his situation which would relax his fidelity and promptitude in the discharge of his duty.

The doctrine, however, which seems to stand most in opposition to the principles I contend for, is, that the power to annual an appointment is, in the nature of things, incidental to the power which makes the appointment. I agree that if nothing more was said in the Constitution than that the President, by and with the advice and consent of the Senate, should appoint to office, there would be a great force in saying that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the Constitution, no less explicit than the one on which the gentleman's doctrine is founded; it is that part which declares that the Executive power shall be vested in a President of the United States. The association of the Senate with the President in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is another part of the Constitution, which inclines, in my judgment, to favor the construction I put upon it; the President is required to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the Executive Magistrate, it would seem that it was generally intended

he should have that species of power which is necessary to accomplish that end. Now, if the officer when once appointed is not to depend upon the President for his official existence, but upon a distinct body, (for where there are two negatives required, either can prevent the removal,) I confess I do not see how the President can take care that the laws be faithfully executed. It is true, by a circuitous operation he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the Senate, for the purpose of displacing an officer; but would this give that species of control to the Executive Magistrate which seems to be required by the Constitution? I own, if my opinion was not contrary to that entertained by what I suppose to be the minority on this question, I should be doubtful of being mistaken, when I discovered how inconsistent that construction would make the Constitution with itself. I can hardly bring myself to imagine the wisdom of the convention who framed the Constitution contemplated such incongruity.

There is another maxim which ought to direct us in expounding the Constitution, and is of great importance. It is laid down, in most of the Constitutions or bills of rights in the republics of America; it is to be found in the political writings of the most celebrated civilians, and is every where held as essential to the preservation of liberty, that the three great departments of Government be kept separate and distinct; and if in any case they are blended, it is in order to admit a partial qualification, in order more effectually to guard against an entire consolidation. I think, therefore, when we review the several parts of this Constitution, when it says that the Legislative powers shall be vested in a Congress of the United States, under certain exceptions, and the Executive power vested in the President with certain exceptions, we must suppose they were intended to be kept separate in all cases in which they are not blended, and ought, consequently, to expound the Constitution so as to blend them as little as possible.

Every thing relative to the merits of the question as distinguished from a Constitutional question, seems to turn on the danger of such a power vested in the President alone. But when I consider the checks under which he lies in the exercise of this power, I own to you I feel no apprehensions but what arise from the dangers incidental to the power itself; for dangers will be incidental to it, vest it where you please. I will not reiterate what was said before with respect to the mode of election, and the extreme improbability that any citizen will be selected from the mass of citizens who is not highly distinguished by his abilities and worth; in this alone we have no small security for the faithful exercise of this power. But, throwing that out of the question, let us consider the restraints he will feel after he is placed in that elevated station. It is to be remarked, that the power in this case will not consist so much in continuing a bad man in office, as in the danger of displacing a good one. Perhaps the great danger, as has been observed, of abuse in the Executive power, lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate can remove him, whether the President chooses or not. The danger then consists merely in this: the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this House, before the Senate for such an act

of mal-administration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. But what can be his motives for displacing a worthy man? It must be that he may fill the place with an unworthy creature of his own. Can he accomplish this end? No; he can place no man in the vacancy whom the Senate shall not approve; and if he could fill the vacancy with the man he might choose, I am sure he would have little inducement to make an improper removal. Let us consider the consequences. The injured man will be supported by the popular opinion; the community will take side with him against the President; it will facilitate those combinations, and give success to those exertions which will be pursued to prevent his re-election. To displace a man of high merit, and who from his station may be supposed a man of extensive influence are considerations in the mind of any man who may fill the Presidential chair. The friends of those individuals and the public sympathy will be against him. If this should not produce his impeachment before the Senate, it will amount to an impeachment before the community, who will have the power of punishment, by refusing to re-elect him. But suppose this persecuted individual cannot obtain revenge in this mode; there are other modes in which he could make the situation of the President very inconvenient, if you suppose him resolutely bent on executing the dictates of resentment. If he had not influence enough to direct the vengeance of the whole community, he may probably be able to obtain an appointment in one or the other branch of the Legislature; and being a man of weight, talents, and influence, in either case he may prove to the President troublesome indeed. We have seen examples in the history of other nations, which justify the remark I now have made. Though the prerogatives of the British King are great as his rank, and it is unquestionably known that he has a positive influence over both branches of the legislative body, yet there have been examples in which the appointment and removal of ministers have been found to be dictated by one or other of those branches. Now if this be the case with an hereditary Monarch, possessed of those high prerogatives and furnished with so many means of influence; can we suppose a President, elected for four years only, dependent upon the popular voice, impeachable by the Legislature, little, if at all, distinguished for wealth, personal talents, or influence from the head of the department himself; I say, will he bid defiance to all these considerations, and wantonly dismiss a meritorious and virtuous officer? Such abuse of power exceeds my conception. If any thing takes place in the ordinary course of business of this kind, my imagination cannot extend to it on any rational principle. But let us not consider the question on one side only; there are dangers to be contemplated on the other. Vest this power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the Executive department, which was intended for the security of liberty and the public good. If the President should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community. The chain of dependence therefore terminates in the supreme body, namely, in the people, who will possess, besides, in aid of their original power, the decisive engine of impeachment. Take the other supposition; that the power should be vested in the Senate, on the principle that the power to displace is necessarily connected with the power to appoint. It is declared by the Constitution, that we may by law vest the appointment of inferior officers in the heads of departments; the

power of removal being incidental, as stated by some gentlemen. Where does this terminate? If you begin with the subordinate officers, they are dependent on their superior, he on the next superior, and he on—whom? On the Senate, a permanent body; a body, by its particular mode of election, in reality existing forever; a body possessing that proportion of aristocratic power which the Constitution no doubt thought wise to be established in the system, but which some have strongly excepted against. And let me ask gentlemen, is there equal security in this case as in the other? Shall we trust the Senate, responsible to individual Legislatures, rather than the person who is responsible to the whole community? It is true, the Senate do not hold their offices for life, like aristocracies recorded in the historic page; yet the fact is, they will not possess that responsibility for the exercise of Executive powers which would render it safe for us to vest such powers in them. But what an aspect will this give to the Executive. Instead of keeping the departments of Government distinct, you make an Executive out of one branch of the Legislature; you make the Executive a two-headed monster, to use the expression of the gentleman from New Hampshire, (Mr. Livermore,) you destroy the great principle of responsibility, and perhaps have the creature divided in its will, defeating the very purposes for which a unity in the Executive was instituted. These objections do not lie against such an arrangement as the bill establishes. I conceive that the President is sufficiently accountable to the community; and if this power is vested in him, it will be vested where its nature requires it should be vested; if anything in its nature is executive, it must be that power which is employed in superintending and seeing that the laws are faithfully executed. The laws cannot be executed but by officers appointed for that purpose; therefore, those who are over such officers naturally possess the Executive power. If any other doctrine be admitted, what is the consequence? You may set the Senate at the head of the Executive department, or you may require that the officers hold their places during the pleasure of this branch of the Legislature, if you cannot go so far as to say we shall appoint them; and by this means, you link together two branches of the Government which the preservation of liberty requires to be constantly separated.

Another species of argument has been urged against this clause. It is said, that it is improper, or at least unnecessary, to come to any decision on this subject. It has been said by one gentleman, that it would be officious in this branch of the Legislature to expound the Constitution, so far as it relates to the division of power between the President and Senate; it is incontrovertibly of as much importance to this branch of the Government as to any other, that the Constitution should be preserved entire. It is our duty, so far as it depends upon us, to take care that the powers of the Constitution be preserved entire to every department of Government; the breach of the Constitution in one point, will facilitate the breach in another; a breach in this point may destroy that equilibrium by which the House retains its consequence and share of power; therefore we are not chargeable with an officious interference. Besides, the bill, before it can have effect, must be submitted to both those branches who are particularly interested in it; the Senate may negative, or the President may object, if he thinks it unconstitutional.

But the great objection drawn from the source to which the last arguments would lead us is, that the Legislature itself has no right to expound the Constitution; that wherever its meaning is doubtful, you must leave it to take its course, until the

Judiciary is called upon to declare its meaning. I acknowledge, in the ordinary course of Government, that the exposition of the laws and Constitution devolves upon the Judiciary. But I beg to know, upon what principle it can be contended, that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several departments? The Constitution is the charter of the people to the Government; it specifies certain great powers as absolutely granted, and marks out the departments to exercise them. If the Constitutional boundary of either be brought into question, I do not see that any one of these independent departments has more right than another to declare their sentiments on that point.

Perhaps this is an omitted case. There is not one Government on the face of the earth, so far as I recollect, there is not one in the United States, in which provision is made for a particular authority to determine the limits of the Constitutional division of power between the branches of the Government. In all systems there are points which must be adjusted by the departments themselves, to which no one of them is competent. If it cannot be determined in this way, there is no resource left but the will of the community, to be collected in some mode to be provided by the Constitution, or one dictated by the necessity of the case. It is therefore a fair question, whether this great point may not as well be decided, at least by the whole Legislature as by a part, by us as well as by the Executive or Judiciary? As I think it will be equally Constitutional, I cannot imagine it will be less safe, that the exposition should issue from the Legislative authority than any other; and the more so, because it involves in the decision the opinions of both those departments, whose powers are supposed to be affected by it. Besides, I do not see in what way this question could come before the judges, to obtain a fair and solemn decision; but even if it were the case that it could, I should suppose, at least while the Government is not led by passion, disturbed by faction, or deceived by any discolored medium of sight, but while there is a desire in all to see and be guided by the benignant ray of truth, that the decision may be made with the most advantage by the Legislature itself.

My conclusion from these reflections is, that it will be Constitutional to retain the clause; that it expresses the meaning of the Constitution as must be established by fair construction, and a construction which, upon the whole, not only consists with liberty, but is more favorable to it than any one of the interpretations that have been proposed.<sup>1</sup>

## JUNE 18. POWER OF REMOVAL FROM OFFICE.

The question now seems to be brought to this, whether it is proper or improper to retain these words in the clause, provided they are explanatory of the Constitution. I think this branch of the Legislature is as much interested in the establishment of the true meaning of the Constitution, as either the President or Senate; and when the Constitution submits it to us to establish offices by law, we ought to know by what tenure the office should be held; and whether it should depend upon the concurrence of the Senate with the President, or upon the will of the President alone; because gentlemen may hesitate in either case, whether they will make it for an indefinite or precise time. If the officer can be removed at discretion by the President, there may be safety in letting it be for an indefinite period. If he cannot exert his prerogative, there



is no security even by the mode of impeachment; because the officer may intrench himself behind the authority of the Senate, and bid defiance to every other department of Government. In this case, the question of duration would take a different turn. Hence it is highly proper that we and our constituents should know the tenure of the office. And have we not as good a right as any branch of the Government to declare our sense of the meaning of the Constitution?

Nothing has yet been offered to invalidate the doctrine, that the meaning of the Constitution may as well be ascertained by the legislative as by the judicial authority. When the question emerges as it does in this bill, and much seems to depend upon it, I should conceive it highly proper to make a legislative construction. In another point of view it is proper that this interpretation should now take place, rather than at a time when the exigency of the case may require the exercise of the power of removal. At present, the disposition of every gentleman is to seek the truth, and abide by its guidance when it is discovered. I have reason to believe the same disposition prevails in the Senate. But will this be the case when some individual officer of high rank draws into question the capacity of the President, with the Senate, to effect his removal? If we leave the Constitution to take this course, it can never be expounded until the President shall think it expedient to exercise the right of removal, if he supposes he has it; then the Senate may be induced to set up their pretensions. And will they decide so calmly as at this time, when no important officer in any of the great departments is appointed to influence their judgments? The imagination of no member here, or of the Senate, or of the President himself, is heated or disturbed by faction. If ever a proper moment for decision should offer, it must be one like the present.

I do not conceive that this question has been truly stated by some gentlemen. In my opinion it is not whether we shall take the power from one branch of the Government and give it to another; but the question is, to which branch has the Constitution given it? Some gentlemen have said, that it resides in the people at large; and that if it is necessary to the Government, we must apply to the people for it, and obtain it by way of amendment to the Constitution. Some gentlemen contend, that although it is given in the Constitution, as a necessary power to carry into execution the other powers vested by the Constitution, yet it is vested in the Legislature. I cannot admit this doctrine either; because it is setting the Legislature at the head of the Executive branch of the Government. If we take the other construction of the gentleman from South Carolina, that all officers hold their places by the firm tenure of good behaviour, we shall find it still more improper. I think gentlemen will see, upon reflection, that this doctrine is incompatible with the principles of free Government. If there is no removability but by way of impeachment, then all the Executive officers of Government hold their offices by the firm tenure of good behaviour, from the Chief Justice down to the tide waiter.

[Mr. Smith interrupted Mr. M., and said that he had admitted that inferior officers might be removed, because the Constitution had left it in the power of the Legislature to establish them on what terms they pleased; consequently, to direct their appointment and removal.]

Mr. Madison had understood the gentleman as he now explained himself. But still he contended, that the consequences he had drawn would necessarily follow; because there was no express authority given to the Legislature in the Constitution to enable the President, the courts of law, or heads of the departments, to remove an inferior officer; all that was said on that head was confined solely to the power of appointing them. If the gentleman admits that the Legislature may vest the power of removal, with respect to inferior officers, he must also admit that the Constitution vests the President with the power of removal in the case of superior officers; because both powers are implied in the same words. The President may appoint the one class, and the Legislature may authorize the courts of law or heads of departments to appoint in the other case. If then it is admitted that the power of removal vests in the President, or President and Senate, the arguments which I urged yesterday, and those which have been urged by honorable gentlemen on this side of the question for these three days past, will fully evince the truth of the construction which we give, that the power is in the President alone. I will not repeat them, because they must have full possession of every gentleman's mind. I am willing, therefore, to rest the decision here; and hope that it will be made in such a manner as to perpetuate the blessings which this Constitution was intended to embrace.<sup>1</sup>

## JUNE 22. POWER OF REMOVAL FROM OFFICE.

I am in favor of the motion for striking out, but not upon the principles of my worthy colleague.<sup>1</sup> I will briefly state my reasons for voting in the manner I intend. First, altering the mode of expression tends to give satisfaction to those gentlemen who think it not an object of legislative discretion; and second, because the amendment already agreed to fully contains the sense of this House upon the doctrine of the Constitution; and therefore the words are unnecessary as they stand here. I will not trouble the House with repeating reasons why the change of expression is best, as they are well understood. But gentlemen cannot fairly urge against us a change of ground, because the point we contended for is fully obtained by the amendment. It was truly said by the gentleman from New York, (Mr. Benson,) that these words carry with them an implication that the Legislature has the power of granting the power of removal.

It is needless to assign my reasons why I think the Legislature not in possession of this power; they were fully explained before. I therefore shall only say, if there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is that which separates the Legislative, Executive, and Judicial powers. If there is any point in which the separation of the Legislative and Executive powers ought to be maintained with greater caution, it is that which relates to officers and offices. The powers relative to offices are partly Legislative and partly Executive. The Legislature creates the office, defines the powers, limits its duration, and annexes a compensation. This done, the Legislative power ceases. They ought to have nothing to do with designating the man to fill the office. That I conceive to be of an Executive nature. Although it be qualified in the Constitution, I would not extend or strain that qualification beyond the limits precisely fixed for it. We ought always to consider the Constitution with an eye to the principles upon which it was founded. In this point of view, we shall readily conclude that if the Legislature determines the powers, the

honors, and emoluments of an office, we should be insecure if they were to designate the officer also. The nature of things restrains and confines the Legislative and Executive authorities in this respect; and hence it is that the Constitution stipulates for the independence of each branch of the Government.

Let it be understood that the Legislature is to have some influence both in appointing and removing officers, and I venture to say the people of America will justly fear a system of sinecures. What security have they that offices will not be created to accommodate favorites or pensioners subservient to their designs? I never did conceive, that so far as the Constitution gave one branch of the Legislature an agency in this business, it was, by any means, one of its most meritorious parts; but so far as it has gone, I confess I would be as unwilling to abridge the power of that body as to enlarge it. But considering, as I do, that the Constitution fairly vests the President with the power, and that the amendment declares this to be the sense of the House, I shall concur with the gentlemen in opposition so far as to strike out these words, which I now look upon to be useless.

I have a great respect for the abilities and judgment of my worthy colleague, (Mr. Page,) and am convinced he is inspired by the purest motives in his opposition to what he conceives to be an improper measure; but I hope he will not think so strange of our difference, if he considers the small proportion of the House which concurs with him with respect to impeachment being the only way of removing officers. I believe the opinion is held but by one gentleman besides himself. If this sentiment were to obtain, it would give rise to more objections to the Constitution than gentlemen are aware of; more than any other construction whatever. Yet while he professes to be greatly alarmed on one account, he possesses a stoic apathy with respect to the other.

## JUNE 29. DUTIES OF THE COMPTROLLER.

Mr. Madison observed, that the committee had gone through the bill without making any provision respecting the tenure by which the Comptroller is to hold his office. He thought it was a point worthy of consideration, and would, therefore, submit a few observations upon it.

It will be necessary, said he, to consider the nature of this office, to enable us to come to a right decision on the subject; in analyzing its properties, we shall easily discover they are not purely of an Executive nature. It seems to me that they partake of a Judiciary quality as well as Executive; perhaps the latter obtains in the greatest degree. The principal duty seems to be deciding upon the lawfulness and justice of the claims and accounts subsisting between the United States and particular citizens: this partakes strongly of the judicial character, and there may be strong reasons why an officer of this kind should not hold his office at the pleasure of the Executive branch of the Government. I am inclined to think that we ought to consider him something in the light of an arbitrator between the public and individuals, and that he ought to hold his office by such a tenure as will make him responsible to the public generally; then again it may be thought, on the other side, that some persons ought to be authorized on behalf of the individual, with the usual liberty of referring to a third person, in case of disagreement, which may throw some embarrassment in the way of the first idea.

Whatever, Mr. Chairman, may be my opinion with respect to the tenure by which an Executive officer may hold his office according to the meaning of the Constitution, I am very well satisfied, that a modification by the Legislature may take place in such as partake of the judicial qualities, and that the legislative power is sufficient to establish this office on such a footing as to answer the purposes for which it is prescribed.

With this view he would move a proposition, to be inserted in the bill; it was that the Comptroller should hold his office during — years, unless sooner removed by the President: he will always be dependent upon the Legislature, by reason of the power of impeachment, but he might be made still more so, when the House took up the Salary bill. He would have the person re-appointable at the expiration of the term, unless he was disqualified by a conviction on an impeachment before the Senate; by this means the Comptroller would be dependent upon the President, because he can be removed by him; he will be dependent upon the Senate, because they must consent to his election for every term of years; and he will be dependent upon this House, through the means of impeachment, and the power we shall reserve over his salary; by which means we shall effectually secure the dependence of this officer upon the Government. But making him thus thoroughly dependent, would make it necessary to secure his impartiality, with respect to the individual. This might be effected by giving any person, who conceived himself aggrieved, a right to petition the Supreme Court for redress, and they should be empowered to do right therein; this will enable the individual to carry his claim before an independent tribunal.

A provision of this kind exists in two of the United States at this time, and is found to answer a very good purpose. He mentioned this, that gentlemen might not think it altogether novel. The committee, he hoped, would take a little time to examine the idea.<sup>1</sup>

## AUGUST 13. AMENDMENTS TO THE CONSTITUTION.

Mr. Madison did not think it was an improper time to proceed in this business; the House had already gone through with subjects of a less interesting nature; now if the Judiciary bill was of such vast importance, its consideration ought not to have been postponed for those purposes.

He would remind gentlemen that there were many who conceived amendments of some kind necessary and proper in themselves; while others who are not so well satisfied of the necessity and propriety, may think they are rendered expedient from some other consideration. Is it desirable to keep up a division among the people of the United States on a point in which they consider their most essential rights are concerned? If this is an object worthy the attention of such a numerous part of our constituents, why should we decline taking it into our consideration, and thereby promote that spirit of urbanity and unanimity which the Government itself stands in need of for its more full support?

Already has the subject been delayed much longer than could have been wished. If after having fixed a day for taking it into consideration, we should put it off again, a spirit of jealousy may be excited, and not allayed without great inconvenience.

Form, sir, is always of less importance than the substance; but on this occasion I admit that form is of some consequence, and it will be well for the House to pursue that which, upon reflection, shall appear to be the most eligible. Now it appears to me, that there is a neatness and propriety in incorporating the amendments into the Constitution itself; in that case, the system will remain uniform and entire; it will certainly be more simple when the amendments are interwoven into those parts to which they naturally belong, than it will if they consist of separate and distinct parts. We shall then be able to determine its meaning without references or comparison; whereas, if they are supplementary, its meaning can only be ascertained by a comparison of the two instruments, which will be a very considerable embarrassment. It will be difficult to ascertain to what parts of the instrument the amendments particularly refer; they will create unfavorable comparisons; whereas, if they are placed upon the footing here proposed, they will stand upon as good foundation as the original work. Nor is it so uncommon a thing as gentlemen suppose; systematic men frequently take up the whole law, and, with its amendments and alterations, reduce it into one act. I am not, however, very solicitous about the form, provided the business is but well completed.<sup>1</sup>

### SEPTEMBER 3. LOCATION OF THE CAPITAL.

Mr. Madison meant to pay due attention to every argument that could be urged on this important question. Facts had been asserted, the impressions of which he wished to be erased, if they were not well founded. It has been said, that the communication with the Western Territory, by the Susquehanna, is more convenient than by the Potomac. I apprehend this is not the case; and the propriety of our decision will depend, in a great measure, on the superior advantages of one of these two streams. It is agreed, on all hands, that we ought to have some regard to the convenience of the Atlantic navigation. Now, to embrace this object, a position must be taken on some navigable river; to favor the communication with the Western Territory, its arms ought likewise to extend themselves towards that region. I did not suppose it would have been necessary to bring forward charts and maps, as has been done by others, to show the committee the comparative situation of those rivers. I flattered myself it was sufficiently understood, to enable us to decide the question of superiority; but I am now inclined to believe, that gentlemen have embraced an error, and I hope they are not determined to vote under improper impressions. I venture to pledge myself for the demonstration, that the communication with the Western Territory, by the Potomac, is more certain and convenient than the other. And if the question is as important as it is admitted to be, gentlemen will not shut their ears to information; they will not precipitate the decision; or if they regard the satisfaction of our constituents, they will allow them to be informed of all the facts and arguments that lead to the decision of a question in which the general and particular interests of all parts of the Union are involved.<sup>1</sup>

## SEPTEMBER 18. LOCATION OF THE CAPITAL.

Mr. Madison felt himself compelled to move for striking out that part of the bill which provided that the temporary residence of Congress should continue at New York; as he conceived it irreconcilable with the spirit of the Constitution. If it was not from viewing it in this light, he should have given the bill no further opposition; and now he did not mean to enter on the merits of the main question.

From the Constitution, it appeared that the concurrence of the two Houses of Congress was sufficient to enable them to adjourn from one place to another; nay, the legal consent of the President was, in some degree, prescribed in the 7th section of article 1st, where it is declared, that every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States, and approved by him, before the same shall take effect. Any attempt, therefore, to adjourn by law, is a violation of that part of the Constitution which gives the power, exclusively, to the two branches of the Legislature. If gentlemen saw it in the same light, he flattered himself they would reject that part of the bill; and, however little they valued the reflection that this city was not central, which had been so often urged, they would be guided by arguments springing from a superior source.

He would proceed to state the reasons which induced him to be of this opinion: it is declared in the Constitution, that neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any place than that in which the two Houses shall be sitting; from hence he inferred, that the two Houses, by a concurrence, could adjourn for more than three days, and to any other place which they thought proper; by the other clause he had mentioned, the Executive power is restrained from any interference with the Legislative on this subject; hence, he concluded, it would be dangerous to attempt to give to the President a power which the Constitution expressly denied him. He did not suppose that the attempt to vest the Executive with a power over the adjournment of the Legislature would absolutely convey the power, but he conceived it wrong to make the experiment. He submitted it to those gentlemen who were attached to the success of the bill, how far an unconstitutional declaration may impede its passage through the other branch of the Legislature.

It has been supposed by some, that the seat of Government may be at a place different from that where the Congress sits; and, although the former may be established by law, the Legislature might remove elsewhere; he could not subscribe to this doctrine. What is the Government of the United States for which a seat is to be provided? Will not the Government necessarily comprehend the Congress as a part? In arbitrary Governments, the residence of the monarch may be styled the seat of Government, because he is within himself the supreme Legislative, Executive, and Judicial power; the same may be said of the residence of a limited monarchy, where the efficiency of the Executive operates, in a great degree, to the exclusion of the Legislative authority; but in such a Government as ours, according to the legal and common acceptation of the term, Government must include the Legislative power; so the term Administration, which in other countries is specially appropriated to the Executive

branch of Government, is used here for both the Executive and Legislative branches; we, in official communications, say Legislative Administration or Executive Administration, according as the one or the other is employed in the exercise of its Constitutional powers. He mentioned these circumstances to show that they ought not to look for the meaning of terms used in the laws and Constitution of the United States, into the acceptation of them in other countries, whose situation and Government were different from that of United America. If his reasoning was just, he should conclude that the seat of Government would be at that place where both the Executive and Legislative bodies are fixed; and this depended upon the vote of the two branches of the Legislature. There was another clause favorable to this opinion; it was, that giving Congress authority to exercise exclusive legislation in all cases whatsoever over such district as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States; this was the only place where any thing respecting the seat of Government was mentioned; and would any gentleman contend that Congress might have a seat of Government over which they are empowered to exercise exclusive legislation, and yet reside at the distance of two or 300 miles from it? Such a construction would contradict the plain and evident meaning of the Constitution, and as such was inadmissible.

He hoped these observations would be attended to; and did not doubt but if seen in their true light they would induce the House to reject that part of the bill which he moved to have struck out.<sup>1</sup>

## SEPTEMBER 28. LOCATION OF THE CAPITAL.

Mr. Madison contended that the amendment proposed by the Senate was a departure from every principle adopted by the House; but he would not trouble them with a recapitulation of arguments, which he feared would be unavailing; he wished, however, that the House would provide against one inconvenience, which was, to prevent the district in Pennsylvania, chosen by Congress, from being deprived for a time of the benefit of the laws. This, he apprehended, would be the case, unless Congress made provision for the operation of the laws of Pennsylvania, in the act by which they accepted of the cession of that State; for the State relinquished the right of legislation from the moment that Congress accepted of the district. The propriety of this proposition was so apparent, that he had not a doubt but the House would consent to it. He then moved the following proviso: "And provided, that nothing herein contained shall be construed to affect the operation of the laws of Pennsylvania, within the district ceded and accepted, until Congress shall otherwise provide by law."<sup>1</sup>



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Orange, Nov<sup>r</sup> 20, 1789.

Wash. Mss.

Dear Sir,—

It was my purpose to have dropped you a few lines from Philad<sup>a</sup>, but I was too much indisposed during my detention there to avail myself of that pleasure. Since my arrival here I have till now been without a fit conveyance to the post office.

You will recollect the contents of a letter shewn you from Mr. Innes to Mr. Brown. Whilst I was in Philad<sup>a</sup>. I was informed by the latter, who was detained there, as well as myself by indisposition that he had rec<sup>d</sup> later accounts though not from the same correspondent, that the Spaniards have finally put an entire stop to the trade of our Citizens down the river. The encouragements to such as settle under their own Government are continued.

A day or two after I got to Philad<sup>a</sup> I fell in with Mr. Morris. He broke the subject of the residence of Cong<sup>s</sup>, and made observations which betrayed his dislike of the upshot of the business at N. York, and his desire to keep alive the Southern project of an arrangement with Pennsylvania. I reminded him of the conduct of his State, and intimated that the question would probably sleep for some time in consequence of it. His answer implied that Congress must not continue at New York, and that if he should be freed from his Engagements with the E. States by their refusal to take up the bill and pass it as it went to the Senate, he should renounce all confidence in that quarter, and speak seriously to the S. States. I told him they must be spoken to very seriously, after what had passed, if Penn<sup>a</sup> expected them to listen to her, that indeed there was probably an end to further intercourse on the subject. He signified that if he should speak it would be in earnest, and he believed that no one would pretend that his conduct would justify the least distrust of his going through with his undertakings; adding however that he was determined & accordingly gave me as he had given others notice that he should call up the postponed bill as soon as Cong<sup>s</sup> should be reassembled. I observed to him that if it were desirable to have the matter revived we could not wish to have in it a form more likely to defeat itself. It was unparliamentary and highly inconvenient; and would therefore be opposed by all candid friends to his object as an improper precedent, as well as by those who were opposed to the object itself. And if he should succeed in the Senate, the irregularity of the proceeding would justify the other House in withholding the signature of its Speaker, so that the bill could never go up to the President. He acknowledged that the bill could not be got thro' unless it had a majority of both Houses on its merits. Why then, I asked, not take it up anew? He said he meant to bring the gentlemen who had postponed the bill to the point, acknowledged that he distrusted them, but held his engagements binding on him, until this final experiment should be made on the respect they meant to pay to theirs. I do not think it difficult to augur from this conversation the views which will govern Penn<sup>a</sup> at the next Session. Conversations held by Grayson both with Morris &



others, in Philad<sup>a</sup>, and left by him in a letter to me, coincide with what I have stated. An attempt will first be made to alarm N. York and the Eastern States into the plan postponed, by holding out the Potowmac & Philad<sup>a</sup> as the alternative, and if the attempt should not succeed, the alternative will then be held out to the Southern members. On the other hand N. Y. & the E. States will enforce the policy of delay, by threatening the S. States as heretofore, with German Town or Trenton or at least Susquehannah, and will no doubt carry the threat into execution if they can, rather y<sup>n</sup> suffer an arrangement to take place between Pen<sup>a</sup>. & the S. States.

I hear nothing certain from the Assembly. It is said that an attempt of Mr. H. to revive the project of commutables has been defeated, that the amendments have been taken up, and are likely to be put off to the next Session, the present house having been elected prior to the promulgation of them. This reason would have more force, if the amendments did not so much correspond as far as they go with the propositions of the State Convention, which were before the public long before the last Election. At any rate, the Assembly might pass a vote of *approbation*, along with the postponement, and assign the reason for referring the *ratification* to their successors. It is probable that the scruple has arisen with the disaffected party. If it be construed by the public into a latent hope of some contingent opportunity for promoting the war ag<sup>st</sup> the Gen<sup>l</sup> Government, I am of opinion the experiment will recoil on the authors of it. As far as I can gather, the great bulk of the late opponents are entirely at rest, and more likely to censure a further opposition to the Gov<sup>t</sup>, as now administered than the Government itself. One of the principal leaders of the Baptists lately sent me word that the amendments had entirely satisfied the disaffected of his Sect, and that it would appear in their subsequent conduct.

I ought not to conclude without some apology for so slovenly a letter. I put off writing it till an opportunity should present itself not knowing but something from time to time might turn up that would make it less unworthy of your perusal. And it has so happened that the opp<sup>y</sup> barely gives me time for this hasty scrawl.

With the most perfect esteem & Affect attachment I remain Dear Sir Y<sup>r</sup>. Mo<sup>s</sup> Obed<sup>t</sup>.  
Serv<sup>t</sup>

[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Orange, Dec<sup>r</sup> 5, 1789.

Wash. Mss.

Dear Sir,—

Since my last I have been furnished with the inclosed copy of the letter from the Senators of this State to its Legislature. <sup>1</sup> It is well calculated to keep alive the disaffection to the Government, and is accordingly applied to that use by violent partizans. I understand the letter was written by the first subscriber of it, as indeed is pretty evident from the style and strain of it. The other *it is said*, subscribed it with reluctance. I am less surprised that this should have been the case than that he should have subscribed it at all.

My last information from Richmond is contained in the following extract from a letter of the 28th of Nov<sup>r</sup>., from an intelligent member of the H. of Delegates. “The revenue bill which proposes a reduction of the public taxes one fourth below the last year’s amount is with the Senate. Whilst this business was before the H. of Delegates a proposition was made to receive Tobacco & Hemp as commutables, which was negatived, the House determining still to confine the collection to specie and to specie warrants. Two or three petitions have been presented which asked a general suspension of Executions for twelve months; they were read, but denied a reference. The Assembly have passed an Act for altering the time for choosing Representatives to Congress, which is now fixed to be on the third Monday in September, suspending the powers of the Representative until the Feb<sup>y</sup>. after his election. This change was made to suit the time of the annual meeting of Congress. The fate of the Amendments proposed by Congress to the Gen<sup>l</sup> Government is still in suspense. In a Com<sup>e</sup> of the whole House the first ten were acceded to with little opposition; for on a question taken on each separately, there was scarcely a dissenting voice. On the two last a debate of some length took place, which ended in rejection. Mr. E. Randolph who advocated all the others stood on this contest in the front of opposition. His principal objection was pointed ag<sup>st</sup> the word ‘*retained*,’ in the eleventh proposed amendment, and his argument if I understood it was applied in this manner—that as the rights declared in the first ten of the proposed amendments were not all that a free people would require the exercise of, and that as there was no criterion by which it could be determined whether any other particular right was retained or not, it would be more safe and more consistent with the spirit of the 1st & 17th amend<sup>ts</sup> proposed by Virginia that this reservation ag<sup>st</sup> constructive power, should operate rather as a provision ag<sup>st</sup> extending the powers of Cong<sup>s</sup> by their own authority, than a protection to rights reducible to no definite certainty. But others, among whom I am one, see not the force of this distinction, for by preventing an extension of power in that body from which danger is apprehended, safety will be insured, if its powers be not too extensive already, & so by protecting the rights of the people & of the States, an improper extension of power will be prevented & safety made equally certain. If the House should agree to the Resolution for rejecting the two last, I am of opinion it will bring

the whole into hazard again, as some who have been decided friends to the ten first think it would be unwise to adopt them without the 11 & 12th. Whatever may be the fate of the amendments submitted by Congress, it is probable that an application for further amendments will be made by this Assembly, for the opposition to the federal Constitution is in my opinion reduced to a single point, the power of direct taxation—those who wish the change are desirous of repeating the application, whilst those [who] wish it not are indifferent on the subject, supposing that Cong<sup>s</sup>. will not propose a change which would take from them a power so necessary for the accomplishment of those objects which are confided to their care. Mess<sup>rs</sup> Joseph Jones & Spencer Roane are appointed Judges of the Gen<sup>l</sup>. Court, to fill the vacancies occasioned by the death of Mr. Carey & the removal of Mr. Mercer to the Court of appeals.”

The difficulty started ag<sup>st</sup> the amendments is really unlucky, and the more to be regretted as it springs from a friend to the Constitution. It is a still greater cause of regret, if the distinction be, as it appears to me, altogether fanciful. If a line can be drawn between the powers granted and the rights retained, it would seem to be the same thing, whether the latter be secured by declaring that they shall not be abridged, or that the former shall not be extended. If no such line can be drawn, a declaration in either form would amount to nothing. If the distinction were just it does not seem to be of sufficient importance to justify the risk of losing the amend<sup>ts</sup>., of furnishing a handle to the disaffected, and of arming N. C. with a pretext, if she be disposed to prolong her exile from the Union.

With every sentiment of respect & attachment I am D<sup>r</sup> Sir Yr Obed<sup>t</sup> & hble Serv<sup>t</sup>.

[\[Back to Table of Contents\]](#)

## MEMORANDUM. DECEMBER, 1789.1

Mad. Mss.

On the supposition that the business can be more properly conducted by a private agent at London, than a public minister at a third Court, the letter and instructions for the former character appear to be well adapted to the purpose. If any remark were to be made, it would relate merely to the form, which it is conceived would be made rather better by transposing the order of the two main subjects. The fulfilment of the Treaty already made seems to be primary to the inquiries requisite to a subsequent Treaty.

The reasoning assigned to those who opposed a commercial discrimination, states the views of a part only of that side of the question. A considerable number, both in the Senate & H. of Rep<sup>s</sup>. objected to the measure as defective in energy, rather than as wrong in its principle. In the former, a Committee was appointed, who reported a more energetic plan, and in the latter, leave to bring in a bill, was given to a member who explained his views to be similar. Both of these instances were posterior to the miscarriage of the discrimination first proposed.

As M<sup>t</sup> Jefferson may be daily expected, as it is possible he may bring informations throwing light on the subject under deliberation, and as it is probable use may be made of his own ideas with regard to it, a quere suggests itself, whether the advantage of consulting with him might not justify such a delay, unless there be special reasons for expedition.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON

New York Jan<sup>y</sup>. 24, 1790.

Mad. Mss.

Dear Sir

A dysenteric attack at Georgetown with its effects retarded my journey so much that I did not arrive here till a few days ago. I am free at present from the original complaint, but a little out of order with the piles generated by that or the medicine it required.

The Cato in which were the busts of P. Jones and the box of books for myself never arrived till the day before yesterday, having sprung a leak which obliged her to put into an English Port. Everything consigned to me appears as far as the parcels are yet opened to have escaped injury. I beg you to accept my unfeigned thanks for the proof medals, of which the value is much enhanced in my estimation by the circumstance which demands that tribute. I have supposed that I could not better dispose of the letters to Mr Eppes as well as that to Col: Lewis than by inclosing them to yourself.

The business of Cong<sup>s</sup>. is as yet merely in embryo. The principal subjects before them are the plans of revenue and the Militia, reported by Hamilton & Knox. That of the latter is not yet printed, and being long is very imperfectly understood. The other has scarcely been long enough from the press to be looked over.<sup>1</sup> It is too voluminous to be sent entire by the mail. I will by the next mail commence a transmission in fractions. Being in possession at present of a single copy only I cannot avail myself of this opportunity for the purpose. You will find a sketch of the plan in one of the Newspapers herewith inclosed. Nothing has passed either in Cong<sup>s</sup> or in conversation from which a conjecture can be formed of the fate of the Report. Previous to its being made, the avidity for stock had raised it from a few shillings to 8s or 10s in the pound, and emissaries are still exploring the interior & distant parts of the Union in order to take advantage of the ignorance of holders. Of late the price is stationary, at or fluctuating between the sums last mentioned. From this suspense it would seem as if doubts were entertained concerning the success of the plan in all its parts.

I take for granted that you will before the receipt of this, have known the ultimate determination of the President on your appointment.<sup>2</sup> All that I am able to say on the subject is that a universal anxiety is expressed for your acceptance, and to repeat my declarations that such an event will be more conducive to the general good, and perhaps to the very objects you have in view in Europe, than your return to your former station.

I do not find that any late information has been received with regard to the Revolution in France. It seems to be still unhappily forced to struggle with the adventitious evils of public scarcity, in addition to those naturally thrown in its way by antient prejudices and hostile interests. I have a letter from Hav<sup>r</sup>. of the 13th Nov<sup>r</sup>., which

says that wheat was then selling at 10 liv<sup>rs</sup>. per Bushel, and flour at 50 liv<sup>s</sup>. per 100 , and the demand pressing for all kinds of materials for bread. The letter adds that a bounty of 2 liv<sup>s</sup>. per 100 . marc on wheat & on flour in proportion &c &c was to commence the 1st Dec<sup>r</sup> last & continue till the 1st of July next, in fav<sup>r</sup>. of imports from any quarter of the Globe.

With sincerest affection I am D<sup>r</sup>. Sir Your Obed<sup>t</sup> friend & Serv<sup>t</sup>..

[\[Back to Table of Contents\]](#)

## SPEECHES IN THE FIRST CONGRESS—SECOND SESSION, 1790.

### FEBRUARY 3. NATURALIZATION OF ALIENS<sup>1</sup>

When we are considering the advantages that may result from an easy mode of naturalization, we ought also to consider the cautions necessary to guard against abuses. It is no doubt very desirable that we should hold out as many inducements as possible for the worthy part of mankind to come and settle amongst us, and throw their fortunes into a common lot with ours. But why is this desirable? Not merely to swell the catalogue of people. No, sir, it is to increase the wealth and strength of the community; and those who acquire the rights of citizenship, without adding to the strength or wealth of the community, are not the people we are in want of. And what is proposed by the amendment is, that they shall take nothing more than an oath of fidelity, and declare their intention to reside in the United States. Under such terms, it was well observed by my colleague, aliens might acquire the right of citizenship, and return to the country from which they came, and evade the laws intended to encourage the commerce and industry of the real citizens and inhabitants of America, enjoying at the same time all the advantages of citizens and aliens.

I should be exceedingly sorry, sir, that our rule of naturalization excluded a single person of good fame that really meant to incorporate himself into our society; on the other hand, I do not wish that any man should acquire the privilege, but such as would be a real addition to the wealth or strength of the United States.

It may be a question of some nicety, how far we can make our law to admit an alien to the right of citizenship, step by step; but there is no doubt we may, and ought to require residence as an essential.<sup>1</sup>

### FEBRUARY 11. PUBLIC DEBT<sup>1</sup>

No gentleman, Mr. Chairman, has expressed more strongly than I feel, the importance and difficulty of the subject before us. Although I have endeavored to view it under all its aspects, and analyze it in all its principles, yet have I kept my mind open, and been anxious to aid my own reflections by the reflected light to be expected from gentlemen on this floor who enter into the discussion. For this purpose, I have chosen hitherto rather to be a hearer than a speaker on the subject, and should even at this moment have continued in my seat, but that the turn which the business has taken, renders it requisite for me now, if at all, to trouble the committee with my reflections, and the opinion in which they have terminated.

It has been said, by some gentlemen, that the debt itself does not exist in the extent and form which is generally supposed. I confess, sir, I differ altogether from the gentlemen who take that ground. Let us consider, first, by whom the debt was contracted, and then let us consider to whom it is due. The debt was contracted by the

United States, who, with respect to that particular transaction, were in a national capacity. The Government was nothing more than the agent or organ, by which the whole body of the people acted. The change in the Government which has taken place has enlarged its national capacity, but it has not varied the national obligation, with respect to the engagements entered into by that transaction. For, in like manner, the present Government is nothing more than the organ, or agent, of the public. The obligation which they are under, is precisely the same with that under which the debt was contracted; although the Government has been changed, the nation remains the same. There is no change in our political duty, nor in the moral or political obligation. The language I now use, sir, is the language of the Constitution itself; it declares that all debts shall have the same validity against the United States, under the new, as under the old form of Government. The obligation remains the same, though I hope experience will prove that the ability has been favorably varied.

The next question is, to what amount the public are at present indebted? I conceive the question may be answered in a few words. The United States owe the value they received, which they acknowledge, and which they have promised to pay: what is that value? It is a certain sum in principal, bearing an interest of six per cent. No logic, no magic, in my opinion, can diminish the force of the obligation.

The only point on which we can deliberate is, to whom the payment is really due; for this purpose, it will be proper to take notice of the several descriptions of people who are creditors of the Union, and lay down some principles respecting them, which may lead us to a just and equitable decision. As there is a small part of the debt yet unliquidated, it may be well to pass it by and come to the great mass of the liquidated debt. It may here be proper to notice four classes into which it may be divided:

*First.* Original creditors, who have never alienated their securities.

*Second.* Original creditors who have alienated.

*Third.* Present holders of alienated securities.

*Fourth.* Intermediate holders, through whose hands securities have circulated.

The only principles that can govern the decision on their respective pretensions, I take to be, 1. Public Justice; 2. Public Faith; 3. Public Credit; 4. Public Opinion.

With respect to the first class, there can be no difficulty. Justice is in their favor, for they have advanced the value which they claim; public faith is in their favor, for the written promise is in their hands; respect for public credit is in their favor, for if claims so sacred are violated, all confidence must be at an end; public opinion is in their favor, for every honest citizen cannot but be their advocate.

With respect to the last class, the intermediate holders, their pretensions, if they have any; will lead us into a labyrinth, for which it is impossible to find a clew. This will be the less complained of, because this class were perfectly free, both in becoming and ceasing to be creditors; and because, in general, they must have gained by their speculations.



The only rival pretensions then are those of the original creditors, who have assigned, and of the present holders of the assignments.

The former may appeal to justice, because the value of the money, the service, or the property advanced by them, has never been really paid to them.

They may appeal to good faith, because the value stipulated and expected, is not satisfied by the steps taken by the Government. The certificates put into the hands of the creditors, on closing their settlements with the public, were of less real value than was acknowledged to be due; they may be considered as having been forced, in fact, on the receivers. They cannot, therefore, be fairly adjudged an extinguishment of the debt. They may appeal to the motives for establishing public credit, for which justice and faith form the natural foundation. They may appeal to the precedent furnished by the compensation allowed to the army during the late war, for the depreciation of bills, which nominally discharged the debts. They may appeal to humanity, for the sufferings of the military part of the creditors can never be forgotten, while sympathy is an American virtue. To say nothing of the singular hardship, in so many mouths, of requiring those who have lost four-fifths or seven-eighths of their due, to contribute the remainder in favor of those who have gained in the contrary proportion.

On the other hand, the holders by assignment, have claims, which I by no means wish to depreciate. They will say, that whatever pretensions others may have against the public, these cannot effect the validity of theirs. That if they gain by the risk taken upon themselves, it is but the just reward of that risk. That as they hold the public promise, they have an undeniable demand on the public faith. That the best foundation of public credit is that adherence to literal engagements on which it has been erected by the most flourishing nations. That if the new Government should swerve from so essential a principle, it will be regarded by all the world as inheriting the infirmities of the old. Such being the interfering claims on the public, one of three things must be done; either pay both, reject wholly one or the other, or make a *composition* between them on some principle of equity. To pay both is perhaps beyond the public ability; and as it would far exceed the value received by the public, it will not be expected by the world, nor even by the creditors themselves. To reject wholly the claims of either is equally inadmissible; such a sacrifice of those who possess the written engagements would be fatal to the proposed establishment of public credit; it would moreover punish those who had put their trust in the public promises and resources. To make the other class the sole victims is an idea at which human nature recoils.

A composition, then, is the only expedient that remains; let it be a liberal one in favor of the present holders, let them have the highest price which has prevailed in the market; and let the residue belong to the original sufferers. This will not do perfect justice; but it will do more real justice, and perform more of the public faith, than any other expedient proposed. The present holders, where they have purchased at the lowest price of the securities, will have a profit that cannot reasonably be complained of; where they have purchased at a higher price, the profit will be considerable; and even the few who have purchased at the highest price cannot well be losers, with a well funded interest of six per cent. The original sufferers will not be fully

indemnified; but they will receive, from their country, a tribute due to their merits, which, if it does not entirely heal their wounds, will assuage the pain of them. I am aware, that many plausible objections will lie against what I have suggested, some of which I foresee and will take some notice of. It will be said, that the plan is impracticable; should this be demonstrated, I am ready to renounce it; but it does not appear to me in that light. I acknowledge that such a scale as has often been a subject of conversation, is impracticable.

The discrimination proposed by me, requires nothing more than a knowledge of the present holders, which will be shown by the certificates; and of the original holders, which the office documents will show. It may be objected, that if the Government is to go beyond the literal into the equitable claims against the United States, it ought to go back to every case where injustice has been done. To this the answer is obvious: the case in question is not only different from others in point of magnitude and of practicability, but forces itself on the attention of the committee, as necessarily involved in the business before them. It may be objected, that public credit will suffer, especially abroad; I think this danger will be effectually obviated by the honesty and disinterestedness of the Government displayed in the measure, by a continuance of the punctual discharge of foreign interest, by the full provision to be made for the whole foreign debt, and the equal punctuality I hope to see in the future payments on the domestic debts. I trust also, that all future loans will be founded on a previous establishment of adequate funds; and that a situation, like the present, will be thereby rendered impossible.

I cannot but regard the present case as so extraordinary, in many respects, that the ordinary maxims are not strictly applicable to it. The fluctuations of stock in Europe, so often referred to, have no comparison with those in the United States. The former never exceeded 50, 60, or 70 per cent: can it be said, that because a Government thought this evil insufficient to justify an interference, it would view in the same light a fluctuation amounting to seven or eight hundred per cent.?

I am of opinion, that were Great Britain, Holland, or any other country, to fund its debts precisely in the same situation as the American debt, some equitable interference of the Government would take place. The South Sea scheme, in which a change, amounting to one thousand per cent. happened in the value of stock, is well known to have produced an interference, and without any injury whatever to the subsequent credit of the nation. It is true, that in many respects, the case differed from that of the United States; but, in other respects, there is a degree of similitude, which warrants the conjecture. It may be objected, that such a provision as I propose will exceed the public ability: I do not think the public unable to discharge honorably all its engagements, or that it will be unwilling, if the appropriations shall be satisfactory. I regret, as much as any member, the unavoidable weight and duration of the burdens to be imposed; having never been a proselyte to the doctrine, that public debts are public benefits. I consider them, on the contrary, as evils which ought to be removed as fast as honor and justice will permit, and shall heartily join in the means necessary for that purpose. I conclude with declaring, as my opinion, that if any case were to happen among individuals, bearing an analogy to that of the public, a Court of Equity would interpose for its redress; or that if a tribunal existed on earth, by which nations

could be compelled to do right, the United States would be compelled to do something not dissimilar in its principles to what I have contended for.

## FEBRUARY 18. PUBLIC DEBT

Mr. Madison said, that the opponents of his proposition had imposed on its friends not only a heavy task, by the number of their objections, but a delicate one by the nature of some of them. It had been arraigned as an embarrassing measure which ought to be facilitated, and producing discussions which might end in disagreeable consequences. However painful it might be to contradict the wishes of gentlemen whom he respected, he could promise nothing more in the present case than his endeavors to disappoint their apprehensions. When his judgment could not yield to the propositions of others, the right to make and support his own, was a right which he could never suffer to be contested. In exercising it, he should study to maintain that moderation and liberality which were due to the greatness of the subject before the committee. He felt pleasure in acknowledging that the like spirit had, in general, directed the arguments on the other side. Free discussions, thus conducted, are not only favorable to a right decision, but to a cheerful acquiescence of the mistaken opponents of it. They might have the further advantage of recommending the results to the public, by fully explaining the grounds of it. If the pretensions of a numerous and meritorious class of citizens be not well founded, or cannot be complied with, let them see that this is the case, and be soothed, under their disappointment, with the proof that they have not been overlooked by their country.

He would proceed now to review the grounds on which the proposition had been combated; which he should do without either following those who had wandered from the field of fair argument, or avoiding those who had kept within its limits.

It could not have escaped the committee, that the gentlemen to whom he was opposed, had reasoned on this momentous question as on an ordinary case in a Court of Law; that they had equally strained all the maxims that could favor the purchasing, or be adverse to the original holder; and that they had dwelt with equal pleasure on every circumstance which could brighten the pretensions of the former, or discredit those of the latter. He had not himself attempted, nor did he mean to undervalue the pretensions of the actual holders. In stating them, he had even used as strong terms as they themselves could have dictated; but beyond a certain point he could not go. He must renounce every sentiment which he had hitherto cherished, before his complaisance could admit that America ought to erect the monuments of her gratitude, not to those who saved her liberties, but to those who had enriched themselves in her funds.

All that he wished was, that the claims of the original holders, not less than those of the actual holders, should be fairly examined and justly decided. They had been invalidated by nothing yet urged. A debt was fairly contracted; according to justice and good faith, it ought to have been paid in gold or silver; a piece of paper only was substituted. Was this paper equal in value to gold or silver? No. It was worth, in the market, which the argument for the purchasing holders makes the criterion, no more than one-eighth or one-seventh of that value. Was this depreciated paper freely

accepted? No. The Government offered that or nothing. The relation of the individual to the Government, and the circumstances of the offer, rendered the acceptance a forced, not a free one. The same degree of constraint would vitiate a transaction between man and man before any Court of Equity on the face of the earth. There are even cases where consent cannot be pretended; where the property of the planter or farmer had been taken at the point of the bayonet, and a certificate presented in the same manner. But why did the creditors part with their acknowledgment of the debt? In some instances, from necessity; in others, from a well-founded distrust of the public. Whether from the one or the other, they had been injured; they had suffered loss, through the default of the debtor; and the debtor cannot, in justice or honor, take advantage of the default.

Here, then, was a debt acknowledged to have been once due, and which was never discharged; because the payment was forced and defective. The balance, consequently, is still due, and is of as sacred a nature as the claims of the purchasing holder can be; and if both are not to be paid in the whole, is equally entitled to payment in part. He begged gentlemen would not yield too readily to the artificial niceties of forensic reasoning; that they would consider not the form, but the substance—not the letter, but the equity—not the bark, but the pith of the business. It was a great and an extraordinary case; it ought to be decided on the great and fundamental principles of justice. He had been animadverted upon for appealing to the heart as well as the head: he would be bold, nevertheless, to repeat, that, in great and unusual questions of morality, the heart is the best judge.

It had been said, by a member from Massachusetts, that the proposition was founded on a new principle in Congress. If the present Congress be meant, that is not strange, for Congress itself is new; if the former Congress be meant, it is not true, for the principle is found in an act which had been already cited. After the pay of the army had, during the war, been nominally and legally discharged in depreciated paper, the loss was made up to sufferers.

It had been said, by a member from New York, that this case was not parallel, there being no third party like the present holders of certificates. This objection could not be valid. The Government paid ten dollars worth in fact, but only one to the soldier. The soldier was then the original holder. The soldier assigned it to the citizen; the citizen then became the actual holder. What was the event? The loss of the original holder was repaired, after the actual holder had been settled with, according to the highest market value of his paper.

He did not mean, however, to decide on the whole merits of this last transaction; or to contend for a similitude, in all respects, between the two kinds of paper. One material difference was, that the bills of credit, by more frequent transfers, and by dividing the change of value among a greater number of hands, rendered the effect of less consequence to individuals, and less sensible to the public mind. But this difference, whatever force it might give to the claims of the purchasing holder of certificates, could diminish nothing from the claims of the original holders who assigned them.

It had been said, by another member from Massachusetts, that the old Government did every thing in its power. It made requisitions, used exhortations, and in every respect discharged its duty; but it was to be remembered, that the debt was not due from the Government, but the United States. An attorney, with full powers to form, without the means to fulfil engagements, could never, by his ineffectual though honest efforts, exonerate his principal.

He had been repeatedly reminded of the address of Congress in 1783, which rejected a discrimination between original and purchasing holders. At that period, the certificates to the army, and citizens at large, had not been issued. The transfers were confined to loan-office certificates, were not numerous, and had been, in great part, made with little loss to the original creditor. At present, the transfers extend to a vast proportion of the whole debt, and the loss to the original holders has been immense. The injustice which has taken place has been enormous and flagrant, and makes redress a great national object. This change of circumstances destroys the argument from the act of Congress referred to; but if implicit regard is to be paid to the doctrines of that act, any modification of the interest of the debt will be as inadmissible as a modification of the principal.

It had been said, that if the losses of the original creditors are entitled to reparation, Congress ought to repair those suffered from paper money—from the ravages of war, and from the act of barring claims not produced within a limited time. As to the paper money, either the case is applicable, or it is not; if not applicable, the argument fails; if applicable, either the depreciated certificates ought to be liquidated by a like scale, as was applied to the depreciated money; or the money, even if the whole mass of it was still in circulation, ought now to be literally redeemed, like the certificates. Leaving the gentleman to make his own choice of these dilemmas, he would only add, himself, that if there were no other difference between the cases, the manifest impossibility of redressing the one, and the practicability of redressing the other, was a sufficient answer to the objection. With respect to the towns burnt, and other devastations of war, it was taught, by the writers on the law of nations, that they were to be numbered among the inevitable calamities of mankind. Still, however, a Government owed them every alleviation which it could conveniently afford; but no authority could be found that puts on the same footing with those calamities, such as proceed from a failure to fulfil the direct and express obligations of the public. The just claims barred by the act of limitation, were, in his opinion, clearly entitled to redress. That act was highly objectionable. The public, which was interested in shortening the term, undertook to decide, that no claim, however just, should be admitted, if not presented within nine months. The act made none of the exceptions usual in such acts, not even in favor of the most distant parts of the Union. In many instances, it had been absolutely impossible for the persons injured to know of the regulation. Some of these instances were within his own knowledge. To limit the duration of a law to a period, within which it could not possibly be promulgated, and then take advantage of the impossibility, would be imitating the Roman tyrant, who posted up his edicts so high that they could not be read, and then punished the people for not obeying them.

It has been said that if the purchased certificates were funded at the rate proposed, they would fall in the market, and the holders be injured. It was pretty certain, that the greater part, at least, would be gainers. He believed that the highest market price, especially with the arrears of interest incorporated, well funded at six per cent. would prevent every loss that could justify complaint.

But foreigners had become purchasers, and ought to be particularly respected. Foreigners, he remarked, had themselves made a difference between the value of the foreign and domestic debt; they would, therefore, the less complain of a difference made by Government here. It was his opinion that the terms stated in the proposition would yield a greater profit to the foreign purchasers than they could have got for their money if advanced by them in any of the funds of Europe.

The proposition had been charged with robbing one set of men to pay another. If there were robbery in the case, it had been committed on the original creditors. But, to speak more accurately, as well as more moderately, the proposition would do no more than withhold a part from each of two creditors, where both were not to be paid the whole.

A member from New York has asked, whether an original creditor, who had assigned his certificate, could, in conscience, accept a reimbursement in the manner proposed? He would not deny that assignments might have been made with such explanations, or under such circumstances, as would have that effect; but, in general, the assignments have been made with reference merely to the market value, and the uncertainty of the steps that might be taken by the Government. The bulk of the creditors had assigned under circumstances from which no scruple could arise. In all cases where a scruple existed, the benefit of the provision might be renounced. He would, in turn, ask the gentleman, whether there was not more room to apprehend that the present holder, who had got his certificate of a distressed and meritorious fellow-citizen for one-eighth, or one-tenth its ultimate value, might not feel some remorse in retaining so unconscionable an advantage?

Similar propositions, it was said, had been made and rejected in the State Legislatures. This was not a fact. The propositions made in the State Legislatures were not intended to do justice to the injured, but to seize a profit to the public.

But no petitions for redress had come from the sufferers. Was merit, then, to be the less regarded, because it was modest? Perhaps, however, another explanation ought to be given. Many of the sufferers were poor and uninformed. Those of another description were so dispersed, that their interests and efforts could not be brought forward. The case of the purchasing holders was very different.

The Constitutionality of the proposition had been drawn into question. He asked whether words could be devised that would place the new Government more precisely in the same relation to the real creditors with the old? The power was the same; the obligation was the same. The means only were varied.

An objection had been drawn from the article prohibiting *ex post facto* laws. But as *ex post facto* laws relate to criminal, not civil cases, the Constitution itself requires this definition, by adding to a like restriction on the States an express one against retrospective laws of a civil nature.

It had been said that foreigners had been led to purchase, by their faith in the article of the Constitution, relating to the public debts. He would answer this objection by a single fact: Foreigners had shown, by the market price in Europe, that they trusted the nature of foreign debt more under the old Government, than the nature of the domestic debt under the new Government.

Objections to the measure had been drawn from its supposed tendency to impede public credit. He thought it, on the contrary, perfectly consistent with the establishment of public credit. It was in vain to say, that Government ought never to revise measures once decided. Great caution on this head ought, no doubt, to be observed. but there were situations in which, without some Legislative interposition, the first principles of justice, and the very ends of civil society, would be frustrated. The gentlemen themselves had been compelled to make exceptions to the general doctrine: they would probably make more before the business was at an end.

It had been urged, that if Government should interpose in the present case, as interposition would be authorized in any case whatever where the stock might fluctuate, the principle would apply as well to a fall of sixty or seventy per cent. as to a fall of six hundred or seven hundred per cent. He could not admit this inference. A distinction was essential between an extreme case, and a case short of it. The line was difficult to be drawn; but it was no more incumbent on him than on his opponents to draw it. They themselves could not deny that a certain extremity of the evil would have justified the interposition. Suppose that the distress of the alienating creditors had been ten times as great as it was; that instead of two, three, or four shillings in the pound, they had received a farthing only in the pound; and that the certificates lay now in the hands of the purchasers in that state, or even at a less value, was there a member who would rise up and say, that the purchasers ought to be paid the entire nominal sum, and the original sufferer be entitled to no indemnification whatever?

Gentlemen had triumphed in the want of a precedent to the measure. No Government, it was said, had interposed to redress fluctuations in its public paper. But where was the Government that had funded its debts under the circumstances of the American debt? If no government had done so, there could be no precedent either for or against the measure, because the occasion itself was unprecedented. And if no similar occasion had before existed in any country, the precedent to be set would at least be harmless, because no similar occasion would be likely to happen in this.

If gentlemen persisted, however, in demanding precedents, he was happy in being able to gratify them with two, which, though not exactly parallel, were, on that account, of the greater force, since the interposition of Government had taken place where the emergency could less require them.

The first was the case of the Canada bills. During the war which ended in 1763, and which was attended with a revolution of the Government in Canada, the supplies obtained for the French army in that province were paid for in bills of exchange and certificates. This paper depreciated, and was bought up chiefly by British merchants. The sum and the depreciation were so considerable as to become a subject of negotiation between France and Great Britain at the peace. The negotiations produced a particular article, by which it was agreed by France that the paper ought to be redeemed, and admitted by Great Britain that it should be redeemed at a liquidated value. In the year 1766 this article was accordingly carried into effect by Ministers from the two Courts, which reduced the paper in the hands of the British holders, in some instances, as much as seventy-five per cent. below its nominal value. It was stated, indeed, by the reporter of the case, that the holders of the paper had themselves concurred in the liquidation; but it was not probable that the concurrence was voluntary. If it was voluntary, it shows that they themselves were sensible of the equity of the sacrifice.

The other case was of still greater weight, as it had no relation to war or treaty, and took place in the nation which has been held up as a model with respect to public credit. In the year 1713, the civil list of Great Britain had fallen into arrears to the amount of £500,000. The creditors who had furnished supplies to the Government, had, instead of money, received debentures only from the respective officers. These had depreciated. In that state, they were assigned in some instances; in others, covenanted to be assigned. When the Parliament appropriated funds for satisfying these arrears, they inserted an express provision in the act, that the creditors who had been obliged, by the default of Government, to dispose of their paper at a loss, might redeem it from the assignees by repaying the actual price, with an interest of six per cent., and that all agreements and covenants to assign should be absolutely void. Here then was an interposition on the very principle, that a Government ought to redress the wrongs, sustained by its default, and on an occasion trivial when compared to that under consideration; yet it does not appear that the public credit of the nation was injured by it.

The best source of confidence in Government was the apparent honesty of its views. The proposition could not possibly be ascribed to any other motive than this, because the public was not to gain a farthing by it. The next source was an experienced punctuality in the payments due from the Government. For this support to public credit, he relied on what had been experienced by a part of the foreign creditors; on the provision to be made for the residue; and on the punctuality which, he flattered himself, would be observed in all future payments of the domestic creditors. He was more apprehensive of injury to public credit from such modifications of the interest of the public debt as some gentlemen seemed to have in view. In these the public would be the gainer, and the plea of inability the more alarming, because it was so easy to set up, so difficult to be disproved, and for which, consequently, the temptations would be so alluring

The impracticability of the measure was the remaining ground on which it had been attacked. He did not deny that it would be attended with difficulties, and that perfect justice would not be done. But these were not the questions. It was sufficient that a



grievous injustice would be lessened, and that the difficulties might be surmounted. What he had in view was, that for the conveniency of claimants some authority should be provided, and properly distributed through the Union, in order to investigate and ascertain the claims; and that, for the security of the public, the burden of proof should be thrown on the claimants. A scrutiny on this plan, aided by original settlements in the books of the army department, and the State commissioners, and other office documents, would be a remedy, at once, for all the difficulties stated with regard to fictitious names, certificates issued as money by commissaries and quartermasters, due bills, &c.

For some particular cases, special provisions might be requisite. The case of loan-office certificates, alienated at early periods, before they were much depreciated, fell under this description. Legacies might be another. He would have no objection to some special regulation, as to the payments of debts in certificates to persons within the British lines, said to have been authorized by the laws of New York; though he presumed few such payments had been made, and that of this few the greater part had, by this time, passed from the creditors into other hands. There might be a few other cases equally entitled to some particular attention in the details of the provision. As to the merchants who had compounded for their debts in certificates, or persons who had exchanged bonds for them, it could not be doubted that the transactions had reference to the market value of the paper, and therefore had nothing peculiar in them.

The expense incident to such a plan of investigation ought to form no difficulty. It bears no proportion to the expense already incurred by commissioners, &c., for effecting a less proportion of justice. Rather than justice should not be done, the expense might be taken out of the portion to the original sufferers.

The danger of frauds and perjuries had been worked up into a formidable objection. If these had always been equally alarming, no provision could ever have been made for the settlement or discharge of public debts. He reminded the committee of the frauds and perjuries for which a door had been opened by the final settlements, &c., of the frauds and perjuries inseparable from the collection of imposts and excises; yet these were all submitted to as necessary evils, because justice could not be done without them. The frauds and perjuries incident to this supplementary provision for justice must be very inconsiderable in number; and still more so, when compared either with the object to be obtained, or with the like evils already encountered in pursuit of a like object.

Great ingenuity and information had been exerted by the gentlemen on the other side in raising difficulties. He was sure that, after an adoption of the proposition, the same exertion would be used in removing them, and with such aid, the idea of impracticability would vanish.

## FEBRUARY 24. ASSUMPTION OF STATE DEBTS

Mr. Madison observed on the measure, that the principle of it is in favor of the United States, so far as it may tend to bring about a final settlement and payment of all the accounts between the United States and the individual States. I believe this to be,

however, a work of amazing difficulty, though not absolutely impossible. If it should be accomplished, it must go at least hand in hand with the Secretary's plan; and if it can be accomplished, it will do more honor to the revolution in our Government than almost any other measure.

I acknowledge that I cannot subscribe to all the reasons which some gentlemen urge. I am far from thinking that the assumption of the State debts will be the means of keeping the debts dispersed throughout the States. The assumption of those debts will give them, immediately, the character of debts of the United States; they will be embarked in the same bottom; they will take the same course, and, of consequence, will arrive at the same place where it is acknowledged the domestic debts of the United States, by degrees, have assembled. Whether they will remain in this place, or flow out of the United States altogether, is a question which time will decide. I look for such a revolution of the debt as will place the greatest part of it in foreign hands.

Neither do I subscribe to the opinion of the gentleman from Maryland (Mr. Stone) that the United States can raise more revenue by the exercise of a sole authority, than by the concurrent operation of the General and State Governments. There are, I conceive, objects of taxation of three kinds: The first is that which can only be operated upon by the United States; the second, which can be operated upon by the United States and individual States jointly; and, in the last place, such as can be best operated upon by the individual States only.

An impost or excise can be best regulated by the sole authority of the United States. Some taxes can be collected by the two Governments, without any interference: the land tax generally falls under this description; but in some particular cases, the local authority alone can make the proper provision. I conclude, therefore, that the authority of the United States and individual States, taken together, will draw more revenue than either can separately draw from the same sources.

But if we can accomplish the great object of doing full justice in so complicated a case, perhaps it will reward us for all the difficulties and sacrifices we shall be compelled to make; but, in order to accomplish it, we must go much further than the object of the proposition on the table.

Some gentlemen have made the passage of this resolution a condition of providing for the acknowledged debt of the United States. I think this a preposterous condition, and a language improper to be held, after the decision which has taken place. In priority of time and obligation, we ought to provide for the acknowledged debt. Before we determine to enter into a new obligation, we should see how far we are able to discharge those positively due by us. The connexion between these resolutions is not such as to require or justify the condition. The plan of the Secretary draws a distinction between the two debts.

If we are to make a common stock of the debts of the States, not yet discharged, it can only be justified by securing provision for those which are discharged; with this view, therefore I will now move to add to the resolution these words: "that effectual provision be, at the same time made for liquidating and crediting to the States, the

whole of their expenditure during the war, as the same hath been or may be stated for the purpose: and, in such liquidation, the best evidence shall be received that the nature of the case will permit.”

It may be said, that this is a superfluous condition; because there is a Board in existence charged with the trust; but, sir, their power does not reach the great object contemplated. The limitation act has already barred a great number of equitable claims of one State; perhaps there are other States in the same predicament. I do not know whether the power of the Board has a latitude sufficient to receive such evidence as the nature of the case will permit; and if adequate provision is not made on this head, a great deal more injustice will be done than by a refusal to assum the State debts.<sup>1</sup>

I hope I shall be excused for connecting these provisions; because I think it impossible to separate them, in justice or propriety. If, by providing for the first, we can secure a provision for the last, we may do great honor to the councils of America, and establish its character for equity and justice. If we do not wish to decide precipitately on the question, I shall be content to delay it; and perhaps gentlemen may be impressed with the propriety of doing so till they take a view of the funds which are in contemplation, and see how effective and adequate they are likely to prove.

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<sup>[1]</sup> Edward Carrington wrote to Madison from New York, where he was a delegate in Congress from Virginia, under date September 23, 1787.—“The Gentlemen who have arrived from the Convention inform us that you are on the way to join us—least, however, you may, under a supposition that the State of the delegation is such as to admit of your absence, indulge yourself in leisurely movements, after the fatiguing time you have had, I take this precaution to apprise you that the same scism which unfortunately happened in our State in Philadelphia, threatens us here also—one of our Colleagues Mr. R. H. Lee is forming propositions for essential alterations in the Constitution, which will, in effect, be to oppose it.—Another, Mr. Grayson, dislikes it, and is, at best for giving it only a Silent passage to the States. Mr. H. Lee joins me in opinion that it ought to be warmly recommended to ensure its adoption—a lukewarmness in Congress will be made a ground of opposition by the unfriendly in the States—those who have hitherto wished to bring the conduct of Congress into contempt, will in this case be ready to declare it truly respectable.

“Next Wednesday is fixed for taking under consideration this business, and I ardently wish you could be with us.

“The New York faction is rather active in spreading the seeds of opposition—this, however, has been expected, and will not make an impression so injurious as the same circumstances would in some other States. Colo. Hamilton has boldly taken his ground in the public papers, and, having truth and propriety, on his side, it is to be hoped he will stem the torrent of folly and iniquity.

“I do not implicitly accede, in sentiment, to every article of the scheme proposed by the convention, but I see not how my utmost wishes are to be gratified until I can withdraw from Society—so long as I find it necessary to combine my strength and interests with others, I must be satisfied to make some sacrifices to the general accommodation.”—*Mad. MSS.*

[1] Lee was so far successful in his efforts against the Constitution that he was able to boast that there was “a bare transmission of the Convention plan, without a syllable of approbation, or disapprobation on the part of Congress.”—Hunt’s *Life of Madison*, 168.

[1] September 30, 1787, from Bowling Green, Edmund Randolph wrote that there was much friendship in Baltimore for the Constitution, and that Bladensburg and Alexandria approved it.—*Chicago Hist. Soc. MSS.*

[1] From *The Madison Papers* (1840).

Edmund Pendleton wrote Madison October 8, 1787, describing Randolph and George Mason as deserters from the Constitution (*Chicago Hist. Soc. MSS.*); but it was not really known whether Randolph was for or against the Constitution till a later period, when he came out as one of its warmest advocates. Washington wrote Madison October 10: “From circumstances, which have been related, it is conjectured that the Governor [Randolph] wishes he had been among the subscribing members.”—(Ford’s *Writings of Washington*, xi., 170.)

[1] September 28 the Pennsylvania House of Assembly took up the question of calling a convention to consider the Constitution, as recommended by the Constitutional Convention. Considerable opposition developed, and finally, in order to prevent the question being carried, the opponents absented themselves and broke a quorum. On the following day two of the absentees were forcibly brought into the House, thus making a quorum, and the House ordered the calling of the convention. The proceedings and debate are humorous reading. See McMaster and Stone’s *Pennsylvania and The Federal Constitution*, Chapter ii., p. 27.

[2] “Observations on the Plan of Government submitted to the Federal Convention in Philadelphia, on the 28th of May, 1787. By the Hon. Charles Pinckney, Esq., L.L.D. Delegate from the State of South Carolina. Delivered at different Times in the course of their Discussions. New York:—Printed by Francis Child.”—P. L. Ford’s *Pamphlets on the Constitution*, 419.

[3] Pinckney’s speech on the Mississippi question delivered in Congress in secret session. See Madison’s letter to Jefferson, Oct. 24, and to Washington, Oct 28, *post*. “Mr. C. Pinckney is unwilling, . . . to lose any fame that can be acquired by the publication of his sentiments. If the subject of the navigation of the Mississippi could have remained as silent, and glided as gently down the stream of time for a while, as the waters do that are contained within the banks, it would, I confess, have comported more with my ideas of sound policy, than any decision that can be come to at this

day.”—Washington to Madison Oct. 22, 1787, Ford’s *Writings of Washington*, xi., 175.

[1] See Washington’s letter in Ford’s *Writings of Washington*, xi., 168. Mason sent Washington a copy in his own hand of his “Objections to the Constitution of Government formed by the Convention.” (Wash. MSS.) It was afterward printed in a folio broadside. The draft and printed copy may be seen in Kate Mason Rowland’s *George Mason*, ii., Appendix. See also P. L. Ford’s *Pamphlets on the Constitution*, 326, and Elliot’s *Debates*, i., 494.

[1] This is hardly fair to Mason. The strongest speech delivered against slavery and the slave trade in the constitutional convention was his (*ante*, vol. iv., 266), and he voted with Madison against extending the permissive period for importing slaves. (*ante*, iv., 303, 305.)

[1] Henry wrote Washington, Oct. 19th, that he was not in accord with the constitution, but that “perhaps mature reflection” might produce a change in his sentiments. (Ford’s *Writings of Washington*, xi., 165, n.) He soon became the leader of the opponents of the constitution.

[1] Jefferson’s reply to this letter is dated Dec. 20, 1787, and contains his objections to the Constitution.—P. L. Ford’s *Writings of Jefferson*, iv., 473.

[1] William Hay in Richmond.

[2] Benjamin Franklin.

[3] “In the box of books are some for the colleges of Philadelphia & Williamsburg & two vols of the Encyclopedie for Congress, presented by the author of that part.”—Jefferson to Madison, Aug. 2, 1787, P. L. Ford’s *Writings of Jefferson*, iv., 423.

[1] Italics for cypher.

[1] See *ante* p. 9.

[1] Archibald Stuart’s letter is dated October 21: “From the disposition of some of ye members I fear it will be difficult to execute that Business [calling the convention] without entering into ye merits of ye Constitution itself—

“Mr. Henry has upon all occasions however foreign his subject attempted to give the Constitution a side blow its friends are equally warm in its support & never fail to pursue him through all his windings. From what I can learn ye body of the people approve ye proposed plan of government, it has however no contemptible opposition. Our two dissenting members in ye Convention P. Hy, ye family of Cabells, St. Geo. Tucker, J. Taylor, Mr Nelson, Genl. Nelson, Mr. Ronald. I fear ye Judges I am to except P. Carrington & others to tedious & at the same time too insignificant to mention.”—*Mad. MSS.*

[1] October 23, 1787, Richmond, Edmond Randolph wrote that the first raptures over the constitution were excessive, but that diversity of opinion had appeared after the meeting of the assembly. Henry, William Cabell and Theoderick Bland were opposed. By a unanimous vote a convention to consider the matter had been agreed on, but the final event was uncertain. Henry's opinions were gaining ground, and the bench and bar were generally in the opposition.—*Chicago Hist. Soc. MSS.*

[1] See *ante* p. 9.

[1] Jonathan Dawson, a member of the Assembly. His letter is dated Oct. 19, and is to the same effect as Stuart's (*ante*, p. 40 n.)—*Mad. MSS.*

[1] Tench Coxe wrote from Philadelphia Oct. 21: "The opposition here has become more open. It is by those *leaders* of the constitutional interest, who have acted in concert with the Western interest. *The people* of the party in the city are chiefly fœderal, tho not so I fear in the Counties. However there is no doubt but that a majority, and a very respectable one in our Convention will adopt the Constitution *in toto*. The matter seems likely to be attended with a good deal of warmth in the conversations & publications, perhaps some abuse; but these things will arise on such great occasions."—*Mad. MSS.*

[2] Daniel Carroll wrote "near Geo Town" Oct 28. "If the information I have received relating to this state [Maryland] can be depended on, every thing I hope will be right—Mr. Carroll [Charles of Carrollton] who waited for me, soon after saw Mr. Johnson, & sends me word that he is a warm friend—that Gentleman Messrs. Lee & Potts were chosen the following week representatives with a view principally of preventing Mischief and forwarding this great object. Mr. Chase has I hear published a pt under the Signature of *Caution* which indicates an adverse disposn.. He has bound himself to propose a Convention, & if chosen by that Body will be bound to ratifye the proposed fœderal Governnt., the impression in Baltimore being strong & general in favor of it."—*Mad. MSS.* Samuel Chase's letter appeared in *The Maryland Journal* Oct 12, 1787. See P. L. Ford's *Essays on The Constitution*, 327.

[1] Among the opponents was Joseph Jones. He wrote to Madison from Richmond Oct. 29, 1787, that he saw many objections to the Constitution. The Senate was a legislative, executive and in some respects a judicial body, which was bad. The Senate and President could in some cases even legislate for the Union without the concurrence of the popular branch, and would prove an overmatch for the popular branch. There was strong objection to the appellate jurisdiction over law and fact of the Supreme Court. He should have been pleased to see a bill of rights. The advocates of the new plan were rather diminishing than increasing in number. Nov. 27, Jones wrote that he would receive the Constitution with reluctance.—*Chicago Hist. Soc. MSS.*

[1] James McClurg wrote to Madison from Richmond October 31:

"I am to thank you for the favor you did me in inclosing a copy of the new constitution; which has ever since been the principle topic of political conversation in

every company. It was at first reciev'd with a prepossession in it's favor almost enthusiastic, in our towns especially. The circumstances, however, which in this state party. tended to excite suspicion & jealousy, have caused this disposition to subside sooner than it might otherwise have done; & every man's mind is turn'd to a subtle investigation of ye plan. Various indeed are the objections made to it; but those which strike only the most moderate & most federal, are confin'd chiefly to the Senate. Nor do they object to the equal representation of ye States in ye Senate, so much as to ye additional weight thrown into that branch of ye Legislature, by combining it with ye Presidt. in ye high executive offices of Government. It is supposed that ye obligation of a common Interest may connect them in a dangerous Junto; & on this account they imagine the Senate to be ye worst court that could have been contriv'd for the Impeachment of ye President. They conceive too that ye Senators, in their executive business, may become liable to Impeachment, tho' they cannot see by what court they can be tried.

"I see, in a pamphlet publish'd at Philada in defence of ye Constitution, a serious objection made to ye clause which empowers Congress to regulate the manner, time, & place, of chusing ye representatives of ye people in ye several States. This has been reechoed here; & it has not been easy to find a sufficient [reason] for it's insertion. Some have objected also to the Influence of the Presidt in the house of representatives as capable of producing his reelection, even when the majority of ye constitutional electors are against him.

"These are objections made by men heartily dispos'd towards an energetic federal government, & conceiving yt defects in its frame must be equally obnoxious to ye people of all ye States, they hope to see them amended. For my part, I am so fearful of it's Loss, that I should be willing to trust ye remedy of it's defects to ye reason moderation & experience of ye future Congress. By the by, what is to become of the State debts, when all ye Sources of revenue in ye States are seiz'd by Congress?"—*Mad. MSS.*

[1] See *ante*, vol. ii., 54, n., for Madison's objections to the state constitution in his speech in the Assembly June, 1784. The constitution was not amended till 1829.

[1] A copy of this letter was printed in the *N. Y. Nation*, July 19, 1894.

[2] Archibald Stuart wrote to Madison, Richmond, Va., November 2. "Inclosed are ye Resolutions of Virginia on the subject of ye federal Government—It is generally considered necessary that you should be of the convention, not only that y Constitution may be adopted but with as much unanimity as possible

"For God's sake do not disappoint the anxious expectations of yr friends & let me add of yr Country—The Govr. on his return here was coolly received, upon which it is said he discovd much anxiety, since ye opposition to ye Constitution has been heard of from Different parts of ye State he speaks with more confidence against what he calls ye objectionable parts—He is a candidate for ye convention, Wilkinson & Southall having cleared ye coast for him the former of whom is inimical to ye Govt. proposed." . . .—*Mad. MSS.* The resolutions were passed October 31. Madison's copy



is not among his papers, but the copy sent by George Mason to Washington is among the Washington MSS. and is as follows:

“In the House of Delegates, Thursday, the 25th of October, 1787.

“Resolved, *unanimously*, that the proceedings of the Federal Convention transmitted to the General Assembly through the medium of Congress, be submitted to a Convention of the people for their full and free investigation, discussion, and decision

“Resolved, That every citizen being a freeholder in this commonwealth be eligible to a seat in the convention, and that the people therefore be not restrained in their choice of Delegates by any of those legal or constitutional restrictions which confine them in their choice of members of the Legislature

“*Resolved*, That it be recommended to each county to elect two Delegates, and to each city, town, or corporation entitled or which may be entitled by law to representation in the Legislature, to elect one Delegate to the said Convention

“*Resolved*, That the qualifications of the Electors be the same with those now established by law, for the choice of representatives to the General Assembly.

“*Resolved*, That the elections for Delegates as aforesaid be held at the several places appointed by law for holding the elections for Delegates to the General Assembly, and that the same be conducted by the officers who conduct the Elections for Delegates, and conformably to the rules and regulations thereof

“*Resolved*, That the election for Delegates be held in the month of *March* next, on the first day of the court to be held for each county, city, or corporation respectively, and that the persons so chosen shall assemble at the state-house in the city of Richmond on the first Monday in June next.

“Resolved, That two thousand copies of these resolutions be forthwith printed, and dispersed by the members of the General Assembly among their constituents, and that the Executive transmit a copy of them to Congress, and to the Legislatures and Executives of the respective states. “Teste, John Beckley, C.H.D. 1787, October 31st, Agreed to by the Senate, “H. Brooke, C.S.”—*Wash. MSS.*

[1] The rest of the letter relates to foreign politics and is unimportant.

[1] See Elliot’s *Debates*, i., 494.

[2] “Ye Paper inclosed contained a piece signed *Publius* with which I am extremely pleased, from his introduction I have the highest expectations from him—If it would not impose too great a task upon you I would request that his subsequent papers may be sent to me, the Nos. written by an American Citizen have had good effects & with some other pieces of merit have been printed in a small pamphlet for the information of the people.”—Archibald Stuart to Madison, Nov. 9, 1787. *Mad. MSS.* The first papers of the *Federalist* appeared over the signature “A Citizen of New York,” but



afterwards the pseudonym “Publius” was used. “An American Citizen” was the pseudonym of Tench Coxe. Rev. James Madison of William and Mary wrote to Madison that he was afraid the constitution of the Senate and Executive would lead to aristocracy and tyranny; but Feb. 9, 1788, he wrote that the papers of “Publius” had well nigh worked a conversion in him.—*Mad. MSS.* Of the 85 papers of the *Federalist* Madison wrote twenty-six, Nos. 10, 14, 18, 19, 20, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 62 and 63. It has been disputed, however, that he wrote more than fourteen by himself,—*i. e.*, Nos. 10, 14, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48, or had more than a joint authorship with Hamilton in Nos. 18, 19 and 20. (See Lodge’s *Federalist*, introduction, and P. L. Ford in *The American Historical Review*, ii., 675.) The other numbers given above were, however, stated by Madison to be his (See *post*) and his right to be considered their author has been conclusively established by Professor Edward Gaylord Bourne in *The American Historical Review*, ii., 443, 682.

[1] Evidently in the letter referred to Randolph elaborated his scheme for holding a second constitutional convention to consider amendments to the proposed constitution.

[1] Caleb Wallace, a college-mate of Madison’s, afterwards Judge of the Supreme Court of Kentucky, wrote to him from Fayette County, November 12, relative to the sentiment in that part of Virginia which afterwards became Kentucky:

“I have had an opportunity of conversing only with a few intelligent acquaintances on the merits of the American Constitution recommended by the late Federal Convention who seem to be well pleased therewith, and I wish it may be cordially embraced by every member of the Union.”—*Mad MSS.*

[1] The first two paragraphs of the letter give the news from Europe.

[1] Edmund Randolph

[1] Tench Coxe wrote from Philadelphia Decr. 28, 1787: “Our advices from Georgia recd on Thursday are very agreeable. From them I should not be surprised at an unanimous adoption there.”—*Mad MSS*

[1] Archibald Stuart wrote from Richmond Dec. 2, 1787: “A Resolution was brought forward the day before yesterday for paying the members to Convention in June their Wages & securing to them Certain privileges &c. seconded by P. H. & Mason which after making Provision for ye purposes aforesaid goes farther & sais that should ye convention think proper to propose Amendments to ye Constitution this state will make provision for carrying the same into effect & that Money shall be advanced for ye support of Deputies to the Neighbouring States &c.—This many of us opposed as improper & proposed that the same provision should be made in General terms which should not discover the sense of the house on ye Subject but after a Long Debate the point was carried against us by a Majority of sixteen—In the Course of ye Debate P. Hy. Observed that if this Idea was not held forth our southern neighbours might be driven to despair seeing no door open to safety should they disapprove the new

Constitution—Mason on the subject was less candid than ever I knew him to be—from the above mentioned Vote there appears to be a Majority vs ye [new] Govt. as it now Stands & I fear since they have discovered their Strength they will adopt other measures tending to its prejudice from this circumstance I am happy to find most of ye States will have decided on ye question before Virginia for I now have my doubts whether She would afford them as usual a good Example.”

Henry Lee wrote Dec. 7, 1787, from Stratford: “It is with real grief I inform you that by a late vote of the Assembly of Virga on a collateral question, they have manifested hostility to the new constitution—Henry whose art is equal to his talents for declamation, conducted this business & gained a majority on the vote of sixteen

“We are told by gentlemen from Richmond, that the whole district South of the James river are in the opposition—In this corner the people are warmly attached to the new system, but we are small in size, being only four or five countys

“I saw Genl Washington on my return, he continues firm as a rock, the Pages are all zealous abettors of the constitution so is R. Wormely & F. Lightfoot Lee—Both of these gentlemen are candidates for the convention—the last is an important acquisition & breaks the influence of the Stratford Lees—It becomes you to return in time to secure your election. If possible let me see you—I have offered myself for Westmoreland, but such is the number who contend for this distinction, it is not probable that I may succeed. God bless you.”

From Rose Hill, Dec. 16, Lawrence Taliaferro wrote

“I am sorry to inform you that the Federal system is deeply [?] slandered by some very able men in this State tho we have some very good & able men that are Friends of that & their Country & wish it to be adopted as speedily as Posable . . . It is the sincere Wish & desire of myself & a Great many others that you will also represent the People of this County in the Spring Convention & we Earnestly beg that you will be here some time before the election . . . I dare say you will be greatly suppd to hear that it is report’d that you are oposd. to the Sistem & I was told the other day that you were actually writing a peice against it.”—*Mad MSS.*

[1] See Elliot’s *Debates*, i., 503.

[1] Then Vice-Consul-General of France “with Congress.” He was Consul-General for New York, Pennsylvania, New Jersey, and Delaware from October 17, 1792.

[1] Delaware was the first State to ratify the Constitution—December 7, 1787. Pennsylvania, the second State, ratified December 12th; New Jersey, the third State, December 18th.

[1] The Privy Council or Council of State of Virginia consisted of eight members. Every two years two members were removed by joint ballot of the Assembly and were ineligible for re-election for the next three years, their places being filled by

election by the Assembly. See *ante*, Vol. II., p. 40, for Madison's opinion of the Council.

[1] Randolph's letter was dated October 16, 1787, but not published until some weeks later. It may be seen in *Elliot's Debates*, 1., 482. About the time of this letter of Madison's he became more definitely arrayed against the opponents of the Constitution. See Conway's *Randolph*, 99; also *ante*, p. 8, n.

[1] Connecticut was the fifth State to ratify the Constitution—January 9, 1788.

[1] Georgia ratified January 2, 1788, the fourth State.

[1] The letter related to the state of public opinion in Virginia. "That the opposition should have gained strength at Richmond," it said, "among the members of Assembly, is not, if true, to be wondered at, when we consider that the great adversaries to the Constitution are all assembled at that place, acting conjointly, with the promulgated sentiments of Colonel Richard Henry Lee as auxiliary."—*Writings* (Ford), xi., 207.

[2] December 27, 1787, Edmund Randolph wrote that the current was against the Constitution; that Gen. Wilkinson was violently opposed to it.—*Chic. Hist. Soc. MSS.*

Henry Lee wrote on his way home from Richmond, Dec. — 1787:

"Three sets of men are to be found on the question of government. One opposed to any system, was it even sent from heaven which tends to confirm the union of the States—Henry is the leader of this band—Another who would accept the new Constitution from conviction of its excellence, or any federal system, sooner than [?] the dissolution of the confederacy, & a third who dislike the proposed government, wish it amended, but if this is not practicable, would adopt it sooner than jeopardize the Union—Mason may be considered as the head of this set—

"From such a discordance in opinion, I believe if the friends to the govt. in the State Convention should manage wisely, & if nine States should have ratified it before Virga. assembles that we may count on the dominion as an accepting State. Your county is divided like many others in their sentiments—Barber & Burnley are warmly opposed & may consider it their duty to prevent your election. . . . If you think you may fail in Orange several countys in Kentucky would on application by let. elect you."

Archibald Stuart wrote from Richmond, January 14.

"The anti-constitutional Fever which raged here some time ago begins to abate & I am not without hopes that many patients will be restored to their senses—Mr. Page of

Rosewell has become a convert. Gen. Nelson begins to view the Govt with a more favorable eye & I am told St. G. Tucker has confessed his sins.

“Publius is in general estimation, his greatness is acknowledged universally—Colo Carrington has sent me his numbers as low down as ye. 24th. inclusive which Dixon has been printing for some time past & should he leave New York I must rely upon yourself & Mr. Brown to transmit the remainder of them as they shall appear—They may be directed to me or in my absence to Mr. John Dixon—. . . .

“Pray let nothing divert you from coming to ye. Convention—”

Edward Carrington wrote from Richmond, January 18.

“The leaders of the opposition appear generally to be preparing for a decent submission—the language amongst them is, that amendments must be tried if there should, at the sitting of the convention, be a prospect of carrying them down in a respectable number of States, but that should this appear improbable, the constitution must be adopted—I have seen but few of these Gentlemen but have good information as to most of their dispositions upon the subject. The Governour’s letter to the Public, which you doubtless have before this seen, marks out this conduct, and I think that publication will be of great service. Mr. Henry, it is said, is determined to amend & leave the fate of the measure to depend on all the other States conforming to the Will of Virginia. His language is, that the other States cannot do without us, and therefore we can dictate to them what terms we please—should they be weak enough to stand out, we may alone enter into foreign alliances—the value of our staple is such that any nation will be ready to treat with us separately—I have not heard of any who have shewn a disposition to go this length with him, except Mr. Bullet whom I saw at Dumfries, and I think at the day of trial but few will be found so mad.

“Mr. B. Randolph whose apprehensions from the Gigantic features in the constitution, appear to be as high as any whatever, is of opinion with the Governor—He thinks that should nine states have adopted when the Convention of Virginia meets, every idea of amendment ought to be abandoned, but that should there be a less number the attempt must be made, but with such caution as not to hazard entirely the fate of the measure. I am persuaded that this will become the prevailing sentiment amongst the malcontents, and in that case there will be tolerable safety, because I see no prospect of more than Rhode Isld. N. York & North Carolina holding out—the latter, it is said, & I believe with truth, have, out of respect for Virginia, deferred her convention until after the time appointed for ours to sit.”—*Mad. MSS.*

[1] The original of the letter is among the Madison MSS. Madison has given the whole of it here with perfect accuracy.

When King left New York he wrote to Madison Jany. 6, 1788, asking him to furnish him with information to use in the Massachusetts Convention.—*Mad. MSS.*

[1] The preceding portion of King’s letter is as follows

“We make but slow progress in our convention, the Friends of the constitution who in addition to their own weight, are respectable as they represent a very large proportion of the Good sense and Property of this state, have the Task not only of answering, but also of stating and bringing forward, the objection of their Opponents—The opposition complain that the Lawyers, Judges, Clergymen, Merchants and men of Education are all in Favor of the constitution, & that for this reason they appear to be able to make the worst, appear the better cause—But say they if we had men of this Description on our side we should alarm the People with the Imperfections of the constitution, & be able to refute the Defense set up in its favor—Notwithstanding the superiority of Talents in favor of the constitution yet the same infatuation, which prevailed not many months since in several counties of this state, and which emboldened them to take arms agt the Government seems to have an uncontrollable authority over a numerous part of our Convention—their objections are not directed against any part of the constitution, but their opposition seems to arise from an opinion, that is immoveable, that some injury is plotted against them, that the system is the production of the Rich, and ambitious; that they discern its operation, and that the consequence will be, the establishment of two orders in the Society, one comprehending the opulent & Great, the other the poor and illiterate—

“The extraordinary union in favor of the constitution in this state, of the wealthy and sensible part of it is a confirmation of their Opinions and every Exertion hitherto made to eradicate it has been in vain.”—*Mad. MSS.*

[1] The letter is not among the Madison MSS.

[1] The letter adds: “But his character is not entirely free from a portion of caprice—this however is confidential—Farewell.”—*Mad. MSS.*

[2] Massachusetts adopted the Constitution February 7.

[1] The following final sentence is omitted by Madison: “Gerry has kept at Cambridge & our opponents say nothing of his reinvitation.” Madison sent the letter to Alexander Hamilton to read with this note added: “Read the above immediately & send it back by the bearer who will wait for it. I shall be glad of the newspaper in about an Hour & an half.”—*Mad. MSS.*

[1] Following is King’s letter, dated Boston, Feb. 6, 1788:

“I have the satisfaction to inform you that on the final Question of assenting to & ratifying the constitution our convention divided, and 187 were in the affirmative & 168 in the negative: the majority although small is extremely respectable, and the minority are in good temper; they have the magnanimity to declare that they will devote their lives & property to support the Government, and I have no doubt but the ratification will be very cordially and universally approved through our State—N. Hampshire will undoubtedly decide in favor of the Constitution—Their convention met to-day. God bless you.”—*Mad. MSS.*

[1] Madison's father wrote to him from Orange, January 30:

“Col. Barbour I have not seen, he was not at Court; probably was preparing for his Mother's funeral, who was to be interred the day after. He is much opposed to it, and is a candidate for the Convention. I believe there were but few that disapproved of it at first, in this County; but several being at Richmond with their Tobo at the time the Assembly was sitting, & hearing the many objections made to it, altered their opinions, & have influenced others who are no better acquainted with the necessity of adopting it than they themselves; and the pieces published against it, have had their intended effect with some others.

“The Baptists are now generally opposed to it, as it is said, Col. Barbour has been down on Pamunky amongst them, & on his return, I hear, publicly declared himself a candidate, I suppose, on the encouragement he met with from the Antifederalists. I do not know at present any other Candidates but yourself & Mr. Gordon, who is a warm friend to the Constitution, & I believe no others that are for it will offer. I think you had better come in as early in March as you can; many of your friends wish it; there are some who suspend their opinion till they see you, & wish for an explanation, others wish you not to come, & will endeavor to shut you out of the Convention, the better to carry their point.”—*Mad. MSS.*

[1] January 29, 1788, Pendleton had written to Madison from “Edmundsburg,” saying that he favored the adoption of the constitution, but was open to conviction after hearing all sides. He earnestly urged Madison to come home.—*Chicago Hist. Soc. MSS.*

[1] Cyrus Griffin to Madison, New York, March 24, 1788: “The adjournment of N. Hampshire, the small majority of Massachusetts, a certainty of rejection in Rhode Island, the formidable opposition in the State of N. York, the convulsions and committee meetings in pennsylvania, and above all the antipathy of Virginia to the system, operating together, I am apprehensive will prevent the noble fabrick from being erected.”—*Mad. MSS.*

[1] Alexander Hamilton to Madison, New York, April 3, 1788:

“I think however the principles we talked of, in respect to the legislative authorities, are not only just but will apply to the other departments. Nor will the consequences appear so disagreeable, as they may seem at first sight, when we attend to the true import of the rule established. The States *retain* all the authorities they were *before* possessed of not alienated in the three modes pointed out; but this does not include cases which are the *creatures* of the New Constitution. For instance, the crime of treason against the United States *immediately*, is a crime known only to the New Constitution There *was* no power in the state constitution to pardon that crime—There will therefore be none under the new &c. This or something like it seems to me to afford the best solution of the difficulty.

“I send you the Federalist from the beginning to the conclusion of the commentary on the Executive branch. If our suspicions of the author be right, he must be too much



engaged to make a rapid progress in what remains.

“—The Court of Chancery & a Circuit Court are now Sitting.

“We are told that your election has succeeded, with which we all felicitate ourselves. I will thank you for an account of the result generally.

“In this state our prospects are much as you left them—A moot point which Side will prevail. Our friends to the northward are active. I remain &c.”—*Mad. MSS.*

[1] George Nicholas wrote to Madison from Charlottesville, April 5, that there was a slight majority of federalists in the members elected to the Virginia convention, but that some of them would, he feared, be unwilling “to give the best hand” to the Constitution, unless the conduct of the other States justified it. If the Maryland and South Carolina conventions adjourned until Virginia had spoken the influence against favorable action by Virginia would be serious. Would Madison, therefore, impress upon his friends in those States the necessity for favorable action. Mr. Pendleton was being urged to favor amendments before ratification, but Madison was expected to prevent any change in his views. The opposition of Mason was due to his irritation and to the “vain opinion he entertains (which has industriously been supported by some particular characters) that he has influence enough to dictate a constitution to Virginia, and through her to the rest of the union. Mr Henry is now almost avowedly an enemy to the union . . . His real sentiments will be industriously concealed, for so long as he talks only of amendments such of the friends to the union, as object to particular parts of the constitution will adhere to him, which they would not do a moment, if they could be convinced of his real design. I hope to be possessed of sufficient information by the meeting of the convention to make that matter clear, and if I am it shall not be withheld. The opposition except from that quarter will be feeble. Our friend E. R. [andolph] talks of a compromise between the friends of the union, but I know of but one that can safely take place, and that is on the plan of the Massachusetts convention: it appears to me impossible that another continental convention assembled to deliberate on the whole subject, should ever agree on any general plan.

“Let the decision of our convention be what it may, I think it will be of great consequence that an address to the people at large should go forth from such of the members as are friends to the constitution: if this had been done in Pennsylvania, it would have counteracted much of the poison contained in the *dissent of the minority* . . . but if this government is rejected, America will be left without one, at least only in possession of one which all parties agree is insufficient; it will therefore be our duty to state to the people the necessity of a change and place in its true point of view the one now offered. Nine tenths of the people are strong friends to the union, and such of them as are opposed to the proposed government are so upon suppositions not warranted by the thing itself. No person in the convention can so well prepare this address as yourself, and if it appears as important in your eyes as it does to me, I hope that you will undertake it. The greater part of the members of the convention will go to the meeting without information on the subject, it will be very important to give this as early as may be, and if possible before—they go from home. *Publius* or *the*

*fæderalist* if it is published in a pamphlet, would do it better than any other work; if it is published can I get the favor of you to procure me thirty or forty copies of it, that I may distribute them . . .

“The only danger I apprehend is from the Kentucky members; and one consideration only has any weight with them: a fear that if the new government should take place, that their navigation would be given up.”—*Mad. MSS.*

[1] “That there shall be one representative to every thirty thousand persons according to the Census mentioned in the Constitution until the whole number of Representatives amounts to two hundred.”—*Documentary History of the Constitution*, ii., 94.

[1] “Congress shall at no time consent that any person holding an office of trust or profit under the United States shall accept of a title of nobility or any other title or office from any King, prince or foreign state.”—*Documentary History of the Constitution*, ii., 95.

[1] Cyrus Griffin, New York, April 14, 1788, wrote to Madison that Madison was considered “the main pillar” in the constitution’s support. “. . . in point of virtues and real abilities the federal members [of the Virginia convention] are much superior—Henry is mighty and powerful but too interested—Mason too passionate—the Governor by nature too timid and undecided—and Grayson too blustering.”—*Mad. MSS.*

[1] Monroe opposed the ratification in the convention.

[1]

## TO GEORGE WASHINGTON

Richmond, June 4, 1788

Dear Sir,—

Your favor of the 2d Ulto was not recd till my arrival here on monday evening. I found contrary to my expectation that not only a very full house had been made on the first day, but that it had proceeded to the appointment of the President & other officers. Mr. Pendleton was put into the chair without opposition. Yesterday little more was done than settling some forms and Resolving that no question general or particular should be propounded till the whole plan should be considered & debated, clause by clause. This was moved by Col. Mason, and contrary to his expectations, concurred in by the other side. Today the discussions commenced in Committee of the whole. The Governor has declared the day of previous amendments passed, and thrown himself fully into the federal scale. Henry & Mason made a lame figure & appeared to take different and awkward ground. The federalists are a good deal elated by the existing prospect. I dare not however speak with certainty as to the decision.



Kentucky has been extremely tainted, is supposed to be generally adverse, and every piece of address is going on privately to work on the local interests & prejudices of that & other quarters. In haste I am

Dr Sir yrs affecty.—*Wash MSS.*

The proceedings of the Convention were reported by Robertson and published at Petersburg, Va., 1788, under the title: “Debates and other Proceedings of the Convention of Virginia, convened at *Richmond* on *Monday* the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention.” Elliot’s *Debates* (1836), vol. iii., inaccurately reprints this volume. Hugh Blair Grigsby’s “Virginia Convention of 1788,” Virginia Historical Collections IX., is a skilful and valuable narrative account of the principal characters in the convention and the debates. The MS. “Journal of the Convention of Virginia” is in the Virginia State Library, but it contains none of the debates. Madison’s speeches, as given by Robertson and reproduced in the text of this volume, were, he declared in after life, reported with reasonable accuracy.

The convention first met, Monday, June 1, in the State House at Richmond, but the hall was too small to accommodate the 170 delegates and the numerous spectators, and an adjournment was taken to the “New Academy on Shockoe Hill,” a building erected by Chevalier Quesnay for a French-American University. See Hunt’s *Life of Madison*, 148 *et seq.*

[2] He was first on his feet the day before (June 4), when he briefly replied to Mason, merely asserting that power to lay taxes was just, that the Constitution would not eventuate in consolidation and that representation was sufficient.

[1] The notes for this speech are found in the Mad. MSS.:

Direct taxation necessary—practicable—safe—œconomical

I. necessary

3—as less mutable—& less exposed to speculators &c.

[1]

TO GEORGE WASHINGTON.

Richmond, June 13th, 1788.

Dear Sir,—

Your favor of came to hand by the mail of Wednesday. I did not write by several late returns for two reasons: one the improbability of your having got back to Mount Vernon; the other a bilious indisposition which confined me for several days. I am again tolerably well recovered.

Appearances at present are less favorable than at the date of my last. Our progress is slow and every advantage is taken of the delay, to work on the local prejudices of particular sets of members. British debts, the Indiana claim, and the Miippi are the principal topics of private discussion & intrigue, as well as of public declamation. The members who have served in Congress have been dragged into communications on the first, which could not be justifiable on any other occasion if on the present. There is reason to believe that the event may depend on the Kentucky members; who seem to lean more agst than in favor of the Constitution. The business is in the most ticklish state that can be imagined. The majority will certainly be very small on whatever side it may finally lie; and I dare not encourage much expectation that it will be on the favorable side.

Oswald of Philada, has been here with letters for the anti federal leaders from N. York and probably Philada. He staid a very short time here during which he was occasionally closeted with H—y M-s-n &c. I learn from N. York that the elections have proved adverse to the Constitution.

Yours AffectY.—*Wash. MSS.*

[1]

TO GEORGE WASHINGTON

Richmond, June 18, 1788.

Dear Sir,—

No question direct or indirect has yet been taken by which the state of parties could be determined, of course each is left to enjoy the hopes resulting from its own partial calculations. It is probable the majority on either side will not exceed 3, 4, 5 or 6. I indulge a belief that at this time the friends of the Constitution have the advantage in point of number. Great moderation as yet marks our proceedings. Whether it be the effect of temper, or of the equality of forces and the uncertainty of victory, will be seen by the event. We are at present on the Executive Department. Mr. H—y has not made any opposition to it, though it was looked for. He may however still mean to make one; or he may lay by for an exertion against the Judiciary. I find myself not yet restored and extremely feeble.

With my affecte regards I remain, Yrs.—*Mad. MSS.*

[1]

TO JAMES MADISON.

Richmd June 20, 1788.

HonD Sir,—

No question has yet been taken by which the strength of parties can be determined. The calculations on different sides do not accord; each making them under the bias of their particular wishes. I think however the friends of the Constitution are most confident of superiority, and am inclined myself to think they have at this time the advantage of 3 or 4 or possibly more in point of number. The final question will probably decide the contest in a few days more. We are now on the Judiciary Department, against which the last efforts of the adversaries seem to be made. How far they will be able to make an impression, I cannot say. It is not probable that many proselytes will be made on either side. As this will be handed to you at Court you can make its contents known to Majr Moore and other friends to whom I have not time separately to write. With my regards to my mother & the family I remain yr affec. Son.—*Mad. MSS.*

[\[1\]](#)

TO GEORGE WASHINGTON.

Richmond, Tuesday, June 25 [23]

Dear Sir,—

We got through the Constitution by paragraphs today. Tomorrow some proposition for closing the business will be made. On our side a ratification involving a few declaratory truths not affecting its validity will be tendered. The opposition will urge previous amendments. Their conversation today seemed to betray despair. Col. Mason in particular talked in a style which no other sentiment could have produced. He held out the idea of civil convulsions as the effects of obtruding the Government on the people. He was answered by several and concluded with declaring his determination for himself to acquiesce in the event whatever it might be. Mr. H—y endeavored to gloss what had fallen from his friend, declared his aversion to the Constitution to be such that he could not take the oath; but that he would remain in peaceable submission to the result. We calculate on a majority, but a bare one. It is possible nevertheless that some adverse circumstance may happen. I am, Dr Sr in haste Yrs entirely.—*Wash. MSS.*

TO AMBROSE MADISON.

Richmd June 24, [1788]

Dear BroR.

Yesterday carried us through the discussion of the constitution by paragraphs. Today will probably carry forward some proposition and debates relative to the final step to be taken. The opposing party will contend for previous amendments. On the other

side a conciliatory declaration of certain fundamental principles in favor of liberty, in a form not affecting the validity and plenitude of the ratification, will be proposed. The final question is likely to be decided by a small majority. I do not know that either party despairs absolutely. The friends of the Convention seem to be in the best spirits; and I hope have the best reason to be so. At the same time it is not impossible they may miscalculate their number, and that accidents may reduce it below the requisite amount, two members on that side, who went away with a purpose of returning are still absent, it is said; and a third is so ill as to render his vote somewhat precarious. It may be questioned whether on any estimate this loss if it shd. continue may not endanger the results.

Yours AffY. —*N. Y. Pub. Lib. MSS.*

TO GEORGE WASHINGTON.

Richmond, June, 25 1788.

Dear Sir,—

On the question to-day for *previous* amendments, the votes stood 80 ays—88 noes. On the final question the ratification passed 89 ayes—79 noes. Subsequent amendments will attend the act; but are yet to be settled. The temper of the minority will be better known to-morrow. The proceedings have been without flaw or pretext of it; and there is no doubt that acquiescence if not cordiality will be manifested by the unsuccessful party. *Two* of the leaders however betray the effect of the disappointment, so far as it is marked in their countenances.

In Haste, Yrs.

—*Mad. MSS.*

[1] Condorcet's work on the application of the mathematical theory of probabilities to judicial decisions first appeared in 1785.

[1] Hamilton wrote that he thought New York would be willing to ratify the constitution and come into the Union with the reservation of a right to recede in case the amendments she proposed were not adopted within a given period.—*Works of Alexander Hamilton* (Lodge), viii, 191.

[1] Italics for cypher.

[2] June 21, really.

[3] May 23.

[1] North Carolina did not ratify until November 21, 1789.

[2] Robert R. Livingston.

[1] New York ratified July 26.

[1] The struggle to secure the capital on the banks of the Potomac River began in Congress with a resolution offered May 10, 1787, by Richard Henry Lee in favor of Georgetown (*Journals of Congress*, Ed. 1801, xii, 51). The progress of the question up to the time the new government went into operation is accurately traced in Madison's letters. See also *Journals of Congress*, Ed. 1801, xiii, 62, *et seq.*

[1] Italics for cypher.

[1] This letter endorsed by Washington 11 Aug., 1788.

[1] Rhode Island did not ratify until May 29, 1790.

[1] New York's ratification was coupled with an expression of "full confidence" that amendments would be accepted and proposed a second federal convention to formulate them, and a circular inviting the cooperation of the other States was sent out.—Hunt's *Life of Madison*, 159.

[1] Italics for cypher.

[1] Italics for cypher.

[2] Madison sent the resolutions to Washington Sept. 26:

"I subjoin two resolutions lately taken by Congress in relation to the Mississippi, which I hope may have a critical and salutary effect on the temper of our Western Brethren.

"In Congress, SepR 16

"On report of the Committee, consisting of Mr. Hamilton, Mr. Madison, Mr. Williamson, Mr. Dane, and Mr. Edwards, to whom was referred the Report of the Secy for For. Affairs on a motion of the Delegates of North Carolina, stating the uneasiness produced by a Report 'that Congress are disposed to treat with Spain for the surrender of their claim to the navigation of the River Mississippi,' and proposing a Resolution intended to remove such apprehensions.

"*Resolvd*, that the said Report not being founded in fact, the Delegates be at liberty to communicate all such circumstances as may be necessary to contradict the same and to remove misconceptions.

“*Resolvd*, that the free navigation of the River Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such.

“In addition to these resolutions which are not of a secret nature, another has passed arresting all negotiations with Spain, and handing over the subject thus freed from bias from any former proceedings, to the Ensuing Government. This last Resolution is entered on the Secret journal, but a tacit permission is given to the Members to make a *confidential* use of it.”—*Wash. MSS.*

[1] Italics for cypher.

[1] This letter was once the property of Guizot. It passed into the hands of Alfred Bovet. of Paris, a collector of MSS., and later into the collection of Mr Alexander Meyer Cohn, of Berlin, who has kindly furnished the editor with a copy, at the request of the American Ambassador at Berlin, His Excellency Charlemagne Tower.

[1] Italics for cypher.

[1] Italics for cypher.

[1] The questions were accurately transcribed by Madison in the margin opposite the answers. The questions themselves were preceded by the following: “Questions, dont M. le Cte de Moustier prie Monsieur Madison de vouloir bien lui adresser le solution, quand ses occupations le lui permettront.” Nothing came of this tentative negotiation evidently begun with the idea of some sort of reciprocity treaty between the United States and France; and by act of July 7, 1798, Congress abrogated all treaties with France, this being the only instance of such sweeping action towards a foreign country by this government.

[1] The paper is endorsed: “Remarks on Mr Jefferson’s draught of a constitution—sent from N. York to Mr. Brown Octr. 1788—see his letters to J. M. on the subject.” John Brown wrote to Madison July 7 and August 26, 1788, relative to a projected constitution for Kentucky, and in the latter letter said:—“also (if your leisure will permit) for some remarks upon Jefferson’s plan of Govt denoting such alterations as would render it more applicable to the District of Kentucky. These might be of the greatest consequence to that country.”—*Mad. MSS.* The Jefferson draft may be seen in *Writings of Jefferson* (P. L. Ford), ii., 7.

[1] N. York, where these remarks were penned.—Madison’s note.

[1] October 27, Henry introduced in the Virginia Assembly resolutions setting forth that “many of the great, essential, and unalienable rights of freemen, if not cancelled, were rendered insecure under the Constitution,” and that application should therefore be made to the first congress under the constitution “to call a second convention for proposing amendments to it.” The resolutions and an address transmitting them to the States were adopted by an overwhelming vote.—George Lee Turberville to Madison, October 27 and November 10, 1788, N. Y. Pub. Lib. (Lenox) MSS.

[1] For Senator, Madison received 77 votes, Richard Henry Lee 98, and William Grayson, 86.

[1] See letters May 23 & 27 1789 for a more favorable view of him & Mad: Brehan.—Madison's note.

[2] Italics for cypher.

[1] In districting the State Orange County was included in seven other counties six of which were thought to be opposed to Madison. This is supposed to have been the earliest instance of "Gerrymandering." Monroe was selected to oppose Madison, who was nevertheless elected by a considerable majority, Feb. 2, 1789.

[2] From *Madison's Works*. The letter is not found in the Mad. MSS.

[1]

Stephens Cabel

109	71	Albemarle.
	270	Amherst.
15	66	Fluvanna.
268	10	Spotsylv <sup>a</sup> .
113	4	Orange.
177	26	Culpeper.
4	157	Buckingham.
686	604	
	82	bal in favor of Stevens.

The unanimity in Amherst was produced by a previous declaration, as I am told, of Col. Cabel on the subject of the Presidt, which satisfied the federal party. Little attention seems to have been paid anywhere to the vice president. Among the bulk of the people, the choice of the President has been regarded as the sole subject of the election.—Madison's note.

[1]

TO GEORGE EVE.

January 2d, 1789

Sir,

Being informed that reports prevail not only that I am opposed to any amendments whatever to the new federal Constitution, but that I have ceased to be a friend to the rights of Conscience; and inferring from a conversation with my brother William, that you are disposed to contradict such reports as far as your knowledge of my sentiments may justify, I am led to trouble you with this communication of them. As a private



Citizen it could not be my wish that erroneous opinions should be entertained, with respect to either of those points, particularly with respect to religious liberty. But having been induced, to offer my services to this district as its representative in the federal Legislature, considerations of a public nature make it proper that, with respect to both, my principles and views should be rightly understood.

I freely own that I have never seen in the Constitution as it now stands those serious dangers which have alarmed many respectable Citizens. Accordingly whilst it remained unratified, and it was necessary to unite the States in some one plan, I opposed all previous alterations as calculated to throw the States into dangerous contentions, and to furnish the secret enemies of the Union with an opportunity of promoting its dissolution. Circumstances are now changed. The Constitution is established on the ratifications of eleven States and a very great majority of the people of America; and amendments, if pursued with a proper moderation and in a proper mode, will be not only safe, but may serve the double purpose of satisfying the minds of well meaning opponents, and of providing additional guards in favour of liberty. Under this change of circumstances, it is my sincere opinion that the Constitution ought to be revised, and that the first Congress meeting under it ought to prepare and recommend to the States for ratification, the most satisfactory provisions for all essential rights, particularly the rights of Conscience in the fullest latitude, the freedom of the press, trials by jury, security against general warrants &c. I think it will be proper also to provide expressly in the Constitution, for the periodical increase of the number of Representatives until the amount shall be entirely satisfactory, and to put the judiciary department into such a form as will render vexatious appeals impossible. There are sundry other alterations which are either eligible in themselves, or being at least safe, are recommended by the respect due to such as wish for them.

I have intimated that the amendments ought to be proposed by the first Congress. I prefer this mode to that of a General Convention—1st. because it is the most expeditious mode. A Convention must be delayed until ? of the State Legislatures shall have applied for one, and afterwards the amendments must be submitted to the States; whereas if the business be undertaken by Congress the amendments may be prepared and submitted in March next. 2dly. because it is the most certain mode. There are not a few States who will absolutely reject the proposal of a Convention, and yet not be averse to amendments in the other mode.—lastly, it is the safest mode. The Congress who will be appointed to execute as well as to amend the Government, will probably be careful not to destroy or endanger it. A Convention, on the other hand, meeting in the present ferment of parties, and containing perhaps insidious characters from different parts of America, would at least spread a general alarm, and be but too likely to turn everything into confusion and uncertainty. It is to be observed however that the question concerning a General Convention, will not belong to the federal Legislature. If ? of the States apply for one, Congress cannot refuse to call it; if not, the other mode of amendments must be pursued.—*Mad. MSS.*

[1] So endorsed by Madison, the words “at whose request drawn up” being in his penmanship when an old man. The report is a copy, as are all the Lee letters.



[1] February 16, 1789, Mt. Vernon, Washington wrote to Madison, congratulating him on his election to Congress, and saying he expected him at Mt. Vernon on his way to New York.

[1] George Morgan.

[1]

### (Put Into The Hands Of Confidential People In PennA & N. Jersey For The Purpose Of Procuring Followers.)

Several Gentlemen who propose to make settlements in the Western Country mean to reconnoitre & survey the same the ensuing winter. All farmers, Tradesmen &c of good characters, who wish to unite in this scheme & to visit the Country under my direction, shall be provided with boats & provisions for the purpose, free of expence, on signing an agreement which may be seen by applying to me at Prospect near Princeton on or before the 8th day of Oct next, or at Fort pitt by the 10th day of Novr next. The boats which will be employed on this expedition are proposed to be from 40 to 60 feet long, to row with 20 oars each, & to carry a number of Swivels. Each man to provide himself with a good firelock or rifle, ammuniton & one blanket or more if he pleases. Such as choose tents or other conveniences must provide them themselves. Every person who accompanies me on this undertaking shall be entitled to 320 Acres of land, at  $\frac{1}{8}$  of a dollar per acre. Those who first engage to have the preference of surveys, wch, however each person may make on such part of the whole tract as he pleases, taking none but his choice of the best lands; provided each survey is either square or oblong whose sides are East, West, North & South; 640 Acres or more being first reserved for a Town which I propose to divide into lots of one acre each & give 600 of them in fee to such Merchants, tradesmen &c, as may apply on the spot, & 40 of them to such public uses as the Inhabitants shall from time to time recommend; together with one out lot of ten acres to each of the first 600 families who shall build & settle in the Town. All persons who settle with me at New Madrid, & their posterity will have the free navigation of the Mississippi & a Market at New Orleans free from duties for all the produce from their lands, where they may receive payment in Mexican Dollars for their flour, tobacco &c.

It is proposed after fixing on the spot to clear & fence in 100 acres in a convenient situation, to plant it with Corn, to hire suitable hands to tend it thro' the summer, & in the next fall winter & spring, to distribute it to New Settlers at  $\frac{1}{8}$  of a dollar per Bushel, that they may have a dependence so far as this will go. And as Buffaloes & other Game are very plenty in the Neighborhood, there can be no want of provision, contractors being ready to engage to deliver fresh beef & venison throughout the year at 1 Penny Per . Credit will be given to those who desire it, as well for the land as for the provisions, & payment recd in future Produce. All persons will be assisted in building a house, clearing a spot of ground, & in getting in their first crops. Horned Cattle, horses & swine will be delivered to the settlers at New Madrid in such quantities as they shall stand in need of at first at very reasonable rates for cash or

future produce. Those who settle at New Madrid in this or the ensuing year shall have Plough Irons, or other Iron works, & farming utensils transported down the Ohio gratis; also their cloathing, bedding, Kitchen furniture & certain other articles which may not be too bulky.

School Masters will be engaged immediately for the instruction of Youth. Ministers of the Gospel will meet with encouragement & grants of land made in fee to each of every denomination who may agree with a Congregation before the year 1790, besides particular grants of tracts of land to each Society.

This new City is proposed to be built on a high bank of the Mississippi River, near the mouth of the Ohio, in the richest & most healthy part of the Western Country, about the latitude of 37°.

Those who wish for further information will be pleased to apply to me in person as above mentioned, or at the New City of Madrid after the first day of next December, where the Surveyors will attend to lay out the lands.

(Copy)

(Signed,) George Morgan.

—*Mad. MSS.* October 3d, 1788.

[1] From *Madison's Works*.

[1] From the *Annals of Congress*, 1st Cong., vol. i.

[2] April 8 Madison introduced the following:

“*Resolved*, As the opinion of this committee, that the following duties ought to be levied on goods, wares, and merchandise, imported into the United States, viz:

“On rum, per gallon, — of a dollar; on all other spirituous liquors, —; on molasses, —; on Madeira wine, —; on all other wines, —; on common bohea teas per lb., —; on all other teas, —; on pepper, —; on brown sugars, —; on loaf sugars, —; on all other sugars, —; on cocoa and coffee, —; on all other articles, — per cent, on their value at the time and place of importation.

“That there ought, moreover, to be levied on all vessels in which goods, wares, or merchandises shall be imported, the duties following, viz: On all vessels built within the United States, and belonging wholly to citizens thereof, at the rate of — per ton.

“On all vessels belonging wholly to the subjects of Powers with whom the United States have formed treaties, or partly to the subjects of such Powers, and partly to citizens of the said States, at the rate of —.

“On all vessels belonging wholly or in part to the subjects of other Powers, at the rate

of —.”

His design was to put into effect immediately the system which had been approved generally by the States in 1783. See *ante*, vol. i., p. 397 *et seq.*

[1] April 12, Madison wrote to Randolph

“On the subject of amendments nothing has been publickly, and very little privately said. Such as I am known to have espoused will as far as I can gather, be attainable from the federalists, who sufficiently predominate in both branches, though with some, the concurrence will proceed from a spirit of conciliation rather than conviction. Connecticut is least inclined though I presume not inflexibly opposed, to a moderate revision. A paper wch will probably be republished in the Virga. Gazettes, under the signature of a Citizen of New Haven, unfolds *Mr. Sherman’s* opinions. Whatever the amendments may be it is clear that they will be attempted in no other way than through Congress. Many of the warmest of the opponents of the Govt disavow the mode contended for by Virga

“I wish I could see an equal prospect of appeasing the disquietude on the two other points you mention—British debts and taxes. With respect to the first, you know my sentiments. It will be the duty of the Senate in my opinion to promote regulations with G. B. as speedily as circumstances will admit, and the aspect of the Government seems likely to command a respectful attention to its measures. I see nothing else that can be done. As to the taxes I see nothing that can be done, more than the ordinary maxims of policy suggest. They may certainly be diminished in consequence of the revolution in the federal Gov [*torn out*], since the public wants will be little if at all increased, [*torn out*] be supplied in greater proportion out of commerce.”—*Mad. MSS.*

[1] Madison wrote to Jefferson, May 9:

“The distinction between nations in & not in Treaty has given birth to three distinct & urgent debates. On the last the minority was very small for putting G. B. at once on the same footing with the most favored nation. This policy, tho, patronized by some respectable names is chiefly abetted by the spirit of this City, which is steeped in Anglicism. It is not improbable from the urgency of its representative, that a further effort may be yet made.

“Inclosed is the Speech of the President with the Address of the House of Reps. & his reply. You will see in the caption of the address that we have pruned the ordinary stile of the degrading appendages of Excellency, Esqr., &c, and restored it to its naked dignity. *Titles* to both the President & vice President were formally & unanimously condemned by a vote of the H. of Reps. This I hope will shew to the friends of Republicanism that our new Government was not meant to substitute either Monarchy or Aristocracy, and that the genius of the people is as yet adverse to both.”—*Mad. MSS.*

The formal reply by the House to the President’s speech was written by Madison and adopted May 5.

[1] The Bill was passed by the House May 16.

[1] Madison wrote Pendleton May 17:

“Dear Sir,—

“The progress of our revenue system continues to be slow. The bill rating the duties is still with the Senate. It is said that many alterations will be proposed, consisting of reductions chiefly. It is said also that the proposition for putting G. B. on the same footing with our Allies in all respects, prior to a treaty with her, will have a majority in that House, and will undergo another agitation in the House of Reps It had before three trials in the latter, but it lost ground in each, and finally was in a minority of 9 or 10 agst near 40. I think it an impolitic idea as it relates to our foreign interest, and not less so perhaps as it relates to the popular sentimer of America, particularly of Virga and still more particularly of that part of it which is already most dissatisfied with the new Government.”—*Mad. MSS.*

[2] The Debate was on the creation of a Department of Foreign Affairs. Smith, of South Carolina, said the head of the Department could only be removed by impeachment before the Senate, and that, “being once in office, he must remain there until convicted on impeachment.”—*Annals of Congress, i., 372.*

[1] Dr. David Ramsay, the historian, of South Carolina. See his petition in *Annals of Congress, i., 403.* He wrote to Madison, Charleston, April 4, 1789. “One of the elected federal representatives of this State is, in my opinion, inelegible. The case is in short thus: the gentleman alluded to left Carolina in the year 1770 his parents died about the same time and he was absent from America during the whole of the war till November 1783. As in the time of his absence the revolution took place I contend that in order to his becoming a Citizen of the United States some thing must have been done previously on his part to shew his acquiescence in the new Government established without his consent.”—*Mad. MSS.*

[1]

TO THOMAS JEFFERSON.

New York, May 23, 1789.

Dear Sir,—

..... My last inclosed copies of the President’s inaugural Speech and the answer of the House of Representatives. I now add the answer of the Senate. It will not have escaped you that the former was addressed with a truly republican simplicity to G. W., Presidt of the U. S. The latter follows the example, with the omission of the personal name, but without any other than the Constitutional title. The proceeding on this point was in the House of Reps, spontaneous. The imitation by the Senate was *extorted.*<sup>1</sup> The question *became a serious one between the two Houses, J. Adams*

*espoused the cause of titles with great earnestness. His friend, R. H. Lee, altho elected as a Republican enemy to an aristocratic Constitution, was a most zealous second. The projected title was, His Highness the Presidt of the U. S. and protector of their liberties. Had the project succeeded, it would have subjected the Presidt to a severe dilemma, and given a deep wound to our infant Government.*

*It is with much pleasure I inform you that Moustier begins to make himself acceptable; and with still more, that Madame Brehan begins to be viewed in the light which I hope she merits, and which was so little the case when I wrote by Master Morris.<sup>2</sup> . . .—Mad MSS*

TO THOMAS JEFFERSON.

New York, May 27th, 1789.

Dear Sir,

.....

*It it already agreed in the form of resolutions that there shall be three departments one for finance, another for foreign affairs, and the third for war. The last will be continued in the hands of General Knox The second will remain with Mr. Jay, if he chooses to keep it. The first is also to be under one head, though to be branched out in such a manner as will check the administration. Chancellor Livingston wishes this department,<sup>1</sup> but will not succeed. It will be given I think to Jay or Hamilton. The latter is perhaps best qualified for that species of business and on that account would be preferred by those who know him personally. The former is more known by character throughout the U. S.*

*I have been asked whether any appointment at home would be agreeable to you. Being unacquainted with your mind I have not ventured on an answer*

*The Bill of rates which passed the House of Representatives a few days ago is not yet come down from the Senate. The duties will it is said be pretty much reduced. In a few instances perhaps the reductions may not be improper. If they are not generally left as high as will admit of collection, the dilemma will be unavoidable, of either maintaining our Public credit in its birth, or resorting to other kinds of taxation for which our constituents are not yet prepared. The Senate is also abolishing<sup>1</sup> the discriminations in favor of nations in treaty, whereby Britain will be quieted in the enjoyment of our trade as she may please to regulate it and France discouraged from her efforts at a competition which it is not less our interest than hers to promote. The question was agitated repeatedly in the house of representatives and decided at last almost unanimously in favor of some monitory proof that our government is able and not afraid to encounter the restrictions of Britain. Both the senators from Virginia particularly Lee go with the majority of the Senate. In this I suspect the temper of the party which sent them is as little consulted as is the conduct of Lee in the affair of titles and his opinion in relation to the western country.*

I have already informed you that *madam Brehan is every day recovering from the disesteem & neglect into which reports had thrown her, and that Moustier is also become more and more acceptable or at least less and less otherwise. His commercial ideas are probably neither illiberal nor unfriendly to this country. The contrary has been supposed. When the truth is ascertained & known, unfavorable impressions will be still more removed.*

The subject of amendments was to have been introduced on monday last, but is postponed in order that more urgent business may not be delayed. On monday seven-night it will certainly come forward. A Bill of rights, incorporated perhaps into the Constitution will be proposed, with a few other alterations most called for by the opponents of the Government and least objectionable to its friends

As soon as Mr. Brown arrives who is the Representative of Kentucky, the admission of that district to the character of a State and a member of the Union, will claim attention. I foresee no difficulty, unless local jealousy should couple the pretensions of Vermont with those of Kentucky; and even then no other delay than what may be necessary to open the way for the former, through the forms and perhaps the objections of this State, N. York which must not be altogether disregarded.

The proceedings of the new Congress are so far marked with great moderation and liberality; and will disappoint the wishes and predictions of many who have opposed the Government. The spirit which characterizes the House of Reps, in particular is already extinguishing the honest fears which considered the system as dangerous to republicanism. For myself I am persuaded that the bias of the federal is on the same side with that of the State Gots tho' in a much less degree.—*Mad. MSS.*

TO EDMUND RANDOLPH.

N. York May 31, 1789.

My Dear Friend:

.....

Our business here goes on very slowly, though in a spirit of moderation and accommodation which is so far flattering. The bill for regulating the quantum of duties is not yet come back from the Senate. Some alterations will be made, but none that affect the substance of the plan, unless it be the abolition of a small favor to the Nations in Alliance with us copied from the laws of Virginia. One of our Senators<sup>1</sup> whose ideas on another point excite animadversions among his constituents seems not to consult their sentiments on this. I think myself that it is impolitic, in every view that can be taken of the subject, to put G. Britain at once on the footing of a most favored nation. The bill for collecting the duties is now before the H. of Reps, and I fear will not be very quickly despatched. It has passed thro' several hands legal as well as merchantile, and, notwithstanding is in a crude state. It might certainly have been put into a better; though in every step the difficulties arising from novelty are severely



experienced, and are an ample as well as just source of apology. Scarcely a day passes without some striking evidence of the delays and perplexities springing merely from the want of precedents. Time will be a full remedy for this evil, and will I am persuaded, evince a greater facility in legislating uniformly for all the States than has been supposed by some of the best friends of the Union

Among the subjects on the anvil is the arrangements of the subordinate Executive departments. A Unity in each has been resolved on, and an amenability to the President alone, as well as to the Senate by way of impeachment. Perhaps it would not be very consistent with the Constitution to require the concurrence of the Senate in removals. The Executive power seems to be vested in the President alone, except so far as it is qualified by an express association of the Senate in appointments: in like manner as the Legislative is vested in Congress, under the exception in favour of the President's qualified negative. Independently of this consideration I think it best to give the Senate as little agency as possible in Executive matters, and to make the President as responsible as possible in them. Were the heads of departments dependent on the Senate, a faction in this branch might support them agst the President, distract the Executive department, and obstruct the public business. The danger of undue power in the President from such a regulation is not to me formidable. I see, and *politically feel* that that will be the weak branch of the Government. With a full power of removal, the President will be more likely to spare unworthy officers, thro' fear than to displace the meritorious thro' caprice or passion.—*Mad. MSS.*

[\[1\]](#) J. M.'s notes for speaking for amendts by Congress 1789.

Reasons for urging amendts

1. to prove fedts friends to liberty
2. remove remaining inquietudes.
3. bring in N. C. R. Island.
4. to improve the Constitution.

Reasons for moderating the plan.

1. No stop if door opened to theoretic amendts
2. as likely to make worse as better till tried.
3. insure passage by ? of Congs &  $\frac{3}{4}$  of Sts:

Objectns of 3 kinds vs. the Constn

1. vs. the theory of its structure.

2. vs. substance of its powers—elections & [illegible].

3. vs. omission of guards in favr of rights & liberty.

The last most urged & easiest obviated

Read the amendments—

They relate 1st to private rights—

Bill of Rights—useful not essential—fallacy in both sides, aspects [?]

as to English Decln of Rts—

1. mere act of parlt

2. no freedom of press—Conscience GI Warrants—Habs Corpus jury in civil causes—criml attainders—arms to Protests

frequent Parlts—chief trust.

freedom of press & of conscience unknown to Magna Cha—& Pet: Rts

Contents of Bill of Rhts.

1. assertion of primitive equality &c.

2. do of rights exerted in formg of Govts

3. *natural rights*. retained as speach [illegible].

4. positive rights resultg as trial by jury.

5. Doctrinl artics vs. Depts distinct electn

6. moral precepts for the administrn. & natl. character—as justice—œconomy—&c.

Object of Bill Rhts.

To limit & qualify powr. by exceptg from grant cases in wch. it shall not be exercised or exd. in a particular manner.

to guard 1. vs Executive & in Engl &c—

2. Legislative as in Sts—

3. Majority of people.



ought to point as greatest danger which in Rep: is Prerogative of majority—Here proper, tho' less neary than in small Repubs

Objectns—vs—Bill of Rhts.

1. in Elective Govts. all power in people hence unnecessary & improper—This vs Sts.

2. In fedl. Govt. all not given retained—Bill of powers—need no Bill of Rhts—  
sweeping clause—Genl Warrants &c.

3. St: Bills not repeald

too uncertain

Some Sts have not bills — others defect: — others — injurious [illegible].

4. dispaee other rights—or constructively enlarge—

The first goes vs. St: Bills—

both guarded vs. by amendts

5. Not effectl. — vs Sts also—but some check.

Courts will aid—also Ex: also Sts Legisls: watch

Time sanctify—incorporate public Sentiment

Bill of Rts ergo *proper*.

II increase of Reps—2 for each St.

III pay of Congs

IV Interdict to Sts as to Conscience—*press*—& jury—

This more necsy to Sts—ye Congs

V Check on appeals—co law

VI partn as to 3 Depts—& do as to Genl & St Govts. — *Mad. MSS.*

[1] The first clause of the bill after reciting the title and duties of the Secretary of the Department of Foreign Affairs provided that he was “to be removable from office by the President of the United States.”—*Annals of Congress*, i., 455.

[1]

## TO EDMUND PENDLETON

N. York June 21, 1789.

Dear Sir,—

. . . . The papers now covered contain a sketch of a very interesting discussion which consumed great part of the past week. The Constitution has omitted to declare expressly by what authority removals from office are to be made. Out of this silence four constructive doctrines have arisen. 1. that the power of removal may be disposed of by the Legislative discretion. To this it is objected that the Legislature might then confer it on themselves, or even on the House of Reps, which could not possibly have been intended by the Constitution. 2. that the power of removal can only be exercised in the mode of impeachment. To this the objection is that it would make officers of every description hold their places during good behavior, which could have still less been intended. 3. that the power of removal is incident to the power of appointment. To this the objections are that it would require the constant Session of the Senate, that it extends the mixture of Legislative & Executive power, that it destroys the responsibility of the President by enabling a subordinate Executive officer to intrench himself behind a party in the Senate, and destroys the utility of the Senate in their Legislative and Judicial characters, by involving them too much in the heats and cabals inseparable from questions of a personal nature; in fine, that it transfers the trust in fact from the President who being at all times impeachable as well as every 4th year eligible by the people at large, may be deemed the most responsible member of the Government, to the Senate who from the nature of that institution, is and was meant after the Judiciary & in some respects without that exception to be the most irresponsible branch of the Government. 4. that the Executive power being in general terms vested in the President, all power of an Executive nature, not particularly taken away must belong to that department, that the power of appointment only being expressly taken away, the power of Removal, so far as it is of an Executive nature must be reserved. In support of this construction it is urged that exceptions to general positions are to be taken strictly, and that the axiom relating to the separation of the Legislative & Executive functions ought to be favored. To this are objected the principle on which the 3d construction is founded, & the danger of creating too much influence in the Executive Magistrate.

The last opinion has prevailed, but is subject to various modifications, by the power of the Legislature to limit the duration of laws creating offices, or the duration of the appointments for filling them, and by the power over the salaries and appropriations. In truth, the Legislative power is of such a nature that it scarcely can be restrained either by the Constitution or by itself. And if the federal Government should lose its proper equilibrium within itself, I am persuaded that the effect will proceed from the Encroachments of the Legislative department. If the possibility of encroachments on the part of the Ex or the Senate were to be compared, I should pronounce the danger to lie rather in the latter than the former. The mixture of Legislative, Executive & Judiciary authorities, lodged in that body, justifies such an inference, At the same [time], I am fully in the opinion that the numerous and immediate representatives of

the people, composing the other House, will decidedly predominate in the Government.

Mr. Page tells me he has forwarded to you a copy of the amendments lately submitted to the H. of Reps. They are restrained to points on which least difficulty was apprehended. Nothing of a controvertible nature ought to be hazarded by those who are sincere in wishing for the approbation of  $\frac{1}{2}$  of each House, and  $\frac{3}{4}$  of the State Legislatures.—*Mad. MSS.*

[\[1\]](#)

TO SAMUEL JOHNSTON.

New York, June 21, 1789.

Dear Sir.

I lost no time in handing to the President the address inclosed in your favor of the 22 of May, and have postponed an acknowledgement of the latter in expectation of being able at the same time to cover the President's answer. This has been and continues to be delayed by a very serious indisposition, we hope he is not in much danger, but are by no means without our fears also. His disorders commenced in a fever which has greatly reduced him, and is terminating in a very large tumor which, unless it degenerate itself into a dangerous malady, will probably be remedial.

In the enclosed paper is a copy of a late proposition in Congress on the subject of amending the Constitution. It aims at the two-fold object of removing the fears of the discontented and of avoiding all such alterations as would either displease the adverse side, or endanger the success of the measure. I need not remark to you the hazard of attempting anything of a controvertible nature which is to depend on the concurrence of  $\frac{1}{2}$  of both Houses here, and the ratification of  $\frac{3}{4}$  of the State Legislatures. It will be some time before the proposed amendments will become a subject of discussion in Congress. The bills relating to revenue, and the organization of the Judiciary and Executive Departments, being likely to remain for some time on hand. This delay proceeds from the intricacy and partly from the novelty of the business. At every step difficulties from one or another of these sources arrest our progress. After the first essays the work will become every day more easy.

Among other difficulties, the exposition of the Constitution is frequently a Copious Source, and must continue so untill its meaning on all great points shall have been settled by precedents. The greatest part of the week past has been consumed in deciding a question as to the power of removal from offices held during pleasure. Four Constructive doctrines have been maintained 1, that the power is subject to the disposal of the Legislature. 2 that no removal can take place otherwise than by impeachment. 3 that the power is incident to that of appointment and therefore belongs to the President & Senate. 4 that the Executive power being generally vested in the President every power of an Executive Nature, not expressly excepted is to be

referred thither, and consequently the power of removal, the power of appointment only being taken away.

In support of each of these constructions the Argumenta ab inconvenientibus have been elaborately dealt out against the others. The decision in a Committee of the whole on the Office of Foreign Affairs has adopted the 4th opinion as most consonant to the frame of the Constitution, to the policy of mixing the Legislature & Executive honors as little as possible, and to the responsibility necessary in the head of the Executive Department.

(Papers of Gov. Samuel Johnston of North Carolina.—*N. C. Historical and Genealogical Register*, vii., 105.)

[1] The bill containing in the second section an expression of the right of removal, passed the House June 27, and was finally passed by both Houses July 20.

[1]

TO EDMUND PENDLETON.

N. York, July 15, 1789.

Dear Sir—

I am particularly obliged by your favor of the 3d, which incloses your remarks on the Judiciary bill. It came to hand yesterday only, and I have not had time to compare your suggestions with the plan of the Senate nor do I know the alterations which may have taken place in it since it has been under discussion. In many points, even supposing the outline a good one, which I have always viewed as controvertible, defects and inaccuracies were striking. It gives me much pleasure to find your approbation given to the decision of the House of Reps on the power of removal. This appears to be the case with several of our friends in Virga. of whose sentiments I had formed other conjectures. I was apprehensive that the alarms with regard to the danger of monarchy, would have diverted their attention from the impropriety of transferring an Executive trust from the most to the least responsible member of the Government. Independently of every other consideration, the primary objects on which the Senate are to be employed, seem to require that their executive agency should not be extended beyond the minimum that will suffice. As the Judiciary tribunal which is to decide on impeachments, they ought not to be called on previously, for a summary opinion on cases which may come before them in another capacity. And both on that account, and the necessity of keeping them in a fit temper to controul the capricious & factious counsels of the other Legislative branch, they ought to be as little as possible involved in those questions of a personal nature, which in all Governments are the most frequent & violent causes of animosity and party. . . .—*Mad. MSS.*

## TO JAMES MONROE

N. Y., Aug. 9, 1789.

Dear Sir—

.....

Your ideas on the proposed discrimination between foreign Nations coincide I perceive exactly with those which have governed me. The Senate did not allow that no effort should be made for vindicating our commercial interests, but argued that a more effectual mode should be substituted. A Com. was appd in that branch to report such a mode. The report made is founded on something like a retort of her restrictions in the W. Inda channels. It is now said that as the measure would involve an imposition of extraordinary duties, the Senate cannot proceed in it. Mr. Gerry alluding to these circumstances moved two days ago for a bill giving further encouragement to trade & navigation, and obtained a Committee for the purpose. What will be the result is uncertain. If the attempt added to what has passed should as it probably will, be made known abroad, it may lead to apprehensions that may be salutary.

The attention of the H. of Reps for some days has been confined to the subject of compensations. The bill is at length brought into its final shape. Much discussion took place on the quantum for the members of Congs, & the question whether it shd be the same for both Houses. My own opinion was in favor of a difference founded on a reduction of the sum proposed with regard to the H. of Reps. & an augmentation as to the Senate. As no difference took place, the case of the Senate and of the members from S. C. & Georga had real weight agst a lesser sum than 6 dollrs, which I own is higher than I had contemplated for the H. of Reps, & which I fear may excite criticisms not to be desired at the present moment.

Yesterday was spent on a Message from the President relative to Indian Affairs & the Militia Bills are ordered providing for a Treaty with the Hostile tribes, and for regulating the Militia. The latter is an arduous task & will probably not be compleated at this Session — *Mad. MSS.*

[1] Madison wrote to Archibald Stuart, August 12.

“I am just favd with yours of the 30th inst: and am glad to find your sentiments so decided as to the power of removal by the Presidt Every letter to me and as far as I know to others here from Virga. ratifies the propriety of the decision of Congress. Our last discussions of moment have turned on the compensations. The bill as gone to the Senate allows six dollars a day to the members of both houses. My own idea was that it should have been less for the Reps & more for the Senate. With equal emoluments the ablest men will prefer the H. of Reps and the Senate will degenerate into an unfitness for the great dignity of its institution. The rate allowed is unpopular in this quarter of the Union. But the truth is that 6 dollars [is more necessary] for the distant states particularly S. C. & Georgia than it would be to N. Jersey, Connecticut, &c, and

a defective allowance would put the states at a distance under disadvantages of a very serious nature. Add to this that a less sum than 6 dollars for the Senate (whose case was involved in that of the H. of Reps after the vote agst a discrimination) could not well be thought of. On these grounds the measure must rest for its vindication. I am afraid it will be disrelished in your part of Virga & cannot say I am satisfied with it myself. With men of liberal turns and who know the former allowance made to Congress by the States and who moreover take into view the situation & voting of the different states, an apologetic reasoning on the subject will not be sufficient, with those of another cast, the case will be different . . .”—*Va. Hist. Soc. MSS.*

## TO EDMUND RANDOLPH.

N. Y., Aug. 21, 89.

My Dear Friend,—

For a week past the subject of amendts has exclusively occupied the H. of Reps. Its progress has been exceedingly wearisome not only on account of the diversity of opinions that was to be apprehended, but of the apparent views of some to defeat by delaying a plan short of their wishes, but likely to satisfy a great part of their companions in opposition throughout the Union. It has been absolutely necessary in order to effect anything, to abbreviate debate, and exclude every proposition of a doubtful & unimportant nature. Had it been my wish to have comprehended every amendt recom?ended by Virga., I should have acted from prudence the very part to which I have been led by choice. Two or three contentious additions would even now prostrate the whole project. The Judiciary bill was put off in favr. of the preceding subject. It was evident that a longer delay of that wd. prevent any decision on it at this Session. A push was therefore made, which did not succeed without strenuous opposition. On monday the bill will probably be taken up & be pursued to a final question as fast as the nature of the case will allow.

I find on looking over the notes of your introductory discourse in the Convention at Philada, that it is not possible for me to do justice to the substance of it. I am anxious for particular reasons to be furnished with the means of preserving this as well as the other arguments in that body, and must beg that you will make out & forward me the scope of your reasoning. You have your notes I know & from these you can easily deduce the argument on a condensed plan. I make this request with an earnestness wch. will not permit you either to refuse or delay a compliance.—*Mad. MSS.*

## TO ALEXANDER WHITE.

N. York Aug. 24—1789,

Dear Sir

The week past has been devoted to the subject of amendments all that remains is a formal vote on a fair transcript which will be taken this morning; and without debate I hope, as each of the propositions has been agreed to by two thirds of the House. The substance of the report of the Committee of eleven has not been much varied. It became an unavoidable sacrifice to *a few* who knew their concurrence to be necessary, to the dispatch if not the success of the business, to give up the form by which the amendts when ratified would have fallen into the body of the Constitution, in favor of the project of adding them by way of appendix to it. It is already apparent I think that some ambiguities will be produced by this change, as the question will often arise and sometimes be not easily solved, how far the original text is or is not necessarily superceded, by the supplemental act. A middle way will be taken between the two modes, of proposing all the amendts as a single act to be adopted or rejected in the gross, and of proposing them as independent amendts each of which shall take place or not, as it may be individually decided on. The several propositions will be *classed* according to their affinity to each other, which will reduce them to the number of 5 or 6 in the whole, to go forth as so many amendts. unconnected with one another.

On Saturday notice was given to the House by Mr Scott that on Thursday in this week he should bring in the subject of the *permanent seat* of Congress. [Illegible] & [illegible] in favr of Trenton ensued The like from Lancaster &c. also came forward. I suspect that the motion is the result of some [illegible] of a pretty serious nature. A great push will be made for Trenton which has I fear more partizans than might be wished. It is surmised that a coalition has taken place between Pa & the East states. I believe it to be the case in some degree, tho' not fully. As far as I can gather, the coalition for Trenton might be broken, by accepting the Susquehannah, and leaving N. Y. the temporary enjoyment of Congs. This I believe is the ultimate [aim] of the N. Y. party, and will not do for us.

I suspect they begin to despair of a long possession of Congs and consequently mix the permanent with the temporary considerations. Having give you these facts your own judgment will best decide how far it may be worth while and incumbent on you to hasten your return.—*N. Y. Pub. Lib. (Lenox) MSS.*

Alexander White wrote from Philadelphia August 9, 1789, saying those people he had seen “Shew almost a childish anxiety for the removal of Congress to this place, and pretend to count votes by States and by Poll, treat the Idea of fixing the permanent Seat of Government on Patowmack within a Century to come as too ridiculous to merit Consideration, resting assured that whenever the Question is put, Delaware will be the place.”—*Mad. MSS.*

[1]

## TO EDMUND PENDLETON.

N. Y., Sepr 14, 89.

Dear Sir,—

I was favd on saturday with yours of the 2d instant. The Judiciary is now under consideration. I view it as you do, as defective both in its general structure, and many of its particular regulations. The attachment of the Eastern members, the difficulty of substituting another plan, with the consent of those who agree in disliking the bill, the defect of time &c, will however prevent any radical alterations. The most I hope is that some offensive violations of Southern jurisprudence may be corrected, and that the system may speedily undergo a reconsideration under the auspices of the Judges who alone will be able perhaps to set it to rights.

The Senate have sent back the plan of amendments with some alterations which strike in my opinion at the most salutary articles. In many of the States juries even in criminal cases, are taken from the State at large; in others from districts of considerable extent; in very few from the County alone. Hence a [torn out] like to the restraint with respect to *vicinage*, which has produced a negative on that clause. A fear of inconvenience from a constitutional bar to appeals below a certain value, and a confidence that such a limitation is not *necessary*, have had the same effect on another article. Several others have had a similar fate. The difficulty of uniting the minds of men accustomed to think and act differently can only be conceived by those who have witnessed it.

A very important question is depending on the subject of a permanent seat for the fedl Govt. Early in the Session secret negotiations were set on foot among the Northern States, from Penna, inclusively. The parties finally disagreeing in their arrangements, both made advances to the Southern members. On the side of N. Y. & N. Engd, we were led to expect the Susquehannah within a reasonable time, if we wd. sit still in N. York, otherwise we were threatened with Trenton. These terms were inadmissible to the friends of Potowmac. On the side of Penna., who was full of distrust and animosity agst. N. Engd. & N. York, the Potowmac was presented as the reward for the temporary advantages if given by the S. States. Some progress was made on this ground, and the prospect became flattering, when a reunion was produced among the original parties by circumstances which it wd be tedious to explain. The Susquehannah has in consequence been voted. The bill is not yet brought in and many things may yet happen. We shall parry any decision if we can, tho' I see little hope of attaining our own object, the Eastern States being inflexibly opposed to the Potowmac & for some reasons which are more likely to grow stronger than weaker; and if we are to be placed on the Susquehannah, the sooner the better.—*Mad. MSS.*

[1]



## TO EDMUND PENDLETON.

N. Y., Sepr 23, 1789.

Dear Sir,—

The pressure of unfinished business has suspended the adjournment of Congs. till saturday next. Among the articles which required it was the plan of amendments, on which the two Houses so far disagreed as to require conferences. It will be impossible I find to prevail on the Senate to concur in the limitation on the *value* of appeals to the Supreme Court, which they say is unnecessary, and might be embarrassing in questions of national or Constitutional importance in their principle, tho' of small pecuniary amount. They are equally inflexible in opposing a definition of the *locality* of Juries. The vicinage they contend is either too vague or too strict a term, too vague if depending on limits to be fixed by the pleasure of the law, too strict if limited to the County. It was proposed to insert after the word Juries, "with the accustomed requisites," leaving the definition to be construed according to the judgment of professional men. Even this could not be obtained. The truth is that in most of the States the practice is different, and hence the irreconcilable difference of ideas on the subject. In some States, jurors are drawn from the whole body of the community indiscriminately; in others, from large districts comprehending a number of Counties, and in a few only from a single County. The Senate suppose also that the provision for vicinage in the Judiciary bill, will sufficiently quiet the fears which called for an amendment on this point. On a few other points in the plan the Senate refuse to join the House of Reps.

The bill establishing the permanent Seat of Govt. has pasd. the H. of Reps in favr of the Susquehannah. Some of the Southern members, despaired so much of ever getting anything better, that they fell into the majority. Even some of the Virginians leaned that way. My own judgment was opposed to any compromise, on the supposition that we had nothing worse to fear than the Susquehannah, and could obtain that at any time, either by uniting with the Eastern States or Pennsylv. The bill however is by no means sure of passing the Senate in its present form. It is even possible that it may fall altogether. Those who wish to do nothing at this time, added to those who disapprove of the Susquehannah, either as too far South or too far North, or not susceptible of early conveniences for the fiscal administration, may form a majority who will directly or indirectly frustrate the measure. In case of an indirect mode, some other place will be substituted for Susquehannah, as Trenton or Germantown, neither of which can I conceive be effectually established, and either of which might get a majority composed of sincere and insidious votes. . . .—*Mad. MSS.*

[1] The passage of this amendment required the bill to go back to the Senate, and Congress adjourned September 29th before there was a chance for further action. Madison thus prevented the loss of the capital to the Potomac party.

[1] The letter was dated September 28th and signed by Richard Henry Lee and William Grayson. It said. "It is impossible for us not to see the necessary tendency to

consolidated Empire, in the natural operation of the Constitution, if no further amended than now proposed,” and that civil liberty could not exist in an undivided government over so great a territory as the United States. They favored persevering application by the States to Congress for more amendments, and if it failed then a convention should be called.—*Mad. MSS.*

[1] Prepared probably for the President, who consulted Madison at this time more than he did any other person outside of the Cabinet.

[1] August 28, 1789, a memorial and petition to Congress from public creditors in Pennsylvania praying that provision be made for the public debt was referred to a committee of which Madison was chairman. September 10th he reported in favor of taking the matter up at the next session. January 14th Hamilton’s report was submitted in favor of “funding and assumption.”

[2] Washington informed Jefferson of his appointment to be Secretary of State October 10, 1789. February 14, 1790, from Monticello Jefferson wrote definitely accepting and soon thereafter assumed office.—*The Department of State, History and Functions* (Hunt), 60, 61.

[1] The bill became a law March 26, 1790, and provided for admission to citizenship of free white aliens of good moral character after residence in the United States of two years.—1 Stat., 103.

[1]

## TO THOMAS JEFFERSON

New York, Feby 4, 1790.

Dear Sir,—

Your favor of Jany. 9, inclosing one of Sepr. last did not get to hand till a few days ago.\* The idea which the latter evolves is a great one; and suggests many interesting reflections to Legislators; particularly when contracting and providing for public debts. Whether it can be received in the extent to which your reasonings carry it, is a question which I ought to turn more in my thoughts than I have yet been able to do, before I should be justified in making up a full opinion on it. My first thoughts lead me to view the doctrine as not *in all respects* compatible with the course of human affairs. I will endeavour to sketch the grounds of my skepticism. “As the Earth belongs to the living, not to the dead, a living generation can bind itself only; in every Society the will of the majority binds the whole; according to the laws of mortality, a majority of those ripe for the exercise of their will do not live beyond the term of 19 years; to this term then is limited the validity of every act of the Society, nor can any act be continued beyond this term without an *express* declaration of the public will.” This I understand to be the outline of the argument.

The Acts of a political society may be divided into three classes:

1. the fundamental constitution of the Government.
2. laws involving some stipulation, which renders them irrevocable at the will of the Legislature.
3. laws involving no such irrevocable quality.

1. However applicable in theory the doctrine may be to a Constitution, it seems liable in practice to some weighty objections.

Would not a Government ceasing of necessity at the end of a given term, unless prolonged by some Constitutional Act, previous to its expiration, be too subject to the casualty and consequences of an interregnum?

Would not a Government so often revised become too mutable & novel to retain that share of prejudice in its favor which is a salutary aid to the most rational Government?

Would not such a periodical revision engender pernicious factions that might not otherwise come into existence; and agitate the public mind more frequently and more violently than might be expedient?

2. In the second class of acts involving stipulations, must not exceptions at least to the doctrine, be admitted?

If the earth be the gift of *nature* to the living, their title can extend to the earth in its *natural* state only. The *improvements* made by the dead form a debt against the living, who take the benefit of them. This debt cannot be otherwise discharged than by a proportionate obedience to the will of the Authors of the improvements.

But a case less liable to be controverted may perhaps be stated. Debts may be incurred with a direct view to the interests of the unborn as well as of the living. Such are debts for repelling a Conquest, the evils of which descend through many generations. Debts may even be incurred principally for the benefit of posterity: Such perhaps is the debt incurred by the U. States. In these instances the debts might not be dischargeable within the term of 19 years.

There seems, then, to be some foundation in the nature of things; in the relation which one generation bears to another, for the *descent* of obligations from one to another. Equity may require it. Mutual good may be promoted by it. And all that seems indispensable in stating the account between the dead and the living, is to see that the debts against the latter do not exceed the advances made by the former. Few of the incumbrances entailed on nations by their predecessors would bear a liquidation even on this principle.

3. Objections to the doctrine, as applied to the third class of Acts must be merely practical. But in that view alone they appear to be material.

Unless such temporary laws should be kept in force by acts regularly anticipating their expiration, all the rights depending on positive laws, that is most of the rights of property would become absolutely defunct, and the most violent struggles ensue between the parties interested in reviving & those interested in reforming the antecedent state of property. Nor does it seem improbable that such an event might be suffered to take place. The checks & difficulties opposed to the passage of laws which render the power of repeal inferior to an opportunity to reject, as a security against oppression, would here render the latter an insecure provision against anarchy. Add to this that the very possibility of an event so hazardous to the rights of property could not but depreciate its value; that the approach of the crisis wd increase the effect; that the frequent return of periods superseding all the obligations dependent on antecedent laws & usages, must by weakening the sense of them, co-operate with motives to licentiousness already too powerful; and that the general uncertainty & vicissitudes of such a state of things would, on one side, discourage every useful effort of steady industry pursued under the sanction of existing laws, and on the other, give an immediate advantage to the more sagacious over the less sagacious part of the Society.

I can find no relief from such embarrassments but in the received doctrine that a *tacit* assent may be given to established Governments & laws, and that this assent is to be inferred from the omission of an express revocation. It seems more practicable to remedy by well-constituted Governments the pestilent operation of this doctrine, in the unlimited sense in which it is at present recd., than it is to find a remedy for the evils necessarily springing from an unlimited admission of the contrary doctrine.

Is it not doubtful whether it be possible to exclude wholly the idea of an implied or tacit assent, without subverting the very foundation of Civil Society?

On what principle is it that the voice of the majority binds the minority? It does not result I conceive from a law of nature but from compact founded on utility. A greater proportion might be required by the fundamental Constitution of Society, if under any particular circumstances it were judged eligible. Prior therefore to the establishment of this principle, *unanimity* was necessary, and rigid Theory, accordingly presupposes the assent of every individual to the rule, which subjects the minority to the will of the majority. If this assent cannot be given tacitly, or be not implied where no positive evidence forbids, no person born in Society, could on attaining ripe age, be bound by any acts of the majority, and either a unanimous renewal of every law would be necessary, as often as a new member should be added to the Society, or the express consent of every new member be obtained to the rule by which the majority decides for the whole.

If these observations be not misapplied, it follows that a limitation of the validity of all Acts to the computed life of the generation establishing them, is in some cases not required by theory, and in others not consistent with practice. They are not meant however to impeach either the utility of the principle as applied to the cases you have particularly in view, or the general importance of it in the eye of the Philosophical Legislator. On the contrary it would give me singular pleasure to see it first announced to the world in a law of the U. States, and always kept in view as a salutary

restraint on living generations from *unjust & unnecessary* burdens on their successors. This is a pleasure however which I have no hope of enjoying. The spirit of Philosophical legislation has not prevailed at all in some parts of America and is by no means the fashion of this part, or of the present Representative Body. The evils suffered or feared weakness in Government and licentiousness in the people, have turned the attention more towards the means of strengthening the powers of the former, than of narrowing their extent in the minds of the latter. Besides this it is so much easier to descry the little difficulties immediately incident to every great plan, than to comprehend its general & remote benefits, that further light must be added to the Councils of our Country before many truths which are seen through the medium of Philosophy, become visible to the naked eye of the ordinary politician.—*Mad. MSS.*

[1] On the same day Madison offered the following:

*Resolved*, That adequate funds ought to be provided for paying the interest and principal of the domestic debt, as the same shall be liquidated; and that in such liquidation, the present holders of public securities, which have been alienated, shall be settled with according to the highest market rate of such securities; and that the balance of the sums due from the public, be paid in such proportion to the original holder of such securities.

[1]

## TO JAMES MADISON

N. Y. Feby 27 1790.

Hond. Sir:

I have not yet recd. a single line from Orange since I left it. The letter from my brother when at Alexa. is the only written information that I have had the pleasure of, a few lines from Mr. Hite excepted. These gave an account of my sisters marriage, and added that about that period my mother was better. I am anxious to hear more on that subject, and indulge my hopes that her health will yet be reestablished.

The papers inclosed at different times will have shewn the state of the business before Congs. The proposition for compromising the matter between original sufferers & the stockjobbers, after being long agitated was rejected by considerable majority, less perhaps from a denial of the justice of the measure, than a supposition of its impracticability. The idea is much better relished I find in the Country at large, than it was in this City. The subject now before Congs is the proposed assumption of the State debts. Opinions are much divided on it, and the result can not be foretold. These difficulties and discussions seem to have produced here a suspence of the public opinion. Stock has been stationary in consequence of it at about 7/. in the pound. I am afraid that the people at a distance from information will continue to be a prey to those who hover about the public councils, and communicate with emissaries all over

the Continent. I wish it were possible to defend the uninformed from these impositions. The best they can do is not to deal with speculators, but to await patiently the event.

I find by a letter from Mr Jefferson that grain is getting as high in Virga. as here. The run on our market from Europe seems to be increasing. If the alarm be not artificial in France England &c. which can not be altogether the case, it is probable that the price will be high for several years.

## I Remain Your Dutiful Son

Js. Madison Jr.

[\[1\]](#)

## TO THOMAS JEFFERSON.

New York, May 23, 1789.

Dear Sir,—

..... My last inclosed copies of the President's inaugural Speech and the answer of the House of Representatives. I now add the answer of the Senate. It will not have escaped you that the former was addressed with a truly republican simplicity to G. W., Presidt of the U. S. The latter follows the example, with the omission of the personal name, but without any other than the Constitutional title. The proceeding on this point was in the House of Reps, spontaneous. The imitation by the Senate was *extorted*.<sup>1</sup> The question *became a serious one between the two Houses, J. Adams espoused the cause of titles with great earnestness. His friend, R. H. Lee, altho elected as a Republican enemy to an aristocratic Constitution, was a most zealous second. The projected title was, His Highness the Presidt of the U. S. and protector of their liberties. Had the project succeeded, it would have subjected the Presidt to a severe dilemma, and given a deep wound to our infant Government.*

It is with much pleasure I inform you that *Moustier begins to make himself acceptable; and with still more, that Madame Brehan begins to be viewed in the light which I hope she merits, and which was so little the case when I wrote by Master Morris*.<sup>2</sup> . . .—Mad MSS

## TO THOMAS JEFFERSON.

New York, May 27th, 1789.

Dear Sir,

.....

It is already agreed in the form of resolutions that there shall be three departments one for finance, another for foreign affairs, and the third for war. The last will be continued in the hands of General Knox. The second will remain with Mr. Jay, if he chooses to keep it. The first is also to be under one head, though to be branched out in such a manner as will check the administration. *Chancellor Livingston wishes this department, 1* but will not succeed. It will be given I think to Jay or Hamilton. The latter is perhaps best qualified for that species of business and on that account would be preferred by those who know him personally. The former is more known by character throughout the U. S.

I have been asked whether *any appointment at home would be agreeable to you*. Being *unacquainted with your mind I have not ventured on an answer*

The Bill of rates which passed the House of Representatives a few days ago is not yet come down from the Senate. The duties will it is said be pretty much reduced. In a few instances perhaps the reductions may not be improper. If they are not generally left as high as will admit of collection, the dilemma will be unavoidable, of either maintaining our Public credit in its birth, or resorting to other kinds of taxation for which our constituents are not yet prepared. The Senate is also *abolishing the discriminations in favor of nations in treaty*, whereby *Britain will be quieted in the enjoyment of our trade as she may please to regulate it and France discouraged from her efforts at a competition which it is not less our interest than hers to promote*. The question was agitated repeatedly in the house of representatives and decided at last almost unanimously in favor of some *monitory proof that our government is able and not afraid to encounter the restrictions of Britain*. Both the senators from Virginia particularly Lee go with the majority of the Senate. In this I suspect the temper of the party which sent them is as little consulted as is the conduct of Lee in the affair of titles and his opinion in relation to the western country.

I have already informed you that *madam Brehan is every day recovering from the disesteem & neglect into which reports had thrown her*, and that *Moustier is also become more and more acceptable or at least less and less otherwise*. His *commercial ideas are probably neither illiberal nor unfriendly to this country*. The contrary has been supposed. When the truth is ascertained & known, *unfavorable impressions will be still more removed*.

The subject of amendments was to have been introduced on Monday last, but is postponed in order that more urgent business may not be delayed. On Monday seven-night it will certainly come forward. A Bill of rights, incorporated perhaps into the Constitution will be proposed, with a few other alterations most called for by the opponents of the Government and least objectionable to its friends

As soon as Mr. Brown arrives who is the Representative of Kentucky, the admission of that district to the character of a State and a member of the Union, will claim attention. I foresee no difficulty, unless local jealousy should couple the pretensions of Vermont with those of Kentucky; and even then no other delay than what may be necessary to open the way for the former, through the forms and perhaps the objections of this State, N. York which must not be altogether disregarded.



The proceedings of the new Congress are so far marked with great moderation and liberality; and will disappoint the wishes and predictions of many who have opposed the Government. The spirit which characterizes the House of Reps, in particular is already extinguishing the honest fears which considered the system as dangerous to republicanism. For myself I am persuaded that the bias of the federal is on the same side with that of the State Gots tho' in a much less degree.—*Mad. MSS.*

## TO EDMUND RANDOLPH.

N. York May 31, 1789.

My Dear Friend:

.....

Our business here goes on very slowly, though in a spirit of moderation and accommodation which is so far flattering. The bill for regulating the quantum of duties is not yet come back from the Senate. Some alterations will be made, but none that affect the substance of the plan, unless it be the abolition of a small favor to the Nations in Alliance with us copied from the laws of Virginia. One of our Senators<sup>1</sup> whose ideas on another point excite animadversions among his constituents seems not to consult their sentiments on this. I think myself that it is impolitic, in every view that can be taken of the subject, to put G. Britain at once on the footing of a most favored nation. The bill for collecting the duties is now before the H. of Reps, and I fear will not be very quickly despatched. It has passed thro' several hands legal as well as merchantile, and, notwithstanding is in a crude state. It might certainly have been put into a better; though in every step the difficulties arising from novelty are severely experienced, and are an ample as well as just source of apology. Scarcely a day passes without some striking evidence of the delays and perplexities springing merely from the want of precedents. Time will be a full remedy for this evil, and will I am persuaded, evince a greater facility in legislating uniformly for all the States than has been supposed by some of the best friends of the Union

Among the subjects on the anvil is the arrangements of the subordinate Executive departments. A Unity in each has been resolved on, and an amenability to the President alone, as well as to the Senate by way of impeachment. Perhaps it would not be very consistent with the Constitution to require the concurrence of the Senate in removals. The Executive power seems to be vested in the President alone, except so far as it is qualified by an express association of the Senate in appointments: in like manner as the Legislative is vested in Congress, under the exception in favour of the President's qualified negative. Independently of this consideration I think it best to give the Senate as little agency as possible in Executive matters, and to make the President as responsible as possible in them. Were the heads of departments dependent on the Senate, a faction in this branch might support them agst the President, distract the Executive department, and obstruct the public business. The danger of undue power in the President from such a regulation is not to me formidable. I see, and *politically feel* that that will be the weak branch of the



Government. With a full power of removal, the President will be more likely to spare unworthy officers, thro' fear than to displace the meritorious thro' caprice or passion.—*Mad. MSS.*

[\[1\]](#)

## TO THOMAS JEFFERSON

New York, Feby 4, 1790.

Dear Sir,—

Your favor of Jany. 9, inclosing one of Sepr. last did not get to hand till a few days ago.\* The idea which the latter evolves is a great one; and suggests many interesting reflections to Legislators; particularly when contracting and providing for public debts. Whether it can be received in the extent to which your reasonings carry it, is a question which I ought to turn more in my thoughts than I have yet been able to do, before I should be justified in making up a full opinion on it. My first thoughts lead me to view the doctrine as not *in all respects* compatible with the course of human affairs. I will endeavour to sketch the grounds of my skepticism. “As the Earth belongs to the living, not to the dead, a living generation can bind itself only; in every Society the will of the majority binds the whole; according to the laws of mortality, a majority of those ripe for the exercise of their will do not live beyond the term of 19 years; to this term then is limited the validity of every act of the Society, nor can any act be continued beyond this term without an *express* declaration of the public will.” This I understand to be the outline of the argument.

The Acts of a political society may be divided into three classes:

1. the fundamental constitution of the Government.
2. laws involving some stipulation, which renders them irrevocable at the will of the Legislature.
3. laws involving no such irrevocable quality.

1. However applicable in theory the doctrine may be to a Constitution, it seems liable in practice to some weighty objections.

Would not a Government ceasing of necessity at the end of a given term, unless prolonged by some Constitutional Act, previous to its expiration, be too subject to the casualty and consequences of an interregnum?

Would not a Government so often revised become too mutable & novel to retain that share of prejudice in its favor which is a salutary aid to the most rational Government?

Would not such a periodical revision engender pernicious factions that might not otherwise come into existence; and agitate the public mind more frequently and more violently than might be expedient?

2. In the second class of acts involving stipulations, must not exceptions at least to the doctrine, be admitted?

If the earth be the gift of *nature* to the living, their title can extend to the earth in its *natural* state only. The *improvements* made by the dead form a debt against the living, who take the benefit of them. This debt cannot be otherwise discharged than by a proportionate obedience to the will of the Authors of the improvements.

But a case less liable to be controverted may perhaps be stated. Debts may be incurred with a direct view to the interests of the unborn as well as of the living. Such are debts for repelling a Conquest, the evils of which descend through many generations. Debts may even be incurred principally for the benefit of posterity: Such perhaps is the debt incurred by the U. States. In these instances the debts might not be dischargeable within the term of 19 years.

There seems, then, to be some foundation in the nature of things; in the relation which one generation bears to another, for the *descent* of obligations from one to another. Equity may require it. Mutual good may be promoted by it. And all that seems indispensable in stating the account between the dead and the living, is to see that the debts against the latter do not exceed the advances made by the former. Few of the incumbrances entailed on nations by their predecessors would bear a liquidation even on this principle.

3. Objections to the doctrine, as applied to the third class of Acts must be merely practical. But in that view alone they appear to be material.

Unless such temporary laws should be kept in force by acts regularly anticipating their expiration, all the rights depending on positive laws, that is most of the rights of property would become absolutely defunct, and the most violent struggles ensue between the parties interested in reviving & those interested in reforming the antecedent state of property. Nor does it seem improbable that such an event might be suffered to take place. The checks & difficulties opposed to the passage of laws which render the power of repeal inferior to an opportunity to reject, as a security against oppression, would here render the latter an insecure provision against anarchy. Add to this that the very possibility of an event so hazardous to the rights of property could not but depreciate its value; that the approach of the crisis wd increase the effect; that the frequent return of periods superseding all the obligations dependent on antecedent laws & usages, must by weakening the sense of them, co-operate with motives to licentiousness already too powerful; and that the general uncertainty & vicissitudes of such a state of things would, on one side, discourage every useful effort of steady industry pursued under the sanction of existing laws, and on the other, give an immediate advantage to the more sagacious over the less sagacious part of the Society.

I can find no relief from such embarrassments but in the received doctrine that a *tacit* assent may be given to established Governments & laws, and that this assent is to be inferred from the omission of an express revocation. It seems more practicable to remedy by well-constituted Governments the pestilent operation of this doctrine, in the unlimited sense in which it is at present recd., than it is to find a remedy for the evils necessarily springing from an unlimited admission of the contrary doctrine.

Is it not doubtful whether it be possible to exclude wholly the idea of an implied or tacit assent, without subverting the very foundation of Civil Society?

On what principle is it that the voice of the majority binds the minority? It does not result I conceive from a law of nature but from compact founded on utility. A greater proportion might be required by the fundamental Constitution of Society, if under any particular circumstances it were judged eligible. Prior therefore to the establishment of this principle, *unanimity* was necessary, and rigid Theory, accordingly presupposes the assent of every individual to the rule, which subjects the minority to the will of the majority. If this assent cannot be given tacitly, or be not implied where no positive evidence forbids, no person born in Society, could on attaining ripe age, be bound by any acts of the majority, and either a unanimous renewal of every law would be necessary, as often as a new member should be added to the Society, or the express consent of every new member be obtained to the rule by which the majority decides for the whole.

If these observations be not misapplied, it follows that a limitation of the validity of all Acts to the computed life of the generation establishing them, is in some cases not required by theory, and in others not consistent with practice. They are not meant however to impeach either the utility of the principle as applied to the cases you have particularly in view, or the general importance of it in the eye of the Philosophical Legislator. On the contrary it would give me singular pleasure to see it first announced to the world in a law of the U. States, and always kept in view as a salutary restraint on living generations from *unjust & unnecessary* burdens on their successors. This is a pleasure however which I have no hope of enjoying. The spirit of Philosophical legislation has not prevailed at all in some parts of America and is by no means the fashion of this part, or of the present Representative Body. The evils suffered or feared weakness in Government and licentiousness in the people, have turned the attention more towards the means of strengthening the powers of the former, than of narrowing their extent in the minds of the latter. Besides this it is so much easier to descry the little difficulties immediately incident to every great plan, than to comprehend its general & remote benefits, that further light must be added to the Councils of our Country before many truths which are seen through the medium of Philosophy, become visible to the naked eye of the ordinary politician.—*Mad. MSS.*

[1] Italics are for cypher

[2] See ante, p. 312.

[1] Italics are for cypher.

[1] Lee.

[\*] See the letter in Ford's Writings of Jefferson, v., 115.

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James Madison, *The Writings, vol. 6 (1790-1802)* [1906]

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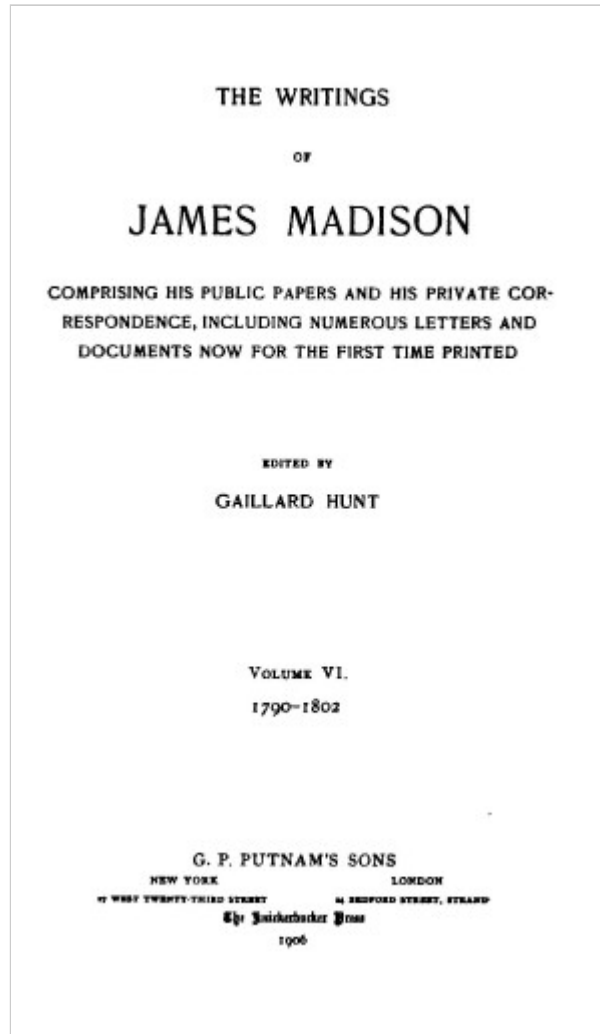
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## Edition Used:

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Author: [James Madison](#)

Editor: [Gaillard Hunt](#)

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CONTENTS OF VOLUME VI.

	PAGE
Chronology . . . . .	XV
1790.	
Speeches in the First Congress—Second Session . . . . .	1-18
May 14th. Discriminating Tonnage Dues—July 6th. Location of the Capital.	
To Edmund Pendleton, March 4th . . . . .	5, n
Census—Treasury Report—Assumption of State debts —European news.	
To Edmund Randolph, March 14th . . . . .	7, n.
Assumption of State debts.	
To Edmund Randolph, March 21st . . . . .	8, n.
Assumption of State debts—Quaker petitions.	
To Edmund Pendleton, April 4th . . . . .	9, n.
Assumption of State debts—Virginia proceedings in the Revolution.	
To Henry Lee, April 13th . . . . .	10, n.
Assumption of State debts—Treasury report—Public debt—Potomac Company.	
To James Monroe, April 17th . . . . .	12, n.
Land investments—Assumption of State debts.	
To James Madison, May 2d . . . . .	13, n.
Sale of tobacco.	
To James Monroe, June 1st . . . . .	14, n.
Assumption of State debts.	
To James Madison, June 13th . . . . .	15, n.
Farming activities—Capital.	
To James Monroe, June 17th . . . . .	16, n.
Capital—Assumption of State debts.	

v

## Table Of Contents

[Chronology of James Madison. 1790-1802.](#)  
[The Writings of James Madison.](#)  
[Speeches In the First Congress—second Session, 1790 \( Continued \).](#)  
[Speeches In the First Congress—third Session, 1791.](#)  
[Population and Emigration. 1](#)  
[Consolidation. 1](#)  
[Public Opinion. 1](#)  
[Money. 1](#)  
[1792: Government. 1](#)  
[Charters. 2](#)  
[Parties. 1](#)  
[British Government. 1](#)  
[Universal Peace. 1](#)  
[Government of the United States. 1](#)  
[Spirit of Governments. 1](#)  
[Republican Distribution of Citizens. 1](#)  
[Fashion. 1](#)  
[Property. 1](#)  
[The Union. 1](#)  
[A Candid State of Parties. 1](#)  
[Who Are the Best Keepers of the People’s Liberties? 1](#)  
[1793: To Edmund Pendleton. Mad. Mss.](#)  
[To J. M. Roland. 1 Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Letters of Helvidius. 1](#)  
[No. I.](#)  
[No. II.](#)  
[No. III.](#)  
[No. IV.](#)  
[No. V. 1](#)  
[To Archibald Stuart. Va. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To George Washington. Wash. Mss.](#)  
[1794: Speech On Discriminating Duties—january 3, 1794. 1](#)  
[To Horatio Gates. 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)



[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[1795: To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Robt. R. Livingston. 1 Mad. Mss.](#)  
[To — — 1. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[1796: The Jay Treaty. Speech In the 4 Th Congress, April 6. 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[1797: To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Madison. Mad. Mss.](#)  
[1798: To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. 1 Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Resolutions of 1798. 1](#)  
[1799: Resolutions of 1799.](#)  
[Address of the General Assembly to the People of the Commonwealth of Virginia.](#)  
[Report On the Resolutions. 1](#)  
[1800: To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[1801: To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Rufus King. 1 D. Of S. Mss. Instr.](#)  
[To Rufus King. D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. 1 D. Of S. Mss. Instr.](#)  
[To Rufus King. D. Of S. Mss. Instr.](#)  
[1802: To Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. 1 D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. D. Of S. Mss. Instr.](#)

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*December, 1906*

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[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1790-1802.

1790.  
March-  
August. } Attending Congress at New York.  
Nov. 20. Arrives at Philadelphia.  
1791.  
January-  
March. } Attending Congress at Philadelphia.  
April. Goes to Princeton.  
May. Goes to New York.  
June. Makes a tour with Jefferson.  
July-August. In New York.  
}  
September. In Virginia.  
October 22. Attends Congress at Philadelphia.  
Nov. 21. Publishes first essay in Freneau's *National Gazette*.  
1792.  
January-  
May. } Attending Congress at Philadelphia.  
February. Breaks with Hamilton.  
May 30. In Orange.  
July 21. Submits draft of farewell address to Washington.  
October 10. Made a citizen of France by the National Assembly.  
December. Attends Congress at Philadelphia.  
1793.  
January-  
March. } Attending Congress at Philadelphia.  
April. In Orange.  
August. Visits Monroe.  
August-  
September. } Publishes Letters of Helvidius in reply to Pacificus.  
October 24. Submits last opinion to Washington.  
October. In Orange.  
1794.  
January-  
June. } Attending Congress at Philadelphia.  
September  
14. Marries Dolly Payne Todd at "Harewood."  
December. Attends Congress at Philadelphia.  
1795.  
January-  
March. } Attending Congress at Philadelphia.  
March. Returns to Orange.  
December 7. Attends Congress at Philadelphia.  
1796.

Attending Congress at Philadelphia.

1797.  
January. In Philadelphia.  
March 4. Retires to private life.  
1798.  
In Orange.  
December 21. Resolutions of 1798 passed by House of Delegates.  
1799.  
January 23. Address of the General Assembly to the People of the Commonwealth of Virginia adopted by General Assembly.  
December. Attending House of Delegates at Richmond.  
Report on the Resolutions adopted.  
1800.  
In Orange.  
1801.  
February 27. His father dies.  
May 2. Assumes office as Secretary of State.  
June 15. Instructs Rufus King relative to seizure of American vessels.  
July 24. Instructs Rufus King relative to impressment of American seamen.  
October 25. Instructs Charles Pinckney relative to affairs with Spain.  
December 22. Instructs Rufus King relative to countervailing duty on American goods.  
1802.  
March 30. Instructs Charles Pinckney concerning reported cession of Louisiana.  
May 1. Instructs Robert R. Livingston concerning Louisiana.  
May 11. Instructs Charles Pinckney concerning Louisiana.  
July 6.  
October 15. Instructs Robert R. Livingston concerning Louisiana.  
}  
November 27. Instructs Charles Pinckney concerning withdrawal of the right of deposit.

[\[Back to Table of Contents\]](#)

## ***THE WRITINGS OF JAMES MADISON.***

### **SPEECHES IN THE FIRST CONGRESS—SECOND SESSION, 1790 (*Continued*).**

#### **MAY 14—DISCRIMINATING TONNAGE DUES.1**

Mr. Madison replied to the several arguments against his motion. A gentleman, said he, (Mr. Sedgwick,) had called it a “measure of passion.” He observed that it had neither been dictated by passion, nor supported with passion; he considered it as a cool as well as a proper measure, and believed that the more coolly it was examined, the more proper it would appear. If any thing more were to be done, let it be something that will be effectual.

As to the distinction proposed between nations in treaty and not in treaty, that point had been discussed and decided yesterday, and was no part of the argument to-day. It was agreed on all hands, that the measure reported by the committee was levelled against a particular nation, though it was not named. Why then ostensibly involve other nations for whom it was not intended; and by making no difference in favor of those in treaty, teach others to consider a treaty with us as of no value? He said, we were the less restrained from making the distinction, because the nation against which the measures were designed to operate, had not hesitated to set the example, as far as her supposed interest went. He had before shown, that the principle on which the trade with the West Indies was regulated by Great Britain, was a departure from the principle of her navigation act: according to that act, all other nations were allowed to carry directly their own produce in their own vessels, wherever the same trade was allowed by the act to British vessels. A gentleman from Pennsylvania (Mr. Fitzsimons) was afraid the measure was too bold a one. But why was it too bold, if, as the weighty information and arguments of the gentleman himself had shown, there was no danger? If the existence of the West Indies, and the prosperity of Great Britain depended so materially on the trade with the United States, that it would be madness in her to hazard an interruption of it?

Mr. M. then proceeded to review the European and West India commerce of the United States. He stated the imports to be, from Europe, about £3,039,000; from the West Indies, £927,438: total, £3,966,438. The exports to Europe, £3,203,448; to the West Indies, £941,552: total, £4,244,000.

He stated the export and return freight to Europe to be estimated at £500,000; to the West Indies, £250,000: total, £750,000. For the return freight, which was estimated at one-tenth of the export freight, he deducted £45,454 10s., which left for the value of the export freight to Europe £454,545 10s. By applying a like rule to the West India freight, he made the total export freight to amount to £681,818 5s.; of this he computed two-thirds, or £454,545 10s., to be enjoyed by British vessels. He took

notice here, that the proportion of foreign to British tonnage, employed in the exports of Great Britain, was stated by Lord Sheffield as no more than one to twelve.

The amount of the freight, at two pounds sterling per ton, employs 227,272 tons of shipping; or, allowing two voyages a year, 568 vessels of 200 tons burden each.

The shipping, allowing six men to 100 tons, employs 6,816 seamen; or allowing one man to fifteen tons, which was perhaps a better estimate, 7,575 seamen.

He asked whether it was conceivable that Great Britain would give up all these advantages, rather than put the commerce of the two countries on such a footing as would be reasonable and reciprocal? Whether she would throw away, and into her rival's hands too, a freight of near half a million sterling? Whether she could bear to see between five and six hundred vessels rotting in port, or sold to others to be employed in the business, sacrificed by her? He asked what would become of seven or eight thousand seamen, thus turned out of employment? And whether they would not enter into the service of other nations, and particularly of the United States, to be employed in the exportation of our produce?

He took notice of the immense loss that would be sustained by the British merchants on the capital employed in the American trade, particularly the rice and tobacco. Near one hundred thousand hogshead of tobacco, not more than ten or twelve thousand of which were consumed in Great Britain, annually went almost all through their hands. The same thing might be said of one hundred thousand barrels of rice annually exported from the United States.

The manufacturers, he said, would be still more distressed by the want of the American market. Many articles, which were luxuries to this country, and which it would be better without, gave bread to that class of people. Their distresses would increase the spirit of emigration, already so much dreaded by the policy of that nation. He observed, that Great Britain would be the more unwilling to risk an interruption of her trade to the United States, because it would hasten the establishment of American manufactures, which she had always endeavored to prevent, and thereby cut off forever this important market for her. Such a danger would be particularly alarming, as her three great staple manufactures, of leather, iron, and wool, were those which were making the greatest progress in this country, and would be the most aided at her expense.

As to the British West Indies, it had been fully shown that they could neither prosper nor subsist without the market of the United States; they were fed from our granaries. Without our lumber, which, it was admitted, could be supplied no where else, they could not carry on their trade, or support their establishments. In the sale of their rum, on which the profits of their labor essentially depended, they had no resource but in the consumption of this country. He said, the whole amount of rum sent to other foreign countries did not exceed eight or nine hundred thousand gallons, which was not more than one-fifth of what was imported into the United States; besides their loss in this respect, they would have the mortification to see the vacancy in our market filled by rum made from molasses supplied by rival islands. In case of war, which



happened every ten or twelve years, or a season of famine, which happened every three or four, he said the condition of the British islands must evidently be such, that she could not fail to provide against the contingency by proper concessions, unless she should infer from our conduct that they are not necessary.

He added, as a consideration which he thought of great weight, in favor of the measure, that in case any negotiations should take place it would put our Executive on proper ground. At present the trade with Great Britain was precisely in that situation which her interest required, and her King could moreover regulate it according to circumstances. On our part, the Executive could neither offer nor withdraw anything. He could offer nothing, because Great Britain was already in possession of every commercial privilege she desired. He could not say, give us reciprocal privileges, or yours shall be withdrawn, because this must be done by a legislative act. By passing the act proposed, the Executive will be enabled to speak a language proper for the occasion. He can say, if you do not give the United States proper privileges, those given to you shall not be continued.<sup>1</sup>

## JULY 6—LOCATION OF THE CAPITAL.

Mr. Madison.—In order to decide this question rightly, we ought to compare the advantages and disadvantages of the two places as they relate to the good of the United States. Now, I will defy any gentleman, however sanguine he may be with respect to Baltimore, to point out any substantial advantage that is not common to the Potomac; and I defy him to disprove that there are not several important advantages belonging to the Potomac, which do not appertain to Baltimore. The committee have had ample information with respect to the Northern and Southern positions of the two places. In point of salubrity of air, without disparaging the pretensions of Baltimore, the Potomac is at least equally favored in that respect. In regard to centrality of situation, the Potomac has undoubtedly the advantage. In respect to security from invasion, I aver the Potomac has the advantage also. With relation to the Western country, there is not a shadow of comparison. If we should go as far south as Baltimore, why not an equal distance southwest to the Potomac? Those who are acquainted with the country on the Potomac, and that in the neighborhood of Baltimore, do not hesitate to give the preference to the Potomac. It is true, that Baltimore has respectable resources; her rapid growth is a clear proof of it; but look at the resources of the Potomac, the great range of rich country that borders on it, and see if these are not advantages that must, in a short time, produce a commercial town. Sir, a period might be named, not exceeding ten years, within which the town of Baltimore obtained the greater part of its increase and consequence; a period of ten years will produce the same effects on the Potomac, because the same causes exist; and when, super-added to this, the residence of Government shall be there, there can be no doubt but that there will be every accommodation that can be desired.

It is said, that before the ten years expire, a repeal of the act may take place, and thus Congress be kept at Philadelphia. But what more can we do than pass a law for the purpose? It is not in our power to guard against a repeal. Our acts are not like those of the Medes and Persians, unalterable. A repeal is a thing against which no provision can be made. If that is an objection, it holds good against any law that can be passed.

If those States that may have a superiority in Congress at a future day will pay no respect to the acts of their predecessors, or to the public good, there is no power to compel them.

But I flatter myself that some respect will be paid to the public interest, and to the plighted faith of the Government. As to centrality, the best evidence we have at this time in favor of the Potomac is the different travelling of the members; and this, sir, proves incontestably that the proposed place on the Potomac is near the centre. If any arguments could be brought against it, it is its being too far to the Northward, for the mileage south of the Potomac is twelve thousand seven hundred and eighty-two miles, to the north of it twelve thousand four hundred and twenty-two miles. If to this Rhode Island be added, it will not be more than equal. If the bill once passes, I am not under any apprehensions of a repeal; but if danger of repeal does exist, it is of that kind against which we cannot guard. Sir, we should calculate on accepting the bill as it now stands; we ought not to risk it by making any amendment. We have it now in our power to procure a Southern position. The opportunity may not again speedily present itself. We know the various and jealous interests that exist on this subject. We should hazard nothing. If the Potomac is struck out, are you sure of getting Baltimore? May no other place be proposed? Instead of Baltimore, is it not probable we may have Susquehanna inserted, perhaps the Delaware? Make any amendment, sir, and the bill will go back to the Senate. Are we sure that it will come back into our possession again? By amending, we give up a certainty for an uncertainty. In my opinion, we shall act wisely, if we accept the bill as it now stands, and I beg leave to press it on gentlemen not to consent to any alteration, lest it be wholly defeated and the prospect of obtaining a Southern position vanish for ever.<sup>1</sup>

[\[Back to Table of Contents\]](#)

## SPEECHES IN THE FIRST CONGRESS—THIRD SESSION, 1791.

### FEBRUARY 2.—BANK OF THE UNITED STATES.

Mr. Madison began with a general review of the advantages and disadvantages of banks. The former, he stated, to consist in, first, the aid they afford to merchants, who can thereby push their mercantile operations further with the same capital. Second. The aids to merchants in paying punctually the customs. Third. Aids to the Government in complying punctually with its engagements, when deficiencies or delays happen in the revenue. Fourth. In diminishing usury. Fifth. In saving the wear of gold and silver kept in the vaults, and represented by notes. Sixth. In facilitating occasional remittances from different places where notes happen to circulate.

The effect of the proposed bank, in raising the value of stock, he thought had been greatly overrated. It would no doubt raise that of the stock subscribed into the bank; but could have little effect on stock in general, as the interest on it would remain the same, and the quantity taken out of the market would be replaced by bank stock.

The principal disadvantages consisted in, first, banishing the precious metals, by substituting another medium to perform their office. This effect was inevitable. It was admitted by the most enlightened patrons of banks, particularly by *Smith on the Wealth of Nations*. The common answer to the objection was, that the money banished was only an exchange for something equally valuable that would be imported in return. He admitted the weight of this observation in general; but doubted whether, in the present habits of this country, the returns would not be in articles of no permanent use to it.

Second. Exposing the public and individuals to all the evils of a run on the bank, which would be particularly calamitous in so great a country as this, and might happen from various causes, as false rumors, bad management of the institution, an unfavorable balance of trade from short crops, &c.

It was proper to be considered, also, that the most important of the advantages would be better obtained by several banks, properly distributed, than by a single one. The aids to commerce could only be afforded at or very near the seat of the bank. The same was true of aids to merchants in the payment of customs. Anticipations of the Government would also be most convenient at the different places where the interest of the debt was to be paid. The case in America was different from that in England: the interest there was all due at one place, and the genius of the Monarchy favored the concentration of wealth and influence at the metropolis.

He thought the plan liable to other objections. It did not make so good a bargain for the public as was due to its interests. The charter to the Bank of England had been granted for eleven years only, and was paid for by a loan to the Government on terms

better than could be elsewhere got. Every renewal of the charter had, in like manner, been purchased; in some instances, at a very high price. The same had been done by the Banks of Genoa, Naples, and other like banks of circulation. The plan was unequal to the public creditors; it gave an undue preference to the holders of a particular denomination of the public debt, and to those at and within reach of the seat of Government. If the subscriptions should be rapid, the distant holders of evidences of debt would be excluded altogether.

In making these remarks on the merits of the bill, he had reserved to himself the right to deny the authority of Congress to pass it. He had entertained this opinion from the date of the Constitution. His impression might, perhaps, be the stronger, because he well recollected that a power to grant charters of incorporation had been proposed in the General Convention and rejected.

Is the power of establishing an incorporated Bank among the powers vested by the Constitution in the Legislature of the United States? This is the question to be examined.

After some general remarks on the limitations of all political power, he took notice of the peculiar manner in which the Federal Government is limited. It is not a general grant, out of which particular powers are excepted; it is a grant of particular powers only, leaving the general mass in other hands. So it had been understood by its friends and its foes, and so it was to be interpreted.

As preliminaries to a right interpretation, he laid down the following rules:

An interpretation that destroys the very characteristic of the Government cannot be just.

Where a meaning is clear, the consequences, whatever they may be, are to be admitted—where doubtful, it is fairly triable by its consequences.

In controverted cases, the meaning of the parties to the instrument, if to be collected by reasonable evidence, is a proper guide.

Contemporary and concurrent expositions are a reasonable evidence of the meaning of the parties.

In admitting or rejecting a constructive authority, not only the degree of its incidentality to an express authority is to be regarded, but the degree of its importance also; since on this will depend the probability or improbability of its being left to construction.

Reviewing the Constitution with an eye to these positions, it was not possible to discover in it the power to incorporate a Bank. The only clauses under which such a power could be pretended are either:

1. The power to lay and collect taxes to pay the debts, and provide for the common defence and general welfare: or,

2. The power to borrow money on the credit of the United States: or,
3. The power to pass all laws necessary and proper to carry into execution those powers.

The bill did not come within the first power. It laid no tax to pay the debts, or provide for the general welfare. It laid no tax whatever. It was altogether foreign to the subject.

No argument could be drawn from the terms “common defence and general welfare.” The power as to these general purposes was limited to acts laying taxes for them; and the general purposes themselves were limited and explained by the particular enumeration subjoined. To understand these terms in any sense, that would justify the power in question, would give to Congress an unlimited power; would render nugatory the enumeration of particular powers; would supersede all the powers reserved to the State Governments. These terms are copied from the articles of Confederation; had it ever been pretended that they were to be understood otherwise than as here explained?

It had been said, that “general welfare” meant cases in which a general power might be exercised by Congress, without interfering with the powers of the States; and that the establishment of a National Bank was of this sort. There were, he said, several answers to this novel doctrine.

1. The proposed Bank would interfere, so as indirectly to defeat a State Bank at the same place.
2. It would directly interfere with the rights of the States to prohibit as well as to establish Banks, and the circulation of Bank notes. He mentioned a law in Virginia actually prohibiting the circulation of notes payable to bearer.
3. Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitution of the States.
4. If Congress could incorporate a Bank merely because the act would leave the States free to establish Banks also, any other incorporations might be made by Congress. They could incorporate companies of manufacturers, or companies for cutting canals, or even religious societies, leaving similar incorporations by the States, like State Banks, to themselves. Congress might even establish religious teachers in every parish, and pay them out of the Treasury of the United States, leaving other teachers unmolested in their functions. These inadmissible consequences condemned the controverted principle.

The case of the Bank established by the former Congress had been cited as a precedent. This was known, he said, to have been the child of necessity. It never could be justified by the regular powers of the articles of Confederation. Congress betrayed a consciousness of this in recommending to the States to incorporate the Bank also.

They did not attempt to protect the Bank notes by penalties against counterfeiters. These were reserved wholly to the authority of the States.

The second clause to be examined is that which empowers Congress to borrow money.

Is this bill to borrow money? It does not borrow a shilling. Is there any fair construction by which the bill can be deemed an exercise of the power to borrow money? The obvious meaning of the power to borrow money, is that of accepting it from, and stipulating payment to those who are able and willing to lend.

To say that the power to borrow involves a power of creating the ability, where there may be the will, to lend, is not only establishing a dangerous principle, as will be immediately shown, but is as forced a construction as to say that it involves the power of compelling the will, where there may be the ability to lend.

The third clause is that which gives the power to pass all laws necessary and proper to execute the specified powers.

Whatever meaning this clause may have, none can be admitted, that would give an unlimited discretion to Congress.

Its meaning must, according to the natural and obvious force of the terms and the context, be limited to means necessary to the end, and incident to the nature of the specified powers.

The clause is in fact merely declaratory of what would have resulted by unavoidable implication, as the appropriate, and, as it were, technical means of executing those powers. In this sense it has been explained by the friends of the Constitution, and ratified by the State Conventions.

The essential characteristic of the Government, as composed of limited and enumerated powers, would be destroyed, if, instead of direct and incidental means, any means could be used, which, in the language of the preamble to the bill, "might be conceived to be conducive to the successful conducting of the finances, or might be conceived to tend to give facility to the obtaining of loans." He urged an attention to the diffuse and ductile terms which had been found requisite to cover the stretch of power contained in the bill. He compared them with the terms necessary and proper, used in the Constitution, and asked whether it was possible to view the two descriptions as synonymous, or the one as a fair and safe commentary on the other.

If, proceeded he, Congress, by virtue of the power to borrow, can create the means of lending, and, in pursuance of these means, can incorporate a Bank, they may do any thing whatever creative of like means.

The East India Company has been a lender to the British Government, as well as the Bank, and the South Sea Company is a greater creditor than either. Congress, then, may incorporate similar companies in the United States, and that too under the idea of regulating trade, but under that of borrowing money.

Private capitals are the chief resources for loans to the British Government. Whatever then may be conceived to favor the accumulation of capitals may be done by Congress. They may incorporate manufacturers. They may give monopolies in every branch of domestic industry.

If, again, Congress by virtue of the power to borrow money, can create the ability to lend, they may, by virtue of the power to levy money, create the ability to pay it. The ability to pay taxes depends on the general wealth of the society, and this, on the general prosperity of agriculture, manufactures, and commerce. Congress then may give bounties and make regulations on all of these objects.

The States have, it is allowed on all hands, a concurrent right to lay and collect taxes. This power is secured to them, not by its being expressly reserved, but by its not being ceded by the Constitution. The reasons for the bill cannot be admitted, because they would invalidate that right; why may it not be conceived by Congress, that a uniform and exclusive imposition of taxes, would not less than the proposed Banks “be conducive to the successful conducting of the national finances, and tend to give facility to the obtaining of revenue, for the use of the Government?”

The doctrine of implication is always a tender one. The danger of it has been felt in other Governments. The delicacy was felt in the adoption of our own; the danger may also be felt, if we do not keep close to our chartered authorities.

Mark the reasoning on which the validity of the bill depends! To borrow money is made the end, and the accumulation of capitals implied as the means. The accumulation of capitals is then the end, and a Bank implied as the means. The Bank is then the end, and a charter of incorporation, a monopoly, capital punishments, &c., implied as the means.

If implications, thus remote and thus multiplied, can be linked together, a chain may be formed that will reach every object of legislation, every object within the whole compass of political economy.

The latitude of interpretation required by the bill is condemned by the rule furnished by the Constitution itself.

Congress have power “to regulate the value of money”; yet it is expressly added, not left to be implied, that counter-feiters may be punished.

They have the power “to declare war,” to which armies are more incident than incorporated banks to borrowing; yet the power “to raise and support armies” is expressly added; and to this again, the express power “to make rules and regulations for the government of armies”; a like remark is applicable to the powers as to the navy.

The regulation and calling out of the militia are more appertinent to war than the proposed Bank to borrowing; yet the former is not left to construction.

The very power to borrow money is a less remote implication from the power of war, than an incorporated monopoly Bank from the power of borrowing; yet, the power to borrow is not left to implication.

It is not pretended that every insertion or omission in the Constitution is the effect of systematic attention. This is not the character of any human work, particularly the work of a body of men. The examples cited, with others that might be added, sufficiently inculcate, nevertheless, a rule of interpretation very different from that on which the bill rests. They condemn the exercise of any power, particularly a great and important power, which is not evidently and necessarily involved in an express power.

It cannot be denied that the power proposed to be exercised is an important power.

As a charter of incorporation the bill creates an artificial person, previously not existing in law. It confers important civil rights and attributes, which could not otherwise be claimed. It is, though not precisely similar, at least equivalent, to the naturalization of an alien, by which certain new civil characters are acquired by him. Would Congress have had the power to naturalize, if it had not been expressly given?

In the power to make by-laws, the bill delegated a sort of Legislative power, which is unquestionably an act of a high and important nature. He took notice of the only restraint on the by-laws, that they were not to be contrary to the law and the constitution of the Bank, and asked what law was intended; if the law of the United States, the scantiness of their code would give a power never before given to a corporation, and obnoxious to the States, whose laws would then be superseded, not only by the laws of Congress, but by the bylaws of a corporation within their own jurisdiction. If the law intended was the law of the State, then the State might make laws that would destroy an institution of the United States.

The bill gives a power to purchase and hold lands; Congress themselves could not purchase lands within a State “without the consent of its Legislature.” How could they delegate a power to others which they did not possess themselves?

It takes from our successors, who have equal rights with ourselves, and with the aid of experience will be more capable of deciding on the subject, an opportunity of exercising that right for an immoderate term.

It takes from our constituents the opportunity of deliberating on the untried measure, although their hands are also to be tied by it for the same term.

It involves a monopoly, which affects the equal rights of every citizen.

It leads to a penal regulation, perhaps capital punishments, one of the most solemn acts of sovereign authority.

From this view of the power of incorporation exercised in the bill, it could never be deemed an accessory or subaltern power, to be deduced by implication, as a means of executing another power; it was in its nature a distinct, an independent and substantive prerogative, which not being enumerated in the Constitution, could never



have been meant to be included in it, and not being included, could never be rightfully exercised.

He here adverted to a distinction, which he said had not been sufficiently kept in view, between a power necessary and proper for the Government or Union, and a power necessary and proper for executing the enumerated powers. In the latter case, the powers included in the enumerated powers were not expressed, but to be drawn from the nature of each. In the former, the powers composing the Government were expressly enumerated. This constituted the peculiar nature of the Government; no power, therefore, not enumerated could be inferred from the general nature of Government. Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment of the Constitution.

But the proposed Bank could not even be called necessary to the Government; at most it could be but convenient. Its uses to the Government could be supplied by keeping the taxes a little in advance; by loans from individuals; by the other Banks, over which the Government would have equal command; nay greater, as it might grant or refuse to these the privilege (a free and irrevocable gift to the proposed Bank) of using their notes in the Federal revenue.

He proceeded next to the contemporary expositions given to the Constitution.

The defence against the charge founded on the want of a bill of rights pre-supposed, he said, that the powers not given were retained; and that those given were not to be extended by remote implications. On any other supposition, the power of Congress to abridge the freedom of the press, or the rights of conscience, &c., could not have been disproved.

The explanations in the State Conventions all turned on the same fundamental principle, and on the principle that the terms necessary and proper gave no additional powers to those enumerated.

[Here he read sundry passages from the Debates of the Pennsylvania, Virginia, and North Carolina Conventions, showing the grounds on which the Constitution had been vindicated by its principal advocates, against a dangerous latitude of its powers, charged on it by its opponents.]

He did not undertake to vouch for the accuracy or authenticity of the publications which he quoted. He thought it probable that the sentiments delivered might, in many instances, have been mistaken, or imperfectly noted; but the complexion of the whole, with what he himself and many others must recollect, fully justified the use he had made of them.

The explanatory declarations and amendments accompanying the ratifications of the several States formed a striking evidence, wearing the same complexion. He referred those who might doubt on the subject, to the several acts of ratification.

The explanatory amendments proposed by Congress themselves, at least, would be good authority with them; all these renunciations of power proceeded on a rule of construction, excluding the latitude now contended for. These explanations were the more to be respected, as they had not only been proposed by Congress, but ratified by nearly three-fourths of the States. He read several of the articles proposed, remarking particularly on the 11th and 12th; the former, as guarding against a latitude of interpretation; the latter, as excluding every source of power not within the Constitution itself.

With all this evidence of the sense in which the Constitution was understood and adopted, will it not be said, if the bill should pass, that its adoption was brought about by one set of arguments, and that it is now administered under the influence of another set? and this reproach will have the keener sting, because it is applicable to so many individuals concerned in both the adoption and administration.

In fine, if the power were in the Constitution, the immediate exercise of it cannot be essential; if not there, the exercise of it involves the guilt of usurpation, and establishes a precedent of interpretation levelling all the barriers which limit the powers of the General Government, and protect those of the State Governments. If the point be doubtful only, respect for ourselves, who ought to shun the appearance of precipitancy and ambition; respect for our successors, who ought not lightly to be deprived of the opportunity of exercising the rights of legislation; respect for our constituents who have had no opportunity of making known their sentiments, and who are themselves to be bound down to the measure for so long a period; all these considerations require that the irrevocable decision should at least be suspended until another session.

It appeared on the whole, he concluded, that the power exercised by the bill was condemned by the silence of the Constitution; was condemned by the rule of interpretation arising out of the Constitution; was condemned by its tendency to destroy the main characteristic of the Constitution; was condemned by the expositions of the friends of the Constitution, whilst depending before the public; was condemned by the apparent intention of the parties which ratified the Constitution; was condemned by the explanatory amendments proposed by Congress themselves to the Constitution; and he hoped it would receive its final condemnation by the vote of this House.

## FEBRUARY 8.—BANK OF THE UNITED STATES.

Mr. Madison observed, that the present is a question which ought to be conducted with moderation and candor; and, therefore, there is no occasion to have recourse to those tragic representations which have been adduced. Warmth and passion should be excluded from the discussion of a subject which ought to depend on the cool dictates of reason for its decision.

Adverting to the observation of Mr. Smith, of South Carolina, “that it would be a deplorable thing for the Senate of the United States to have fallen on a decision which violates the Constitution,” he inquired, What does the reasoning of the gentleman tend

to show but this, that from respect to the Senate this House ought to sanction their decisions? And from hence it will follow, that the President of the United States ought, out of respect to both, to sanction their joint proceedings; but he could remind the gentleman of his holding different sentiments on another occasion.

Mr. M. then enlarged on the exact balance or equipoise contemplated by the Constitution, to be observed and maintained between the several branches of Government; and showed, that except this idea was preserved, the advantages of different independent branches would be lost, and their separate deliberations and determinations be entirely useless.

In describing a corporation, he observed, that the powers proposed to be given are such as do not exist antecedent to the existence of the corporation; these powers are very extensive in their nature, and to which a principle of perpetuity may be annexed.

He waived a reply to Mr. Vining's observations on the common law, [in which that gentleman had been lengthy and minute, in order to invalidate Mr. Madison's objections to the power proposed to be given to the Bank, to make rules and regulations, not contrary to law.] Mr. M. said, the question would involve a very lengthy discussion; and other objects more intimately connected with the subject remained to be considered.

The power of granting charters, he observed, is a great and important power, and ought not to be exercised unless we find ourselves expressly authorized to grant them. Here he dilated on the great and extensive influence that incorporated societies had on public affairs in Europe. They are powerful machines, which have always been found competent to effect objects on principles in a great measure independent of the people.

He argued against the influence of the precedent to be established by the bill; for though it has been said, that the charter is to be granted only for a term of years, yet he contended, that granting the powers on any principle is granting them in *perpetuum*; and assuming this right on the part of the Government involves the assumption of every power whatever.

Noticing the arguments in favor of the bill, he said, it had been observed, that "Government necessarily possesses every power." However true this idea may be in the theory, he denied that it applied to the Government of the United States.

Here he read the restrictive clause in the Constitution; and then observed, that he saw no pass over this limit.

The preamble to the Constitution, said he, has produced a new mine of power; but this is the first instance he had heard of, in which the preamble has been adduced for such a purpose. In his opinion, the preamble only states the objects of the Confederation, and the subsequent clauses designate the express powers by which those objects are to be obtained; and a mean is proposed through which to acquire those that may be found still requisite, more fully to effect the purposes of the Confederation.

It is said, “there is a field of legislation yet unexplored.” He had often heard this language; but he confessed he did not understand it. Is there a single blade of grass—is there any property in existence in the United States, which is not subject of legislation, either of the particular States, or of the United States? He contended that the exercise of this power, on the part of the United States, involves, to all intents and purposes, every power which an individual State may exercise. On this principle, he denied the right of Congress to make use of a bank to facilitate the collection of taxes. He did not, however, admit the idea, that the institution would conduce to that object. The bank notes are to be equal to gold and silver, and consequently will be as difficult to obtain as the specie. By means of the objects of trade on which gold and silver are employed, there will be an influx of those articles: but paper being substituted, will fill those channels which would otherwise be occupied by the precious metals. This, experience shows, is the uniform effect of such a substitution.

The right of Congress to regulate trade is adduced as an argument in favor of this of creating a corporation; but what has this bill to do with trade? Would any plain man suppose that this bill had any thing to do with trade?

He noticed the observation respecting the utility of banks to aid the Government with loans. He denied the necessity of the institution to aid the Government in this respect. Great Britain, he observed, did not depend on such institutions; she borrows from various sources.

Banks, it is said, are necessary to pay the interest of the public debt. Then they ought to be established in the places where that interest is paid; but can any man say, that the bank notes will circulate at par in Georgia. From the example in Scotland, we know that they cannot be made equal to specie, remote from the place where they can be immediately converted into coin; they must depreciate in case of a demand for specie; and if there is no moral certainty that the interest can be paid by these bank bills, will the Government be justified in depriving itself of the power of establishing banks in different parts of the Union?

We reason, and often with advantage, from British models; but in the present instance there is a great dissimilarity of circumstances. The bank notes of Great Britain do not circulate universally. To make the circumstances parallel, it ought to have been assumed as a fact, that banks are established in various parts of Great Britain, at which the interest of the national debt is paid; but the fact is, it is only paid in one place.

The clause of the Constitution which has been so often recurred to, and which empowers Congress to dispose of its property, he supposed referred only to the property left at the conclusion of the war, and has no reference to the moneyed property of the United States.

The clause which empowers Congress to pass all laws necessary, &c., has been brought forward repeatedly by the advocates of the bill; he noticed the several constructions of this clause which had been offered. The conclusion which he drew from the commentary of the gentleman from Massachusetts (Mr. Gerry,) was, that

Congress may do what they please; and recurring to the opinion of that gentleman in 1787, he said the powers of the Constitution were then dark, inexplicable, and dangerous; but now, perhaps, as the result of experience, they are clear and luminous!

The constructions of the Constitution, he asserted, which have been maintained on this occasion, go to the subversion of every power whatever in the several States; but we are told, for our comfort, that the Judges will rectify our mistakes. How are the Judges to determine in the case; are they to be guided in their decisions by the rules of expediency?

It has been asked, that if those minute powers of the Constitution were thought to be necessary, is it supposable that the great and important power on the table was not intended to be given? Mr. M. interpreted this circumstance in a quite different way, viz: if it was thought necessary to specify in the Constitution those minute powers, it would follow that more important powers would have been explicitly granted had they been contemplated.

The Western Territory business, he observed, was a case *sui generis*, and therefore cannot be cited with propriety. West Point, so often mentioned, he said, was purchased by the United States, pursuant to law, and the consent of the State of New York is supposed, if it has not been expressly granted; but, on any occasion, does it follow that one violation of the Constitution is to be justified by another?

The permanent residence bill, he conceived, was entirely irrelative to the subject; but he conceived it might be justified on truly constitutional principles.

The act vesting in the President of the United States the power of removability has been quoted; he recapitulated, in a few words, his reasons for being in favor of that bill.

The Bank of North America he had opposed, as he considered the institution as a violation of the Confederation. The State of Massachusetts, he recollected, voted with him on that occasion. The Bank of North America was, however, the child of necessity; as soon as the war was over, it ceased to operate as to Continental purposes. But, asked he, are precedents in war to justify violations of private and State rights in a time of peace? And did the United States pass laws to punish the counterfeiting the notes of that bank? They did not, being convinced of the invalidity of any such law; the bank, therefore, took shelter under the authority of the State.

The energetic administration of this Government is said to be connected with this institution. Mr. M. here stated the principles on which he conceived this Government ought to be administered; and added, other gentlemen may have had other ideas on the subject, and may have consented to the ratification of the Constitution on different principles and expectations; but he considered the enlightened opinion and affection of the people the only solid basis for the support of this Government.

Mr. M. then stated his objections to the several parts of the bill. The first article he objected to was the duration. A period of twenty years was, to this country, as a

period of a century in the history of other countries; there was no calculating for the events which might take place. He urged the ill policy of granting so long a term, from the experience of the Government in respect to some treaties, which, though found inconvenient, could not now be altered.

The different classes of the public creditors, he observed, were not all put on an equal footing by this bill; but in the bill for the disposal of the Western Territory this had been thought essential. The holders of six per cent. securities will derive undue advantages. Creditors at a distance, and the holders of three per cent. securities, ought to be considered, as the public good is most essentially promoted by an equal attention to the interest of all.

I admit, said he, that the Government ought to consider itself as the trustee of the public on this occasion, and therefore should avail itself of the best disposition of the public property.

In this view of the subject, he objected to the bill, as the public, he thought, ought to derive greater advantages from the institution than those proposed. In case of a universal circulation of the notes of the proposed bank, the profits will be so great that the Government ought to receive a very considerable sum for granting the charter.

There are other defects in the bill, which render it proper and necessary, in my opinion, that it should undergo a revision and amendment before it passes into a law. The power vested by the bill in the Executive to borrow of the bank, he thought was objectionable; and the right to establish subordinate banks ought not to be delegated to any set of men under Heaven.

The public opinion has been mentioned. If the appeal to the public opinion is suggested with sincerity, we ought to let our constituents have an opportunity to form an opinion on the subject.

He concluded by saying, he should move for the previous question.[1](#)

[\[Back to Table of Contents\]](#)

## POPULATION AND EMIGRATION.1

Both in the vegetable and animal kingdoms, every species derives from nature, a reproductive faculty beyond the demand for merely keeping up its stock: the seed of a single plant is sufficient to multiply it one hundred or a thousand-fold. The animal offspring is never limited to the number of its parents.1

This ordinance of nature is calculated, in both instances, for a double purpose. In both it insures the life of the species, which, if the generative principle had not a multiplying energy, would be reduced in number by every premature destruction of individuals, and by degrees would be extinguished altogether. In the vegetable species, the surplus answers, moreover, the essential purpose of sustaining the herbivorous tribes of animals; as in the animal, the surplus serves the like purpose of sustenance to the carnivorous tribes. A crop of wheat may be reproduced by one tenth of itself. The remaining nine tenths can be spared for the animals which feed on it. A flock of sheep may be continued by a certain proportion of its annual increase. The residue is the bounty of nature to the animals which prey on that species.

Man who preys both on the vegetable and animal species, is himself a prey to neither. He too possesses the reproductive principle far beyond the degree requisite for the bare continuance of his species.—What becomes of the surplus of human life to which this principle is competent?

It is either, 1<sup>st</sup> destroyed by infanticide, as among the Chinese and Lacedaemonians; or 2d. it is stifled or starved, as among other nations whose population is commensurate to its food; or 3d. it is consumed by wars and endemic diseases; or 4<sup>th</sup> it overflows, by emigration, to places where a surplus of food is attainable.

What may be the greatest ratio of increase of which the human species is susceptible, is a problem difficult to be solved; as well because precise experiments have never been made, as because the result would vary with circumstances distinguishing different situations. It has been computed that under the most favorable circumstances possible, a given number would double itself in ten years. What has actually happened in this country is a proof, that nature would require for the purpose, a less period than twenty years. We shall be safe in averaging the surplus at five per cent.1

According to this computation, Great Britain and Ireland, which contain about ten millions of people, are capable of producing annually for emigration, no less than five hundred thousand; France, whose population amounts to twenty-five millions, no less than one million two hundred and fifty thousand; and all Europe, stating its numbers at one hundred and fifty millions, no less than seven and a half millions.

It is not meant that such a surplus could, under any revolution of circumstances, suddenly take place: yet no reason occurs why an annual supply of human, as well as other animal life, to any amount not exceeding the multiplying faculty, would not be produced in one country, by a regular and commensurate demand of another. Nor is it

meant that if such a redundancy of population were to happen in any particular country, an influx of it beyond a certain degree ought to be desired by any other, though within that degree, it ought to be invited by a country greatly deficient in its population. The calculation may serve, nevertheless, by placing an important principle in striking view, to prepare the way for the following positions and remarks.

*First.* Every country, whose population is full, may annually spare a proportion of its inhabitants, like a hive of bees its swarm, without any diminution of its number: nay a certain proportion must, necessarily, be either spared, or destroyed, or kept out of existence.<sup>1</sup>

*Secondly.* It follows, moreover, from this multiplying faculty of human nature, that a nation, sparing or losing more than its proper surplus, the level must soon be restored by the internal resources of life.

*Thirdly.* Emigrations may augment the population of the country permitting them. The commercial nations of Europe, parting with emigrants, to America, are examples. The articles of consumption demanded from the former, have created employment for an additional number of manufactures. The produce remitted from the latter, in the form of raw materials, has had the same effect—whilst imports and exports of every kind, have multiplied European merchants and mariners. Where the settlers have doubled every twenty or twenty-five years, as in the United States, the increase of products and consumption in the new country, and consequently of employment and people in the old, has had a corresponding rapidity.

Of the people of the United States, nearly three millions are of British descent.<sup>1</sup> The British population has notwithstanding increased within the period of our establishment. It was the opinion of the famous Sir Josiah Child, that every man in the British Colonies found employment, and of course, subsistence, for four persons at home. According to this estimate, as more than half a million of the adult males in the United States equally contribute employment at this time to British subjects, there must at this time be more than two millions of British subjects subsisting on the fruits of British emigrations. This result, however, seems to be beyond the real proportion. Let us attempt a less vague calculation. The value of British imports into the United States including British freight, may be stated at about fifteen millions of dollars. Deduct two millions for foreign articles coming through British hands; there remain thirteen millions. About half our exports, valued at ten millions of dollars, are remitted to that nation. From the nature of the articles, the freight cannot be less than three millions of dollars; of which about one fifth<sup>1</sup> being the share of the United States, there is to be added to the former remainder, two millions four hundred thousand. The profit accruing from the articles as materials or auxiliaries for manufactures, is probably at least fifty per cent. or five millions of dollars.

The three sums make twenty millions four hundred thousand dollars, call them in round numbers twenty millions.—The expence of supporting a labouring family in Great-Britain, as computed by Sir John Sinclair, on six families containing thirty-four persons, averages £.4: 12: 10½ sterling, or about twenty dollars a head. As his families were of the poorer class, and the subsistence a bare competency, let twenty-



five per cent. be added, making the expence about twenty-five dollars a head, dividing twenty millions by this sum, we have eight hundred thousand for the number of British persons whose subsistence may be traced to emigration for its source; or allowing eight shillings sterling a week, for the support of a workman, we have two hundred sixteen thousand three hundred forty-five, of that class, for the number derived from that source.

This lesson of fact, which merits the notice, of every commercial nation, may be enforced by a more general view of the subject.

The present imports of the United States, adding to the first cost, &c, one half the freight, as the reasonable share of foreign nations, may be stated at twenty-five millions of dollars. Deducting five millions on account of East-India articles, there remain in favor of Europe, twenty millions of dollars. The foreign labour incorporated with such part of our exports as are subjects or ingredients for manufactures, together with half the export freight, is probably not of less value than fifteen millions of dollars. The two sums together make thirty-five millions of dollars, capable of supporting two hundred, thirty-three thousand three hundred thirty-three families of six persons each: or three hundred seventy-eight thousand and six hundred and five men, living on eight shillings sterling a week.

The share of this benefit, which each nation is to enjoy, will be determined by many circumstances. One that must have a certain and material influence, will be, the taste excited here for their respective products and fabrics. This influence has been felt in all its force by the commerce of Great-Britain, as the advantage originated in the emigration from that country to this; among the means of retaining it, will not be numbered a restraint on emigrations. Other nations, who have to acquire their share in our commerce, are still more interested in aiding their other efforts, by permitting, and even promoting emigrations to this country, as fast as it may be disposed to welcome them. The space left by every ten or twenty thousand emigrants will be speedily filled by a surplus of life that would otherwise be lost. The twenty thousand in their new country, calling for the manufactures and productions required by their habits, will employ and sustain ten thousand persons in their former country, as a clear addition to its stock. In twenty or twenty-five years, the number so employed and added, will be twenty thousand. And in the mean time, example and information will be diffusing the same taste among other inhabitants here, and proportionately extending employment and population there.

*Fourthly.* Freedom of emigration is due to the general interests of humanity. The course of emigrations being always, from places where living is more difficult, to places where it is less difficult, the happiness of the emigrant is promoted by the change: and as a more numerous progeny is another effect of the same cause, human life is at once made a greater blessing, and more individuals are created to partake of it.

The annual expence of supporting the poor in England amounts to more than one million and a half sterling.<sup>1</sup> The number of persons, subsisting themselves not more than six months in the year, is computed at one million two hundred sixty eight

thousand, and the number of beggars at forty eight thousand. In France, it has been computed that seven millions of men women and children live one with another, on twenty-five livres, which is less than five dollars a year. Every benevolent reader will make his own reflections.

*Fifthly.* It may not be superfluous to add, that freedom of emigration is favorable to morals. A great proportion of the vices which distinguish crowded from thin settlements, are known to have their rise in the facility of illicit intercourse between the sexes, on one hand, and the difficulty of maintaining a family, on the other. Provide an outlet for the surplus population, and marriages will be increased in proportion. Every four or five emigrants will be the fruit of a legitimate union which would not otherwise have taken place.

*Sixthly.* The remarks which have been made, though in many respects little applicable to the internal situation of the United States, may be of use as far as they tend to prevent mistaken and narrow ideas on an important subject. Our country being populated in different degrees in different parts of it, removals from the more compact to the more spare or vacant districts are continually going forward—The object of these removals is evidently to exchange a less easy for a more easy subsistence. The effect of them must therefore be to quicken the aggregate population of our country. Considering the progress made in some situations towards their natural complement of inhabitants, and the fertility of others, which have made little or no progress, the probable difference in their respective rates of increase is not less than as three to the former to five in the latter. Instead of lamenting then a loss of *three* human beings to Connecticut, Rhode Island, or New Jersey, the *Philanthropist*, will rejoice that *five* will be gained to New York, Vermont or Kentucky; and the *patriot* will be not less pleased that *two* will be added to *the citizens of the United States*.

Philadelphia, Nov. 19, 1791.

[\[Back to Table of Contents\]](#)

## CONSOLIDATION.1

Much has been said, and not without reason, against a consolidation of the States into one government. Omitting lesser objections, two consequences would probably flow from such a change in our political system, which justify the cautions used against it. *First*, it would be impossible to avoid the dilemma, of either relinquishing the present energy and responsibility of a *single* executive magistrate, for some plural substitute, which by dividing so great a trust might lessen the danger of it; or suffering so great an accumulation of powers in the hands of that officer, as might by degrees transform him into a monarch. The incompetency of one Legislature to regulate all the various objects belonging to the local governments, would evidently force a transfer of many of them to the executive department; whilst the increasing splendour and number of its prerogatives supplied by this source, might prove excitements to ambition too powerful for a sober execution of the elective plan, and consequently strengthen the pretexts for an hereditary designation of the magistrate. *Second*, were the state governments abolished, the same space of country that would produce an undue growth of the executive power, would prevent that controul on the Legislative body, which is essential to a faithful discharge of its trust, neither the voice nor the sense of ten or twenty millions of people, spread through so many latitudes as are comprehended within the United States, could ever be combined or called into effect, if deprived of those local organs, through which both can now be conveyed. In such a state of things, the impossibility of acting together, might be succeeded by the inefficacy of partial expressions of the public mind, and at length, by a universal silence and insensibility, leaving the whole government to that *self directed course*, which, it must be owned, is the natural propensity of every government.

But if a consolidation of the states into one government be an event so justly to be avoided, it is not less to be desired, on the other hand, that a consolidation should prevail in their interests and affections; and this, too, as it fortunately happens, for the very reasons, among others, which lie against a government consolidation. For, in the first place, in proportion as uniformity is found to prevail in the interests and sentiments of the several states, will be the practicability of accommodating Legislative regulations to them, and thereby of withholding new and dangerous prerogatives from the executive. Again, the greater the mutual confidence and affection of all parts of the Union, the more likely they will be to concur amicably, or to differ with moderation, in the elective designation of the chief magistrate; and by such examples, to guard and adorn the vital principle of our republican constitution. Lastly, the less the supposed difference of interests, and the greater the concord and confidence throughout the great body of the people, the more readily must they sympathize with each other, the more seasonably can they interpose a common manifestation of their sentiments, the more certainly will they take the alarm at usurpation or oppression, and the more effectually will they *consolidate* their defence of the public liberty.

Here then is a proper object presented, both to those who are most jealously attached to the separate authority reserved to the states, and to those who may be more inclined

to contemplate the people of America in the light of one nation. Let the former continue to watch against every encroachment, which might lead to a gradual consolidation of the states into one government. Let the latter employ their utmost zeal, by eradicating local prejudices and mistaken rivalships, to consolidate the affairs of the states into one harmonious interest; and let it be the patriotic study of all, to maintain the various authorities established by our complicated system, each in its respective constitutional sphere; and to erect over the whole, one paramount Empire of reason, benevolence, and brotherly affection.[1](#)

[\[Back to Table of Contents\]](#)

## PUBLIC OPINION.1

Public opinion sets bounds to every government, and is the real sovereign in every free one.

As there are cases where the public opinion must be obeyed by the government; so there are cases, where not being fixed, it may be influenced by the government. This distinction, if kept in view, would prevent or decide many debates on the respect due from the government to the sentiments of the people.

In proportion as government is influenced by opinion, it must be so, by whatever influences opinion. This decides the question concerning a *Constitutional Declaration of Rights*, which requires an influence on government, by becoming a part of public opinion.

The larger a country, the less easy for its real opinion to be ascertained, and the less difficult to be counterfeited; when ascertained or presumed, the more respectable it is in the eyes of individuals.—This is favorable to the authority of government. For the same reason, the more extensive a country, the more insignificant is each individual in his own eyes.—This may be unfavorable to liberty.

Whatever facilitates a general intercourse of sentiments, as good roads, domestic commerce, a free press, and particularly a *circulation of newspapers through the entire body of the people*, and *Representatives going from, and returning among every part of them*, is equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive.

[\[Back to Table of Contents\]](#)

## MONEY. 1

*(Observations written posterior to the circular Address of Congress in Sept. 1779, and prior to their Act of March, 1780.)*2

It has been taken for an axiom in all our reasonings on the subject of finance, that supposing the quantity and demand of things vendible in a country to remain the same, their price will vary according to the variation in the quantity of the circulating medium; in other words, that the value of money will be regulated by its quantity. I shall submit to the judgment of the public some considerations which determine to reject the proposition as founded in error. Should they be deemed not absolutely conclusive, they seem at least to show that it is liable to too many exceptions and restrictions to be taken for granted as a fundamental truth.

If the circulating medium be of universal value as specie, a local increase or decrease of its quantity, will not, whilst a communication subsists with other countries, produce a corresponding rise or fall in its value. The reason is obvious. When a redundancy of universal money prevails in any one country, the holders of it know their interest too well to waste it in extravagant prices, when it would be worth so much more to them elsewhere. When a deficiency happens, those who hold commodities, rather than part with them at an undervalue in one country, would carry them to another. The variation of prices, in these cases, cannot therefore exceed the expence and insurance of transportation.

Suppose a country totally unconnected with Europe, or with any other country, to possess specie in the same proportion to circulating property that Europe does; prices there would correspond with those in Europe. Suppose that so much specie were thrown into circulation as to make the quantity exceed the proportion of Europe tenfold, without any change in commodities or in the demand for them; as soon as such an augmentation had produced its effect, prices would rise tenfold; or which is the same thing, money would be depreciated tenfold. In this state of things, suppose again, that a free and ready communication were opened between this country and Europe, and that the inhabitants of the former, were made sensible of the value of their money in the latter; would not its value among themselves immediately cease to be regulated by its quantity, and assimilate itself to the foreign value?

Mr. Hume in his discourse on the balance of trade supposes, “that if four fifths of all money in Britain were annihilated in one night, and the nation reduced to the same condition, in this particular, as in the reign of the Harrys and Edwards, that the price of all labour and commodities would sink in proportion, and everything be sold as cheap as in those ages: That, again, if all the money in Britain were multiplied five-fold in one night, a contrary effect would follow.” This very ingenious writer seems not to have considered that in the reign of the Harrys and Edwards, the state of prices in the circumjacent nations corresponded with that of Britain; whereas in both of his suppositions, it would be no less than four fifths different. Imagine that such a difference really existed, and remark the consequence. Trade is at present carried on

between Britain and the rest of Europe at a profit of 15 or 20 per cent. Were that profit raised to 400 per cent. would not their home market, in case of such a fall of prices, be so exhausted by exportation—and in case of such a rise of prices, be so overstocked with foreign commodities, as immediately to restore the general equilibrium. Now, to borrow the language of the same author, “the same causes which would redress the inequality were it to happen, must forever prevent it, without violent external operation.”

The situation of a country connected by commercial intercourse with other countries, may be compared to a single town or province whose intercourse with other towns and provinces results from political connection. Will it be pretended that if the national currency were to be accumulated in a single town or province, so as to exceed its due proportion five or tenfold, a correspondent depreciation would ensue, and every thing be sold five or ten times as dear as in a neighboring town or province?

If the circulating medium be a municipal one, as paper currency, still its value does not depend on its quantity. It depends on the credit of the state issuing it, and on the time of its redemption; and is no otherwise affected by the quantity, than as the quantity may be supposed to *endanger* or *postpone* the redemption.

That it depends in part on the credit of the issuer, no one will deny. If the credit of the issuer therefore be perfectly unsuspected, the time of redemption alone will regulate its value.

To support what is here advanced, it is sufficient to appeal to the nature of paper money. It consists of bills or notes of obligation payable in specie to bearer, either on demand or at a future day. Of the first kind is the paper currency of Britain, and hence its equivalence to specie. Of the latter kind is the paper currency of the United States, and hence its inferiority to specie. But if its being redeemable, not on demand but at a future day, be the cause of its inferiority, the distance of that day, and not its quantity, ought to be the measure of that inferiority.

It has been shown that the value of specie does not fluctuate according to the local fluctuations in its quantity. Great Britain, in which there is such an immensity of circulating paper, shews that the value of paper depends as little on its quantity as that of specie, when the paper represents specie payable on demand. Let us suppose that the circulating notes of Great Britain, instead of being payable on demand, were to be redeemed at a future day, at the end of one year for example, and that no interest was due on them. If the same assurance prevailed that at the end of the year they would be equivalent to specie, as now prevails that they are every moment equivalent, would any other effect result from such a change, except that the notes would suffer a depreciation equal to one year's interest? They would in that case represent, not the nominal sum expressed on the face of them, but the sum remaining after a deduction of one year's interest. But if when they represent the full nominal sum of specie, their circulation contributes no more to depreciate them, than the circulation of specie itself would do; does it not follow, that if they represented a sum of specie less than the nominal inscription, their circulation ought to depreciate them no more than so much specie, if substituted, would depreciate itself? We may extend the time from one, to

five, or to twenty years; but we shall find no other rule of depreciation than the loss of intermediate interest.

What has been here supposed with respect to Great Britain has actually taken place in the United States. Being engaged in a necessary war without specie to defray the expence, or to support paper emissions for that purpose redeemable on demand, and being at the same time unable to borrow, no resource was left, but to emit bills of credit to be redeemed in future. The inferiority of these bills to specie was therefore incident to the very nature of them. If they had been exchangeable on demand for specie, they would have been equivalent to it: as they were not exchangeable on demand they were inferior to it. The degree of their inferiority must consequently be estimated by the time of their becoming exchangeable for specie, that is the time of their redemption.

To make it still more palpable that the value of currency does not depend on its quantity, let us put the case, that Congress had, during the first year of the war, emitted five millions of dollars to be redeemed at the end of ten years: that, during the second year of the war, they had emitted ten millions more, but with due security that the whole fifteen millions should be redeemed in five years; that during the two succeeding years, they had augmented the emissions to one hundred millions, but from the discovery of some extraordinary sources of wealth, had been able to engage for the redemption of the whole sum in one year. It is asked, whether the depreciation, under these circumstances, would have increased as the quantity of money increased—or whether on the contrary, the money would not have risen in value, at every accession to its quantity?

It has indeed happened, that a progressive depreciation of our currency has accompanied its growing quantity; and to this is probably owing in a great measure the prevalence of the doctrine here opposed. When the fact however is explained, it will be found to coincide perfectly with what has been said. Every one must have taken notice that, in the emissions of Congress, no precise time has been stipulated for their redemption, nor any specific provision made for that purpose. A general promise entitling bearer to so many dollars of metal as the paper bills express, has been the only basis of their credit. Every one therefore has been left to his own conjectures as to the time the redemption would be fulfilled; and as every addition made to the quantity in circulation, would naturally be supposed to remove to a proportionally greater distance the redemption of the whole mass, it could not happen otherwise than that every additional emission would be followed by a further depreciation.

In like manner has the effect of a distrust of public credit, the other source of depreciation, been erroneously imputed to the quantity of money. The circumstances under which our early emissions were made, could not but strongly concur with the futurity of their redemption, to debase their value. The situation of the United States resembled that of an individual engaged in an expensive undertaking, carried on, for want of cash, with bonds and notes secured on an estate to which his title was disputed; and who had besides, a combination of enemies employing every artifice to disparage that security. A train of sinister events, during the early stages of the war likewise contributed to increase the distrust of the *public ability* to fulfill their



engagements. Before the depreciation arising from this cause was removed by success of our arms, and our alliance with France, it had drawn so large a quantity into circulation, that the quantity soon after begat a distrust of the *public disposition* to fulfill their engagements; as well as new doubts, in timid minds, concerning the issue of the contest. From that period, this cause of depreciation has been incessantly operating. It has first conduced to swell the amount of necessary emissions, and from that very amount has derived new force and efficacy to itself. Thus, a further discredit of our money has necessarily followed the augmentation of its quantity; but every one must perceive, that it has not been the effect of the quantity, considered in itself, but considered as an omen of public bankruptcy.<sup>1</sup>

Whether the money of a country, then, be gold and silver, or paper currency, it appears that its value depends on the general proportion of gold and silver, to the circulating property throughout all countries having free communication. If the latter, it depends on the credit of the state issuing it, and the time at which it is to become equal to gold and silver.

Every circumstance which has been found to accelerate the depreciation of our currency naturally resolves itself into these general principles. The spirit of monopoly hath affected it in no other way than by creating an artificial scarcity of commodities wanted for public use, the consequence of which has been an increase of their price, and of the necessary emissions. Now it is this increase of emissions which has been shewn to lengthen the supposed period of their redemption, and to foster suspicions of public credit. Monopolies destroy the natural relation between money and commodities; but it is by raising the value of the latter, not by debasing that of the former. Had our money been gold or silver, the same prevalence of monopoly would have had the same effect on prices and expenditures; but these would not have had the same effect on the value of money.

The depreciation of our money has been charged on misconduct in the purchasing departments; but this misconduct must have operated in the same manner as the spirit of monopoly. By unnecessarily raising the price of articles required for the public use, it has swelled the amount of necessary emissions, on which has depended the general opinion concerning the time and the probability of their redemption.

The same remark may be applied to the deficiency of imported commodities. The deficiency of these commodities has raised the price of them; the rise of their price has increased the emissions for purchasing them; and with the increase of emissions, have increased the suspicions concerning their redemption.

Those who consider the quantity of money as the criterion of its value, compute the intrinsic depreciation of our currency by dividing the whole mass by the supposed necessary medium of circulation. Thus supposing the medium necessary for the United States to be 30,000,000. dollars, and the circulating emissions to be 200,000,000, the intrinsic difference between paper and specie will be nearly as 7 for 1. If its value depends on the time of its redemption, as hath been above maintained, the real difference will be found to be considerably less. Suppose the period necessary for its redemption to be 18 years, as seems to be understood by Congress; 100 dollars

of paper 18 years hence will be equal in value to 100 dollars of specie; for at the end of that term, 100 dollars of specie may be demanded for them. They must consequently at this time be equal to as much specie as, with compound interest, will amount, in that number of years, to 100 dollars. If the interest of the money be rated at 5 per cent. this present sum of specie will be about 41½ dollars. Admit, however the use of money to be worth 6 per cent. about 35 dollars will then amount in 18 years to 100. 35 dollars of specie therefore is at this time equal to 100 of paper; that is, the man who would exchange his specie for paper at this discount, and lock it in his desk for 18 years, would get 6 per cent. for his money. The proportion of 100 to 35 is less than 3 to 1. The intrinsic depreciation of our money therefore, according to this rule of computation, is less than 3 to 1; instead of 7 to 1, according to the rule espoused in the circular address, or of 30 or 40 to 1, according to its currency in the market.

I shall conclude with observing, that if the preceding principles and reasoning be just, the plan on which our domestic loans have been obtained, must have operated in a manner directly contrary to what was intended. A loan office certificate differs in nothing from a common bill of credit, except in its higher denomination, and the interest allowed on it; and the interest is allowed, merely as a compensation to the lender, for exchanging a number of small bills, which being easily transferable, are most convenient, for a single one so large as not to be transferable in ordinary transactions. As the certificates, however, do circulate in many of the more considerable transactions, it may justly be questioned, even on the supposition that the value of money depended on its quantity, whether the advantage to the public from the exchange, would justify the terms of it. But dismissing this consideration, I ask whether such loans do in any shape, lessen the public debt, and thereby render the discharge of it less suspected or less remote? Do they give any new assurance that a paper dollar will be one day equal to a silver dollar, or do they shorten the distance of that day? Far from it: The certificates continue a part of the public debt no less than the bills of credit exchanged for them, and have an equal claim to redemption within the general period; nay, are to be paid off long before the expiration of that period, with bills of credit, which will thus be returned into the general mass, to be redeemed along with it. Were these bills, therefore, not to be taken out of circulation at all, by means of the certificates, not only the expence of offices for exchanging, re-exchanging and annually paying the interest, would be avoided; but the whole sum of interest would be saved, which must make a formidable addition to the public emissions, protract the period of their redemption, and proportionately increase their depreciation. No expedient could perhaps have been devised more preposterous and unlucky. In order to relieve public credit sinking under the weight of an enormous debt, we invent new expenditures. In order to raise the value of our money, which depends on the time of its redemption, we have recourse to a measure which removes its redemption to a more distant day. Instead of paying off the capital to the public creditors, we give them an enormous interest to change the name of the bit of paper which expresses the sum due to them; and think it a piece of dexterity in finance, by emitting *loan-office certificates*, to elude the necessity of *emitting bills of credit*.

[\[Back to Table of Contents\]](#)

## GOVERNMENT. 1

In monarchies there is a two-fold danger—1st, That the eyes of a good prince cannot see all that he ought to know—2d, That the hands of a bad one will not be tied by the fear of combinations against him. Both of these evils increase with the extent of dominion; and prove, contrary to the received opinion, that monarchy is even more unfit for a great state, than for a small one, notwithstanding the greater tendency in the former to that species of government.

Aristocracies, on the other hand, are generally seen in small states; where a concentration of public will is required by external danger, and that degree of concentration is found sufficient. The *many* in such cases, cannot govern on account of emergencies which require the promptitude and precautions of a *few*; whilst the few themselves, resist the usurpations of a single tyrant. In Thessaly, a country intersected by mountainous barriers into a number of small cantons, the governments, according to Thucydides, were in most instances, oligarchical. Switzerland furnishes similar examples.—The smaller the state, the less intolerable is this form of government, its rigors being tempered by the facility and the fear of combinations among the people.

A republic involves the idea of popular rights. A representative republic *chuses* the wisdom, of which hereditary aristocracy has the *chance*; whilst it excludes the oppression of that form. And a confederated republic attains the force of monarchy, whilst it avoids the ignorance of a good prince, and the oppression of a bad one. To secure all the advantages of such a system, every good citizen will be at once a sentinel over the rights of the people; over the authorities of the federal government: and over both the rights and the authorities of the intermediate governments.

[\[Back to Table of Contents\]](#)

## CHARTERS.2

In Europe, charters of liberty have been granted by power. America has set the example and France has followed it, of charters of power granted by liberty. This revolution in the practice of the world, may, with an honest praise, be pronounced the most triumphant epoch of its history, and the most consoling presage of its happiness. We look back, already, with astonishment, at the daring outrages committed by despotism, on the reason and rights of man; we look forward with joy, to the period, when it shall be despoiled of all its usurpations, and bound forever in the chains, with which it had loaded its miserable victims.

In proportion to the value of this revolution; in proportion to the importance of instruments, every word of which decides a question between power and liberty; in proportion to the solemnity of acts, proclaiming the will authenticated by the seal of the people, the only earthly source of authority, ought to be the vigilance with which they are guarded by every citizen in private life, and the circumspection with which they are executed by every citizen in public trust.

As compacts, charters of government are superior in obligation to all others, because they give effect to all others. As truths, none can be more sacred, because they are bound, on the conscience by the religious sanctions of an oath. As metes and bounds of government, they transcend all other land-marks, because every public usurpation is an encroachment on the private right, not of one, but of all.

The citizens of the United States have peculiar motives to support the energy of their constitutional charters.

Having originated the experiment, their merit will be estimated by its success.

The complicated form of their political system arising from the partition of government between the states and the union, and from the separations and subdivisions of the several departments in each, requires a more than common reverence for authority which is to preserve order thro' the whole.

Being republicans, they must be anxious to establish the efficacy of popular charters, in defending liberty against power, and power against licentiousness; and in keeping every portion of power within its proper limits; by this means discomforting the partizans of anti-republican contrivances for the purpose.

All power has been traced up to opinion. The stability of all governments and security of all rights may be traced to the same source. The most arbitrary government is controuled where the public opinion is fixed. The despot of Constantinople dares not lay a new tax, because every slave thinks he ought not. The most systematic governments are turned by the slightest impulse from their regular path, where public opinion no longer holds them in it. We see at this moment the *executive* magistrate of

Great-Britain, exercising under the authority of the representatives of the *people*, a *legislative* power over the West-India commerce.

How devoutly is it to be wished, then, that the public opinion of the United States should be enlightened; that it should attach itself to their governments as delineated in *great charters*, derived not from the usurped power of kings, but from the legitimate authority of the people; and that it should guarantee, with a holy zeal, these political scriptures from every attempt to add to or diminish from them. Liberty and order will never be *perfectly* safe, until a trespass on the constitutional provisions for either, shall be felt with the same keenness that resents an invasion of the dearest rights, until every citizen shall be an Argus to espy, and an Ægeon to avenge, the unhallowed deed.

[\[Back to Table of Contents\]](#)

## PARTIES.1

In every political society, parties are unavoidable. A difference of interests, real or supposed is the most natural and fruitful source of them. The great objects should be to combat the evil: 1. By establishing political equality among all. 2. By withholding *unnecessary* opportunities from a few, to increase the inequality of property, by an immoderate, and especially unmerited, accumulation of riches. 3. By the silent operation of laws, which, without violating the rights of property, reduce extreme wealth towards a state of mediocrity, and raise extreme indigence towards a state of comfort. 4. By abstaining from measures which operate differently on different interests, and particularly such as favor one interest, at the expence of another. 5. By making one party a check on the other, so far as the existence of parties cannot be prevented, nor their views accommodated.—If this is not the language of reason, it is that of republicanism.

In all political societies, different interests and parties arise out of the nature of things, and the great art of politicians lies in making them checks and balances to each other. Let us then increase these *natural distinctions* by favoring an inequality of property; and let us add to them artificial distinctions, by establishing *kings* and *nobles*, and *plebeians*. We shall then have the more checks to oppose to each other; we shall then have the more scales and the more weights to protect and maintain the equilibrium. This is as little the voice of reason, as it is of republicanism.

From the expediency, in politics, of making natural parties, mutual checks on each other, to infer the propriety of creating artificial parties, in order to form them into mutual checks, is not less absurd than it would be in ethics, to say, that new vices ought to be promoted, where they would counteract each other, because this use may be made of existing vices.

[\[Back to Table of Contents\]](#)

## BRITISH GOVERNMENT. 1

The boasted equilibrium of this government (so far as it is a reality) is maintained less by the distribution of its powers, than by the force of public opinion. If the nation were in favour of absolute monarchy, the public liberty would soon be surrendered by their representatives. If a republican form of government were preferred, how could the monarch resist the national will? Were the public opinion neutral only, and the public voice silent, ambition in the House of Commons could wrest from him his prerogatives, or the avarice of its members, might sell to him its privileges.

The provision required for the civil list, at every accession of a king, shews at once his dependence on the representative branch, and its dependence on the public opinion. Were this establishment to be made from year to year, instead of being made for life (a change within the legislative power) the monarchy, unless maintained by corruption, would dwindle into a name. In the present temper of the nation, however, they would obstruct such a change, by taking side with their king, against their representatives.

Those who ascribe the preservation of the British government to the form in which its powers are distributed and balanced, forget the evolutions which it has undergone.—Compare its primitive with its present form.

A king at the head of 7 or 800 barons, sitting together in their own right, or (admitting another hypothesis) some in their own right, others as representatives of a few lesser barons, but still sitting together as a single House; and the judges holding their offices during the pleasure of the king; such was the British government at one period.

At present a king is seen at the head of a legislature, consisting of two Houses, each jealous of the other, one sitting in their own right, the other representing the people; and the judges forming a distinct and independent department.

In the first case the judiciary is annexed to the executive, and the legislature not even formed into separate branches. In the second, the legislative, executive and judiciary are distinct; and the legislative subdivided into rival branches.

What a contrast in these forms. If the latter be self balanced, the former could have no balance at all. Yet the former subsisted as well as the latter, and lasted longer than the latter, dating it from 1688, has been tried.

The former was supported by the opinion and circumstances of the times, like many of the intermediate variations, through which the government has passed; and as will be supported, the future forms through which it probably remains to be conducted, by the progress of reason, and change of circumstances.

[\[Back to Table of Contents\]](#)

## UNIVERSAL PEACE.1

Among the various reforms which have been offered to the world, the projects for universal peace have done the greatest honor to the hearts, though they seem to have done very little to the heads of their authors. Rousseau, the most distinguished of these philanthropists, has recommended a confederation of sovereigns, under a council of deputies, for the double purpose of arbitrating external controversies among nations, and of guaranteeing their respective governments against internal revolutions. He was aware, neither of the impossibility of executing his pacific plan among governments which feel so many allurements to war, nor, what is more extraordinary, of the tendency of his plan to perpetuate arbitrary power wherever it existed; and, by extinguishing the hope of one day seeing an end of oppression, to cut off the only source of consolation remaining to the oppressed.

A universal and perpetual peace, it is to be feared, is in the catalogue of events, which will never exist but in the imaginations of visionary philosophers, or in the breasts of benevolent enthusiasts. It is still however true, that war contains so much folly, as well as wickedness, that much is to be hoped from the progress of reason; and if any thing is to be hoped, every thing ought to be tried.

Wars may be divided into two classes: one flowing from the mere will of the government, the other according with the will of the society itself.

Those of the first class can no otherwise be prevented than by such a reformation of the government, as may identify its will with the will of the society. The project of Rousseau, was, consequently, as preposterous as it was impotent. Instead of beginning with an external application, and even precluding internal remedies, he ought to have commenced with, and chiefly relied on, the latter prescription.

He should have said, whilst war is to depend on those whose ambition, whose revenge, whose avidity, or whose caprice may contradict the sentiment of the community, and yet be uncontrouled by it; whilst war is to be declared by those who are to spend the public money, not by those who are to pay it; by those who are to direct the public forces, not by those who are to support them; by those whose power is to be raised, not by those whose chains may be riveted, the disease must continue to be *hereditary* like the government of which it is the offspring. As the first step towards a cure, the government itself must be regenerated. Its will must be made subordinate to, or rather the same with, the will of the community.

Had Rousseau lived to see the constitution of the United States and of France, his judgment might have escaped the censure to which his project has exposed it.

The other class of wars, corresponding with the public will, are less susceptible of remedy. There are antidotes, nevertheless, which may not be without their efficacy. As wars of the first class were to be prevented by subjecting the will of the government to the will of the society, those of the second class can only be controuled



by subjecting the will of the society to the reason of the society; by establishing permanent and constitutional maxims of conduct, which may prevail over occasional impressions and inconsiderate pursuits.

Here our republican philosopher might have proposed as a model to lawgivers, that war should not only be declared by the authority of the people, whose toils and treasures are to support its burdens, instead of the government which is to reap its fruits: but that each generation should be made to bear the burden of its own wars, instead of carrying them on, at the expence of other generations. And to give the fullest energy to his plan, he might have added, that each generation should not only bear its own burdens, but that the taxes composing them, should include a due proportion of such as by their direct operation keep the people awake, along with those, which being wrapped up in other payments, may leave them asleep, to misapplications of their money.

To the objection, if started, that where the benefits of war descend to succeeding generations, the burdens ought also to descend, he might have answered; that the exceptions could not be easily made; that, if attempted, they must be made by one only of the parties interested; that in the alternative of sacrificing exceptions to general rules, or of converting exceptions into general rules, the former is the lesser evil; that the expense of *necessary* wars, will never exceed the resources of an *entire* generation; that, in fine the objection vanishes before the fact, that in every nation which has drawn on posterity for the support of its wars, the *accumulated interest* of its perpetual debts, has soon become more than a *sufficient principal* for all its exigencies.

Were a nation to impose such restraints on itself, avarice would be sure to calculate the expences of ambition; in the equipoise of these passions, reason would be free to decide for the public good; and an ample reward would accrue to the state, first, from the avoidance of all its wars of folly, secondly, from the vigor of its unwasted resources for wars of necessity and defence. Were all nations to follow the example, the reward would be doubled to each; and the temple of Janus might be shut, never to be opened more.

Had Rousseau lived to see the rapid progress of reason and reformation, which the present day exhibits, the philanthropy which dictated his project would find a rich enjoyment in the scene before him. And after tracing the past frequency of wars to a will in the government independent of the will of the people; to the practice by each generation of taxing the principal of its debts on future generations; and to the facility with which each generation is seduced into assumption of the interest, by the deceptive species of taxes which pay it; he would contemplate, in a reform of every government subjecting its will to that of the people, in a subjection of each generation to the payment of its own debts, and in a substitution of a more palpable, in place of an imperceptible mode of paying them, the only hope of Universal and Perpetual Peace.

[\[Back to Table of Contents\]](#)

## GOVERNMENT OF THE UNITED STATES.1

Power being found by universal experience liable to abuses, a distribution of it into separate departments, has become a first principal of free governments. By this contrivance, the portion entrusted to the same hands being less, there is less room to abuse what is granted; and the different hands being interested, each in maintaining its own, there is less opportunity to usurp what is not granted. Hence the merited praise of governments modelled on a partition of their powers into legislative, executive, and judiciary, and a repartition of the legislative into different houses.

The political system of the United States claims still higher praise. The power delegated by the people is first divided between the general government and the state governments; each of which is then subdivided into legislative, executive, and judiciary departments. And as in a single government these departments are to be kept separate and safe, by a defensive armour for each; so, it is to be hoped, do the two governments possess each the means of preventing or correcting unconstitutional encroachments of each other.

Should this improvement on the theory of free government not be marred in the execution, it may prove the best legacy ever left by lawgivers to their country, and the best lesson ever given to the world by its benefactors. If a security against power lies in the division of it into parts mutually controuling each other, the security must increase with the increase of the parts into which the whole can be conveniently formed.

It must not be denied that the task of forming and maintaining a division of power between different governments, is greater than among different departments of the same governments; because it may be more easy (though sufficiently difficult) to separate, by proper definitions, the legislative, executive, and judiciary powers, which are more distinct in their nature, than to discriminate, by precise enumerations, one class of legislative powers from another class, one class of executive from another class, and one class of judiciary from another class; where the powers being of a more kindred nature, their boundaries are more obscure and run more into each other.

If the test be difficult, however, it must be no means be abandoned. Those who would pronounce it impossible, offer no alternative to their country but schism, or consolidation; both of them bad, but the latter the worst, since it is the high road to monarchy, than which nothing worse, in the eye of republicans, could result from the anarchy implied in the former.

Those who love their country, its repose, and its republicanism, will study to avoid the alternative, by elucidating and guarding the limits which define the two governments; by inculcating moderation in the exercise of the powers of both, and particularly a mutual abstinence from such as might nurse present jealousies, or engender greater.

In bestowing the eulogies due to the particular and internal checks of power, it ought not the less to be remembered, that they are neither the sole nor the chief palladium of constitutional liberty. The people who are authors of this blessing, must also be its guardians. Their eyes must be ever ready to mark, their voice to pronounce, and their arm to repel or repair aggressions on the authority of their constitutions; the highest authority next to their own, because the immediate work of their own, and the most sacred part of their property, as recognizing and recording the title to every other.

[\[Back to Table of Contents\]](#)

## SPIRIT OF GOVERNMENTS. 1

No Government is perhaps reducible to a sole principle of operation. Where the theory approaches nearest to this character, different and often heterogeneous principles mingle their influence in the administration. It is useful, nevertheless, to analyse the several kinds of government, and to characterize them by the spirit which predominates in each.

Montesquieu has resolved the great operative principles of government into fear, honor, and virtue, applying the first to pure despotisms, the second to regular monarchies, and the third to republics. The portion of truth blended with the ingenuity of this system sufficiently justifies the admiration bestowed on its author. Its accuracy however can never be defended against the criticisms which it has encountered. Montesquieu was in politics not a Newton or a Locke, who established immortal systems, the one in matter, the other in mind. He was in his peculiar science what Bacon was in universal science. He lifted the veil from the venerable errors which enslaved opinion, and pointed the way to those luminous truths of which he had but a glimpse himself.

May not governments be properly divided, according to their predominant spirit and principles into three species of which the following are examples?

First. A government operating by a permanent military force, which at once maintains the government, and is maintained by it; which is at once the cause of burdens on the people, and of submission in the people to their burdens. Such have been the governments under which human nature has groaned through every age. Such are the governments which still oppress it in almost every country of Europe, the quarter of the globe which calls itself the pattern of civilization, and the pride of humanity.

Secondly. A government operating by corrupt influence; substituting the motive of private interest in place of public duty; converting its pecuniary dispensations into bounties to favorites, or bribes to opponents; accommodating its measures to the avidity of a part of the nation instead of the benefit of the whole; in a word, enlisting an army of interested partizans, whose tongues, whose pens, whose intrigues, and whose active combinations, by supplying the terror of the sword, may support a real domination of the few, under an apparent liberty of the many. Such a government, wherever to be found, is an impostor. It is happy for the new world that it is not on the west side of the Atlantic. It will be both happy and honorable for the United States, if they never descend to mimic the costly pageantry of this form, nor betray themselves into the venal spirit of its administration.

Thirdly. A government deriving its energy from the will of the society, and operating by the reason of its measures, on the understanding and interest of the society. Such is the government for which philosophy has been searching, and humanity been fighting, from the most remote ages. Such are republican governments which it is the glory of America to have invented, and her unrivalled happiness to possess. May her

glory be compleated by every improvement on the theory which experience may teach; and her happiness be perpetuated by a system of administration corresponding with the purity of the theory.[1](#)

[\[Back to Table of Contents\]](#)

## REPUBLICAN DISTRIBUTION OF CITIZENS. 1

A perfect theory on this subject would be useful, not because it could be reduced to practice by any plan of legislation, or ought to be attempted by violence on the will or property of individuals: but because it would be a monition against empirical experiments by power, and a model to which the free choice of occupations by the people, might gradually approximate the order of society.

The best distribution is that which would most favor *health, virtue, intelligence* and *competency* in the *greatest number* of citizens. It is needless to add to these objects, *liberty* and safety. The first is presupposed by them. The last must result from them.

The life of the husbandman is pre-eminently suited to the comfort and happiness of the individual. *Health*, the first of blessings, is an appurtenance of this property and his employment. *Virtue*, the health of the soul, is another part of his patrimony, and no less favored by his situation. Intelligence may be cultivated in this as well as in any other walk of life. If the mind be less susceptible of polish in retirement than in a crowd, it is more capable of profound and comprehensive efforts. Is it more ignorant of some things? It has a compensation in its ignorance of others. *Competency* is more universally the lot of those who dwell in the country, when liberty is at the same time their lot. The extremes both of want and of waste have other abodes. 'T is not the country that peoples either the Bridewells or the Bedlams. These mansions of wretchedness are tenanted from the distresses and vice of overgrown cities.

The condition, to which the blessings of life are most denied is that of the sailor. His health is continually assailed and his span shortened by the stormy element to which he belongs. His virtue, at no time aided, is occasionally exposed to every scene that can poison it. His mind, like his body, is imprisoned within the bark that transports him.

Though traversing and circumnavigating the globe, he sees nothing but the same vague objects of nature, the same monotonous occurrences in ports and docks; and at home in his vessel, what new ideas can shoot from the unvaried use of the ropes and the rudder, or from the society of comrades as ignorant as himself? In the supply of his wants he often feels a scarcity, seldom more than a bare sustenance; and if his ultimate prospects do not embitter the present moment, it is because he never looks beyond it. How unfortunate, that in the intercourse, by which nations are enlightened and refined, and their means of safety extended, the immediate agents should be distinguished by the hardest condition of humanity.

The great interval between the two extremes, is, with a few exceptions, filled by those who work the materials furnished by the earth in its natural or cultivated state.

It is fortunate in general, and particularly for this country, that so much of the ordinary and most essential consumption, takes place in fabrics which can be prepared in every family, and which constitute indeed the natural ally of agriculture. The

former is the work within doors, as the latter is without; and each being done by hands or at times, that can be spared from the other, the most is made of everything.

The class of citizens who provide at once their own food and their own raiment, may be viewed as the most truly independent and happy. They are more: they are the best basis of public liberty, and the strongest bulwark of public safety. It follows, that the greater the proportion of this class to the whole society, the more free, the more independent, and the more happy must be the society itself.

In appreciating the regular branches of manufacturing and mechanical industry, their tendency must be compared with the principles laid down, and their merits graduated accordingly. Whatever is least favorable to vigor of body, to the faculties of the mind, or to the virtues or the utilities of life, instead of being forced or fostered by public authority, ought to be seen with regret as long as occupations more friendly to human happiness, lie vacant.

The several professions of more elevated pretensions, the merchant, the lawyer, the physician, the philosopher, the divine, form a certain proportion of every civilized society, and readily adjust their numbers to its demands, and its circumstances.

[\[Back to Table of Contents\]](#)

## FASHION. 1

An humble address has been lately presented to the Prince of Wales by the Buckle Manufacturers of Birmingham, Wassal, Wolverhampton, and their environs, stating that the Buckle Trade gives employment to more than Twenty Thousand persons, numbers of whom, in consequence of the prevailing fashion of Shoestrings & Slippers, are at present without employ, almost destitute of bread, and exposed to the horrors of want at the most inclement season; that to the manufactures of Buckles and Buttons, Birmingham owes its important figure on the map of England; that it is to no purpose to address Fashion herself, she being void of feeling and deaf to argument, but fortunately accustomed to listen to his voice, and to obey his commands: and finally *imploring* his Royal Highness to consider the deplorable condition of their trade, which is in danger of being ruined by the *mutability of fashion*, and to give that direction to the *public taste*, which will insure the lasting gratitude of the petitioners.

Several important reflections are suggested by this address.

I. The most precarious of all occupations which give bread to the industrious, are those depending on mere fashion, which generally changes so suddenly, and often so considerably, as to throw whole bodies of people out of employment.

II. Of all occupations those are the least desirable in a free state, which produce the most servile dependence of one class of citizens on another class. This dependence must increase as the *mutuality* of wants is diminished. Where the wants on one side are the absolute necessities; and on the other are neither absolute necessities, nor result from the habitual œconomy of life, but are the mere caprices of fancy, the evil is in its extreme; or if not,

III. The extremity of the evil must be in the case before us, where the absolute necessities depend on the caprices of fancy, and the caprice of a single fancy directs the fashion of the community. Here the dependence sinks to the lowest point of servility. We see a proof of it in the *spirit* of the address. Twenty thousand persons are to get or go without their bread, as a wanton youth, may fancy to wear his shoes with or without straps, or to fasten his straps with strings or with buckles. Can any despotism be more cruel than a situation, in which the existence of thousands depends on one will, and that will on the most slight and fickle of all motives, a mere whim of the imagination.

IV. What a contrast is here to the independent situation and manly sentiments of American citizens, who live on their own soil, or whose labour is necessary to its cultivation, or who are occupied in supplying wants, which being founded in solid utility, in comfortable accommodation, or in settled habits, produce a reciprocity of dependence, at once ensuring subsistence, and inspiring a dignified sense of social rights.



V. The condition of those who receive employment and bread from the precarious source of fashion and superfluity, is a lesson to nations, as well as to individuals. In proportion as a nation consists of that description of citizens, and depends on external commerce, it is dependent on the consumption and caprice of other nations. If the laws of propriety did not forbid, the manufacturers of Birmingham, Walsall, and Wolverhampton, had as real an interest in supplying the arbiters of fashion in America, as the patron they have addressed. The dependence in the case of nations is even greater than among individuals of the same nation: for besides the *mutability of fashion* which is the same in both, the *mutability of policy* is another source of danger in the former.

[\[Back to Table of Contents\]](#)

## PROPERTY. 1

This term in its particular application means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and *which leaves to every one else the like advantage.*

In the former sense, a man’s land, or merchandize, or money is called his property.

In the latter sense, a man has property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties or his possessions.

Where there is an excess of liberty, the effect is the same, tho’ from an opposite cause.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which *impartially* secures to every man, whatever is his *own*.

According to this standard of merit, the praise of affording a just security to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man’s religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and inalienable right. To guard a

man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing warrants to a press gang, would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most compleat despotism.

That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called. What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the economical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

If there be a government then which prides itself on maintaining the inviolability of property; which provides that none shall be taken *directly* even for public use without indemnification to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the inference will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

[\[Back to Table of Contents\]](#)

## THE UNION.1

### ***Who Are Its Real Friends?***

Not those who charge others with not being its friends, whilst their own conduct is wantonly multiplying its enemies.

Not those who favor measures, which by pampering the spirit of speculation within and without the government, disgust the best friends of the Union.

Not those who promote unnecessary accumulations of the debt of the Union, instead of the best means of discharging it as fast as possible; thereby increasing the causes of corruption in the government, and the pretexts for new taxes under its authority, the former undermining the confidence, the latter alienating the affection of the people.

Not those who study, by arbitrary interpretations and insidious precedents, to pervert the limited government of the Union, into a government of unlimited discretion, contrary to the will and subversive of the authority of the people.

Not those who avow or betray principles of monarchy and aristocracy, in opposition to the republican principles of the Union, and the republican spirit of the people; or who espouse a system of measures more accommodated to the depraved examples of those hereditary forms, than to the true genius of our own.

Not those, in a word, who would force on the people the melancholy duty of chusing between the loss of the Union, and the loss of what the union was meant to secure.

*The real Friends to the Union are those,*

Who are friends to the authority of the people, the sole foundation on which the Union rests.

Who are friends to liberty, the great end, for which the Union was formed.

Who are friends to the limited and republican system of government, the means provided by that authority, for the attaining of that end.

Who are enemies to every public measure that might smooth the way to hereditary government, for resisting the tyrannies of which the Union was first planned, and for more effectually excluding which, it was put into its present form.

Who considering a public debt as injurious to the interests of the people, and baneful to the virtue of the government, are enemies to every contrivance for *unnecessarily* increasing its amount, or protracting its duration, or extending its influence.

In a word, those are the real friends to the Union, who are friends to that republican policy throughout, which is the only *cement* for the Union of a republican people; in opposition to a spirit of usurpation and monarchy, which is the *menstruum* most capable of dissolving it.[1](#)

[\[Back to Table of Contents\]](#)

## A CANDID STATE OF PARTIES. 1

As it is the business of the contemplative statesman to trace the history of parties in a free country, so it is the duty of the citizen at all times to understand the actual state of them. Whenever this duty is omitted, an opportunity is given to designing men, by the use of artificial or nominal distinctions, to oppose and balance against each other those who never differed as to the end to be pursued, and may no longer differ as to the means of attaining it. The most interesting state of parties in the United States may be referred to three periods: Those who espoused the cause of independence and those who adhered to the British claims, formed the parties of the first period; if, indeed, the disaffected class were considerable enough to deserve the name of a party. This state of things was superseded by the treaty of peace in 1783. From 1783 to 1787 there were parties in abundance, but being rather local than general, they are not within the present review.

The Federal Constitution, proposed in the latter year, gave birth to a second and most interesting division of the people. Every one remembers it, because every one was involved in it.

Among those who embraced the constitution, the great body were unquestionably friends to republican liberty; tho' there were, no doubt, some who were openly or secretly attached to monarchy and aristocracy; and hoped to make the constitution a cradle for these hereditary establishments.

Among those who opposed the constitution, the great body were certainly well affected to the union and to good government, tho' there might be a few who had a leaning unfavourable to both. This state of parties was terminated by the regular and effectual establishment of the federal government in 1788; out of the administration of which, however, has arisen a third division, which being natural to most political societies, is likely to be of some duration in ours.

One of the divisions consists of those, who from particular interest, from natural temper, or from the habits of life, are more partial to the opulent than to the other classes of society; and having debauched themselves into a persuasion that mankind are incapable of governing themselves, it follows with them, of course, that government can be carried on only by the pageantry of rank, the influence of money and emoluments, and the terror of military force. Men of those sentiments must naturally wish to point the measures of government less to the interest of the many than of a few, and less to the reason of the many than to their weaknesses; hoping perhaps in proportion to the ardor of their zeal, that by giving such a turn to the administration, the government itself may by degrees be narrowed into fewer hands, and approximated to an hereditary form.

The other division consists of those who believing in the doctrine that mankind are capable of governing themselves, and hating hereditary power as an insult to the reason and an outrage to the rights of man, are naturally offended at every public

measure that does not appeal to the understanding and to the general interest of the community, or that is not strictly conformable to the principles, and conducive to the preservation of republican government.

This being the real state of parties among us, an experienced and dispassionate observer will be at no loss to decide on the probable conduct of each.

The anti republican party, as it may be called, being the weaker in point of numbers, will be induced by the most obvious motives to strengthen themselves with the men of influence, particularly of moneyed, which is the most active and insinuating influence. It will be equally their true policy to weaken their opponents by reviving exploded parties, and taking advantage of all prejudices, local, political, and occupational, that may prevent or disturb a general coalition of sentiments.

The republican party, as it may be termed, conscious that the mass of people in every part of the union, in every state, and of every occupation must at bottom be with them, both in interest and sentiment, will naturally find their account in burying all antecedent questions, in banishing every other distinction than that between enemies and friends to republican government, and in promoting a general harmony among the latter, wherever residing, or however employed.

Whether the republican or the rival party will ultimately establish its ascendance, is a problem which may be contemplated now; but which time alone can solve. On one hand experience shews that in politics as in war, stratagem is often an overmatch for numbers; and among more happy characteristics of our political situation, it is now well understood that there are peculiarities, some temporary, others more durable, which may favour that side in the contest. On the republican side, again, the superiority of numbers is so great, their sentiments are so decided, and the practice of making a common cause, where there is a common sentiment and common interest, in spite of circumstantial and artificial distinctions, is so well understood, that no temperate observer of human affairs will be surprised if the issue in the present instance should be reversed, and the government be administered in the spirit and form approved by the great body of the people.

[\[Back to Table of Contents\]](#)

## WHO ARE THE BEST KEEPERS OF THE PEOPLE'S LIBERTIES?1

*Republican.*—The people themselves.—The sacred trust can be no where so safe as in the hands most interested in preserving it.

*Anti-republican.*—The people are stupid, suspicious, licentious. They cannot safely trust themselves. When they have established government they should think of nothing but obedience, leaving the care of their liberties to their wiser rulers.

*Republican.*—Although all men are born free, and all nations might be so, yet too true it is, that slavery has been the general lot of the human race. Ignorant—they have been cheated; asleep—they have been surprized; divided—the yoke has been forced upon them. But what is the lesson? that because the people *may* betray themselves, they ought to give themselves up, blindfold, to those who have an interest in betraying them? Rather conclude that the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it, as well as obey it.

*Anti-republican.*—You look at the surface only, where errors float, instead of fathoming the depths where truth lies hid. It is not the government that is disposed to fly off from the people; but the people that are ever ready to fly off from the government. Rather say then, enlighten the government, warn it to be vigilant, enrich it with influence, arm it with force, and to the people never pronounce but two words—*Submission* and *Confidence*.

*Republican.*—The centrifugal tendency then is in the people, not in the government, and the secret art lies in restraining the tendency, by augmenting the attractive principle of the government with all the weight that can be added to it. What a perversion of the natural order of things! to make *power* the primary and central object of the social system, and *Liberty* but its satellite.

*Anti-republican.*—The science of the stars can never instruct you in the mysteries of government. Wonderful as it may seem, the more you increase the attractive force of power, the more you enlarge the sphere of liberty; the more you make government independent and hostile towards the people, the better security you provide for their rights and interests. Hence the wisdom of the theory, which, after limiting the share of the people to a third of the government, and lessening the influence of that share by the mode and term of delegating it, establishes two grand hereditary orders, with feelings, habits, interests, and prerogatives all inveterately hostile to the rights and interests of the people, yet by a *mysterious* operation all combining to fortify the people in both.

*Republican.*—Mysterious indeed!—But mysteries belong to religion, not to government; to the ways of the Almighty, not to the works of man. And in religion itself there is nothing mysterious to its author; the mystery lies in the dimness of the



human sight. So in the institutions of man let there be no mystery, unless for those inferior beings endowed with a ray perhaps of the twilight vouchsafed to the first order of terrestrial creation.

*Anti-republican.*—You are destitute, I perceive, of every quality of a good citizen, or rather of a good *subject*. You have neither the light of faith nor the spirit of obedience. I denounce you to the government as an accomplice of atheism and anarchy.

*Republican.*—And I forbear to denounce you to the people, though a blasphemer of their rights and an idolater of tyranny.—Liberty disdains to persecute.

Dec. 20.

[\[Back to Table of Contents\]](#)

## TO EDMUND PENDLETON.

Philad<sup>a</sup>, Feb<sup>y</sup> 23, 1793.

Mad. Mss.

Dear Sir

Since we had the pleasure of Col. Taylor's arrival I have left in his better hands the trust of keeping you supplied with whatever communications might interest or amuse you. As the political scene here, is however soon to be suspended, I cannot refuse myself the last opportunity I shall have before a dispersion of the dramatis personæ takes place, of enjoying the pleasure I always feel in tendering my respects & affection, as well as testifying the high value I set on your correspondence.

I seize the opportunity in this case with the more avidity, as it permits me at the same time, to tell you how much we have been charmed with the successor to Col. R. H. L. 1 & to entreat your co-operation with a number of his other friends in overcoming his repugnance to his present station. His talents during the fraction of time he has been on the federal theatre have been of such infinite service to the republican cause, and such a terror to its adversaries, that his sudden retirement, on which he is strongly bent, ought to be regarded as a public calamity, and counterworked by all the means his friends can use. We think it essential that he should be prevailed on to prolong his stay in the Gov<sup>t</sup> at least through the next session, which will form a critical epoch in our political History. Much will depend on the turn our affairs will then take; and that will depend not a little on the character which Virginia in particular will exhibit in the National Councils. In this view it is to be desired that her weight of talents in one branch sh<sup>d</sup> correspond with her force of numbers in the other. The figure she is to make in the latter with respect to talents will depend on the issue of the approaching elections. We understand in general that there will be no scarcity of competitors; but our information is too defective for an accurate conjecture of the result. Your district has been said to abound more than any other in candidates. Mr. C. 1 I presume is most distinguished for parliamentary talents and activity, and on that score claims a favorable wish, if the course he would be likely to take should furnish no objection, of which those most in the knowledge of his politics are the best judges.

You will have discovered from the Newspapers that a pretty interesting scrutiny has been started into the administration of the Treas<sup>y</sup> Department. 2 The documents furnished shew that there has been at least a very blameable irregularity & secrecy in some particulars of it, and many appearances which at least require explanation. With some, suspicions are carried very far; others resolve the whole that is wrong into favoritism to the Bank, &c. whilst the partizans of the Fisc. either see nothing amiss, or are willing to ascribe everything that is so to venial, if not laudable motives.

The Jan<sup>y</sup> Packet has just arrived at N. Y. Her budget is not yet fully opened to the public. The Gov<sup>t</sup> of Eng<sup>d</sup> it is said remains firm in the saddle notwithstanding the spurs which Mr. Payne has so vigorously applied to the people. Whether a war is to be

forced with France is still uncertain; tho' the affirmative is most countenanced by individual opinions. The arms of France continue to maintain their reputation. She is threatened with a further trial of them by all the efforts that Austria & Prussia at least can make. Spain is disposed to be neutral; but would fain make the preservation of Louis a condition. You will find by the inclosed paper that his fate must ere this have been decided by an appeal to the judgment of the Nation.

With every sentiment of esteem & attachment I am D<sup>r</sup> sir Y<sup>rs</sup>

[\[Back to Table of Contents\]](#)

TO J. M. ROLAND. 1

Virginia, April 1793.

Chic. Hist. Soc.  
Mss.

Sir

I have recd your letter of the 10th of Oct. accompanying the decree of the National Assembly of the 26th of Aug. last; which confers the title of French Citizen on several foreigners among whom I have the honor to be named.

In the catalogue of sublime truths and precious sentiments recorded in the revolution of France, none is more to be admired than the renunciation of those prejudices which have perverted the artificial boundaries of nations into exclusions of the philanthropy which ought to cement the whole into one great family. The recitals of the act which you communicate contain the best comment on the great principle of humanity: and in proportion as they speak the magnanimity of the French nation, must claim the gratitude and affection of the individuals so honorably adopted into her citizenship. For myself I feel these sentiments with all the force which that reflection can inspire; and I present them with peculiar satisfaction as a citizen of the U. S. which have born so signal a part towards banishing prejudices from the world and reclaiming the lost rights of mankind; and whose public connection with France is endeared by the affinities of their mutual liberty, and the sensibility testified by the citizens of each country to every event interesting to the fortunes of the other.

To this tribute of respectful affection, I beg leave to add my anxious wishes for all the prosperity and glory to the French Nation which can accrue from an example corresponding with the dignified maxims they have established and completed the triumphs of Liberty by a victory over the minds of all its adversaries.

Be pleased, Sir, to accept acknowledg[ment] due to the sentiments you have personally expressed in transmitting the public act with which you were charged.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Orange May 8th, 1793.

Mad. Mss.

Dear Sir

Your last rec<sup>d</sup> was of the 28 Ap<sup>l</sup>. The rec<sup>t</sup> of all the preceding is verified by the uninterrupted dates of the Gazettes inclosed. I anxiously wish that the reception of Genest may testify what I believe to be the real affections of the people. It is the more desirable as a seasonable plum after the bitter pills which it seems must be administered. Having neither the Treaty nor Law of Nations at hand I form no opinion as to the stipulations of the former, or the precise neutrality defined by the latter.<sup>1</sup> I had always supposed that the terms of the Treaty made some sort of difference, at least as far as would consist with the Law of Nations, between France & Nations not in Treaty, particularly G. Britain. I should still doubt whether the term *impartial*, in the Proclamation, is not stronger than was necessary, if not than was proper. Peace is no doubt to be preserved at any price that honor and good faith will permit. But it is no less to be considered that the least departure from these will not only be most likely to end in the loss of peace, but is pregnant with every other evil that could happen to us. In explaining our own engagements under the Treaty with France, it would be honorable as well as just to adhere to the sense that would at the time have been put on them. The attempt to shuffle off the Treaty altogether by quibbling on Vattel is equally contemptible for the meanness & folly of it. If a change of Gov<sup>t</sup> is an absolution from public engagements, why not from those of a domestic as well as of a foreign nature; and what then becomes of public debts &c &c. In fact, the doctrine would perpetuate every existing Despotism, by involving in a reform of the Gov<sup>t</sup> a destruction of the social pact, an annihilation of property, and a complete establishment of the state of Nature. What most surprises me is, that such a proposition *sh<sup>d</sup>. have been discussed.*

Our weather has not been favorable of late, owing more to want of sun, than excess of rain. Vegetation of all sorts even the wheat, nevertheless continues to flourish; and the fruit having no longer anything to fear from frost, we are sure of good crops of that agreeable article.

Y<sup>Rs</sup>. Always & Aff<sup>Y</sup>

Will you send me a copy of the little pamphlet advertised under the title of an Examination of the proceedings in the case of the Sec<sup>y</sup> of the Trea<sup>y</sup>?

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

[Orange] May 27, 1793.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup> your letter, with the unsealed one for Monroe & have forwarded the latter. Your subsequent one, which I calculate to have been written on the 12th inst, came to hand two days ago. I feel for your situation but you must bear it. Every consideration private as well as public requires a further sacrifice of your longings for the repose of Monticello, you must not make your final exit from public life till it will be marked with justifying circumstances which all good citizens will respect, & to which your friends can appeal. At the present crisis, what would the former think, what could the latter say? The real motives, whatever they might be would either not be admitted or could not be explained; and if they should be viewed as satisfactory at a future day, the intermediate effects would not be lessened & could not be compensated.—I am anxious to see what reception Genest will find in Philad<sup>a</sup>. I hear that the fiscal party in Alex<sup>a</sup> was an over match for those who wished to testify the American sentiment. George Town it is said repaired the omission. A public dinner was intended for him at Fredericksburg, but he passed with such rapidity that the compliment miscarried. It would not be amiss, if a knowledge of this would in a proper mode get to him. I think it certain that he will be misled if he takes either the fashionable cant of the Cities or the cold caution of the Gov<sup>t</sup> for the sense of the public; and I am equally persuaded that nothing but the habit of implicit respect will save the Executive from blame if thro' the mask of Neutrality, a secret Anglomania should betray itself. I forgot when I requested your attention to my plows, to ask the favor of you to pay for them & to let me know the amount of your several advances. . . .

Yours Always & Aff<sup>Ey</sup>.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange June 13, 93.

Mad. Mss.

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I observe that the newspapers continue to criticise the President's proclamation, and I find that some of the criticisms excite the attention of dispassionate & judicious individuals here. <sup>1</sup> I have heard it remarked marked by such, with some surprise that the P. should have declared the U. S. to be neutral in the unqualified terms used, when we were so notoriously & unequivocally under *eventual engagements* to defend the American possessions of F. I have heard it remarked also that the impartiality enjoined on the people was as little reconcileable with their moral obligations, as the unconditional neutrality proclaimed by the Government is with the express articles of the Treaty. It has been asked also whether the authority of the Executive extended by any part of the Constitution to a declaration of the *Disposition* of the U. S. on the subject of war & peace? I have been mortified that on these points I could offer no bona fide explanations that ought to be satisfactory. On the last point I must own my surprise that such a prerogative should have been exercised. Perhaps I may have not attended to some parts of the Constitution with sufficient care, or may have misapprehended its meaning. But, as I have always supposed & still conceive a proclamation on the subject could not properly go beyond a declaration of the fact that the U. S. were at war or peace, and an injunction of a suitable conduct on the Citizens. The right to decide the question whether the duty & interest of the U. S. require war or peace under any given circumstances, and whether their disposition be towards the one or the other seems to be essentially & exclusively involved in the right vested in the Legislature, of declaring war in time of peace; and in the P. & S. of making peace in time of war. Did no such view of the subject present itself in the discussions of the Cabinet? I am extremely afraid that the P. may not be sufficiently aware of the snares that may be laid for his good intentions by men whose politics at bottom are very different from his own. An assumption of prerogatives not clearly found in the Constitution & having the appearance of being copied from a Monarchical model, will beget animadversion equally mortifying to him & disadvantageous to the Government. Whilst animadversions of this sort can be plausibly ascribed to the spirit of party, the force of them may not be felt. But all his real friends will be anxious that his public conduct may bear the strictest scrutiny of future times as well as of the present day; and all such friends of the Constitution would be doubly pained at infractions of it under auspices that may consecrate the evil till it be incurable.

It will not be in my power to take the step with the Friend of our Friend which you recommend. <sup>1</sup> It is probable too that it would be either unnecessary or without effect. If the complexion of the former be such as is presumed, he will fairly state the truth & that alone is wanted. If as I deem not impossible, his complexion be a little different from the general belief, there would be more harm than good in the attempt. The great danger of misconstruing the sentiment of Virginia with regard to Liberty & France is from the heretical tone of conversation in the Towns on the post roads. The voice of

the Country is universally and warmly right. If the popular disposition could be collected & carried into effect, a most important use might be made of it in obtaining contributions of the necessaries called for by the danger of famine in France. Unfortunately the disaffection of the Towns which alone could give effect to a plan for the purpose, locks up the public gratitude & beneficence. . . .



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Orange June 17, 1793.

Mad. Mss.

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I fell in two days ago with French Strother, who was returning circuitously from Richmond. He had seen W. C. Nicholas on his way, & spoke of him as among the decided friends of the French cause. In general I discovered that his testimony and conviction corroborated the fact that the people of this country, where you cannot trace the causes of particular exceptions, are unanimous & explicit in their sympathy with the Revolution. He was in Richmond during the session of the Court of the U. S., and heard the opinions of the Judges on the subject of the British debts. Jay's he says was that the depreciated paym<sup>ts</sup> into the Treasury discharged the debtor, but leaves the State liable to the creditor. It would be a hard tax on those who have suffered themselves by the depreciation to bear such a burden. It would be severely felt by those who put money into the Treasury on loan & have received certificates by the scale, & those again further reduced by the modifications of the assumption. I asked S. who told me he was under the same roof with Jay & a good deal in his society, what language he held on French topics. He never opened his lips, was the answer. In Fred<sup>g</sup> on his way to Richmond, he was less reserved. I understood that in a conversation there with Mr. Page who was full of zeal on the side of France, his enmity broke out in a very decided tone. . . .

My imagination has hunted thro' this whole state without being able to find a single character fitted for the mission to N. O. 1 Young Marshal seems to possess some of the qualifications, but there would be objections of several sorts to him. In general the men of understanding in this country are either preoccupied or too little acquainted with the world in the sense necessary for such functions. As a mercantile man would be politic, the difficulty of providing a man here is the greater. . . .

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

July 18, 1793.

Mad. Mss.

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I have read over the subject<sup>1</sup> which you recommend to my attention. It excites equally surprise & indignation, and ought certainly to be taken notice of by some one who can do it justice. In my present disposition which is perfectly alienated from such things, and in my present situation which deprives me of some material facts and many important lights, the task would be in bad hands if I were otherwise better qualified for it. I am in hopes of finding that some one else has undertaken it. In the mean time I will feel my own pulse and if nothing appears, may possibly try to supply the omission. Return my thanks to Doc<sup>r</sup>. Logan for the pamphlet & also for the plows arrived at Fred<sup>d</sup>, tho' by a singular succession of errors & accidents, they lie still on the road between this and that. Your acc<sup>t</sup>. of G—[Genet] is dreadful. He must be brought right if possible. His folly will otherwise do mischief which no wisdom can repair. Is there no one through whom he can be *effectually* counselled. D[e] L[a] F[orest] is said to be able, and if himself rightly disposed as I have understood him to be, might perhaps be of great use.

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[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

July 22, 1793.

Mad. Mss.

Dear Sir

My last was on the 18th, and acknowledged yours of the 30th Ult: & 7th instant. I had not then time to mention that W. C. Nicholas pass<sup>d</sup> an evening with me on his way home from his brother's where he had met Ed Randolph on his return to Ph<sup>a</sup>. From his conversation, his sentiments are right & firm on the French Revol<sup>n</sup>, and In other respects I discovered no symptoms of heresy. He spoke particularly & emphatically of the unquestionable unanimity of the Country in favor of the cause of F. I have no doubt that he held this language to every one, and consequently that the impressions depending on him have been rightly made. I could not but infer from all that he said with regard to E. R. that he considered the sentiments of him on French affairs as similar to his own, and to such as were expressed by himself. Some allowance however in all such conversations, must be made for the politeness or policy of respecting the known sentiments of the party to which they are addressed or communicated. He had seen the first part of H's publication<sup>1</sup> and spoke of it as from that quarter. He expressed some surprise at the doctrines & cabinet efforts of the Author as he had learnt them from E. R., and seemed unable to account for some things without suspecting H. of a secret design to commit and sacrifice the P<sup>t</sup>. His ideas on this subject must have grown out of the language of E. R., if not actually copied from it. I have read over with some attention, the *printed* papers you inclosed, and have made notes towards a discussion of the subject. I find myself however under some difficulties first from my not knowing how far concessions have been made on particular points behind the curtain.<sup>1</sup> 2<sup>dly</sup>. from my not knowing how far the P. considers himself as actually committed with respect to some doctrines. 3<sup>dly</sup>. from the want of some lights from the Law of Nations as applicable to the construction of the Treaty. 4<sup>th</sup>. from my ignorance of some material facts,—such as whether any call was made by G. B. or any other Belligerent power for the intentions of the U. S. prior to the Proclamation—whether F. was heard on the subject of her constructions & pretensions under the Treaty—whether the Ex. had before them any authentic documents or entered into any discussions, on the question whether the war between F. & G. B. is offensive or defensive &c: I do not mean that all such information ought to be brought into the controversy, tho' some of it is necessary & some more might be used to advantage. But all or most of it seems proper in order to avoid vulnerable assertions or suppositions which might give occasion to triumphant replies. If an answer to the Publication be undertaken, it ought to be both a solid, and a prudent one. None but intelligent readers will enter into such a controversy, and to their minds it ought principally to be accommodated. If you can lay your hands on the Explanatory publication of the real object of the Proclam<sup>n</sup> referred to in your last, or the preceding one, send it to me. The one I had is no longer in my hands.—I expect to day to receive your letter next in date to the 7th.

[\[Back to Table of Contents\]](#)

## LETTERS OF HELVIDIUS. 1

August-September.

[\[Back to Table of Contents\]](#)

## NO. 1.

Several pieces with the signature of Pacificus were lately published, which have been read with singular pleasure and applause, by the foreigners and degenerate citizens among us, who hate our republican government, and the French revolution; whilst the publication seems to have been too little regarded, or too much despised by the steady friends to both.

Had the doctrines inculcated by the writer, with the natural consequences from them, been nakedly presented to the public, this treatment might have been proper. Their true character would then have struck every eye, and been rejected by the feelings of every heart. But they offer themselves to the reader in the dress of an elaborate dissertation; they are mingled with a few truths that may serve them as a passport to credulity; and they are introduced with professions of anxiety for the preservation of peace, for the welfare of the government, and for the respect due to the present head of the executive, that may prove a snare to patriotism.

In these disguises they have appeared to claim the attention I propose to bestow on them: with a view to show, from the publication itself, that under colour of vindicating an important public act, of a chief magistrate who enjoys the confidence and love of his country, principles are advanced which strike at the vitals of its constitution, as well as at its honour and true interest.

As it is not improbable that attempts may be made to apply insinuations, which are seldom spared when particular purposes are to be answered, to the author of the ensuing observations, it may not be improper to premise, that he is a friend to the constitution, that he wishes for the preservation of peace, and that the present chief magistrate has not a fellow-citizen, who is penetrated with deeper respect for his merits, or feels a purer solicitude for his glory.

This declaration is made with no view of courting a more favourable ear to what may be said than it deserves. The sole purpose of it is, to obviate imputations which might weaken the impressions of truth; and which are the more likely to be resorted to, in proportion as solid and fair arguments may be wanting.

The substance of the first piece, sifted from its inconsistencies and its vague expressions, may be thrown into the following propositions:

That the powers of declaring war and making treaties are, in their nature, executive powers:

That being particularly vested by the constitution in other departments, they are to be considered as exceptions out of the general grant to the executive department:

That being, as exceptions, to be construed strictly, the powers not strictly within them, remain with the executive.

That the executive consequently, as the organ of intercourse with foreign nations, and the interpreter and executor of treaties, and the law of nations, is authorized to expound all articles of treaties, those involving questions of war and peace, as well as others;—to judge of the obligations of the United States to make war or not, under any *casus fœderis* or eventual operation of the contract, relating to war; and to pronounce the state of things resulting from the obligations of the United States, as understood by the executive

That in particular the executive had authority to judge, whether in the case of the mutual guaranty between the United States and France, the former were bound by it to engage in the war:

That the executive has, in pursuance of that authority, decided that the United States are not bound:—And

That its proclamation of the 22nd of April last, is to be taken as the effect and expression of that decision.

The basis of the reasoning is, we perceive, the extraordinary doctrine, that the powers of making war, and treaties, are in their nature executive, and therefore comprehended in the general grant of executive power, where not especially and strictly excepted out of the grant

Let us examine this doctrine: and that we may avoid the possibility of mistaking the writer, it shall be laid down in his own words; a precaution the more necessary, as scarce any thing else could outweigh the improbability, that so extravagant a tenet should be hazarded at so early a day, in the face of the public.

His words are—“Two of these [exceptions and qualifications to the executive powers] have been already noticed—the participation of the senate in the *appointment of officers*, and the *making of treaties*. A *third* remains to be mentioned—the right of the legislature to *declare war*, and *grant letters of marque and reprisal*.”

Again—“It deserves to be remarked, that as the participation of the senate in the *making of treaties*, and the power of the legislature to *declare war*, are *exceptions* out of the general *executive power*, vested in the president; they are to be construed *strictly*, and ought to be extended no further than is *essential* to their execution.”

If there be any countenance to these positions, it must be found either, first, in the writers of authority on public law; or, 2d, in the quality and operation of the powers to make war and treaties; or, 3d, in the constitution of the United States.

1. It would be of little use to enter far into the first source of information, not only because our own reason and our own constitution, are the best guides; but because a just analysis and discrimination of the powers of government, according to their executive, legislative, and judiciary qualities, are not to be expected in the works of the most received jurists, who wrote before a critical attention was paid to those objects, and with their eyes too much on monarchical governments, where all powers are confounded in the sovereignty of the prince. It will be found, however, I believe,

that all of them, particularly Wolsius, Burlamaqui, and Vattel, speak of the powers to declare war, to conclude peace, and to form alliances, as among the highest acts of the sovereignty; of which the legislative power must at least be an integral and preeminent part.

Writers, such as Locke, and Montesquieu, who have discussed more the principles of liberty and the structure of government, lie under the same disadvantage, of having written before these subjects were illuminated by the events and discussions which distinguish a very recent period. Both of them, too, are evidently warped by a regard to the particular government of England, to which one of them owed allegiance<sup>1</sup>; and the other professed an admiration bordering on idolatry. Montesquieu, however, has rather distinguished himself by enforcing the reasons and the importance of avoiding a confusion of the several powers of government, than by enumerating and defining the powers which belong to each particular class. And Locke, notwithstanding the early date of his work on civil government, and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law he calls *federative*, are really *distinct* from the *executive*, though almost always united with it, and *hardly to be separated into distinct hands*. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to lawgivers, the last observation would probably never have dropped from his pen. But let us quit a field of research which is more likely to perplex than to decide, and bring the question to other tests of which it will be more easy to judge.

2. If we consult, for a moment, the nature and operation of the two powers to declare war and to make treaties, it will be impossible not to see, that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts, therefore, properly executive, must presuppose the existence of the laws to be executed. A treaty is not an execution of laws: it does not presuppose the existence of laws. It is, on the contrary, to have itself the force of a *law*, and to be carried into *execution*, like all *other laws*, by the *executive magistrate*. To say then that the power of making treaties, which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory this is an absurdity—in practice a tyranny.

The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws: it does not suppose pre-existing laws to be executed: it is not, in any respect, an act merely executive. It is, on the contrary, one of the most deliberate acts that can be performed; and when performed, has the effect of *repealing* all the *laws* operating in a state of peace, so far as they are inconsistent with a state of war; and of *enacting*, as a *rule for the executive*, a *new code* adapted to the relation between the society and its foreign enemy. In like manner, a conclusion of peace *annuls* all the *laws* peculiar to a state of war, and *revives* the general *laws* incident to a state of peace.

These remarks will be strengthened by adding, that treaties, particularly treaties of peace, have sometimes the effect of changing not only the external laws of the

society, but operate also on the internal code, which is purely municipal, and to which the legislative authority of the country is of itself competent and complete.

From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions, from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident, that if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to result to their most natural department, the legislature would be without a rival in its claim.

Another important inference to be noted is, that the powers of making war and treaty being substantially of a legislative, not an executive nature, the rule of interpreting exceptions strictly must narrow, instead of enlarging, executive pretensions on those subjects.

3. It remains to be inquired, whether there be any thing in the constitution itself, which shows, that the powers of making war and peace are considered as of an executive nature, and as comprehended within a general grant of executive power.

It will not be pretended, that this appears from any *direct* position to be found in the instrument.

If it were *deducible* from any particular expressions, it may be presumed, that the publication would have saved us the trouble of the research.

Does the doctrine, then, result from the actual distribution of powers among the several branches of the government? or from any fair analogy between the powers of war and treaty, and the enumerated powers vested in the executive alone?

Let us examine:

In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.

This conclusion becomes irresistible, when it is recollected, that the constitution cannot be supposed to have placed either any power legislative in its nature, entirely among executive powers, or any power executive in its nature, entirely among legislative powers, without charging the constitution, with that kind of intermixture and consolidation of different powers, which would violate a fundamental principle in the organization of free governments. If it were not unnecessary to enlarge on this



topic here, it could be shown, that the constitution was originally vindicated, and has been constantly expounded, with a disavowal of any such intermixture.

The power of treaties is vested jointly in the president and in the senate, which is a branch of the legislature. From this arrangement merely, there can be no inference that would necessarily exclude the power from the executive class: since the senate is joined with the president in another power, that of appointing to offices, which, as far as relate to executive offices at least, is considered as of an executive nature. Yet on the other hand, there are sufficient indications that the power of treaties is regarded by the constitution as materially different from mere executive power, and as having more affinity to the legislative than to the executive character.

One circumstance indicating this, is the constitutional regulation under which the senate give their consent in the case of treaties. In all other cases, the consent of the body is expressed by a majority of voices. In this particular case, a concurrence of two-thirds at least is made necessary, as a substitute or compensation for the other branch of the legislature, which, on certain occasions, could not be conveniently a party to the transaction.

But the conclusive circumstance is, that treaties, when formed according to the constitutional mode, are confessedly to have force and operation of *laws*, and are to be a rule for the courts in controversies between man and man, as much as any *other laws*. They are even emphatically declared by the constitution to be “the supreme law of the land.”

So far the argument from the constitution is precisely in opposition to the doctrine. As little will be gained in its favour from a comparison of the two powers, with those particularly vested in the president alone.

As there are but few, it will be most satisfactory to review them one by one.

“The president shall be commander in chief of the army and navy of the United States, and of the militia when called into the actual service of the United States.”

There can be no relation worth examining between this power and the general power of making treaties. And instead of being analogous to the power of declaring war, it affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be *commenced, continued, or concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws.

“He may require the opinion in writing of the principal officers in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in case of impeachment.” These powers can have nothing to do with the subject.

“The president shall have power to fill up vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session.” The same remark is applicable to this power, as also to that of “receiving ambassadors, other public ministers, and consuls.” The particular use attempted to be made of this last power will be considered in another place.

“He shall take care that the laws shall be faithfully executed, and shall commission all officers of the United States.” To see the laws faithfully executed constitutes the essence of the executive authority. But what relation has it to the power of making treaties and war, that is, of determining what the *laws shall be* with regard to other nations? No other certainly than what subsists between the powers of executing and enacting laws, no other, consequently, than what forbids a coalition of the powers in the same department.

I pass over the few other specified functions assigned to the president, such as that of convening the legislature, &c., &c., which cannot be drawn into the present question.

It may be proper however to take notice of the power of removal from office, which appears to have been adjudged to the president by the laws establishing the executive departments; and which the writer has endeavoured to press into his service. To justify any favourable inference from this case, it must be shown, that the powers of war and treaties are of a kindred nature to the power of removal, or at least are equally within a grant of executive power. Nothing of this sort has been attempted, nor probably will be attempted. Nothing can in truth be clearer, than that no analogy, or shade of analogy, can be traced between a power in the supreme officer responsible for the faithful execution of the laws, to displace a subaltern officer employed in the execution of the laws; and a power to make treaties and to declare war, such as these have been found to be in their nature, their operation, and their consequences.

Thus it appears that by whatever standard we try this doctrine, it must be condemned as no less vicious in theory than it would be dangerous in practice. It is countenanced neither by the writers on law; nor by the nature of the powers themselves; nor by any general arrangements, or particular expressions, or plausible analogies, to be found in the constitution.

Whence then can the writer have borrowed it?

There is but one answer to this question.

The power of making treaties and the power of declaring war, are *royal prerogatives* in the *British government*, and are accordingly treated as *executive prerogatives* by *British commentators*.

We shall be the more confirmed in the necessity of this solution of the problem, by looking back to the area of the constitution, and satisfying ourselves that the writer could not have been misled by the doctrines maintained by our own commentators on our own government. That I may not ramble beyond prescribed limits, I shall content myself with an extract from a work which entered into a systematic explanation and

defence of the constitution; and to which there has frequently been ascribed some influence in conciliating the public assent to the government in the form proposed. Three circumstances conspire in giving weight to this cotemporary exposition. It was made at a time when no application to *persons or measures* could bias: the opinion given was not transiently mentioned, but formally and critically elucidated: it related to a point in the constitution which must consequently have been viewed as of importance in the public mind. The passage relates to the power of making treaties; that of declaring war, being arranged with such obvious propriety among the legislative powers, as to be passed over without particular discussion.

“Though several writers on the subject of government place that power [*of making treaties*] in the class of *executive authorities*, yet this is *evidently* an *arbitrary disposition*. For if we attend *carefully* to its operation, it will be found to partake *more* of the *legislative* than of the *executive* character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority, is to enact laws; or, in other words, to prescribe rules for the regulation of the society: while the execution of the laws and the employment of the common strength, either for this purpose, or for the common defence, seem to comprise *all* the functions of the *executive magistrate*. The power of making treaties is *plainly* neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enactment of new ones, and still less to an exertion of the common strength. Its objects are contracts with foreign nations, which have the *force of law*, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong properly neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign *negotiations*, point out the executive as the most fit agent in those transactions; whilst the vast importance of the trust, and the operation of treaties *as laws*, plead strongly for the participation of the whole or a part of the *legislative body*, in the office of making them.”—*Federalist*, p. 418.<sup>1</sup>

It will not fail to be remarked on this commentary, that whatever doubts may be started as to the correctness of its reasoning against the legislative nature of the power to make treaties; it is *clear, consistent, and confident*, in deciding that the power is *plainly* and *evidently* not an *executive power*.

[\[Back to Table of Contents\]](#)

## NO. II.

The doctrine which has been examined is pregnant with inferences and consequences against which no ramparts in the constitution could defend the public liberty or scarcely the forms of republican government. Were it once established that the powers of war and treaty are in their nature executive; that so far as they are not by strict construction transferred to the legislature, they actually belong to the executive; that of course all powers not less executive in their nature than those powers, if not granted to the legislature, may be claimed by the executive; if granted, are to be taken *strictly*, with a residuary right in the executive; or, as will hereafter appear, perhaps claimed as a concurrent right by the executive; and no citizen could any longer guess at the character of the government under which he lives; the most penetrating jurist would be unable to scan the extent of constructive prerogative.

Leaving however to the leisure of the reader deductions which the author, having omitted, might not choose to own, I proceed to the examination of one, with which that liberty cannot be taken.

“However true it may be, (says he,) that the right of the legislature to declare war *includes the right of judging*, whether the legislature be under obligations to make war or not, it will not follow that the executive is *in any case* excluded from a *similar right* of judging in the execution of its own functions.”

A material error of the writer, in this application of his doctrine, lies in his shrinking from its regular consequences. Had he stuck to his principle in its full extent, and reasoned from it without restraint, he would only have had to defend himself against his opponents. By yielding the great point, that the right to declare war, *though to be taken strictly*, includes the right to judge, whether the nation be under obligation to make war or not, he is compelled to defend his argument, not only against others, but against himself also. Observe, how he struggles in his own toils.

He had before admitted, that the right to declare war is vested in the legislature. He here admits, that the right to declare war includes the right to judge, whether the United States be obliged to declare war or not. Can the inference be avoided, that the executive, instead of having a similar right to judge, is as much excluded from the right to judge as from the right to declare?

If the right to declare war be an exception out of the general grant to the executive power, every thing included in the right must be included in the exception; and, being included in the exception, is excluded from the grant.

He cannot disentangle himself by considering the right of the executive to judge as *concurrent* with that of the legislature: for if the executive have a concurrent right to judge, and the right to judge be included in (it is in fact the very essence of) the right to declare, he must go on and say, that the executive has a concurrent right also to

declare. And then, what will he do with his other admission, that the power to declare is an exception out of the executive power?

Perhaps an attempt may be made to creep out of the difficulty through the words, “in the execution of its functions.” Here, again, he must equally fail.

Whatever difficulties may arise in defining the executive authority in particular cases, there can be none in deciding on an authority clearly placed by the constitution in another department. In this case, the constitution has decided what shall not be deemed an executive authority; though it may not have clearly decided in every case what shall be so deemed. The declaring of war is expressly made a legislative function. The judging of the obligations to make war, is admitted to be included as a legislative function. Whenever, then, a question occurs, whether war shall be declared, or whether public stipulations require it, the question necessarily belongs to the department to which those functions belong—and no other department can be *in the execution of its proper functions*, if it should undertake to decide such a question.

There can be no refuge against this conclusion, but in the pretext of a *concurrent* right in both departments to judge of the obligations to declare war; and this must be intended by the writer, when he says, “It will not follow, that the executive is excluded *in any case* from a *similar right* of judging,” &c.

As this is the ground on which the ultimate defence is to be made, and which must either be maintained, or the works erected on it demolished; it will be proper to give its strength a fair trial.

It has been seen, that the idea of a *concurrent* right is at variance with other ideas, advanced or admitted by the writer. Laying aside, for the present, that consideration, it seems impossible to avoid concluding, that if the executive, as such, has a concurrent right with the legislature to judge of obligations to declare war, and the right to judge be essentially included in the right to declare, it must have the same concurrent right to declare, as it has to judge; and, by another analogy, the same right to judge of other causes of war, as of the particular cause found in a public stipulation. So that whenever the executive, *in the course of its functions*, shall meet with these cases, it must either infer an equal authority in all, or acknowledge its want of authority in any.

If any doubt can remain, or rather if any doubt could ever have arisen, which side of the alternative ought to be embraced, it can be with those only who overlook or reject some of the most obvious and essential truths in political science.

The power to judge of the causes of war, as involved in the power to declare war, is expressly vested, where all other legislative powers are vested, that is, in the congress of the United States. It is consequently determined by the constitution to be a *legislative power*. Now, omitting the inquiry here, in what respects a compound power may be partly legislative, and partly executive, and accordingly vested *partly* in the one, and *partly* in the other department, or *jointly* in both; a remark used on another occasion is equally conclusive on this, that the same power cannot belong, *in the whole to both* departments, or be properly so vested as to operate *separately* in

*each*. Still more evident is it, that the same *specific function or act*, cannot possibly belong to the *two* departments, and be *separately* exerciseable by *each*.

Legislative power may be *concurrently* vested in different legislative bodies. Executive powers may be concurrently vested in different executive magistrates. In legislative acts the executive may have a participation, as in the qualified negative on the laws. In executive acts, the legislature, or at least a branch of it, may participate, as in the appointment to offices. Arrangements of this sort are familiar in theory, as well as in practice. But an independent exercise of an *executive act* by the legislature *alone*, or of a *legislative act* by the executive *alone*, one or other of which must happen in every case where the same act is exerciseable by each, and the latter of which would happen in the case urged by the writer, is contrary to one of the first and best maxims of a well-organized government, and ought never to be founded in a forced construction, much less in opposition to a fair one. Instances, it is true, may be discovered among ourselves, where this maxim has not been faithfully pursued; but being generally acknowledged to be errors, they confirm, rather than impeach the truth and value of the maxim.

It may happen also, that different independent departments, the legislative and executive, for example, may, in the exercise of their functions, interpret the constitution differently, and thence lay claim to the same power. This difference of opinion is an inconvenience not entirely to be avoided. It results from what may be called, if it be thought fit, a *concurrent* right to expound the constitution. But this *species* of concurrence is obviously and radically different from that in question. The former supposes the constitution to have given the power to one department only; and the doubt to be, to which it has been given. The latter supposes it to belong to both; and that it may be exercised by either or both, according to the course of exigencies.

A concurrent authority in two independent departments, to perform the same function with respect to the same thing, would be as awkward in practice, as it is unnatural in theory.

If the legislature and executive have both a right to judge of the obligations to make war or not, it must sometimes happen, though not at present, that they will judge differently. The executive may proceed to consider the question to-day; may determine that the United States are not bound to take part in a war, and, *in the execution of its functions*, proclaim that determination to all the world. To-morrow, the legislature may follow in the consideration of the same subject; may determine that the obligations impose war on the United States, and, *in the execution of its functions* enter into a *constitutional declaration*, expressly contradicting the *constitutional proclamation*.

In what light does this present the constitution to the people who established it? In what light would it present to the world a nation, thus speaking, through two different organs, equally constitutional and authentic, two opposite languages, on the same subject, and under the same existing circumstances?

But it is not with the legislative rights alone that this doctrine interferes. The rights of the judiciary may be equally invaded. For it is clear that if a right declared by the constitution to be legislative, and actually vested by it in the legislature, leaves, notwithstanding, a similar right in the executive, whenever a case for exercising it occurs, *in the course of its functions*; a right declared to be judiciary and vested in that department may, on the same principle, be assumed and exercised by the executive *in the course of its functions*; and it is evident that occasions and pretexts for the latter interference may be as frequent as for the former. So again the judiciary department may find equal occasions in the execution of *its* functions, for usurping the authorities of the executive; and the legislature for stepping into the jurisdiction of both. And thus all the powers of government, of which a partition is so carefully made among the several branches, would be thrown into absolute hotchpot, and exposed to a general scramble.

It is time however for the writer himself to be heard, in defence of his text. His comment is in the words following:

“If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace, till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; and when, in pursuance of this right, it has concluded that there is nothing inconsistent with a state of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the nation. The executive is charged with the execution of all laws, the laws of nations, as well as the municipal law which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the nation, to avoid giving a cause of war to foreign powers.”

To do full justice to this masterpiece of logic, the reader must have the patience to follow it step by step.

*If the legislature have a right to make war on the one hand, it is, on the other, the duty of the executive to preserve peace till war is declared.*

It will be observed that here is an explicit and peremptory assertion, that it is the *duty* of the executive to *preserve peace till war is declared*.

*And in fulfilling that duty it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the country impose on the government; That is to say, in fulfilling the duty to preserve peace, it must necessarily possess the right to judge whether peace ought to be preserved; in other words, whether its duty should be performed. Can words express a flatter contradiction? It is self-evident that the duty in this case is so far from necessarily implying the right, that it necessarily excludes it.*

*And when in pursuance of this right it has concluded that there is nothing in them (obligations) inconsistent with a state of neutrality, IT BECOMES both its province and its duty to enforce the laws incident to that state of the nation.*

And what if it should conclude that there is something inconsistent? Is it or is it not the province and duty of the executive to enforce the same laws? Say it is, you destroy the right to judge. Say it is not, you cancel the duty to preserve peace, till war is declared.

Take this sentence in connexion with the preceding, and the contradictions are multiplied. Take it by itself, and it makes the right to judge and conclude, whether war be obligatory, absolute and operative; and the duty to preserve peace subordinate and conditional.

It will have been remarked by the attentive reader, that the term *peace* in the first clause has been silently exchanged in the present one for the term *neutrality*. Nothing however is gained by shifting the terms. Neutrality means peace, with an allusion to the circumstances of other nations being at war. The term has no reference to the existence or non-existence of treaties or alliances between the nation at peace and the nations at war. The laws incident to a state of neutrality, are the laws incident to a state of peace, with such circumstantial modifications only as are required by the new relation of the nations at war: until war therefore be duly authorized by the United States, they are as *actually* neutral when other nations are at war, as they are at peace (if such a distinction in the terms is to be kept up) when other nations are not at war. The existence of *eventual* engagements which can only take effect on the declaration of the legislature, cannot, without that declaration, change the *actual* state of the country, any more in the eye of the executive than in the eye of the judiciary department. The laws to be the guide of both, remain the same to each, and the same to both.

Nor would more be gained by allowing the writer to define, than to shift the term neutrality. For suppose, if you please, the existence of obligations to join in war to be inconsistent with neutrality, the question returns upon him, what laws are to be enforced by the executive, until effect shall be given to those obligations by the declaration of the legislature? Are they to be the laws incident to those obligations, that is, incident to war? However strongly the doctrines or deductions of the writer may tend to this point, it will not be avowed. Are the laws to be enforced by the executive, then, in such a state of things, to be the *same* as if no such obligations existed? Admit this, which you must admit, if you reject the other alternative, and the argument lands precisely where it embarked—in the position, that it is the absolute duty of the executive in *all* cases to preserve peace till war is declared, not that it is “*to become* the province and duty of the executive” after it has concluded that there is nothing in those obligations inconsistent with a state of peace and neutrality. The right to judge and conclude therefore, so solemnly maintained in the text, is lost in the comment.

We shall see, whether it can be reinstated by what follows:

*The executive is charged with the execution of all laws, the laws of nations as well as the municipal law which recognises and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality when that is the state of the nation, to avoid giving cause of war to foreign powers.*



The first sentence is a truth, but nothing to the point in question. The last is *partly true* in its proper meaning, but *totally untrue* in the meaning of the writer. That the executive is bound faithfully to execute the laws of neutrality, whilst those laws continue unaltered by the competent authority, is true; but not for the reason here given, to wit, to avoid giving cause of war to foreign powers. It is bound to the faithful execution of these as of all other laws internal and external, by the nature of its trust and the sanction of its oath, even if turbulent citizens should consider its so doing as a cause of war at home, or unfriendly nations should consider its so doing as a cause of war abroad. The duty of the executive to preserve external peace, can no more suspend the force of external laws, than its duty to preserve internal peace can suspend the force of municipal laws.

It is certain that a faithful execution of the laws of neutrality may tend as much in some cases, to incur war from one quarter, as in others to avoid war from other quarters. The executive must nevertheless execute the laws of neutrality whilst in force, and leave it to the legislature to decide, whether they ought to be altered or not. The executive has no other discretion than to convene and give information to the legislature on occasions that may demand it; and whilst this discretion is duly exercised, the trust of the executive is satisfied, and that department is not responsible for the consequences. It could not be made responsible for them without vesting it with the legislative as well as with the executive trust.

These remarks are obvious and conclusive, on the supposition that the expression “laws of neutrality” means simply what the words import, and what alone they can mean, to give force or colour to the inference of the writer from his own premises. As the inference itself however, in its proper meaning, does not approach towards his avowed object, which is to work out a prerogative for the executive to judge, in common with the legislature, whether there be cause of war or not in a public obligation, it is to be presumed that “in faithfully executing the laws of neutrality,” an exercise of that prerogative was meant to be included. On this supposition the inference, as will have been seen, does not result from his own premises, and has been already so amply discussed, and, it is conceived, so clearly disproved, that not a word more can be necessary on this branch of his argument.

[\[Back to Table of Contents\]](#)

### NO. III.

In order to give colour to a right in the executive to exercise the legislative power of judging, whether there be a cause of war in a public stipulation—two other arguments are subjoined by the writer to that last examined.

The first is simply this: “It is the right and duty of the executive to judge of and interpret those articles of our treaties which give to France particular privileges, *in order to the enforcement of those privileges:*” from which it is stated, as a necessary consequence, that the executive has certain other rights, among which is the right in question.

This argument is answered by a very obvious distinction. The first right is essential to the execution of the treaty, *as a law in operation*, and interferes with no right vested in another department. The second, viz., the right in question, is not essential to the execution of the treaty, or any other law: on the contrary, the article to which the right is applied cannot, as has been shown, from the very nature of it, be *in operation* as a law, without a previous declaration of the legislature; and all the laws to be *enforced* by the executive remain, in the mean time, precisely the same, whatever be the disposition or judgment of the executive. This second right would also interfere with a right acknowledged to be in the legislative department.

If nothing else could suggest this distinction to the writer, he ought to have been reminded of it by his own words, “in order to the enforcement of those privileges”—Was it in order to *the enforcement* of the article of guaranty, that the right is ascribed to the executive?

The other of the two arguments reduces itself into the following form: the executive has the right to receive public ministers; this right includes the right of deciding, in the case of a revolution, whether the new government, sending the minister, ought to be recognised, or not; and this, again, the right to give or refuse operation to preexisting treaties.

The power of the legislature to declare war, and judge of the causes for declaring it, is one of the most express and explicit parts of the constitution. To endeavour to abridge or *affect* it by strained inferences, and by hypothetical or singular occurrences, naturally warns the reader of some lurking fallacy.

The words of the constitution are, “He (the president) shall receive ambassadors, other public ministers, and consuls.” I shall not undertake to examine, what would be the precise extent and effect of this function in various cases which fancy may suggest, or which time may produce. It will be more proper to observe, in general, and every candid reader will second the observation, that little, if any thing, more was intended by the clause, than to provide for a particular mode of communication, *almost* grown into a right among modern nations; by pointing out the department of the government, most proper for the ceremony of admitting public ministers, of examining their

credentials, and of authenticating their title to the privileges annexed to their character by the law of nations. This being the apparent design of the constitution, it would be highly improper to magnify the function into an important prerogative, even where no rights of other departments could be affected by it.

To show that the view here given of the clause is not a new construction, invented or strained for a particular occasion—I will take the liberty of recurring to the cotemporary work already quoted, which contains the obvious and original gloss put on this part of the constitution by its friends and advocates.

“The president is also to be authorized to receive ambassadors and other public ministers. This, though it has been a rich theme of declamation, is more a matter of *dignity* than of *authority*. It is a circumstance, that will be *without consequence* in the administration of the government, and it is far more convenient that it should be arranged in this manner, than that there should be a necessity for convening the legislature or one of its branches upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.” *Fed.*, p. 389.<sup>1</sup>

Had it been foretold in the year 1788, when this work was published, that before the end of the year 1793, a writer, assuming the merit of being a friend to the constitution, would appear, and gravely maintain, that this function, which was to be *without consequence* in the administration of the government, might have the consequence of deciding on the validity of revolutions in favour of liberty, “of putting the United States in a condition to become an associate in war”—nay, “of laying the *legislature* under an *obligation of declaring war*,” what would have been thought and said of so visionary a prophet?

The moderate opponents of the constitution would probably have disowned his extravagance. By the advocates of the constitution, his prediction must have been treated as “an experiment on public credulity, dictated either by a deliberate intention to deceive, or by the overflowings of a zeal too intemperate to be ingenuous.”

But how does it follow from the function to receive ambassadors and other public ministers, that so consequential a prerogative may be exercised by the executive? When a foreign minister presents himself, two questions immediately arise: Are his credentials from the existing and acting government of his country? Are they properly authenticated? These questions belong of necessity to the executive; but they involve no cognizance of the question, whether those exercising the government have the right along with the possession. This belongs to the nation, and to the nation alone, on whom the government operates. The questions before the executive are merely questions of fact; and the executive would have precisely the same right, or rather be under the same necessity of deciding them, if its function was simply to receive *without any discretion to reject* public ministers. It is evident, therefore, that if the executive has a right to reject a public minister, it must be founded on some other consideration than a change in the government, or the newness of the government; and consequently a right to refuse to acknowledge a new government cannot be implied by the right to refuse a public minister.

It is not denied that there may be cases in which a respect to the general principles of liberty, the essential rights of the people, or the overruling sentiments of humanity, might require a government, whether new or old, to be treated as an illegitimate despotism. Such are in fact discussed and admitted by the most approved authorities. But they are great and extraordinary cases, by no means submitted to so limited an organ of the national will as the executive of the United States; and certainly not to be brought by any torture of words, within the right to receive ambassadors.

That the authority of the executive does not extend to a question, whether an *existing* government ought to be recognised or not, will still more clearly appear from an examination of the next inference of the writer, to wit: that the executive has a right to give or refuse activity and operation to preexisting treaties.

If there be a principle that ought not to be questioned within the United States, it is, that every nation has a right to abolish an old government and establish a new one. This principle is not only recorded in every public archive, written in every American heart, and sealed with the blood of a host of American martyrs; but is the only lawful tenure by which the United States hold their existence as a nation.

It is a principle incorporated with the above, that governments are established for the national good, and are organs of the national will.

From these two principles results a third, that treaties formed by the government, are treaties of the nation, unless otherwise expressed in the treaties.

Another consequence is, that a nation, by exercising the right of changing the organ of its will, can neither disengage itself from the obligations, nor forfeit the benefits of its treaties. This is a truth of vast importance, and happily rests with sufficient firmness, on its own authority. To silence or prevent cavil, I insert, however, the following extracts: “Since then such a treaty (a treaty not *personal* to the sovereign) directly relates to the body of the state, it subsists though the form of the republic happens to be changed, and though it should be even transformed into a monarchy—for the state and the nation are always the same, whatever changes are made in the form of the government—and the treaty concluded with the nation, remains in force as long as the nation exists.”—Vattel, B. II, § 85. “It follows that as a treaty, notwithstanding the change of a democratic government into a monarchy, continues in force with the new king, in like manner, if a *monarchy* becomes a *republic*, the treaty made with the king does not expire on that account, unless it was manifestly personal.”—Burlam, part iv., c. ix., § 16, ¶ 6.

As a change of government then makes no change in the obligations or rights of the party to a treaty, it is clear that the executive can have no more right to suspend or prevent the operation of a treaty, on account of the change, than to suspend or prevent the operation, where no such change has happened. Nor can it have any more right to suspend the operation of a treaty in force as a law, than to suspend the operation of any other law

The logic employed by the writer on this occasion, will be best understood by accommodating to it the language of a proclamation, founded on the prerogative and policy of suspending the treaty with France.

Whereas a treaty was concluded on the — day of — between the United States and the French nation, through the kingly government, which was then the organ of its will: and whereas the said nation hath since exercised its right (nowise abridged by the said treaty) of changing the organ of its will, by abolishing the said kingly government, as inconsistent with the rights and happiness of the people, and establishing a republican in lieu thereof, as most favourable to the public happiness, and best suited to the genius of a people become sensible of their rights and ashamed of their chains: and whereas, by the constitution of the United States, the executive is authorized to receive ambassadors, other public ministers, and consuls: and whereas a public minister, duly appointed and commissioned by the new republic of France, hath arrived and presented himself to the executive, in order to be received in his proper character, now be it known, that by virtue of the said right vested in the executive to receive ambassadors, other public ministers and consuls, and of the rights included therein, the executive hath refused to receive the said minister from the said republic, and hath thereby caused the activity and operation of all treaties with the French nation, *hitherto in force as supreme laws of the land*, to be suspended until the executive, by taking off the said suspension, shall revive the same: of which all persons concerned are to take notice at their peril.

The writer, as if beginning to feel that he was grasping at more than he could hold, endeavours all of a sudden to squeeze his doctrine into a smaller size, and a less vulnerable shape. The reader shall see the operation in his own words.

“And where *a treaty* antecedently exists between the United States and such nation, [a nation whose government has undergone a revolution,] that right [the right of judging, whether the new rulers ought to be recognised or not] involves the power of giving operation or not to *such treaty*. For until the new government is acknowledged, the treaties between the nations *as far at least as regards public rights*, are *of course* suspended.”

This qualification of the suspending power, though reluctantly and inexplicitly made, was prudent, for two reasons: first, because it is pretty evident that *private rights*, whether of judiciary or executive cognizance, may be carried into effect without the agency of the foreign government: and therefore would not be suspended, of course, by a rejection of that agency: secondly, because the judiciary, being an independent department, and acting under an oath to pursue the law of treaties as the supreme law of the land, might not readily follow the executive example; and a *right* in *one* expositor of treaties, to consider them as *not in force*, whilst it would be the *duty* of *another* expositor to consider them as *in force*, would be a phenomenon not so easy to be explained. Indeed, as the doctrine stands qualified, it leaves the executive the right of suspending the law of treaties in relation to rights of one description, without exempting it from the duty of enforcing it in relation to rights of another description.

But the writer is embarked in so unsound an argument, that he does not save the rest of his inference by this sacrifice of one half of it. It is not true, that *all public rights* are of course suspended by a refusal to acknowledge the government, or even by a suspension of the government. And in the next place, the right in question does not follow from the necessary suspension of public rights, in consequence of a refusal to acknowledge the government.

Public rights are of two sorts: those which require the agency of government; those which may be carried into effect without that agency.

As public rights are the rights of the nation, not of the government, it is clear, that wherever they can be made good to the nation, without the office of government, they are not suspended by the want of an acknowledged government, or even by the want of an existing government; and that there are important rights of this description, will be illustrated by the following case.

Suppose, that after the conclusion of the treaty of alliance between the United States and France, a party of the enemy had surprised and put to death every member of congress; that the occasion had been used by the people of America for changing the old confederacy into such a government as now exists, and that in the progress of this revolution, an interregnum had happened: suppose further, that during this interval, the states of South Carolina and Georgia, or any other parts of the United States, had been attacked, and been put into evident and imminent danger of being irrecoverably lost, without the interposition of the French arms; is it not manifest, that as the treaty is the treaty of the United States, not of their government, the people of the United States could not forfeit their right to the guaranty of their territory by the accidental suspension of their government; and that any attempt, on the part of France, to evade the obligations of the treaty, by pleading the suspension of government, or by refusing to acknowledge it, would justly have been received with universal indignation, as an ignominious perfidy?

With respect to public rights that cannot take effect in favour of a nation without the agency of its government, it is admitted that they are suspended of course where there is no government in existence, and also by a refusal to acknowledge an existing government. But no inference in favour of *a right* to suspend the operation of treaties, can be drawn from either case. Where the existence of the government is suspended, it is a case of necessity; it would be a case happening without the act of the executive, and consequently could prove nothing for or against the right. In the other case, to wit, of a refusal by the executive to recognise an *existing government*, however certain it may be, that a suspension of some of the public rights might ensue; yet it is equally certain, that the refusal would be without right or authority; and that no right or authority could be implied or produced by the unauthorized act. If a right to do whatever might bear an analogy to the necessary consequence of what was done without right, could be inferred from the analogy, there would be no other limit to power than the limit to its ingenuity.

It is no answer to say that it may be doubtful, whether a government does or does not exist; or doubtful which may be the existing and acting government. The case stated

by the writer is, that there are existing rulers; that there is an acting government; but that they are *new* rulers; and that it is a *new* government. The full reply, however, is to repeat what has been already observed; that questions of this sort are mere questions of fact; that as such only, they belong to the executive, that they would equally belong to the executive, if it was tied down to the reception of public ministers, without any discretion to receive or reject them; that where the fact appears to be, that no government exists, the consequential suspension is independent of the executive; that where the fact appears to be, that the government does exist, the executive must be governed by the fact, and can have no right or discretion, on account of the date or form of the government, to refuse to acknowledge it, either by rejecting its public ministers, or by any other step taken on that account. If it does refuse on that account, the refusal is a wrongful act, and can neither prove nor illustrate a rightful power.

I have spent more time on this part of the discussion than may appear to some, to have been requisite. But it was considered as a proper opportunity for presenting some important ideas, connected with the general subject, and it may be of use in showing how very superficially, as well as erroneously, the writer has treated it

In other respects, so particular an investigation was less necessary. For allowing it to be, as contended, that a suspension of treaties might happen from a *consequential* operation of a right to receive public ministers, which is an *express right* vested by the constitution; it could be no proof, that the same or a *similar* effect could be produced by the *direct* operation of a *constructive power*

Hence the embarrassments and gross contradictions of the writer in defining, and applying his ultimate inference from the operation of the executive power with regard to public ministers.

At first it exhibits an “important instance of the right of the executive to decide the obligation of the nation with regard to foreign nations.”

Rising from that, it confers on the executive, a right “to put the United States in a condition to become an associate in war.”

And at its full height, it authorizes the executive “to lay the legislature under an *obligation* of declaring war.”

From this towering prerogative, it suddenly brings down the executive to the right of “*consequentially affecting* the proper or improper exercise of the power of the legislature to declare war.”

And then, by a caprice as unexpected as it is sudden, it espouses the cause of the legislature; rescues it from the executive right “to lay it under an *obligation* of declaring war;” and asserts it to be “free to perform its *own* duties according to its *own* sense of them,” without any other control than what it is liable to, in every other legislative act.

The point at which it finally seems to rest, is, that “the executive, in the exercise of its *constitutional powers*, may establish an antecedent state of things, which ought to

*weigh* in the *legislative decisions*;" a prerogative which will import a great deal, or nothing, according to the handle by which you take it; and which at the same time, you can take by no handle that does not clash with some inference preceding.

If "by weighing in the legislative decisions" be meant having *an influence* on the *expediency* of this or that decision, in the *opinion* of the legislature; this is no more than what every antecedent state of things ought to have, from whatever cause proceeding; whether from the use or abuse of constitutional powers, or from the exercise of constitutional or assumed powers. In this sense, the power to establish an antecedent state of things is not contested. But then it is of no use to the writer, and is also in direct contradiction to the inference, that the executive may "lay the *legislature* under an *obligation* to decide in favour of *war*."

If the meaning be as is implied by the force of the terms "constitutional powers," that the antecedent state of things produced by the executive, ought to have a *constitutional weight* with the legislature; or, in plainer words, imposes a *constitutional obligation* on the *legislative decisions*; the writer will not only have to combat the arguments by which such a prerogative has been disproved; but to reconcile it with his last concession, that "the legislature is *free* to perform its duties according to its *own* sense of them." He must show that the legislature is, at the same time *constitutionally free* to pursue its *own judgment*, and *constitutionally bound* by the *judgment of the executive*.



[\[Back to Table of Contents\]](#)

## NO. IV.

The last papers completed the view proposed to be taken of the arguments in support of the new and aspiring doctrine, which ascribes to the executive the prerogative of judging and deciding, whether there be causes of war or not in the obligations of treaties; notwithstanding the express provision in the constitution, by which the legislature is made the organ of the national will, on questions, whether there be or be not a cause for declaring war. If the answer to these arguments has imparted the conviction which dictated it, the reader will have pronounced that they are generally superficial, abounding in contradictions, never in the least degree conclusive to the main point, and not unfrequently conclusive against the writer himself: whilst the doctrine—that the powers of treaty and war, are in their nature executive powers, which forms the basis of those arguments, is as indefensible and as dangerous as the particular doctrine to which they are applied.

But it is not to be forgotten that these doctrines, though ever so clearly disproved, or ever so weakly defended, remain before the public a striking monument of the principles and views which are entertained and propagated in the community.

It is also to be remembered, that however the consequences flowing from such premises, may be disavowed at this time, or by this individual, we are to regard it as morally certain, that in proportion as the doctrines make their way into the creed of the government, and the acquiescence of the public, every power that can be deduced from them, will be deduced, and exercised sooner or later by those who may have an interest in so doing. The character of human nature gives this salutary warning to every sober and reflecting mind. And the history of government in all its forms and in every period of time, ratifies the danger. A people, therefore, who are so happy as to possess the inestimable blessing of a free and defined constitution cannot be too watchful against the introduction, nor too critical in tracing the consequences, of new principles and new constructions, that may remove the landmarks of power.

Should the prerogative which has been examined, be allowed, in its most limited sense, to usurp the public countenance, the interval would probably be very short, before it would be heard from some quarter or other, that the prerogative either amounts to nothing, or means a right to judge and conclude that the obligations of treaty impose war, as well as that they permit peace; that it is fair reasoning to say, that if the prerogative exists at all, an operative rather than an *inert* character ought to be given to it.

In support of this conclusion, there would be enough to echo, “that the prerogative in this active sense, is connected with the executive in various capacities—as the organ of intercourse between the nation and foreign nations—as the interpreter of national treaties” (a violation of which may be a cause of war)—“as that power which is charged with the execution of the laws, of which treaties make a part—as that power, which is charged with *the command and application of the public force.*”

With additional force, it might be said, that the executive is as much the *executor* as the *interpreter* of treaties; that if by virtue of the *first* character, it is to judge of the *obligations* of treaties, it is, by virtue of the *second*, equally authorised to carry those obligations into *effect*. Should there occur, for example, a *casus fœderis*, claiming a military cooperation of the United States, and a military force should happen to be under the command of the executive, it must have the same right, as *executor of public treaties*, to *employ* the public force, as it has in quality of *interpreter of public treaties* to decide, whether it ought to be *employed*.

The case of a treaty of peace would be an auxiliary to comments of this sort: it is a condition annexed to every treaty, that an infraction even of an important article, on one side, extinguishes the obligations on the other: and the immediate consequence of a dissolution of a treaty of peace is a restoration of a state of war. If the executive is “to decide on the obligation of the nation with regard to foreign nations”—“to pronounce the *existing condition* (in the sense annexed by the writer) of the nation with regard to them; and to admonish the citizens of their obligations and duties, as founded upon *that condition* of things”—“to judge what are the *reciprocal rights* and obligations of the United States, and of all and each of the powers at war;”—add, that if the executive, moreover, possesses all powers relating to war, *not strictly* within the power to *declare war*, which any pupil of political casuistry could distinguish from a mere *relapse* into a war that *had been declared*: with this store of materials, and the example given of the use to be made of them, would it be difficult to fabricate a power in the executive to plunge the nation into war, whenever a treaty of peace might happen to be infringed?

But if any difficulty should arise, there is another mode chalked out, by which the end might clearly be brought about, even without the violation of the treaty of peace; especially if the other party should happen to change its government at the crisis. The executive could *suspend* the treaty of peace *by refusing to receive an ambassador* from the *new* government; and the state of war *emerges of course*.

This is a sample of the use to which the extraordinary publication we are reviewing might be turned. Some of the inferences could not be repelled at all. And the least regular of them must go smoothly down with those who had swallowed the gross sophistry which wrapped up the original dose.

Every just view that can be taken of this subject, admonishes the public of the necessity of a rigid adherence to the simple, the received, and the fundamental doctrine of the constitution, that the power to declare war, including the power of judging of the causes of war, is *fully* and *exclusively* vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing congress, whenever such a question seems to call for a decision, is all the right which the constitution has deemed requisite or proper; and that for such, more than for any other contingency, this right was specially given to the executive

In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive

department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for any one man; not such as nature may offer as the prodigy of many centuries, but such as may be expected in the ordinary successions of magistracy. War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered, and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace.

Hence it has grown into an axiom that the executive is the department of power most distinguished by its propensity to war: hence it is the practice of all states, in proportion as they are free, to disarm this propensity of its influence.

As the best praise then that can be pronounced on an executive magistrate, is, that he is the friend of peace; a praise that rises in its value, as there may be a known capacity to shine in war: so it must be one of the most sacred duties of a free people, to mark the first omen in the society, of principles that may stimulate the hopes of other magistrates of another propensity, to intrude into questions on which its gratification depends. If a free people be a wise people also, they will not forget that the danger of surprise can never be so great, as when the advocates for the prerogative of war can sheathe it in a symbol of peace.

The constitution has manifested a similar prudence in refusing to the executive the *sole* power of making peace. The trust in this instance also, would be too great for the wisdom, and the temptations too strong for the virtue, of a single citizen. The principle reasons on which the constitution proceeded in its regulation of the power of treaties, including treaties of peace, are so aptly furnished by the work already quoted more than once, that I shall borrow another comment from that source.

“However proper or safe it may be in a government where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years’ duration. It has been remarked upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much at stake in the government to be in any material danger of being corrupted by foreign powers: but that a man raised from the station of a private citizen to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote, when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice his duty to his interest, which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the state to the acquisition of wealth. An ambitious man might make his own aggrandizement, by the aid of a foreign power, the price of his treachery to his constituents. The history of human conduct does not warrant that exalted opinion of

human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind, as *those which concern its intercourse* with the rest of the world, to the *sole* disposal of a magistrate created and circumstanced as would be a president of the United States.” p. 418.[1](#)

I shall conclude this paper and this branch of the subject, with two reflections, which naturally arise from this view of the constitution.

The first is, that as the personal interest of an hereditary monarch in the government, is the *only* security against the temptation incident to the commitment of the delicate and momentous interests of the nation, which concern its intercourse with the rest of the world, to the disposal of a single magistrate, it is a plain consequence, that every addition that may be made to the *sole* agency and influence of the executive, in the intercourse of the nation with foreign nations, is an increase of the dangerous temptation to which an *elective and temporary* magistrate is exposed; and an *argument* and *advance* towards the security afforded by the personal interests of an *hereditary* magistrate.

Secondly, as the constitution has not permitted the executive *singly* to conclude or judge that peace ought to be made, it might be inferred from that circumstance alone, that it never meant to give it authority, *singly*, to judge and conclude that war ought not to be made. The trust would be precisely similar and equivalent in the two cases. The right to say that war ought not to go on, would be no greater than the right to say that war ought not to begin. Every danger of error or corruption, incident to such a prerogative in one case, is incident to it in the other. If the constitution therefore has deemed it unsafe or improper in the one case, it must be deemed equally so in the other case.

[\[Back to Table of Contents\]](#)

## NO. V.1

Having seen that the executive has no constitutional right to interfere in any question, whether there be or be not a cause of war, and the extensive consequences flowing from the doctrines on which such a claim has been asserted; it remains to be inquired, whether the writer is better warranted in the fact which he assumes, namely that the proclamation of the executive has undertaken to decide the question, whether there be a cause of war or not, in the article of guaranty between the United States and France, and in so doing has exercised the right which is claimed for that department.

Before I proceed to the examination of this point, it may not be amiss to advert to the novelty of the phraseology, as well as of the doctrines, espoused by this writer. The source from which the former is evidently borrowed, may enlighten our conjectures with regard to the source of the latter. It is a just observation also that words have often a gradual influence on ideas, and, when used in an improper sense, may cover fallacies which would not otherwise escape detection.

I allude particularly to his application of the term *government* to the *executive authority alone*. The proclamation is “a manifestation of the sense of the *government*.” “Why did not the *government* wait,” &c. “The policy on the part of the *government* of removing all doubt as to *its own disposition*.”<sup>1</sup> “It was of great importance, that our citizens should understand as early as possible the opinion entertained by the *government*,” &c. “If in addition to the rest, the early manifestation of *the views* of the *government* had any effect *in fixing the public opinion*,” &c. The reader will probably be struck with the reflection, that if the proclamation really possessed the character, and was to have the effects, here ascribed to it, something more than the authority of *the government*, in the writer’s sense of government, would have been a necessary sanction to the act; and if the term “government” be removed, and that of “president” substituted, in the sentences quoted, the justice of the reflection will be felt with peculiar force. But I remark only on the singularity of the style adopted by the writer, as showing either that the phraseology of a foreign government is more familiar to him than the phraseology proper to our own, or that he wishes to propagate a familiarity of the former in preference to the latter. I do not know what degree of disapprobation others may think due to this innovation of language; but I consider it as far above a trivial criticism, to observe that it is by no means unworthy of attention, whether viewed with an eye to its probable cause, or its apparent tendency. “The government” unquestionably means, in the United States, the whole government, not the executive part, either exclusively, or *pre-eminently*: as it may do in a monarchy, where the splendour of prerogative eclipses, and the machinery of influence directs, every other part of the government. In the former and proper sense, the term has hitherto been used in official proceedings, in public discussions, and in private discourse. It is as short and as easy, and less liable to misapprehension, to say the executive, or the president, as to say the government. In a word, the new dialect could not proceed either from necessity, conveniency, propriety, or perspicuity; and being in opposition to common usage, so marked a

fondness for it justifies the notice here taken of it. It shall no longer detain me, however, from the more important subject of the present paper.

I proceed therefore to observe, that as a “proclamation,” in its *ordinary* use, is an address to citizens or subjects only; as it is always understood to relate to the law *actually in operation*, and to be an act *purely* and *exclusively* executive; there can be no implication in the *name* or the *form* of such an instrument, that it was meant principally for the information of foreign nations; far less that it related to an *eventual stipulation* on the subject *acknowledged* to be within the *legislative province*.

When the writer therefore undertook to engraft his new prerogative on the proclamation, by ascribing to it so unusual, and unimplied a meaning, it was evidently incumbent on him to show, that the *text* of the instrument could not be satisfied by any other construction than his own. Has he done this? No. What has he done? He has called the proclamation a proclamation of neutrality; he has put his own arbitrary meaning on that phrase; and has then proceeded in his arguments and his inferences, with as much confidence, as if no question was ever to be asked whether the term “neutrality” be in the proclamation; or whether, if there, it could justify the use he makes of it.

It has appeared from observations already made, that if the term “neutrality” was in the proclamation, it could not avail the writer in the present discussion; but the fact is, no such term is to be found in it, nor any other term, of a meaning equivalent to that, in which the term neutrality is used by him.

There is the less pretext in the present case, for hunting after any latent or extraordinary object, because an obvious and legal one is at hand, to satisfy the occasion on which the proclamation issued. The existence of war among several nations with which the United States have an extensive intercourse; the duty of the executive to preserve peace by enforcing its laws, whilst those laws continued in force; the danger that indiscreet citizens might be tempted or surprised by the crisis, into unlawful proceedings, tending to involve the United States in a war, which the competent authority might decide them to be at liberty to avoid, and which, if they should be judged not at liberty to avoid, the other party to the *eventual contract*, might be willing not to impose on them; these surely might have been sufficient grounds for the measure pursued by the executive: and being legal and rational grounds, it would be wrong, if there be no necessity, to look beyond them.

If there be any thing in the proclamation of which the writer could have made a handle, it is the part which declares, the *disposition*, the *duty*, and the *interest* of the United States, in relation to the war existing in Europe. As the legislature is the only competent and constitutional organ of the will of the nation; that is, of its disposition, its duty, and its interest, in relation to a commencement of war, in like manner as the president and senate *jointly*, not the president *alone*, are in relation to peace, after war has been commenced—I will not dissemble my wish that a language less exposed to criticism had been preferred; but taking the expressions, in the sense of the writer himself, as analogous to the language which might be proper, on the reception of a

public minister, or any similar occasion, it is evident that his construction can derive no succour even from this source.

If the proclamation, then, does not *require* the construction which this writer has taken the liberty of putting on it; I leave it to be decided, whether the following considerations do not forbid us to suppose, that the president could have intended by that act, to embrace and prejudge the legislative question, whether there was, or was not, under the circumstances of the case, a cause of war in the article of guaranty.

It has been shown that such an intention would have usurped the prerogative not vested in the executive, and even *confessedly* vested in another department.

In exercising the constitutional power of deciding a question of war, the legislature ought to be as free to decide, according to its own sense of the public good, on one side as on the other side. Had the proclamation prejudged the question on either side, and *proclaimed its decision to the world*: the legislature, instead of being as free as it ought, might be thrown under the dilemma, of either sacrificing its judgment to that of the executive; or, by opposing the executive judgment, of producing a relation between the two departments, extremely delicate among ourselves, and of the worst influence on the national character and interests abroad. A variance of this nature, it will readily be perceived, would be very different from a want of conformity to the *mere recommendations* of the executive, in the measure adopted by the legislature.

It does not appear that such a proclamation could have even pleaded any call, from either of the parties at war with France, for an explanation of the light in which the guaranty was viewed. Whilst, indeed, no positive indication whatever was given of hostile purposes, it is not conceived, that any power could have decently made such an application; or, if it had, that a proclamation would have been either a satisfactory, or an honourable answer. It could not have been satisfactory, if serious apprehensions were entertained; because it would not have proceeded from that authority which alone could definitively pronounce the will of the United States on the subject. It would not have been honourable, because a private diplomatic answer, only, is due to a private diplomatic application; and to have done so much more, would have marked a pusillanimity and want of dignity in the executive magistrate.

But whether the executive was or was not applied to, or whatever weight be allowed to that circumstance, it ought never to be presumed, that the executive would so abruptly, so publicly, and so solemnly, proceed to disclaim a sense of the contract, which the other party might consider, and wish to support by discussion, as its true and reasonable import. It is asked, indeed, in a tone that sufficiently displays the spirit in which the writer construes both the proclamation and the treaty, "Did the executive stand in need of the logic of a foreign agent to enlighten it as to the duties or the interests of the nation; or was it bound to ask his consent to a step, which appeared to itself consistent with the former, and conducive to the latter? The sense of treaties was to be learned from the treaties themselves." Had he consulted his Vatel, instead of his animosity to France, he would have discovered, that however humiliating it might be to wait for a foreign logic, to assist the interpretation of an act depending on the national authority alone, yet in the case of a treaty, which is as much the treaty of a

foreign nation, as it is ours, and in which foreign duties and rights are as much involved as ours, the sense of the treaty, though to be learned from the treaty itself, is to be equally learned by both parties to it. Neither of them can have a right more than the other, to say what a particular article means; and where there is equality without a judge, consultation is as consistent with dignity as it is conducive to harmony and friendship. Let Vattel however be heard on the subject.

“The third general maxim, or principle, on the subject of interpretation [of treaties] is: *that neither the one nor the other of the interested or contracting powers has a right to interpret the act or the treaty at its pleasure.* For if you are at liberty to give my promise what sense you please, you will have the power of obliging me to do whatever you have a mind, contrary to my intention, and beyond my real engagement: and reciprocally, *if I am allowed to explain my promises as I please, I may render them vain and illusive, by giving them a sense quite different from that in which they were presented to you, and in which you must have taken them in accepting them.*” Vattel, B. II., c. vii., § 265.

The writer ought to have been particularly sensible of the improbability that a precipitate and *ex parte* decision of the question arising under the guaranty, could have been intended by the proclamation. He had but just gone through the undertaking, to prove that the article of guaranty like the rest of the treaty is defensive, not offensive. He had examined his books and retailed his quotations, to show that the criterion between the two kinds of war is the circumstance of priority in the attack. He could not therefore but know, that according to his own principles, the question, whether the United States were under an obligation or not to take part in the war, was a *question of fact* whether the first attack was made by France or her enemies. And to decide a question of fact, as well as of principle, without waiting for such representations and proofs as the absent and interested party might have to produce, would have been a proceeding contrary to the ordinary maxims of justice, and requiring circumstances of a very peculiar nature, to warrant it towards any nation. Towards a nation which could verify her claim to more than bare justice by our own reiterated and formal acknowledgments, and which must in her present singular and interesting situation have a peculiar sensibility to marks of our friendship or alienation, the impropriety of such a proceeding would be infinitely increased, and in the same proportion the improbability of its having taken place.

There are reasons of another sort which would have been a bar to such a proceeding. It would have been as impolitic as it would have been unfair and unkind.

If France meant not to insist on the guaranty, the measure, without giving any present advantage, would have deprived the United States of a future claim which may be of importance to their safety. It would have inspired France with jealousies of a secret bias in this country toward some of her enemies which might have left in her breast a spirit of contempt and revenge, of which the effects might be felt in various ways. It must in particular have tended to inspire her with a disinclination to feed our commerce with those important advantages which it already enjoys, and those more important ones which it anxiously contemplates. The nation that consumes more of the fruits of our soil than any other nation in the world, and supplies the only foreign



raw<sup>1</sup> material of extensive use in the United States, would not be unnecessarily provoked by those who understand the public interest, and make it their study, as it is their duty to advance it.

I am aware that the common-place remark will be interposed, that, “commercial privileges are not worth having, when not secured by mutual interest; and never worth purchasing because they will grow of themselves out of a mutual interest.” Prudent men, who do not suffer their reason to be misled by their prejudices, will view the subject in a juster light. They will reflect, that if commercial privileges are not worth purchasing, they are worth having without purchase, that in the commerce of a great nation, there are valuable privileges which may be granted or not granted, or granted either to this or that country, without any sensible influence on the interest of the nation itself; that the friendly or unfriendly disposition of a country, is always an article of moment in the calculations of a comprehensive interest; that some sacrifices of interest will be made to other motives, by nations as well as by individuals, though not with the same frequency, or in the same proportions; that more of a disinterested conduct, or of a conduct founded on liberal views of interest, prevails in some nations than in others; that as far as can be seen of the influence of the revolution on the genius and the policy of France, particularly with regard to the United States, every thing is to be hoped by the latter on this subject, which one country can reasonably hope from another. In this point of view, a greater error could not have been committed than in a step that might have turned the present disposition of France to open her commerce to us as far as a liberal calculation of her interest would permit, and her friendship towards us, and confidence in our friendship towards her, could prompt, into a disposition to shut it as closely against us as the united motives of interest, of distrust, and of ill will, could urge her.

On the supposition that France might intend to claim the guaranty, a hasty and harsh refusal before we were asked, on a ground that accused her of being the aggressor in the war against every power in the catalogue of her enemies, and in a crisis when all her sensibility must be alive towards the United States, would have given every possible irritation to a disappointment which every motive that one nation could feel towards another and towards itself, required to be alleviated by all the circumspection and delicacy that could be applied to the occasion.

The silence of the executive, since the accession of Spain and Portugal to the war against France, throws great light on the present discussion. Had the proclamation been issued in the sense, and for the purposes ascribed to it, that is to say, as a declaration of neutrality, another would have followed, on that event. If it was the right and duty of the *government*, that is, the *president*, to manifest to Great Britain and Holland, and to the American merchants and citizens, his *sense*, his *disposition*, and his *views* on the question, whether *the United States were, under the circumstances of the case, bound or not, to execute the clause of guaranty, and not to leave it uncertain, whether the executive did or did not believe a state of neutrality to be consistent with our treaties; the duty*, as well as the right prescribed a similar manifestation to all the parties concerned, after<sup>1</sup> Spain and Portugal had joined the other maritime enemies of France. The opinion of the executive with respect to a consistency or inconsistency of neutrality with treaties, in the *latter case*, could not be

*inferred* from the proclamation in the former, because the *circumstances might be different*: the war in the *latter case*, might be *defensive* on the side of France, though offensive against her other enemies. Taking the proclamation in its proper sense, as reminding all concerned, that as the United States were at peace, (that state not being affected by foreign wars, and only to be changed by the legislative authority of the country,) the laws of peace were still obligatory, and would be enforced; and the inference is so obvious and so applicable to all other cases, *whatever circumstances* may distinguish them, that another proclamation would be unnecessary. Here is a new aspect of the whole subject, admonishing us in the most striking manner at once of the danger of the prerogative contended for, and the absurdity of the distinctions and arguments employed in its favour. It would be as impossible in practice, as it is in theory, to separate the power of judging and concluding that the obligations of a treaty do not impose war, from that of judging and concluding that the obligations *do impose war*. In certain cases, silence would proclaim the latter conclusion, as intelligibly as words could do the former. The writer indeed has himself abandoned the distinction in his seventh paper, by declaring expressly that the object of the proclamation would have been defeated “by leaving it uncertain, whether the executive did or *did not* believe a state of neutrality to be consistent with our treaties.”

Helvidius

[\[Back to Table of Contents\]](#)

## TO ARCHIBALD STUART.

Sep. 1, 1793.

Va. Hist. Soc.  
Mss.

Dear Sir

Being well persuaded of your attachment to the public good, I make no apology for mentioning to you a few circumstances which I conceive to be deeply connected with it. It appears by accounts received by Col. Monroe and myself from Mr. Jefferson, as well as by the face of the late Newspapers that a variance of a very serious nature has taken place between the federal executive and Mr. Genet the French Minister. From whatever causes it may have particularly resulted, and whatever blame may belong to the latter, the event will give great pain to all those enlightened friends of those principles of liberty on which the American & french Revolutions are founded, and of that sound policy which ought to maintain the connection between the two countries. Unfortunately this character is not due to every description of person among us. There are some who dislike Republican Government. There are others who dislike the connection with France. And there are others misled by the influence of both. From these quarters attempts are already issuing to make the worst instead of the best of the event, to turn the public . . . in respect to Genet against the French Nation, to give the same turn to the public veneration for the President to produce by these means an animosity between America & France, as the hopeful source of the dissolution of their political & commercial union, of a consequent connection with G. B. and under her auspices to a gradual approximation to her Form of Government. In this state of things Is it not the duty of all good citizens to deliberate on the best steps that can be taken for defecting the mischief? And can there be any doubt that a true and authentic expression of the sense of the people will be the most effectual as well as the most proper antidote that can be applied? It is as little doubtful in my opinion what the sense of the people is. They are attached by the Constitution. They are attached to the President. They are attached to the French Nation & Revolution. They are attached to peace as long as it can be honorably preserved. They are averse to Monarchy and to a political connection with that of Great Britain and will readily protest against any known or supposed danger that may have this change in their situation for their object. Why then cannot the sense of the people be collected on these points by the agency of temperate and respectable men who have the opportunity of meeting them. This is the more requisite in the country at large at present as the voice of particular plans distinguished by particular interests and opinions may otherwise be mistaken as that of the nation and every hope be thence cut off of preserving the esteem & affection as yet existing between the French & the American people. A great deal might be said on this subject: To you a very little will suffice and the less as you will learn from Col. Monroe all the particulars which may explain the ground of what I have taken the liberty of suggesting. I shall only therefore add my request that you consider this letter as entirely confidential, and as a proof of the esteem & regard with which I am Dear . . .

Your Sincere Friend & Ob'T Serv<sup>T</sup>

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Sept<sup>r</sup> 2d, 1793.

Mad. Mss.

Dear Sir

I dropped you a few lines this morning by a servant going to George Town with your horse. I had not time without detaining him to say more than that I had your two favors of the 11<sup>th</sup> Ult. by Mr D. R. and of the 18<sup>th</sup> by post. The former was communicated to Monroe as shall be the latter in case of opportunity. The conduct of Genet, as developed in these, and in his proceedings as exhibited in the newspapers, is as unaccountable as it is distressing. The effect is beginning to be strongly felt here in the surprise and disgust of those who are attached to the French cause, and viewed this minister as the instrument for cementing instead of alienating, the two Republics. These sensations are powerfully reinforced by the general and habitual veneration for the President. The Anglican party is busy as you may suppose in making the worst of everything, and in turning the public feelings against France, and thence in favor of England. The only antidote for their poison is to distinguish between the nation & its agent, between principles and events; and to impress the well meaning with the fact that the enemies of France & of Liberty are at work to lead them from their honorable connection with these into the arms and ultimately into the Government, of G. B. If the genuine sense of the people could be collected on the several points comprehended in the occasion, the calamity would be greatly alleviated if not absolutely controuled. But this is scarcely possible. The Country is too much uninformed, and too inert to speak for itself; and the language of the towns which are generally directed by an adverse interest will insidiously inflame the evil. It is however of such infinite importance to our own Government as well as to that of France, that the real sentiments of the people here should be understood, that something ought to be attempted on that head. I inclose a copy of a train of Ideas<sup>1</sup> sketched on the first rumour of the war between the Ex & Genet, and particularly suggested by the Richmond Resolutions, as a groundwork for those who might take the lead in County meetings. It was intended that they should be modified in every particular according to the state of information and the particular temper of the place. A copy has been sent to Caroline with a hope that Mr. P. might find it not improper to step forward. Another is gone to the District Court at Staunton in the hands of Monroe, who carried a letter from me on the subject to A. Stuart; and a third will be for consideration at the District C<sup>t</sup> at Charlottesville. If these examples should be set, there may be a chance of like proceedings elsewhere; and in themselves they will be respectable specimens of the principles and sensations of the Agricultural which is the commanding part of the Society. I am not sanguine however that the effort will succeed. If it does not, the State Legislatures, and the federal also if possible, must be induced to take up the matter in its true point of view. Monroe & myself read with attention your despatch by D. R., and had much conversation on what passed between you & the P. It app<sup>d</sup> to both of us that a real anxiety was marked to retain you in office, that over and above other motives, it was felt that your presence and implied

sanction might be a necessary shield against certain criticisms from certain quarters; that the departure of the only counsellor possessing the confidence of the Republicans would be a signal for new & perhaps very disagreeable attacks; that in this point of view the respectful & conciliatory language of the P. is worthy of particular attention; and that it affords a better hope than has existed of your being able to command attention, and to moderate the predominant tone. We agreed in opinion also that whilst this end is pursued, it would be wise to make as few concessions as possible that might embarrass the free pursuit of measures which may be dictated by Repub<sup>n</sup> principles & required by the public good. In a word we think you ought to make the most of the value we perceive to be placed on your participation in the Ex: Counsels. I am extremely glad to find that you are to remain another quarter. The season will be more apropos in several respects; and it will prevent any co-operation which a successor might be disposed to make towards a final breach with France. I have little hope that you will have one whose policy will have the same healing tendency with yours. I foresee, I think, that it will be either King, if Johnson is put at the Treasury, or E. Rutlege, if Wolcot should be put there. I am glad the President rightly infers my determination from antecedent circumstances, so as to free me from imputations in his mind connected with the present state of things. Monroe is particularly solicitous that you should take the view of your present position & opportunities above suggested. He sees so forcibly the difficulty of keeping the feelings of the people as to Genet distinct from those due to his Constituents, that he can hardly prevail on himself, absolutely and *openly*, to abandon him. I concur with him that it ought to be done no farther than is forced upon us, that general silence is better than open denunciation and crimination; and that it is not unfair to admit the apologetic influence of the errors in our own Government which may have inflamed the passions which now discolor every object to his eye: such as the refusal in the outset of the Government, to favor the commerce of France more than that of G. B.; the unfortunate appointment of Gouv. M[orris] to the former; the language of the proclamation, the attempts of Pacificus to explain away & dissolve the Treaty, the notoriety of the author, and the appearance of its being an informal manifestation of the views of the Ex, &c.

I paid a short visit to Mr. W. [C.] N[icholas,] as I proposed. He talks like a sound Republican, and sincere friend to the French cause in every respect. I collected from him that E. R. had admitted to him that he drew the Procl<sup>n</sup>; that he had been attacked on it at Chatham by Mr. Jos. Jones, that he reprobated the comment of Pacifi[cu]s, &c. W. N. observed that H[amilton] had taken the Ex, in by gaining phrases, of which he could make the use he has done. The circumstances which derogate from full confidence in W. N. are 1<sup>st</sup> his being embarked in a variety of projects which call for money, and keep him in intercourse with the Merch<sup>ts</sup> of Rich<sup>d</sup>. 2<sup>d</sup> his connection & intimacy with Marshal of whose *disinterestedness* as well as understanding he has the highest opinion. It is said, that Marshal who is at the head of the great purchase from Fairfax, has lately obtained pecuniary aids from the Bank or people connected with it. I think it certain that he must have felt, in the moment of purchase an absolute dependence on the monied interest, which will explain him to every one that reflects, in the active character he is assuming. I have been obliged to write this in great haste [*illegible*] bearer impatiently waiting the whole time.

I hope you have received the five N<sup>os</sup> of Hel[vidius]. I must resume the task I suppose in relation to the *Treaty & gratitude*. I feel however so much awkwardness under the new posture of things that I shall deliberate whether a considerable postponement at least may not be advisable. I found, also, on my return, a house full of particular friends who will stay some weeks and receive & return visits from which I cannot decently exclude myself. If I s<sup>d</sup> perceive it impossible or improper to continue the publication so as to avail myself of the channel used to the press, I shall suspend it till I see & talk with you on the whole matter.

Adieu.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Sep<sup>r</sup> 15, 93.

Mad. Mss.

Dear Sir

Since I parted from you I have had several letters from Mr. J. in which all the *facts* involving Genet are detailed. His conduct has been that of a madman. He is abandoned even by his votaries in Philad<sup>a</sup>. Hutchison declares that he has ruined the Republican interest in that place. I wish I could forward the details I have rec<sup>d</sup> but they are too confidential to be hazarded by the casual conveyance to which this is destined. They ought however to have no other effect on the steps to be pursued than to caution ag<sup>st</sup> founding any of them on the presumed inculpability of Genet. As he has put himself on such unjustifiable ground, perhaps it is fortunate that he has done it in so flagrant a manner. It will be the more easily believed here that he has acted ag<sup>st</sup> the sense of his Constituents, and the latter will be the less likely to support him in his errors. I find that the Anglicans & Monocrats from Boston to Philad<sup>a</sup>, are betrayed by the occasion into the most palpable discovery of their real views. They already lose sight of the Agent; and direct their hostilities *immediately ag<sup>st</sup> France*. This will do good, if proper use be made of it. You will see by the late papers that G. B. has made war on our commerce, by intercepting uncontraband articles bound to unblockaded ports, and taking them to herself at her own price. This must bring on a crisis with us, unless the order be revoked on our demand, of which there is not the least probability. I understand that the malignant fever in Philad<sup>a</sup> is raging still with great violence; and all the inhabitants who can, are flying from it in every direction. The mortality at first was in the ratio of 3 out of 4. It had been reduced to 1 out of 3. Mr. J. is in raptures with the performance of our friend in C-I-n-e. He means to have it appear about two weeks before the meeting of C—s. This will not coincide with the plan of the Author, who wished its publication to be in time for the meeting of the State Legislature. Think of this & let me know your ideas. On my return home I found a letter from Mr. Jones w<sup>ch</sup> I inclose, as the shortest way of making you acquainted with what he wishes. With all due respect to Mrs. Monroe,

I Am Y<sup>Rs</sup> Aff<sup>ly</sup>



[\[Back to Table of Contents\]](#)

## TO GEORGE WASHINGTON.

Orange October 24th, 1793.

Wash. Mss.

Dear Sir

Your letter of the 14th instant<sup>1</sup> did not arrive till Sunday night, and being not then at home, I did not receive it till last night. I now lose not a moment in complying with its request; tho' I foresee it cannot reach you before you will have left Mount Vernon, and before you will probably have made up a final determination on some if not all the questions proposed. These are

1. Ought the President to summon Congress at a time and place to be named by him?  
or
2. If the President has no power to change the place, ought he to abstain from all interposition whatever? or
3. Ought he to notify the obstacle to a meeting at Philadelphia, state the defect of a regular provision for the exigency, and suggest his purpose of repairing to—as a place deemed most eligible for a meeting in the first instance?
4. What is the place liable to the fewest objections?

From the best investigation I have been able to make in so short a time, the first expedient, tho' most adequate to the exigency, seems to require an authority that does not exist under the Constitution and laws of the U. States.

The only passage in the Constitution in which such an authority could be sought is that which says “The President may, on extraordinary occasions, convene both Houses, or either of them.” But the obvious import of these terms is satisfied by referring them to the time only at which the extraordinary meeting is summoned. If indeed they included a discretion as to the place as well as the time, it would be unnecessary to recur to the expedient of altering the time in order to get at an alteration of the place. The President could as well alter the place without interfering with the time, as alter the time without interfering with the place. Besides, the effect of a change as to place would not be in all respects similar to a change as to time. In the latter case, an extraordinary session, running into the period of an ordinary one, would allow the ordinary one to go on under all the circumstances prescribed by law. In the former case, this would not happen. The ordinary part of the Session would be held out of the place prescribed for it, unless prevented by a positive act for returning to it.

The obvious meaning here assigned to the phrase is confirmed by other parts of the Constitution. It is well known that much jealousy has always appeared in everything connected with the residence of the General Government. The solicitude of the

Constitution to appease this jealousy is particularly marked by the 1<sup>st</sup> paragraph of section 6<sup>th</sup> & the 3<sup>d</sup> paragraph of section the 7<sup>th</sup>, of Article I. The light in which these paragraphs must be viewed cannot well be reconciled with a supposition that it was meant to entrust the Executive alone with any power on that subject.

Laying aside the Constitution and consulting the law, the expedient seems to be no less inadmissible. The Act of July 1790 “establishing the temporary and permanent seat of the Government of the U. S.” cannot be understood to leave any such power in the President. And as the power, if exercised so as to interfere with the provision relating to the temporary seat, might beget an alarm lest, in the hands of a President unfriendly to the permanent seat, it should be turned on some pretext or other against that arrangement, prudential reasons unite with legal ones for avoiding the precedent.

The 2<sup>d</sup> mode of treating the difficulty would seem to be best, if the danger at German Town were out of the way. A voluntary resort to that place might be relied on; and the members of the Legislature finding themselves together and with the President might legalize the necessary steps; or if that should be thought wrong might deliberate and decide for themselves on the emergency. But as the danger might defeat such an expectation it results that,

The 3<sup>d</sup> expedient is called for by the occasion; and, being sufficient, is all that can be justified by it.

The 4<sup>th</sup> point to be considered is the delicate one of naming the place.

In deciding this point, it would seem proper to attend *first* to the risk of the infection. This consideration lies, as you observe, against Trenton & Wilmington: secondly, to Northern and Southern jealousies. This applies to N. York and Annapolis: thirdly to the disposition of Pennsylvania, which is entitled to some regard, as well by her calamity as by the circumstance of her being in possession of the Government.

In combining these considerations we are led to look for some place within the State of Pennsylvania not materially different from Philad<sup>a</sup> in relation to North and South. Lancaster and Reading appear to have occurred. With the former I am but little acquainted. The latter I never saw. If the object of the Executive should be merely to put Congress in the most neutral situation possible for choosing a place for themselves, as would have been the case at German Town, Reading seems to have the better pretensions. If the object should be to provide a place at once marking an impartiality in the Executive, and capable of retaining Congress during the Session, Lancaster seems to claim a preference.

If the measure which my present view of the subject favors should be deemed least objectionable, something like the following form might be given to it.

“Whereas a very dangerous and infectious malady which continues to rage in the City of Philad<sup>a</sup>, renders it indispensable that the approaching Session of Congress should be held, as well as the Executive Department be for the present administered, at some other place; And whereas no regular provision exists for such an emergency, so that

unless some other place be pointed out at which the members of Congress may assemble in the first instance, great embarrassments may happen: Under these peculiar circumstances I have thought it incumbent on me to notify the obstacle to a meeting of Congress at the ordinary place of their Session; and to recommend that the several members assemble on the day appointed at — in the State of — at which place I shall be ready to meet them.

“G. W. P. U. S.”

With sentiments of the highest respect and attachment I remain, Dear Sir, your affectionate humble servant

[\[Back to Table of Contents\]](#)

## SPEECH ON DISCRIMINATING DUTIES—JANUARY 3, 1794.1

Mr. Madison, after some general observations on the Report [of the Secretary of State on commerce], entered into a more particular consideration of the subject. He remarked, that the commerce of the United States is not, at this day, on that respectable footing to which, from its nature and importance, it is entitled. He recurred to its situation previous to the adoption of the Constitution, when conflicting systems prevailed in the different States. The then existing state of things gave rise to that Convention of Delegates from the different parts of the Union, who met to deliberate on some general principles for the regulation of commerce, which might be conducive, in their operation, to the general welfare, and that such measures should be adopted as would conciliate the friendship and good faith of those countries who were disposed to enter into the nearest commercial connexions with us. But what has been the result of the system which has been pursued ever since? What is the present situation of our commerce? From the situation in which we find ourselves after four years' experiment, he observed, that it appeared incumbent on the United States to see whether they could not now take measures promotive of those objects for which the Government was in a great degree instituted. Measures of moderation, firmness, and decision, he was persuaded, were now necessary to be adopted, in order to narrow the sphere of our commerce with those nations who see proper not to meet us on terms of reciprocity.

Mr. M. then read the following resolutions:

“*Resolved*, as the opinion of this committee, That the interest of the United States would be promoted by further restrictions and higher duties, in certain cases, on the manufactures and navigation of foreign nations employed in the commerce of the United States, than those now imposed.

“1. *Resolved*, as the opinion of this committee, That an additional duty ought to be laid on the following articles, manufactured by European nations having no commercial treaty with the United States: On all articles of which leather is the material of chief value, an additional duty of — per centum *ad valorem*; on all manufactured iron, steel, tin, pewter, copper, brass, or articles of which either of these metals is the material of chief value, an additional duty of — per centum *ad valorem*; on all articles of which cotton is the material of chief value, an additional duty of — per centum *ad valorem*; on all cloths of which wool is the material of chief value, where the estimated value on which the duty is payable, is above —, an additional duty of — per centum *ad valorem*; where such value is below —, an additional duty of — per centum *ad valorem*; on all cloths of which hemp or flax is the material of chief value, and of which the estimated value on which the duty is payable is below —, an additional duty of — per centum *ad valorem*; on all manufactures of which silk is the material of chief value, an additional duty of — per centum *ad valorem*.

“2. *Resolved*, as the opinion of this committee, That an additional duty of — per ton, ought to be laid on the vessels belonging to the nations having no commercial treaty with the United States.

“3. *Resolved*, as the opinion of this committee, That the duty on vessels belonging to the nations having commercial treaties with the United States, ought to be reduced to — per ton.

“4. *Resolved*, as the opinion of this committee, That where any nation may refuse to consider as vessels of the United States, any vessels not built within the United States, the foreign built vessels of such nation ought to be subjected to a like refusal, unless built within the United States.

“5. *Resolved*, as the opinion of this committee, That, where any nation may refuse to admit the produce or manufactures of the United States, unless in vessels belonging to the United States, or to admit them in vessels of the United States, if last imported from any place not within the United States, a like restriction ought, after the — day of —, to be extended to the produce and manufactures of such nation, and that, in the mean time, a duty of — per ton extraordinary ought to be imposed on vessels so importing any such produce or manufacture.

“6. *Resolved*, as the opinion of this committee, That, where any nation may refuse to the vessels of the United States a carriage of the produce or manufactures thereof, whilst such produce or manufactures are admitted by it in its own vessels it would be just to make the restriction reciprocal; but, inasmuch as such a measure, if suddenly adopted, might be particularly distressing in cases which merit the benevolent attention of the United States, it is expedient, for the present, that a tonnage extraordinary only of —, be imposed on the vessels so employed; and that all distilled spirits imported therein shall be subject to an additional duty of one — part of the existing duty.

“7. *Resolved*, as the opinion of this committee, That provision ought to be made for liquidating and ascertaining the losses sustained by citizens of the United States, from the operation of particular regulations of any country contravening the Law of Nations, and that such losses be reimbursed, in the first instance, out of the additional duties on the manufactures, productions, and vessels of the nation establishing such unlawful regulations.”

Mr. M. took a general view of the probable effects which the adoption of something like the resolutions he had proposed, would produce. They would produce, respecting many articles imported, a competition which would enable countries who do not now supply us with those articles, to do it, and would increase the encouragement on such as we can produce within ourselves. We should also obtain an equitable share in carrying our own produce; we should enter into the field of competition on equal terms, and enjoy the actual benefit of advantages which nature and the spirit of our people entitle us to.

He adverted to the advantageous situation this country is entitled to stand in, considering the nature of our exports and returns. Our exports are bulky, and therefore must employ much shipping, which might be nearly all our own: our exports are chiefly necessaries of life, or raw materials, the food for the manufacturers of other nations. On the contrary, the chief of what we receive from other countries, we can either do without, or produce substitutes.

It is in the power of the United States, he conceived, by exerting her natural rights, without violating the rights, or even the equitable pretensions of other nations—by doing no more than most nations do for the protection of their interests, and much less than some, to make her interests respected; for, what we receive from other nations are but luxuries to us which, if we choose to throw aside, we could deprive part of the manufacturers of those luxuries, of even bread, if we are forced, to the contest of self-denial. This being the case, our country may make her enemies feel the extent of her power. We stand, with respect to the nation exporting those luxuries, in the relation of an opulent individual to the laborer, in producing the superfluities for his accommodation; the former can do without those luxuries, the consumption of which gives bread to the latter

He did not propose, or wish that the United States should, at present, go so far in the line which his resolutions point to, as they might go. The extent to which the principles involved in those resolutions should be carried, will depend upon filling up the blanks. To go to the very extent of the principle immediately, might be inconvenient. He wished, only, that the Legislature should mark out the ground on which we think we can stand; perhaps it may produce the effect wished for, without unnecessary irritation; we need not at first go every length.

Another consideration would induce him, he said, to be moderate in filling up the blanks—not to wound public credit. He did not wish to risk any sensible diminution of the public revenue. He believed that if the blanks were filled with judgment, the diminution of the revenue, from a diminution in the quantity of imports, would be counterbalanced by the increase in the duties.

The last resolution he had proposed, he said, is, in a manner, distinct from the rest. The nation is bound by the most sacred obligation, he conceived, to protect the rights of its citizens against a violation of them from any quarter; or, if they cannot protect, they are bound to repay the damage.

It is a fact authenticated to this House by communications from the Executive, that there are regulations established by some European nations, contrary to the Law of Nations, by which our property is seized and disposed of in such a way that damages have accrued. We are bound either to obtain reparation for the injustice, or compensate the damage. It is only in the first instance, no doubt, that the burden is to be thrown upon the United States. The proper Department of Government will, no doubt, take proper steps to obtain redress. The justice of foreign nations will certainly not permit them to deny reparation when the breach of the Law of Nations appear evidently; at any rate, it is just that the individual should not suffer. He believed the

amount of the damages that would come within the meaning of this resolution, would not be very considerable.

[\[Back to Table of Contents\]](#)

## TO HORATIO GATES. 1

Philad<sup>a</sup> Mar. 24, 1794.

Dear Sir

Your favor of the 19<sup>th</sup> has lain by me unanswered till I could give you the result of a proposition for an Embargo discussed for several days with shut doors. The decision did not take place till friday afternoon. The measure was then negatived by 48 ag<sup>st</sup> 46 votes. Those who took the lead in opposing it are now for transferring the power to the Executive even during the Session of Congress.

You will find in the newspapers the havoc made on our trade in the W. Indies. Every day adds new proofs of the ill will and contempt of G. B. towards us. Still I do not concur with those who see in these proceedings a design to make war in form. If she can destroy the branches of our commerce which are beneficial to her enemies, and continue to enjoy those which are beneficial to herself, things are in the best possible arrangement for her. War would turn the arrangement ag<sup>st</sup> her by breaking up the trade with her, and forcing that with her enemies. I conclude therefore that she will push her aggressions just so far and no farther, than she imagines we will tolerate. I conclude also that the readiest expedient for stopping her career of depredation on those parts of our trade which thwart her plans, will be to make her feel for those which she cannot do without.

I have nothing to add to the newspaper details with respect to events in Europe. The campaign seems to have closed as triumphantly for the French Republic as the fears of its enemies could have foreboded. If that in the W. Indies should not exhibit a reverse of fortune, the public attention may possibly be called off from the French to “the British Revolution,” you may then renew your prophetic wishes which have created a millenium under the auspices of the three great Republics. . . .



[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Mar: 26 1794.

Mad. Mss.

Dear Sir

My last informed you that an embargo had been proposed & negatived. You will see by the inclosed that on a renewal of the proposition yesterday it went through the H. of Rep<sup>s</sup> by a very large majority. The change took place among the Eastern members whose constituents were growing so clamorous under their losses in the W. Indies as to alarm the representatives. The Senate will have the subject before them today, and will probably concur. It is said that some further measures are to be discussed in that House. The Commercial propositions have not yet rec<sup>d</sup> a vote. The progress of the evils which they were to remedy, having called for more active medicine, it has not been deemed prudent to force them on the attention of the House during more critical discussions. They will however notwithstanding a change of circumstances, co-operate with other measures as an alternative system and will be pressed to a vote at the first favorable moment. Whether they can be carried into a law at the present session is doubtful, on acc<sup>t</sup> of the lateness of the day, and the superior urgency of other questions. The point immediately depending is the discrimination between G. B. and other nations as to the proposed duties on manufactures. If this should succeed, the future parts will I think meet with little difficulty. The enquiry into the Treasury is going on, tho' not very rapidly. I understand that it begins to pinch where we most expected—the authority for drawing the money from Europe into the Bank. He endeavoured to parry the difficulty by contesting the right of the Committee to call for the authority. This failing he talks of constructive written authority from the P. but relies on parol authority, which I think it impossible the P. can support him in. The old question of referring the origination of Taxes comes on to-day, and will in some degree test the present character of the House. I have written an abundance of letters of late, but fear they are stopped by the small pox at Richmond.

The people of Charleston are taking a high tone. Their memorial, which is signed by Ramsay, the Gadzdens Young Rutledge and a very great number of respectable Citizens, marks the deliberate sense of her people. The more violent has been expressed by hanging & burning the effigies of Smith Ames Arnold, Dumouriez & the Devil, *en groupe*.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Phil<sup>a</sup> Ap<sup>l</sup> 28, 1794.

Mad. Mss.

Dear Sir

. . . The non-importation bill has passed the H. of Rep<sup>s</sup> by 59 ag<sup>st</sup> 34. It will probably miscarry in the Senate. It prohibits all articles of British or Irish production after the 1st Nov<sup>r</sup>, until the claims of the U. S. be adjusted and satisfied. The appointment of H. as envoy Extr<sup>y</sup> was likely to produce such a sensation that to his great mortification he was laid aside & Jay named in his place. The appointment of the latter would have been difficult in the Senate, but for some adventitious causes. There were 10 votes ag<sup>st</sup> him in one form of the opposition and 8 on the direct question. As a resignation of his Judiciary character might, for anything known to the Senate, have been intended to follow his acceptance of the Ex. trust, the ground of incompatibility could not support the objections, which, since it has appeared that such a resignation was no part of the arrangement, are beginning to be pressed in the Newspapers. If animadversions are undertaken by skilful hands, there is no measure of the Ex. administration perhaps that will be found more severely vulnerable.

The English prints breathe an unabated zeal for the war ag<sup>st</sup> France. The Minister carries everything as usual in Parl<sup>t</sup> notwithstanding the miscarriages at Toulon &c; and his force will be much increased by the taking of Martinique, and the colouring it will give to the W. India prospects. Nothing further appears as to the views prevailing in relation to us. The latter acc<sup>ts</sup> from the W. Ind<sup>s</sup> since the new Instruction of Jan<sup>y</sup> 8 are rather favorable to the Merchants, & alleviate their resentments; so that G. B. seems to have derived from the excess of her aggressions a title to commit them in a less degree with impunity. The French arms continue to prosper, tho' no very capital event is brought by the latest arrivals.

[\[Back to Table of Contents\]](#)

## TO JAMES MADISON.

Philad<sup>a</sup> May 4 1794.

Mad. Mss.

Hon<sup>D</sup> Sir

By a vessel which sails for Fred<sup>g</sup> to-day I have sent a small box containing the following articles 6 p<sup>s</sup> very coarse muslins, 1 p<sup>s</sup> of finer, 2<sup>lb</sup> of Tea, 3 Books on Medicine & a few pamphlets, a sett of marking instruments. The muslins were bought as being extremely cheap, and useful for various purposes. If my mother or sister wants any part of them they will make free with them. If the finer piece should not be applicable to any better purpose, I allotted it for shirts, in which it is said to wear as well as linnen. The coarser p<sup>s</sup> I supposed might be dealt out in parts to my negro women if thought proper as far as would give them each some kind of garment. The cost would be a trifle and they w<sup>d</sup> probably be better pleased than with some thing in the ordinary way of greater value. I wish however that use may be made of them as already hinted. The coarse p<sup>s</sup> cost about 4 dol<sup>s</sup> each. The fine one ab<sup>t</sup> 4s. V<sup>a</sup> Curr<sup>y</sup> a yard. The two books by Hamilton are for D<sup>t</sup>. Taylor whom you will ask to accept of them. The other by Waller I send for yourself. It is said to be an able performance. If Dr. Taylor on perusal of it sh<sup>d</sup> wish a copy, I will forward one for him. You will find that I have recovered the pamphlet by the French Chymist on the mineral waters of Virg<sup>a</sup>. The Squash seed is of the same kind with that inclosed lately in a letter.

As I retain the conviction I brought from home in fav<sup>r</sup> of the Mill at my brothers, I have been endeavoring to dispose of the piece of land on the Mohawk river. 1 But the acc<sup>t</sup> I have of it embarrasses me. I perceive that by selling it now, I shall get 40 or 50 per C<sup>t</sup> less than it will probably fetch in a year or two. I am assured by *correct & authentic* information that it is of the best quality, that the country is rapidly settling all around it. That the navigation of the river will soon be opened, and that at a very few miles distance land of the same quality sells for 8 or 10 dollars an acre. Within three miles lotts in a town lately laid out sell for £50 an acre and are with difficulty got for that. I can not at present get more than 4 or 5 doll<sup>ts</sup> an acre. The gentleman who gave me my information is a respectable lawyer residing within three miles of the land and intimately acquainted with it as well as with that part of the Country. He writes me that within 2 years past similar lands have risen at least 50 per C<sup>t</sup> & that the prospect of future rise is at least as great. Notwithstanding these favorable circumstances I am so much disposed to forward the plan of the Mill which I view as particularly favorable to the interest of my brothers as well as myself, that If a pursuit of it depends materially on my contribution, I shall not hesitate to make the sacrifice. Whether this be the case you can best decide & I will thank you for a line on the subject immediately on the receipt of this. Perhaps your funds may be competent to the demands of the present year. I am persuaded also that notwithstanding the low rate of the [illegible] paper, there would be less loss in your sale of that than I should suffer from the present sale of the land.

The bill for suspending importations from G. B. & Ireland which passed the H of Rep<sup>s</sup> by 59 ag<sup>st</sup> 34 was rejected in the Senate, who are determined to rely on the extraordinary mission of Jay to sue for satisfaction. The H. of Rep<sup>s</sup> are occupied with new taxes to defray the expence of the naval armament, the fortifications &c. An increase of the impost, a stamp tax, further excises and a land tax are all proposed. I much fear that the aversion to the last will soon involve this Country in the pernicious revenue system of Europe and without ultimately avoiding the thing dreaded, as a land tax will be sure to be added on the first great occasion that may arise. It is not certain how much longer the session will be spun out. I hope it will end at farthest within the present month. If I should determine to make above mentioned, I shall probably be obliged to make a trip to New York before I return to Virginia.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Philad<sup>a</sup>, May 25, 1794.

Mad. Mss.

Dear Sir

Your fav<sup>r</sup>. of the 15<sup>th</sup> Inst: came to hand yesterday. I will procure you the “definition of parties” and one or two other things from the press which merit a place in your archives. Osnabrigs can be had here. Negro Cotton I am told can also be had: but of this I am not sure. I learn nothing yet of Blake.

The inclosed paper will give you the correspondence of E. R. & Hammond on an occurrence particularly interesting. You will be as able to judge as we are of the calculations to be founded on it. The embargo expires to-day. A proposition some days ago for continuing it was negatived by a vast majority; all parties in the main concurring. The Republican was assured that the Embargo if continued would be considered by France as hostility. The other had probably an opposite motive. It now appears that throughout the Continent the people were anxious for its continuance, & it is probable that its expiration will save the W. Ind<sup>s</sup> from famine, without affording any sensible aid to France. A motion was put on the table yesterday for re-enacting it. Measures of this sort are not the fashion. To supplicate for peace, and under the uncertainty of success, to prepare for war by taxes & troops is the policy which now triumphs under the patronage of the Executive. Every attack on G. B. thro’ her comerce is at once discomfited; & all the taxes, that is to say excises, stamps, &c. are carried by decided majorities. The plan for a large army has failed several times in the H. of Rep<sup>s</sup>. It is now to be sent from the Senate, and being recommended by the Message of the P., accompanying the intelligence from the Miami, will probably succeed. The influence of the Ex. on events, the use made of them, and the public confidence in the P. are an overmatch for all the efforts Republicanism can make. The party of that sentiment in the Senate is compleatly wrecked; and in the H. of Rep<sup>s</sup> in a much worse condition than at an earlier period of the Session. [1](#)

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, June 1, 1794.

Mad. Mss.

Dear Sir

The stamp act was poisoned by the ingredient of the tax on transfers. The sentinels of stock uniting with the adversaries of the general plan formed a large majority. The Carriage tax which only struck at the Constitution has passed the H. of Rep<sup>s</sup> and will be a delicious morsel to the Senate.<sup>2</sup> The attempt of this Branch to give the P. power to raise an army of 10,000, if he should please, was strangled more easily in the H. of Rep<sup>s</sup> than I had expected. This is the 3<sup>d</sup> or 4<sup>th</sup> effort made in the course of the Session to get a powerful military establishment, under the pretext of public danger and under the auspices of the P<sup>ts</sup> popularity. The bill for punishing certain crimes &c. including that of selling prizes has been unexpectedly called up at the last moment of the Session. It is pretended that our Citizens will arm under French colors if not restrained. You will be at no loss for the real motive, especially as explained by the circumstances of the present crisis. The bill for complying with Fauchèt's application for a million of dollars passed the H. of Rep<sup>s</sup> by a large majority. The Senate will certainly reject it. Col. M. is busy in preparing for his embarkation. He is puzzled as to the mode of getting to France. He leans towards an American vessel, which is to sail from Baltimore for Amsterdam. A direct passage to F. is scarcely to be had, and is incumbered with the risk of being captured & carried into England. It is not certain that Negro Cotton can be had here. German linens of all sorts can. Nothing of Blake. Tomorrow is the day of adjournment as fixed by the vote of the two Houses; but it will probably not take place till the last of the week. We have had 8 or 10 days of wet weather from the N. E. which seems at length to be breaking up.

Y<sup>Rs</sup> Aff<sup>Y</sup>

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Philad<sup>a</sup>, Dec<sup>r</sup> 4, 1794.

Mad. Mss.

Dear Sir

I did not receive your favor of Sep<sup>r</sup> 2d, the only one yet come to hand, till yesterday. The account of your arrival and reception had some time ago found its way to us thro' the English Gazettes. The language of your address to the Convention was certainly very grating to the ears of many here; and would no doubt have employed the tongues and the pens too of some of them, if external as well as internal circumstances had not checked them; but more particularly, the appearance about the same time of the Presidents letter and those of the Secretary of State. 1 Malicious criticisms if now made at all are confined to the little circles which relish that kind of food. The sentiments of the P. will be best communicated by Mr. R. You are right in your conjecture, both as to the facility given to the Envoy Extr<sup>y</sup> by the triumphs of France, and the artifice of referring it to other causes. The prevailing idea here is that the Mission will be successful, tho' it is scarcely probable that it will prove so in any degree commensurate to our rights, or even to the expectations which have been raised: Whilst no industry is spared to prepare the public mind to eccho the praises which will be rung to the address of the Negotiator, and the policy of defeating the commercial resolutions proposed at the last session. It will not be easy however to hide from the view of the judicious & well disposed part of the community that every thing that may be obtained from G. B. will have been yielded by the fears inspired by those retaliating measures, and by the state of affairs in Europe.

You will learn from the Newspapers and official communications the unfortunate scene in the Western parts of Penn<sup>a</sup> which unfolded itself during the recess. 1 The history of its remote & immediate causes, the measures produced by it, and the manner in which it has been closed, does not fall within the compass of a letter. It is probable also that many explanatory circumstances are yet but imperfectly known. I can only refer to the printed accounts which you will receive from the Department of State, and the comments which your memory will assist you in making on them. The event was in several respects a critical one for the cause of liberty, and the real authors of it, if not in the service, were in the most effectual manner, doing the business of Despotism. You well know the general tendency of insurrections to increase the momentum of power. You will recollect the particular effect of what happened some years ago in Massach<sup>ts</sup>. Precisely the same calamity was to be dreaded on a larger scale in this Case. There were eno' as you may well suppose, ready to give the same turn to the crisis, and to propagate the same impressions from it. It happened most auspiciously however that with a spirit truly Republican, the people every where and of every description condemned the resistance of the will of the Majority, and obeyed with alacrity the call to vindicate the authority of the laws. You will see, in the answer of the House of Rep<sup>s</sup> to the P<sup>'s</sup> speech, that the most was made of this circumstance, as an antidote to the poisonous influence to which

Republicanism was exposed. If the insurrection had not been crushed in the manner it was I have no doubt that a formidable attempt would have been made to establish the principle that a standing army was necessary for *enforcing the laws*. When I first came to this City about the middle of October, this was the fashionable language. Nor am I sure that the attempt would not have been made if the P. could have been embarked in it, and particularly if the temper of N. England had not been dreaded on this point. I hope we are over that danger for the present. You will readily understand the business detailed in the Newspapers, relating to the denunciation of the “self-created Societies.”<sup>1</sup> The introduction of it by the President was perhaps the greatest error of his political life. For his sake, as well as for a variety of obvious reasons, I wished it might be passed over in silence by the H. of Rep<sup>s</sup>. The answer was penned with that view and so reported. This moderate course would not satisfy those who hoped to draw a party advantage out of the P<sup>s</sup> popularity. The game was, to connect the democratic Societies with the odium of the insurrection—to connect the Republicans in Cong<sup>s</sup> with those Societies—to put the P. ostensibly at the head of the other party, in opposition to both, and by these means prolong the illusions in the North, & try a new experiment on the South. To favor the project, the answer of the Senate was accelerated & so framed as to draw the P. into the most pointed reply on the subject of the Societies. At the same time the answer of the H. of R. was procrastinated till the example of the Senate, & the commitment of the P. could have their full operation. You will see how nicely the House was divided, and how the matter went off. As yet, the discussion has not been revived by the newspaper combatants. If it should and equal talents be opposed, the result cannot fail to wound the P<sup>s</sup> popularity more than anything that has yet happened. It must be seen that no two principles can be either more indefensible in reason, or more dangerous in practice—than that—1. arbitrary denunciations may punish what the law permits, & what the Legislature has no right by law, to prohibit—and that 2. the Gov<sup>t</sup> may stifle all censures whatever on its misdoings, for if it be itself the Judge it will never allow any censures to be just, and if it can suppress censures flowing from one lawful source it may those flowing from any other—from the press and from individuals, as well as from Societies, &c.

The elections for the H. of Rep<sup>s</sup> are over in N. Eng. & P<sup>a</sup>. In Mass<sup>ts</sup> they have been contested so generally as to rouse the people compleatly from their lethargy, tho’ not sufficiently to eradicate the errors which have prevailed there. The principal members have been all severely pushed; several changes have taken place, rather for the better; and *not one* for the worse. In P<sup>a</sup> Republicanism claims 9 out of 13, notwithstanding the very disadvantageous circumstances under which the election was made. In N. Y. it is expected the proportion of sound men will be increased. In Maryland, the choice has been much as heretofore. Virg<sup>a</sup> & N. C. will probably make no changes for the worse. In the former, Mr. Griffin resigns his pretensions. Mr. Lee will probably either do so or be dropped by his Constituents. In S. Carolina the death of Gillon will probably let in Mr. Barnwell. In Delaware Patton is elected, in lieu of Latimer. On the whole the prospect is rather improved than otherwise. The election of Swanwick as a Republican, by the Commercial & political Metropolis of the U. S. in preference to Fitzsimmons is of itself of material consequence, and is so felt by the party to which the latter belongs. For what relates to the Senate I trust to the letters which you will receive from Brown & Langdon, whom I have apprized of this opportunity of



answering yours. I shall observe only that Tazewell & S. Tho: Mason were elected by the most decided majorities, to fill your vacancy and that of Col. Taylor who gave in his resignation. Not a single Anti-republican was started. Mr. Dawson was a candidate and got 40 votes ag<sup>st</sup> 122. Brooke is also Gov<sup>r</sup> by a pretty decided vote. He had 90 odd, ag<sup>st</sup> 60 odd given to Wood, his only competitor.

I had a letter lately from Mr. Jefferson. He has been confined by the Rheumatism since August, and is far from being entirely recovered. Mr. T. M. Randolph has also been in a ticklish situation. What it is at present I cannot say. Mr. Jones was well a few days ago. He was then setting out to Loudon where he has made a great purchase of land from Col. Chs. Carter. I infer from his letters to me that you are included in it. He will no doubt write you fully on that subject, or more probably has written already.

I have not rec<sup>d</sup> anything from Wilkinson, nor from Vermont; nor heard anything relating to your interests in N. York. I have given notice to Mr. Yard and Doc<sup>r</sup> Stephen, of this conveyance and expect both will write. Mrs. Heilager is also here on her way to St. Croix and will no doubt write to Mrs. Monroe. She tells me all friends are well in N. York. I hope her letter will give all the particulars which may be interesting.

When in Albemarle last fall I visited your farm along with Mr. Jefferson, and viewed the sites out of which a choice is to be made for your house. The one preferred by us is that which we favored originally on the East side of the road, near the field not long since opened. All that could be suggested by way of preparation was, that trees be planted promiscuously & pretty thickly in the field adjoining the wood. In general your farm appeared to be as well as was to be expected. Your upper farm I did not see, being limited in my stay in that quarter.

I have just seen Mr. Ross, who tells me he has rec<sup>d</sup> your letter. He would write by this opportunity but wishes to be more full than the time will permit. We expect another will offer in a few weeks when we shall all continue our communications. I should say more to you now, if I could say it in cypher.

Present my best respects to Mrs. Monroe and Eliza, and tell them I shall be able on their return to present them with a new acquaintance who is prepared by my representations to receive them with all the affection they merit, & who I flatter myself will be entitled to theirs. The event which puts this in my power took place on the 15th of Sep<sup>r</sup>.<sup>1</sup> We are at present inhabitants of the House which you occupied last winter & shall continue in it during the session. With my sincerest wishes for your happiness and that of your amiable family, I remain affectionately.

Hamilton has given notice that he means to resign. Knox means to do the same. It is conjectured that the former will contend for the Gov<sup>t</sup> of N. York. Burr will be the competitor.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Dec<sup>r</sup> 21, 1794.

Mad. Mss.

Dear Sir

Your favor of the 9th, by the Orange post arrived here on the 18th; that of the 12 by the Richmond post, on the 20th so that it appears the latter was one day less on the way. It is to be remarked however that as the Orange post leaves Charlottesville on tuesday he might easily be in Fredericksburg on thursday, in time for the mail which passes thro' it on that day to Dumfries. If this despatch is not required of him it ought to be. It would make a difference of two days in the journey. Or at least the post might wait a day in Charlottesville and be in time for the saturday's mail at Fredericksburg.

Our weather here has been as fine as you describe yours. Yesterday there was a change. It was cold, cloudy, and inclined to snow. To-day we have a bright day, and not very cold. Prices here are very different from yours. Wheat is at 13 or 14s. & flour in proportion. In general, things are 50 Per C<sup>t</sup> beyond the prices of last winter. The phenomenon you wish to have explained is as little understood here as with you; but it would be here quite unfashionable to suppose it needed explanations. It is impossible to give you an idea of the force with which the tide has set in a particular direction. It has been too violent not to be soon followed by a change. In fact I think a change has begun already. The danger will then be of as violent a reflux to the opposite extreme.

The attack made on the essential & constitutional right of the Citizen in the blow levelled at the "self-created Societies," does not appear to have had the effect intended. It is and must be felt by every man who values liberty whatever opinions he may have of the use or abuse of it by those institutions. You will see that the appeal is begun to the public sentiment by the injured parties. The Republican society of Baltimore set the example. That of Newark has advertised a meeting of its members. It is said that if Edw<sup>d</sup> Livingston, as is generally believed, has outvoted Watts for the H. of Rep<sup>s</sup> he is indebted for it to the invigorated exertions of the Democratic society of that place, of which he is himself a member. In Boston the subject is well understood, and handled in the Newspapers on the republican side with industry & address.

The elections in Mass<sup>ts</sup> have turned out rather better than was of late expected. The two republican members have stood their ground; in spite of the most unexampled operations ag<sup>st</sup> them. Ames is said to owe his success to the votes of negroes & British sailors smuggled under a very lax mode of conducting the election there. Sedgwick & Goodhue have *bare* majorities. Dexter is to run another heat, but will succeed; Gerry, his only considerable competitor, & who would outvote him, refusing to be elected. There are several changes in the remainder of the Delegation, and some of them greatly for the better. In New York there will be at least half republicans; perhaps more. It has unluckily happened that in 2 Districts two *republicans* set up ag<sup>st</sup>

one Anti. The consequence is that a man is re-elected who would not otherwise have taken the field; and there is some danger of a similar consequence in the other district. In N. Jersey, it is said that not more than one of the old members will be returned. The people all over the State are signing with avidity a remonstrance against the high salaries of the Gov<sup>t</sup>.

Hamilton is to resign, according to his own notification the last of Feb<sup>y</sup>. His object is not yet unfolded. Knox as the shadow follows the substance. Their successors are not yet designated by any circumstance that has escaped.

What think you of a project to disfranchise the insurgent Counties by a bill of exclusion ag<sup>st</sup> their Rep<sup>s</sup> in the State Legislature? The object is to pave the way for Bingham or Fitzsimmons as Senator, & to give an example for rejecting Galatin in the H. of Rep<sup>s</sup> at the next Congress of which he is a member. The proposition has been laid on the table and the event is uncertain. There is some probability the violence of the measure may defeat it; nor is it certain I am told that if carried thro' it would answer the purpose of its authors.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Jan<sup>y</sup> 26, 95.

Mad. Mss.

Dear Sir,—

I have received your favor of Dec<sup>r</sup> 28, but till three weeks after the date of it. It was my purpose to have answered it particularly, but I have been robbed of the time reserved for the purpose. I must of consequence limit myself to a few lines and to my promise given to the Fresco Painter to forward you the enclosed letter. Nothing since my last from Jay or Monroe. The Newspapers as usual teem with French victories and rumors of peace. There seem to be very probable indications of a progress made to this event, except in relation to G. B. with whom a Duet Campaign is the cry of France. The Naturalization has not yet got back from the Senate. 1 I understand however it will suffer no material change. They have the prudence not to touch the nobility clause. The House of Rep<sup>s</sup> are on the Military estab<sup>t</sup> & the public debt. The difficulty & difference of opinion as to the former produced a motion to request the P. to cause an estimate of the proper defence &c. It was in its real meaning, saying we do not know how many troops ought to be provided by our legislative duty, and ask your direction. It was opposed as opening the way for dragging in the weight of the Ex. for one scale on all party questions—as extorting his opinion which he sh<sup>d</sup> reserve for his negative, and as exposing his unpopular opinions to be extorted at any time by an unfriendly majority. The prerogative men chose to take the subject by the wrong handle, and being joined by the weak men, the resolution passed. I fancy the Cabinet are embarrassed on the subject. On the subject of the Debt, the Treasury faction is spouting on the policy of paying it off as a great evil, and laying hold of two or three little excises past last session under the pretext of war, of claiming more merit for their zeal than they allow to the opponents of their (pecuniary) resources. Hamilton has made a long Valedictory Rep<sup>t</sup> on the subject. It is not yet printed, & I have not read it. It is said to contain a number of improper things. He got it in by informing the Speaker he had one ready, predicated on the actual revenues, for the House, when they sh<sup>d</sup> please to receive. Berdinot the ready agent for sycophantic jobs, had a motion cut & dry just at the moment of the adjournment, for informing him in the language applied to the P. on such occasions, that the House was ready to receive the Rep<sup>t</sup> when he pleased, which passed without opposition & almost without notice. H gives out that he is going to N. Y. and does not mean to return into public life at all.—N. Jersey has changed all her members except Dayton, whose zeal ag<sup>st</sup> G. B. saved him. There are not more than 2 or 3 who are really on all points Repub<sup>ns</sup> Dexter is under another sweat in his district, and it is said to be perfectly uncertain whether he or his Rival competitor will succeed.

Adieu Y<sup>Rs</sup>.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Feb<sup>y</sup> 23, 1795.

Mad. Mss.

Hon<sup>D</sup>. Sir

Inclosed is the explanation from the offices concerning Mr L's claim.—The Treaty made by Mr Jay is not yet come to hand & we know nothing more of its articles than what has been conjectured from the hints in the News papers. I have already let you know that if you mean that I sh<sup>d</sup> sell your paper you must forward the proper power. The period is becoming favorable. It can now be sold at par, as I shall not be able to get off for some time after the adjournment, you may venture to write & communicate with me till I give you notice that your letters will be too late. If you, my mother or Fanny want any particular articles to be got let me know it. I understand it is reported in some parts of my District that I decline being a candidate in March. Perhaps I ought on many considerations to do so—but I have said nothing from which the Report could spring, and find myself constrained again to sacrifice both my inclination and interest. If you have an opportunity of seeing or dropping a few lines to any particular friend in Louisa (say M<sup>r</sup> A. Fontaine) I should therefore be glad you would contradict the Report, as well as let it be known that it is not in my power to be in the district before the election as I would wish. I rely on you & my brother W. to give the proper explanations in Orange & Madison Counties—Cong<sup>s</sup>. will adjourn on the 3<sup>d</sup>. of March—

Y<sup>R</sup> Aff<sup>E</sup> Son

[\[Back to Table of Contents\]](#)

## TO ROBT. R. LIVINGSTON.<sup>1</sup>

August 10, 1795.

Mad. Mss.

D<sup>R</sup> Sir

Your favour of July 6. having been address<sup>d</sup> to Williamsburg, instead of *Orange C. Ho[u]se*, did not come to hand till two day ago. Your gloomy Picture of the Treatys does not exceed my Ideas of it.<sup>2</sup> After yealding terms which would have been scorned by this Country in the moment of its greatest embarrissments, & of G. Britain's full enjoyment of peace & confidence, it adds to the ruinous bargain with this Nation a disqualification to make a good one with any other. In all our other Treaties it has been carefully stipulated that the Nation to be treated as the most favored Nations & to come in for all new privileges that may be granted by the U. States, must pay for them the same or an equivalent price with the Grantee. The proposed Treaty with G. B., disregarding this obvious rule of justice & equality, roundly agrees that no duty restriction or prohibition with respect to ships or merchandize shall be applied to G. B., which do not operate on all other nations (see Art. XV). should any other Nation therefore, be disposed to give us the most precious & peculiar advantages in their trade, in exchange for the slightest preferences in ours, this Article gives G. B. a negative on the transaction; unless it be so modified as to let her in for the favour without paying the price of it. But what Nation would be willing to buy favours for another; especially when the Inducement to buy & the value of the purchase might depend on the peculiarity of the favour. it must be seen at once that this extraor dinary feature would monopolize us to G. B., by precluding any material improvement of our existing Treaties, or the hope of any new ones that would be of much advantage to us. That so insidious an article should have occurred to lord Grenville's jealousy of the U. S. & his policy of barring their connection with other Countries & particularly with the French republic, can surprise no one. The concurrence of the American Envoy may not be so easily explained, but it seems impossible to screen him from the most illiberal suspicions without referring his conduct to the blindest partiality to the British Nation & Gov<sup>t</sup>. & the most vindictive sensations towards the F<sup>h</sup> Republic. Indeed, the Treaty from one end to the other must be regarded as a demonstration that the Party to which the Envoy belongs & of which he has been more the organ than of the U. S., is a British party systematically aiming at an exclusive connection with the British Govern<sup>t</sup> & ready to sacrifice to that object as well the dearest interests of our commerce as the most sacred dictates of National honour. this is the true Key to this unparalleled proceeding, & can alone explain it to the impartial & discerning part of the Public. the leaders of this Party stand *self condemned* in their efforts to paliate the Treaty by magnifying the necessity of the British commerce to the U. S. & the insufficiency of the U. S. to influence the regulation of it. you will find on turning to a Pamphlet addressed to your people by Mr. Jay when the Federal Constitution was before them, that he then could see our power under such a Constitution to extort what we justly claimed from G. B., & particularly to open the W. India ports to us. as an Agent for the Constitution he now voluntarily abandons; the very object which as an

advocate for the Constitution he urged as an argument for adopting it,—read also the Paper N<sup>o</sup>. XI in the Publication entitled the Federalist for the view of the subject then inculcated by another advocate,—it is with much Pleasure I assure you that the sentiments & voice of the People in this State, in relation to the attempt to Prostrate us to a foreign & unfriendly Nation, are as decided & as loud as could be wished. many, even of those who have hitherto rallied to the most exceptionable Party measures, join in the general indignation ag<sup>st</sup> the Treaty. the few who hold out will soon be under the Dilimma of following the example or of falling under imputations which must disarm them of all injurious influence. you will see by the N. papers that the City of Richmond has trodden in the steps of the other Cities by an unanimous address to the President. You will remark that our chancellor, Mr. Wythe, presided in the meeting, a circumstance which will draw the more attention to it, as he is not only distinguished for his moderation of character; but was President of the Meeting which addressed the P. in support of his proclamation of Neutrality. How far the other Towns & Counties will Imitate Richmond is uncertain. If they should be silent, it will assuredly be the effect in the former of a supposed notoriety of their harmony in opposition, &, in the latter to the same cause added to the dispersed situation of the People. I think it certain, that there is not a Town or county in this State (except perhaps Alexandria) where an Appeal to the Inhabitants would be attended with any show of opposition. You will readily conclude therefore that *here*, the *Public* do not need the measure to which you report. With respect to the P. his situation must be a most delicate one for himself as well as for his Country; & there never was, as you observe, a crisis where the friends of both ought to feel more solicitude or less reserve. At the same time, I have reasons, which I think good for doubting the Propriety & of course utility of uninvited communications from myself. He cannot, I am persuaded, be a stranger to my oppinion on the merits of the Treaty; & I am equally persuaded that the state of the Public oppinion within my sphere of information will sufficiently force itself on his Attention.

It is natural eno' for the Apologists of the Treaty to lay hold of the Doctrine maintained by Mr. Jefferson but whether that Doctrine be right or wrong, they might be reminded that he expressly urges the Policy of guarding ag<sup>st</sup> it instead of establishing it by Treaty. the appeal to him therefore must add to their condemnation. See his letter to Mr. G. Morris explaining the discussions with Mr. Genet.

With Respect &C &C.

[\[Back to Table of Contents\]](#)TO — — 1 .Orange, Aug<sup>st</sup> 23, 1795.

Mad. Mss.

Dear Sir

Your favor of the 3d instant did not come to hand till a few days ago, having been probably retarded by the difficulty the post met with in passing the water-courses which have been much swelled of late by excessive rains. It gives me much pleasure to learn that your health has been so much improved; as well as that you are taking advantage of it to cooperate in elucidating the great subject before the public. We see here few of the publications relating to it, except those which issue from meetings of the people, & which are of course republished everywhere. The only Philad<sup>a</sup> paper that comes to me is the Aurora w<sup>ch</sup> besides frequent miscarriages, is not I find the vehicle used by the regular champions on either side. I have occasionally seen Dunlap's, & in that some specimens of the Display of the "Features &c." I wish much to see the whole of it. Your obliging promise to forward it along with any other things of the kind, will have a good opportunity by the return of Mr. Wilson Nicholas who is on his way to Phil<sup>a</sup> & will call on me on his way home. I requested the favour of him to apprise you of the opportunity. I am glad to find that the author of the "Features &c." meditates a similar operation on "The Defence of the Treaty by Camillus"1 who if I mistake not will be betrayed by his anglo-maniy into arguments as vicious & as vulnerable as the Treaty itself. The Resolutions of the Chamber of Commerce in N. Y. justify this anticipation. What can be more absurd than to talk of the advantage of securing the *privileges* of sending raw materials to a manufacturing nation, and of buying merchandizes which are hawked over the four quarters of the globe for customers. To say that we must take the Treaty or be punished with hostilities is something still worse. By the way, it is curious to compare the language of the author & abettors of the Treaty, with that held on the subject of our commercial importance, when the Constitution was depending. Jay himself could then view its adoption as the only thing necessary to extort the Posts, &c., and *open the W. India Ports*. (See his address to the people of N. Y. in the Museum.) The Federalist (N<sup>o</sup>. XI) will exhibit a still more striking contrast on this point, in another quarter.—You intimate a wish that I w<sup>d</sup>. suggest any ideas in relation to the Treaty that may occur to my reflections.1 In my present sequestered situation I am too little possessed of the particular turns of the controversy to be able to adapt remarks to them. In general I think it of importance to avoid laying too much stress on minute or doubtful objections which may give an occasion to the other party to divert the public attention from the palpable and decisive ones, and to involve the question in uncertainty, if not to claim an apparent victory. The characteristics of the Treaty which I have wished to see more fully laid open to the public view are 1. its ruinous tendency with respect to the carrying trade. The increase of our shipping under the new Gov<sup>t</sup> has, in most legislative discussions, been chiefly ascribed to the advantage given to American vessels by the difference of 10 Per C<sup>t</sup> on the impost in their favor. This, in the valuable cargoes from G. B. has been sufficient to check the preference of British Merch<sup>ts</sup> for British bottoms; and it



has been not deemed safe hitherto by G. B. to force on a contest with us, in this particular, by any countervailing regulations. In consequence of the Treaty, she will no doubt establish such regulations; and thereby leave the British capital free to prefer British vessels. This will not fail to banish our tonnage from the trade with that Country. And there seems to have been no disposition in the Negotiator to do better for our navigation in the W. India trade; especially if the exclusion of our vessels from the re-exportation of the enumerated articles Sugar Coffee &c be taken into the account. The nature of our exports & imports compared with that of the British, is a sufficient, but at the same time our only defence ag<sup>st</sup>. the superiority of her capital. The advantage they give us in fostering our navigation ought never to have been abandoned. If this view of the subject be just and were presented to the public with mercantile skill, it could not fail to make a deep impression on England. In fact the whole Treaty appears to me to assassinate the interest of that part of the Union.—2 the insidious hostility of the Treaty to France in general; but particularly the operation of the 15<sup>th</sup>. article, which as far as I have seen has been but faintly touched on, tho it be in fact, pregnant with more mischief than any of them. According to all our other Treaties as well as those of all other nations, the footing of the most favored nations is so qualified, that those entitled to it, must pay the price of any particular privilege that may be granted in a new Treaty. The Treaty of Jay makes every new privilege result to G. B., without her paying any price at all. Should France, Spain, Portugal or any other nation offer the most precious privileges in their trade, as the price of some particular favour in ours, no bargain could be made, unless they would agree, not only to let the same favor be extended to G. B., but extended gratuitously. They could not purchase for themselves, without at the same time purchasing for their rival. In this point of view, the 15<sup>th</sup> art. may be considered as a direct bar to our Treating with other nations, and particularly with The French Republic. Much has been said of a suspected backwardness to improve our com<sup>l</sup> arrangements with France; and a predilection for arrangements with G. B., who had less to give, as well as less inclination to give what she had. It was hardly imagined that we were so soon to grant every thing to G. B. for nothing in return; and to make it a part of this bad bargain with her, that we should not be able to make a good one with any other nation. 3. the spirit in which every point of the law of nations is regulated. It is the interest of the U. S. to enlarge the rights of Neutral nations. It is the general interest of humanity that this sh<sup>d</sup>. be done. In all our other Treaties this policy has prevailed. The same policy has pervaded most of the modern Treaties of other nations. G. B. herself has been forced into it in several of her Treaties. In the Treaty of Jay, every principle of liberality, every consideration of interest has been sacrificed to the arbitrary maxims which govern the policy of G. B. Nay a new principle has been created, in the face of former complaints of our Executive. As well as against the fundamental rights of nations & duties of humanity, for the purpose of aiding the horrible scheme of starving a whole people out of their liberties.

1 I Even waiving the merits of the respective complaints & pretensions of the two parties as to the inexecution of the Treaty of peace, the waiver implies that the two parties were to be viewed either as equally culpable or equally blameless; and that the execution of the Treaty of peace equally by both ought now to be provided for. Yet, whilst the U. S. are to comply in the most ample manner with the article unfulfilled by them, and to make compensation for whatever losses may have accrued from the

delay; G. B. is released altogether from one of y<sup>e</sup> articles unfulfilled by her and is not to make the smallest compensation for the damages which have accrued from her delay to execute the other.2

The inequality of these terms is still further increased by concessions on the part of the U. S. which, besides adding to the Constitutional difficulties unnecessarily scattered thro' the Treaty, may in a great measure defeat the good consequences of a surrender of the Western posts.3

The British Settlers and Traders, within an undefined Tract of Country, are allowed to retain both their lands and their allegiance at the same time; and consequently to keep up a foreign and unfriendly influence over the Indians within the limits of the U. States.

The Indians within those limits are encouraged to continue their trade with the British by the permission to bring their goods duty free from Canada; where the goods being charged with no such impost as is payable on the goods of the U. S., will be offered for sale with that tempting preference; a regulation but too likely also to cloak the frauds of smuggling traders in a country favorable to them. The reciprocity in this case is ostensible only and fallacious.

Under another ostensible & fallacious reciprocity the advantage secured to the U. S. in the fur trade by their possession of the carrying places is abandoned to the superiority of British Capital, and the inferiority of the Canada duties on imports.

A part only of the ports harbors & bays of a single British Province is made free to the U. S., in consideration of a freedom of all the ports harbors and bays of the whole U. S. The goods and merchandize of the U. S., not entirely prohibited by Canada (but which in fact are always entirely prohibited, when partial & temporary admissions are not dictated by necessity,) may be carried there, in consideration, of a free admission of all goods and merchandize from Canada not entirely prohibited by the U. S. (where, in fact there never is this entire prohibition.) A like stipulation, liable to the like observations, is extended to the exports of the U. S. and the Province of Canada. These are further instances of a nominal & delusive reciprocity.

In the case of the Mississippi there is not even an ostensible or nominal reciprocity. The ports and places on its Eastern side, are to be equally free to both the parties; altho' the Treaty itself supposes that the course of the Northern Boundary of the U. S. will throw the British beyond the very source of that river. This item of the Treaty is the more to be noticed, as a repetition and extension of the stipulated privileges of G. B. on the Mississippi, will probably be construed into a partiality in the U. S. to the interests and views of that Nation on the American Continent, not likely to conciliate those from whom an amicable adjustment of the navigation of the Mississippi is to be expected; and were no doubt intended by G. B. as a snare to our good understanding with the nations most jealous of her encroachments & her aggrandizement.

II. Without remarking on the explicit provision for redressing past spoliations & vexations, no sufficient precautions are taken against them in future. On the contrary,

By omitting to provide for the respect due to sea letters passports and certificates and for other customary safeguards to neutral vessels, “a general search-warrant, (in the strong but just language of our fellow Citizens of Charlestown) is granted against the American navigation.” Examples of such provisions were to be found in our other Treaties, as well as in the Treaties of other nations. And it is matter of just surprise that they should have no place in a Treaty with G. B. whose conduct on the seas so particularly suggested and enforced every guard to our rights that could reasonably be insisted on.

By omitting to provide against the arbitrary seizure & impressment of American seamen, that valuable class of Citizens remains exposed to all the outrages, and our commerce to all the interruptions hitherto suffered from that cause.

By expressly admitting that provisions are to be held contraband in cases other than when bound to an invested place, and impliedly admitting that such cases exist at present; not only a retrospective sanction may be given to proceedings ag<sup>st</sup> which indemnification is claimed; but an apparent license is granted to fresh and more rapacious depredations on our lawful commerce. And facts seem to shew that such is to be the fruit of the impolitic concession. It is conceived that the pretext set up by G. B., of besieging and starving whole Nations, and the doctrine grounded thereon, of a right to intercept the customary trade of Neutral nations, in articles not contraband, ought never to have been admitted into a Treaty of the U. S.; because 1. it is a general outrage on humanity, and an attack on the useful intercourse of Nations. 2. it appears that the doctrine was denied by the Executive in the discussions with Mr. Hammond, the British Minister, and demands of compensation founded on that denial are now depending. 3 As provisions constitute not less than NA of our exports, and as Great Britain is nearly half her time at war, an admission of the doctrine sacrifices a correspondent proportion of the value of our commerce. 4. After a public denial of the doctrine, to admit it, in the midst of the present war by a formal Treaty, would have but too much of the effect as well as the appearance of voluntarily concurring in the scheme of distressing a nation in friendship with this Country, and whose relations to it, as well as the struggles for freedom in which they are engaged, give them a title to every good office not strictly forbidden by the duties of neutrality. 5. It is no plea for the measure to hold it up as an alternative to the disgrace of being involuntarily treated in the same manner, without a faculty to redress ourselves; the disgrace of being plundered with impunity ag<sup>st</sup> our consent being under no circumstances, greater than the disgrace of consenting to be plundered with impunity; more especially as the calamity in the former case might not happen in another war, whereas in the latter case it is bound upon us for as much of twelve years, as there may be of war within that period.

By annexing to the implements of war, enumerated as contraband, the articles of ship-timber, tar or rosin, copper in sheets, sails, hemp & Cordage, our neutral rights and national interests are still further narrowed. These articles were excluded by the U. S. from the contraband list, when they were themselves in a state of war.<sup>1</sup> Their other Treaties expressly declare them not to be contraband. British Treaties have done the same. Nor, as is believed, do the Treaties of any nation in Europe, producing these articles for exportation, allow them to be subjects of confiscation. The stipulation was

the less to be admitted as the reciprocity assumed by it is a mere cover for the violation of that principle, most of the articles in question, being among the exports of the U. S. whilst all of them are among the imports of G. B.

By expressly stipulating with G. B. against the freedom of enemy's property in neutral bottoms, the progress towards a compleat & formal establishment of a principle in the law of nations so favorable to the general interest and security of Commerce, receives all the check the U. S. could give to it. Reason & experience have long taught the propriety of considering free ships, as giving freedom to their cargoes. The several great maritime nations of Europe have not only established it at different times by their Treaties with each other, but on a solemn occasion (the armed neutrality) jointly declared it to be the law of Nations by a specific compact, of which the U. S. entered their entire approbation.<sup>1</sup> G. B. alone dissented: But she herself, in a variety of prior Treaties, & in a Treaty with France since, [1786], has acceded to the principle. Under these circumstances, the U. S., of all nations, ought to be the last to unite in a retrograde effort on this subject, as being more than any other interested in extending & establishing the commercial rights of neutral Nations. Their situation particularly fits them to be carriers for the great nations of Europe during their wars. And both their situation & the genius of their Government & people promise them a greater share of peace and neutrality than can be expected by any other nation. The relation of the U. S. by Treaty on this point to the enemies of G. B. was another reason for avoiding the stipulation. Whilst British goods in American vessels are protected ag<sup>st</sup> French & Dutch capture, it was eno' to leave French & Dutch goods in American Vessels to the ordinary course of Judicial determinations, without a voluntary, a positive, and an invidious provision for condemning them. It has not been overlooked that a clause in the Treaty proposes to renew, at some future period, the discussion of the principle it now settles; but the question is then to be not only in what, but whether in any cases, neutral vessels shall protect enemy's property; and it is to be discussed at the same time, not whether in any, but in what cases provisions & other articles, not bound to invested places, may be treated as contraband. So that when the principle is in favor of the U. S., the principle itself is to be the subject of discussion; when the principle is in favor of G. B., the application of it only is to be the subject of discussion.

III Whenever the law of nations comes into question the result of y<sup>e</sup>. Treaty accommodates G. B. in relation to one or both of the Republics at war with her, as well as in diminution of the rights and interests of the U. S.

Thus American vessels, bound to G. B. are protected by sea papers ag<sup>st</sup> French or Dutch searches; bound to France or Holland, are left exposed to British searches, without regard to such papers.

British property in American Vessels is not subject to French or Dutch confiscation: French or Dutch property in American vessels is subjected to British confiscation.

American provisions in American vessels, bound to the Enemies of G. B., are left by Treaty to the seizure and use of G. B.; provisions whether American or not, in American vessels, cannot be touched by the Enemies of G. B.

Timber for ship-building, tar or rosin, copper in sheets, sails, hemp & cordage, bound to the enemies of G. B., for the equipment of vessels of trade only, are contraband; bound to G. B. for the equipment of vessels of war, are not contraband.

American citizens entering, as volunteers the service of F. or Holland ag<sup>st</sup> G. B. are to be punished; American volunteers joining the arms of G. B. ag<sup>st</sup> F. or H. are not punishable.

British Ships of war and privateers, with their prizes made on Citizens of Holland, may freely enter & depart the ports of the U. S. Dutch Ships of war and privateers with their prizes made on subjects of G. B. are to receive no shelter or refuge in the ports of the U. S. And this advantage in war is given to G. B., not by a Treaty prior & having no relation, to an existing war; but by a Treaty made in the midst of war, and prohibiting a like article of Treaty with Holland for equalizing the advantage.

The article prohibiting confiscations & sequestrations, is unequal between the U. S. & G. B. American Citizens have little if any interest in public or bank Stock or in private debts within G. Britain. British subjects have a great interest in all within the U. S. Vessels & merchandize belonging to individuals, governed by the same “confidence in each other & in regard to their respective Gov<sup>ts</sup> for their municipal laws, and for the laws of nations allowed to be part thereof as consecrates private debts,” are not exempted from such proceedings. So that where much would be in the power of the U. S. and little in the power of G. B., the power is interdicted. Where more is in the power of G. B. than of the U. S., the power is left unconfined. Another remark is applicable. When the modern usage of nations, is in favor of G. B., the modern usage is the rule of the Treaty. When the modern usage was in favor of the U. S., the modern usage was rejected as a rule for the Treaty.

IV The footing on which the Treaty places the subject of Commerce is liable to insuperable objections.

1. The nature of our exports & imports, compared with those of other Countries, and particularly of G. B., has been thought by the Legislature of the U. S. to justify certain differences in the tonnage & other duties in favor of American bottoms; and the advantage possessed by G. B. in her superior capital was thought at the same time to require such countervailing encouragements. Experience has shewn the solidity of both these considerations. The American navigation has, in a degree been protected against the advantage on the side of British Capital, and has increased in proportion. Whilst the nature of our exports, being generally necessaries or raw materials, and of our imports consisting mostly of British manufactures, has restrained G. B. from any attempt to counteract the protecting duties afforded to our navigation. Should the Treaty go into effect, this protection is relinquished; Congress are prohibited from substituting any other; and the British Capital, having no longer the present inducement to make use of American Bottoms may be expected, *thro' whatever hands operating*, to give the preference to British Bottoms.

2. The provisions of the Treaty which relate to the W. Indies, where the nature of our exports and imports gives a commanding energy to our just pretensions, instead of

alleviating the general evil, are a detail of peculiar humiliations and sacrifices. Nor is a remedy, by any means to be found in the proposed suspension of that part of the Treaty. On the contrary;

If Great Britain should accede to the proposition; and the Treaty be finally established without the twelfth article, she will, in that event, be able to exclude American bottoms altogether from that channel of intercourse, and to regulate the whole trade with the W. Indies in the manner hitherto complained of; whilst by another article of the Treaty, the U. S. are completely dispossessed of the right & the means hitherto enjoyed of counteracting the monopoly, unless they submit to a universal infraction of their trade, not excepting with nations whose regulations may be reciprocal and satisfactory.

3. The treaty, not content with these injuries to the U. S. in their commerce with G. B., provides in the XV article against the improvement or preservation of their commerce with other nations, by any beneficial Treaties that may be attainable. The general rule of the U. S. in their Treaties, founded on y<sup>e</sup> example of other nations has been, that where a nation is to have the privileges that may be granted to the most favored nations, it should be admitted gratuitously to such privileges only as are gratuitously granted; but should pay for privileges not gratuitously granted the compensations paid for them by others. This prudent & equitable qualification of the footing of the most favored nation was particularly requisite in a Treaty with G. B., whose commercial system, being matured & settled, is not likely to be materially varied by grants of new privileges that might result to the U. S. It was particularly requisite at the present juncture also when an advantageous revision of the Treaty with France is said to be favored by that Republic; when a Treaty with Spain is actually in negotiation, and Treaties with other nations whose commerce is important to the U. S. cannot be out of contemplation. The proposed Treaty, nevertheless, puts G. B. in all respects, *gratuitously*, on the footing of the most favored nation; even as to future privileges for which the most valuable considerations may be given. So that it is not only out of the power of the U. S. to grant any peculiar privilege to any other nation, as an equivalent for peculiar advantages in commerce or navigation to be granted to the U. S.; but every nation, desiring to treat on this subject with the U. S. is reduced to the alternative either of declining the treaty altogether, or of including G. B., *gratuitously*, in all the privileges it purchases for itself. An article of this import is the greatest obstacle, next to an absolute prohibition, that could have been thrown in the way of other Treaties; and that it was insidiously meant by G. B. to be such, is rendered the less doubtful, by the other kindred features visible in the Treaty.

It can be no apology for these commercial disadvantages, that better terms could not be obtained at the crisis when the Treaty was settled. If proper terms could not be obtained at that time, commercial stipulations, which were no wise essentially connected with the objects of the Envoyship ought to have waited for a more favorable season. Nor is a better apology to be drawn from our other Treaties. The chief of These, were the auxiliaries or the guaranties of our independence, and would have been an equivalent for greater commercial concessions than were insisted on. (Under other circumstances, there is no ground to suppose, that the same treaties, tho'

more favorable in several material articles than the Treaty in question, would have been embraced by the U. S. 1 )

V. A. Treaty thus unequal in its conditions, thus derogatory to our national rights, thus insidious in some of its objects, and thus alarming in its operation to the dearest interests of the U. S. in their commerce and navigation, is in its present form unworthy the voluntary acceptance of an Independent people, and is not dictated to them by the circumstances in which providence has kindly placed them. It is sincerely believed, that such a Treaty would not have been listened to at any former period, when G. B. was most at her ease, and the U. S. without the respectability they now enjoy. To pretend that however injurious the Treaty may be it ought to be submitted to in order to avoid the hostile resentment of G. B. which w<sup>d</sup> evidently be as impolitic as it would be unjust on her part, is an artifice too contemptible to answer its purpose. It will not easily be supposed, that a refusal to part with our rights without an equivalent will be made the pretext of a war on us; much less that such a pretext will be founded on our refusal to mingle a sacrifice of our commerce & navigation with an adjustment of political differences. Nor is any evidence to be found, either in History or Human nature, that nations, are to be bribed out of a spirit of encroach<sup>t</sup> & aggressions by humiliations which nourish their pride, or by concessions which extend their resources & power.

To do justice to all nations; to seek it from them by peaceable means in preference to war; and to confide in this policy for avoiding that extremity; or securing the blessing of Heaven, when forced upon us, is the only course of which the United States can never have reason to repent.



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Philad<sup>a</sup>, Dec<sup>r</sup> 20, 1795.

Mad. Mss.

Dear Sir,

The last of your favors come to hand bears date Sept<sup>r</sup> 8, 1795, of which a duplicate has also been received. The others which it may be proper to acknowledge or reacknowledge are of Nov<sup>r</sup> 30th, 1794, which was opened at Halifax, & forwarded to me in that state,—Dec<sup>r</sup> 18, 1794, covering a copy of one of the same date to Mr. *Randolph*; Feb<sup>y</sup> 18, 1795, covering a copy of one of Feb<sup>y</sup> 12 to the same,—Feb<sup>y</sup> 25, covering a duplicate of ditto,—June 13, inclosing a copy of a letter of May 4, from Mr. Short,—June 3-28-30,-July 26, covering the correspondence with *Jay*; and August 15.—As I cannot now give minute answers to each of these letters, & the necessity of them as to most has been superseded, I shall proceed to the object most immediately interesting to you, to wit the posture of things here resulting from the embassy of Mr. Jay. The Treaty concluded by him did not arrive till a few days after the 3d of March which put an end to the last session of Cong<sup>s</sup>. According to previous notification to the Senators that branch assembled on the 28th of June, the contents of the Treaty being in the mean time impenetrably concealed. I understood it was even withheld from the Secretaries at War & the Treasury, that is Pickering & Wolcot. The Senate, after a few weeks consultation, ratified the Treaty as you have seen. The injunction of secrecy was then dissolved by a full House, and quickly after restored sub modo, in a thin one. Mr. Mason disregarding the latter vote sent the Treaty to the press, from whence it flew with an electric velocity to every part of the Union. The first impression was universally & simultaneously against it. Even the mercantile body, with the exception of Foreigners and demi-Americans, joined in the general condemnation. Addresses to the P. ag<sup>st</sup> his ratification, swarmed from all quarters, and without a possibility of preconcert, or party influence. In short it appeared for a while that the latent party in favor of the Treaty, were struck dumb by the voice of the Nation. At length however, doubts began to be thrown out in New York, whether the Treaty was as bad as was represented. The Chamber of commerce proceeded to an address to the P., in which they hinted at war as the tendency of rejecting the Treaty, but rested the decision with the constituted authorities. The Boston Chamber of Commerce followed the example, as did a few inland villages. For all the details on this subject I refer to the Gazettes, which I presume you continue to receive from the Department of State. It appears that the struggle in the public mind was anxiously contemplated by the President, who had bound himself first not to disclose the Treaty till it should be submitted to the Senate, and in the next place, not to refuse his sanction if it should receive that of the Senate. On the receipt here, however of the predatory orders renewed by G. B., the President as we gather from Mr. Randolph's pamphlet<sup>1</sup> was advised not to ratify the Treaty unless they should be revoked and adhered to this resolution, from the adjournment of the Senate, about the last of June till the middle of August. At the latter epoch Mr. Fauchet's intercepted letter became known to him, and as no other circumstance on which a conjecture can be founded



has been hinted to the public, his change of opinion, has been referred to some impression made by that letter, or by comments upon it, altho' it cannot easily be explained how the merits of the Treaty, or the demerits of the provision order could be affected by the one or the other. As soon as it was known that the P. had yielded his ratification the *2<sup>Br</sup> party* were reinforced by those who bowed to the name of constituted authority, and those who are implicitly devoted to the Pr. Principal Merchants of Philad<sup>a</sup>, with others amounting to ab<sup>t</sup> four hundred, took the lead in an address of approbation. There is good reason to believe that many subscriptions were ob<sup>td</sup> by the Banks, whose directors solicited them and by the influence of Br capitalists. In Baltimore Charleston, & the othercommercial towns, except Philad<sup>a</sup>, New York, & boston, no similar proceeding has been attainable. Acquiescence has been inculcated with the more success by exaggerated pictures of the public prosperity, an appeal to the popular feeling for the President, and the bugbear of war; still, however there is little doubt that the real sentiment of the mass of the community is hostile to the treaty. How far it may prove impregnable, must be left to events. A good deal will depend on the result of the session, & more than ought, on external contingencies. You will see how the Session opened in the President's Speech & the answer to it. 1 That you may judge the better on the subject, I add in the margin of the latter, the clause expunged, as not true in itself, and as squinting too favorably at the Treaty. This is the only form in which the pulse of the House has been felt. *It is pretty certain that a majority disapproves the Treaty* but it is not yet possible to ascertain theirultimate object, as matters now are. The Speech of the Pr was well adapted to his view. The answer was from a Committee, consisting of myself, Sedgwick, & Sitgrove, in the first instance, with the addition of two other members on the recommitment. In the first committee, my two colleagues were of the Treaty party; and, in the second, there was a willingness to say all that truth w<sup>d</sup> permit. This explanation will assist you in comprehending the transaction.

Since the answer, as passed, & was presented, no has been said or done in relation to the Treaty. It is much to be feared that the majority against the Treaty will be broken to pieces by lesser & collateral differences. Some will say it is too soon to take up the subject before it is officially presented in its finished form; others will then say it is too late. The opportunity of declaring the sense of the House in the answer to the speech was sacrificed to the opinion of some, from whom more decision was expected than will be experienced towards an immediate consideration of the subject by itself. The truest policy seems to be, to take up the business as soon as a majority can be ascertained; but not to risk that event on a preliminary question. What the real state of opinions may be, is now under enquiry. I am not sanguine as to the result. There is a clear majority who disapprove the Treaty, but it will dwindle under the influence of causes well known to you; more especially as the States, instead of backing the wavering, are themselves rather giving way. Virginia has indeed set a firm example; but Maryland, North Carolina, & New Hampshire, have counteracted it, & New York will soon follow with some strong proceedings on the same side.

I am glad to find by your letters that Fr, notw the late Treaty, continues to be friendly. A magnanimous conduct will conduce to her interest as well as ours. It must ult baffle the insidious projects for bartering our honour and our Trade to Br pride & Br monopoly. The fifteenth article of the Treaty is evidently meant to put Br on a better

*footing than Fr & prev<sup>f</sup> a further Treaty with the latter; since it secures to Br, gratuitously, all privileges that may be granted to others for an equivalent, and of course obliges Fr, at her sole expense, to include the interest of Br in her future treaties with us. But if the Treaty should take effect, this abominable part will be of short duration, and, in the mean time, something may perhaps, may be done, tow<sup>d</sup>. disconcerting the mischief in some degree. You will observe a navigation act is always in our power. The article relating to the Mississippi, being permanent, may be more embarrassing, yet possibly not without some antidote for its poison. I intended to go on in Cypher, but the tediousness obliges me to conclude the present letter, in order to seize a conveyance just known to me. Mr. R's pamphlet is just out. Mr. Tazewell will send that & several other things collected for you by this conveyance. Pickering is Secretary of State—Ch<sup>s</sup> Lee Attorney Gen<sup>l</sup>; no Sec<sup>y</sup> at War. The Senate have negatived Rutledge as chief Justice. Mr. Jones keeps you informed of your private affairs.—He & Mr. Jefferson are well. I have just rec<sup>d</sup> your two favors of Oct<sup>r</sup> 23 & 24, with the accompaniments, by Mr. Murray. The articles have probably not arrived in the same ship, as Mr. Yard has no information from N. Y. thereon. Accept from Mrs. M. & myself ten thousand thanks for your & Mrs. Monroe's goodness, which will, as generally happens probably draw more trouble upon you. Mr. Yard & Mrs. Y. well,—Your friends at New York so, too.*

[\[Back to Table of Contents\]](#)

## THE JAY TREATY. SPEECH IN THE 4<sup>TH</sup> CONGRESS, APRIL 6.1

Mr. Madison rose, and spoke as follows: When the Message was first proposed to be committed, the proposition had been treated by some gentlemen not only with levity but with ridicule. He persuaded himself that the subject would appear in a very different light to the Committee; and he hoped that it would be discussed on both sides without either levity, intemperance, or illiberality.

If there were any question which could make a serious appeal to the dispassionate judgment, it must be one which respected the meaning of the Constitution; and if any Constitutional question could make the appeal with peculiar solemnity, it must be in a case like the present, where two of the constituted authorities interpreted differently the extent of their respective powers

It was a consolation, however, of which every member would be sensible, to reflect on the happy difference of our situation, on such occurrences, from that of Governments in which the constituent members possessed independent and hereditary prerogatives. In such Governments, the parties having a personal interest in their public stations, and not being amenable to the national will, disputes concerning the limits of their respective authorities might be productive of the most fatal consequences. With us, on the contrary, although disputes of that kind are always to be regretted, there were three most precious resources against the evil tendency of them. In the first place, the responsibility which every department feels to the public will, under the forms of the Constitution, may be expected to prevent the excesses incident to conflicts between rival and irresponsible authorities. In the next place, if the difference cannot be adjusted by friendly conference and mutual concession, the sense of the constituent body, brought into the Government through the ordinary elective channels, may supply a remedy. And if this resource should fail, there remains, in the third and last place, that provident article in the Constitution itself, by which an avenue is always open to the sovereignty of the people, for explanations or amendments, as they might be found indispensable.

If, in the present instance, it was to be particularly regretted that the existing difference of opinion had arisen, every motive to the regret was a motive to calmness, to candor, and the most respectful delicacy towards the other constituted authority. On the other hand, the duty which the House of Representatives must feel to themselves and to their constituents required that they should examine the subject with accuracy, as well as with candor, and decide on it with firmness, as well as with moderation.

In this temper, he should proceed to make some observations on the Message before the Committee, and on the reasons contained in it.

The Message related to two points: First. The application made for the papers. Secondly. The Constitutional rights of Congress, and of the House of Representatives, on the subject of Treaties.

On the first point, he observed, that the right of the House to apply for any information they might want, had been admitted by a number in the minority, who had opposed the exercise of the right in this particular case. He thought it clear that the House must have a right, in all cases, to ask for information which might assist their deliberations on the subjects submitted to them by the Constitution; being responsible, nevertheless, for the propriety of the measure. He was as ready to admit that the Executive had a right, under a due responsibility, also, to withhold information, when of a nature that did not permit a disclosure of it at the time. And if the refusal of the President had been founded simply on a representation, that the state of the business within his department, and the contents of the papers asked for, required it, although he might have regretted the refusal, he should have been little disposed to criticise it. But the Message had contested what appeared to him a clear and important right of the House; and stated reasons for refusing the papers, which, with all the respect he could feel for the Executive, he could not regard as satisfactory or proper.

One of the reasons was, that it did not occur to the Executive that the papers could be relative to any purpose under the cognizance, and in the contemplation of the House. The other was, that the purpose for which they were wanted was not expressed in the resolution of the House.

With respect to the first, it implied that the Executive was not only to judge of the proper objects and functions of the Executive department, but, also, of the objects and functions of the House. He was not only to decide how far the Executive trust would permit a disclosure of information, but how far the Legislative trust could derive advantage from it. It belonged, he said, to each department to judge for itself. If the Executive conceived that, in relation to his own department, papers could not be safely communicated, he might, on that ground, refuse them, because he was the competent though a responsible judge within his own department. If the papers could be communicated without injury to the objects of his department, he ought not to refuse them as irrelative to the objects of the House of Representatives; because the House was, in such cases, the only proper judge of its own objects.

The other reason of refusal was, that the use which the House meant to make of the papers was not expressed in the resolution.

As far as he could recollect, no precedent could be found in the records of the House, or elsewhere, in which the particular object in calling for information was expressed in the call. It was not only contrary to right to require this, but it would often be improper in the House to express the object. In the particular case of an impeachment referred to in the Message, it might be evidently improper to state that to be the object of information which might possibly lead to it, because it would involve the preposterous idea of first determining to impeach, and then inquiring whether an impeachment ought to take place. Even the holding out an impeachment as a contemplated or contingent result of the information called for, might be extremely disagreeable in practice, as it might inflict a temporary pain on an individual, whom an investigation of facts might prove to be innocent and perhaps meritorious.

From this view of the subject he could not forbear wishing that, if the papers were to be refused, other reasons had been assigned for it. He thought the resolutions offered by the gentleman from North Carolina, one of which related to this subject, ought to stand on the Journal along with the Message which had been entered there. Both the resolutions were penned with moderation and propriety. They went no farther than to assert the rights of the House; they courted no reply; and it ought not to be supposed they could give any offence.

The second object to which the measure related, was the Constitutional power of the House on the subject of Treaties.

Here, again, he hoped it may be allowable to wish that it had not been deemed necessary to take up, in so solemn a manner, a great Constitutional question, which was not contained in the resolution presented by the House, which had been incidental only to the discussion of that resolution, and which could only have been brought into view through the unauthentic medium of the newspapers. This, however, would well account for the misconception which had taken place in the doctrine maintained by the majority in the late question. It had been understood by the Executive, that the House asserted its assent to be necessary to the validity of Treaties. This was not the doctrine maintained by them. It was, he believed, fairly laid down in the resolution proposed, which limited the power of the House over Treaties, to cases where Treaties embraced Legislative subjects, submitted by the Constitution to the power of the House.

Mr. M. did not mean to go into the general merits of this question, as discussed when the former resolution was before the Committee. The Message did not request it, having drawn none of its reasoning from the text of the Constitution. It had merely affirmed that the power of making Treaties is exclusively vested by the Constitution in the President, by and with the advice and consent of the Senate. Nothing more was necessary on this point than to observe, that the Constitution had as expressly and exclusively vested in Congress the power of making laws, as it had vested in the President and Senate the power of making Treaties.

He proceeded to review the several topics on which the Message relied. First. The intention of the body which framed the Constitution. Secondly. The opinions of the State Conventions who adopted it. Thirdly. The peculiar rights and interests of the smaller States. Fourthly. The manner in which the Constitution had been understood by the Executive and the foreign nations, with which Treaties had been formed. Fifthly. The acquiescence and acts of the House on former occasions

1. When the members on the floor, who were members of the General Convention, particularly a member from Georgia and himself, were called on in a former debate for the sense of that body on the Constitutional question, it was a matter of some surprise, which was much increased by the peculiar stress laid on the information expected. He acknowledged his surprise, also, at seeing the Message of the Executive appealing to the same proceedings in the General Convention, as a clue to the meaning of the Constitution.

It had been his purpose, during the late debate, to make some observations on what had fallen from the gentlemen from Connecticut and Maryland, if the sudden termination of the debate had not cut him off from the opportunity. He should have reminded them that this was the ninth year since the convention executed their trust, and that he had not a single note in this place to assist his memory. He should have remarked, that neither himself nor the other members who had belonged to the Federal Convention, could be under any particular obligation to rise in answer to a few gentlemen, with information, not merely of their own ideas at that period, but of the intention of the whole body; many members of which, too, had probably never entered into the discussions of the subject. He might have further remarked, that there would not be much delicacy in the undertaking, as it appeared that a sense had been put on the Constitution by some who were members of the Convention, different from that which must have been entertained by others, who had concurred in ratifying the Treaty.

After taking notice of the doctrine of Judge Wilson, who was a member of the Federal Convention, as quoted by Mr. Gallatin from the Pennsylvania debates, he proceeded to mention that three gentlemen, who had been members of the Convention, were parties to the proceedings in Charleston, South Carolina, which, among other objections to the Treaty, represented it as violating the Constitution. That the very respectable citizen who presided at the meeting in Wilmington, whose resolutions made a similar complaint, had also been a distinguished member of the body that formed the Constitution.

It would have been proper for him, also, to have recollected what had, on a former occasion, happened to himself during a debate in the House of Representatives. When the bill for establishing a National Bank was under consideration, he had opposed it, as not warranted by the Constitution, and incidentally remarked, that his impression might be stronger, as he remembered that, in the Convention, a motion was made and negatived, for giving Congress a power to grant charters of incorporation. This slight reference to the Convention, he said, was animadverted on by several, in the course of the debate, and particularly by a gentleman from Massachusetts, who had himself been a member of the Convention, and whose remarks were not unworthy the attention of the Committee. Here Mr. M. read a paragraph from Mr. Gerry's speech, from the Gazette of the United States, page 814, protesting, in strong terms, against arguments drawn from that source.

Mr. M. said, he did not believe a single instance could be cited in which the sense of the Convention had been required or admitted as material in any Constitutional question. In the case of the Bank, the Committee had seen how a glance at that authority had been treated in this House. When the question on the suability of the States was depending in the Supreme Court, he asked, whether it had ever been understood that the members of the Bench, who had been members of the Convention, were called on for the meaning of the Convention on that very important point, although no Constitutional question would be presumed more susceptible of elucidation from that source.

He then adverted to that part of the Message which contained an extract from the Journal of the Convention, showing that a proposition “that no Treaty should be binding on the United States, which was not ratified by law,” was explicitly rejected. He allowed this to be much more precise than any evidence drawn from the debates in the Convention, or resting on the memory of individuals. But, admitting the case to be as stated, of which he had no doubt, although he had no recollection of it, and admitting the record of the Convention to be the oracle that ought to decide the true meaning of the Constitution, what did this abstract vote amount to? Did it condemn the doctrine of the majority? So far from it, that, as he understood their doctrine, they must have voted as the Convention did; for they do not contend that no Treaty shall be operative without a law to sanction it; on the contrary, they admit that some Treaties will operate without this sanction; and that it is no further applicable in any case than where Legislative objects are embraced by Treaties. The term “ratify” also deserved some attention, for, although of loose signification in general, it had a technical meaning different from the agency claimed by the House on the subject of Treaties.

But, after all, whatever veneration might be entertained for the body of men who formed our Constitution, the sense of that body could never be regarded as the oracular guide in expounding the Constitution. As the instrument came from them it was nothing more than the draft of a plan, nothing but a dead letter, until life and validity were breathed into it by the voice of the people, speaking through the several State Conventions. If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified the Constitution. To these also the Message had referred, and it would be proper to follow it.

2. The debates of the Conventions in three States (Pennsylvania, Virginia, and North Carolina) had been before introduced into the discussion of this subject, and were believed the only publications of the sort which contained any lights with respect to it. He would not fatigue the Committee with a repetition of the passages then read to them. He would only appeal to the Committee to decide whether it did not appear, from a candid and collected view of the debates in those Conventions, and particularly in that of Virginia, that the Treaty-making power was a limited power; and that the powers in our Constitution, on this subject bore an analogy to the powers on the same subject in the Government of Great Britain. He wished, as little as any member could to extend the analogies between the two Governments; but it was clear that the constituent parts of two Governments might be perfectly heterogeneous, and yet the powers be similar.

At once to illustrate his meaning, and give a brief reply to some arguments on the other side, which had heretofore been urged with ingenuity and learning, he would mention, as an example, the power of pardoning offences. This power was vested in the President; it was a prerogative also of the British King. And, in order to ascertain the extent of the technical term “pardon,” in our Constitution, it would not be irregular to search into the meaning and exercise of the power in Great Britain. Yet, where is the general analogy between an hereditary Sovereign, not accountable for his conduct,

and a Magistrate like the President of the United States, elected for four years, with limited powers, and liable to impeachment for the abuse of them?

In referring to the debates of the State Conventions as published, he wished not to be understood as putting entire confidence in the accuracy of them. Even those of Virginia, which had been probably taken down by the most skilful hand, (whose merit he wished by no means to disparage,) contained internal evidence in abundance of chasms and misconceptions of what was said.

The amendments proposed by the several Conventions were better authority, and would be found, on a general view, to favor the sense of the Constitution which had prevailed in this House. But even here it would not be reasonable to expect a perfect precision and system in all their votes and proceedings. The agitations of the public mind on that occasion, with the hurry and compromise which generally prevailed in settling the amendments to be proposed, would at once explain and apologize for the several apparent inconsistencies which might be discovered.

He would not undertake to say that the particular amendment referred to in the Message, by which two states require that “no Commercial Treaty should be ratified without the consent of two-thirds of the whole number of Senators, and that no Territorial rights, &c. should be ceded without the consent of three-fourths of the members of both Houses,” was digested with an accurate attention to the whole subject. On the other hand, it was no proof that those particular Conventions, in annexing these guards to the Treaty power, understood it as different from that espoused by the majority of the House. They might consider Congress as having the power contended for over Treaties stipulating on Legislative subjects, and still very consistently wish for the amendment they proposed. They might not consider the Territorial-rights and other objects for which they required the concurrence of three-fourths of the members of both Houses as coming within any of the enumerated powers of Congress, and, therefore, as not protected by that control over Treaties. And although they might be sensible that Commercial Treaties were under that control, yet, as they would always come before Congress with great weight after they had passed through the regular forms and sanctions of the Treaty department, it might be deemed of real importance that the authority should be better guarded which was to give that weight to them.

He asked, whether it might not happen, even in the progress of a Treaty through the Treaty department, that each succeeding sanction might be given, more on account of preceding sanctions than of any positive approbation? And no one could doubt, therefore, that a Treaty which had received all these sanctions would be controlled with great reluctance by the Legislature, and, consequently, that it might be desirable to strengthen the barriers against making improper Treaties, rather than trust too much to the Legislative control over carrying them into effect.

But, said Mr. M., it will be proper to attend to other amendments proposed by the ratifying Conventions, which may throw light on their opinions and intentions on the subject in question. He then read from the Declaration of Rights proposed by Virginia to be prefixed to the Constitution, the seventh article, which is as follows:



“That all power of suspending laws, or the execution of laws, by any authority, without the consent of the Representatives of the people in the Legislature, is injurious to their rights, and ought not to be exercised.”

The Convention of North Carolina, as he showed, had laid down the same principle in the same words. And it was to be observed that, in both Conventions, the article was under the head of a Declaration of Rights, “asserting and securing from encroachment the essential and inalienable rights of the people,” according to the language of the Virginia Convention; and “asserting and securing from encroachment the great principles of civil and religious liberty, and the inalienable rights of the people,” as expressed by the Convention of North Carolina. It must follow that these two Conventions considered it as a fundamental, inviolable, and universal principle in a free Government, that no power could supersede a law without the consent of the Representatives of the people in the Legislature.

In the Maryland Convention also, it was among the amendments proposed, though he believed not decided on, “that no power of suspending laws, or the execution of laws, unless derived from the Legislature, ought to be exercised or allowed.”

The Convention of North Carolina had further explained themselves on this point, by their twenty-third amendment proposed to the Constitution, in the following words: “That no Treaties which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed or made conformable to such Treaty; nor shall any Treaty be valid which is contradictory to the Constitution of the United States.”

The latter part of the amendment was an evidence that the amendment was intended to ascertain rather than to alter the meaning of the Constitution; as it could not be supposed to have been the real intention of the Constitution that a Treaty contrary to it should be valid.

He proceeded to read the following amendments accompanying the ratification of State Conventions:

The New York Convention had proposed “that no standing army or regular troops shall be raised or kept up in time of peace without the consent of two-thirds of the Senators and Representatives in each House.”

“That no money be borrowed on the credit of the United States, without the assent of two-thirds of the Senators and Representatives in each House.”

The New Hampshire Convention had proposed “that no standing army shall be kept up in time of peace, unless with the consent of three-quarters of the members of each branch of Congress.” In the Maryland Convention a proposition was made in the same words.

The Virginia Convention had proposed “that no navigation law, or law regulating commerce, shall be passed without the consent of two-thirds of the members present in both Houses.”

“That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two-thirds of the members present in both Houses.”

“That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.”

The Convention of North Carolina had proposed the same three amendments in the same words.

On a review of these proceedings, may not, said he, the question be fairly asked, whether it ought to be supposed that the several Conventions who showed so much jealousy with respect to the powers of commerce, of the sword, and of the purse, as to require, for the exercise of them, in some cases two-thirds, in others three-fourths of both branches of the Legislature, could have understood that, by the Treaty clauses in the Constitution, they had given to the President and Senate, without any control whatever from the House of Representatives, an absolute and unlimited power over all those great objects?

3. It was with great reluctance, he said, that he should touch on the third topic—the alleged interest of the smaller States in the present question. He was the more unwilling to enter into this delicate part of the discussion, as he happened to be from a State which was in one of the extremes in point of size. He should limit himself, therefore, to two observations. The first was, that if the spirit of amity and mutual concession from which the Constitution resulted was to be consulted on expounding it, that construction ought to be favored which would preserve the mutual control between the Senate and House of Representatives, rather than that which gave powers to the Senate not controllable by, and paramount over those of the House of Representatives, whilst the House of Representatives could in no instance exercise their powers without the participation and control of the Senate. The second observation was, that, whatever jealousy might unhappily have prevailed between the smaller and larger States, as they had most weight in one or the other branch of Government, it was a fact, for which he appealed to the Journals of the old Congress, from its birth to its dissolution, and to those of the Congress under the present Government, that in no instance would it appear, from the yeas and nays, that a question had been decided by a division of the votes according to the size of the States. He considered this truth as affording the most pleasing and consoling reflection, and as one that ought to have the most conciliating and happy influence on the temper of all the States.

4. A fourth argument in the Message was drawn from the manner by which the Treaty power had been understood by both parties in the negotiations with foreign Powers. “In all the Treaties made, *we* have declared and *they* have believed,” &c. By *we*, he remarked, was to be understood the Executive alone, who had made the declaration, and in no respect the House of Representatives. It was certainly to be regretted, as had often been expressed, that different branches of the Government should disagree in the construction of their powers; but when this could not be avoided, each branch must judge for itself; and the judgment of the Executive could in this case be no more an authority overruling the judgment of the House than the judgment of the House

could be an authority overruling that of the Executive. It was also to be regretted that any foreign nation should at any time proceed under a misconception of the meaning of our Constitution. But no principle was better established in the Laws of Nations, as well as in common reason, than that one nation is not to be the interpreter of the Constitution of another. Each nation must adjust the forms and operations of its own Government, and all others are bound to understand them accordingly. It had before been remarked, and it would be proper to repeat it here, that of all nations Great Britain would be the least likely to object to this principle, because the construction given to our Government was particularly exemplified in her own.

5. In the fifth and last place, he had to take notice of the suggestion, that every House of Representatives had concurred in the construction of the Treaty power, now maintained by the Executive; from which it followed that the House could not now consistently act under a different construction. On this point, it might be sufficient to remark, that this was the first instance in which a foreign Treaty had been made since the establishment of the Constitution; and that this was the first time the Treaty-making power had come under formal and accurate discussion. Precedents, therefore, would readily be perceived to lose much of their weight. But whether the precedents found in the proceedings preparatory to the Algerine Treaty, or in the provisions relative to the Indian Treaties, were inconsistent with the right which had been contended for in behalf of the House, he should leave to be decided by the Committee. A view of these precedents had been pretty fully presented to them by a gentleman from New York [Mr. Livingston] with all the observations which the subject seemed to require.

On the whole, it appeared that the rights of the House on the two great Constitutional points had been denied by a high authority in the Message before the Committee. This Message was entered on the Journals of the House. If nothing was entered in opposition thereto, it would be inferred that the reasons in the Message had changed the opinion of the House, and that their claims on those great points were relinquished. It was proper, therefore, that the questions, brought fairly before the Committee in the propositions of the gentleman [Mr. Blount] from North Carolina, should be examined and formally decided. If the reasoning of the Message should be deemed satisfactory, it would be the duty of this branch of the Government to reject the propositions, and thus accede to the doctrines asserted by the Executive. If, on the other hand, this reasoning should not be satisfactory, it would be equally the duty of the House, in some such firm, but very decent terms, as are proposed, to enter their opinions on record. In either way, the meaning of the Constitution would be established, as far as depends on the vote of the House of Representatives.

Mr. M. said, on a subject of such extent and importance, he should not attempt to go through all the observations that might be applicable to it. A general view of the subject was all that he meant at present. His omissions would be more than supplied by others who might enter into the discussion.

The proposition immediately before the Committee was, that the Treaty with Great Britain ought to be carried into effect by such provisions as depended on the House of Representatives. This was the point immediately in question. But it would be proper

in examining it to keep in view also the proposition of the gentleman from Pennsylvania [Mr. Maclay] which had been referred to the Committee, and which would be taken up of course, if the immediate question should be decided in the negative.

If the proposition for carrying the Treaty into effect be agreed to, it must be from one of three considerations: either that the Legislature is bound by a Constitutional necessity to pass the requisite laws without examining the merits of the Treaty, or that, on such examination, the Treaty is deemed in itself a good one, or that there are good extraneous reasons for putting it into force, although it be in itself a good one, or that there are good extraneous reasons for putting it into force, although it be in itself a bad Treaty.

The first consideration being excluded by the decision of the House, that they have a right to judge of the expediency or in expediency of passing laws relative to Treaties; the question first to be examined must relate to the merits of the Treaty. He then proceeded to consider the Treaty under three aspects: first, as it related to the execution of the Treaty of Peace in 1783; secondly, as it determines the several points in the Law of Nations; thirdly, as it respects the commerce between the two nations.

First. He would not inquire on which side the blame lay, of having first violated the Treaty of 1783, or of having most contributed to delay its execution, although he did not shrink from the task under any apprehension that the result could be disadvantageous to this country. The Treaty itself had waived this inquiry, and professed to adjust all controversies on this subject, without regard to the mutual complaints or pretensions of the parties. It was, therefore, justly and naturally to be expected, that the arrangements for carrying that Treaty into effect would have been founded in the most exact and scrupulous reciprocity. Was this the case? He was sorry that, on the contrary, the arrangements were founded on the grossest violation of that principle.

There were two articles which had not been executed by Great Britain; that which related to the negroes and other property carried away, and that which required a surrender of the posts. The article unexecuted by the United States was, that which required payment of all *bona fide* debts, according to the Treaty now in question: this article is now to be carried into the most complete effect by the United States, and damages to the last fraction are to be paid for the delay. Is there a reciprocal stipulation by Great Britain with respect to the articles unexecuted by her? Nothing like it. She is wholly absolved from the obligation to fulfil one of the articles, viz.: that relating to the negroes, &c., and she is to make no compensation whatever for delaying to fulfil the other, viz.: the surrender of the posts.

It had been urged in apology for those very unequal stipulations, that the injury resulting from a forbearance to surrender the posts, was not susceptible of any precise liquidation into pecuniary damages. However plausible this might appear, it was by no means satisfactory. Commissioners, such as were appointed, with full discretion for other purposes, might have been charged with this subject, and if they could not have done exact justice, might have mitigated the injustice of doing nothing.

Apologies had been attempted also for the very extraordinary abandonment of the compensation due for the negroes, &c. It was said to be at least doubtful whether this claim was authorized by the seventh article of the Treaty of Peace, and that Great Britain had uniformly denied the meaning put by the United States on that article. In reply he made two remarks. First, that it was not true that Great Britain had uniformly denied the American construction of that article; on the contrary, he believed, it could be proved, that till of late, Great Britain had uniformly admitted this construction, and had rejected the claim on no other ground than the alleged violation of the fourth article on the part of the United States.

But had it been true that Great Britain had uniformly asserted a different construction of the article, and refused to accede to ours, what ought to have been done? Ought we to have at once acceded to hers? By no means. Each party had an equal right to interpret the compact; and if they could not agree, they ought to have done in this what they did in other cases where they could not agree; that is, have referred the settlement of the meaning of the compact to an arbitration. To give up the claim altogether, was to admit, either that Great Britain had a better right than the United States to explain the controverted point, or that the United States had done something which in justice called for a sacrifice of their equal right.

It was evident, he thought, from this view of the subject, that the arrangements with respect to the Treaty of Peace were frequently wanting both in justice and reciprocity.

It would seem, from the face of the Treaty, and the order of the articles, that the compensation for the spoliations on our trade had been combined with the execution of the Treaty of Peace; and might therefore have been viewed as a substitute for the compensation for the negroes, &c. If this was the meaning of the instrument, it could not be the less obnoxious to reasonable and fair judges. No man was more thoroughly convinced than himself of the perfect justice on which the claims of the merchants against Great Britain were founded, nor any one more desirous to see them fully indemnified. But compensation to them could never be a just substitute for the compensation due to others. It was impossible that any claims could be better founded than those of the sufferers under the seventh article of the Treaty of Peace; because they were supported by positive and acknowledged stipulation, as well as by equity and right. Just and strong as the claims of the merchants might be, and certainly were, the United States could not be obliged to take more care of them than of the claims equally just and strong of other citizens, much less to sacrifice to them the claims for property wrongfully carried off at the close of the war, and obtaining stipulations in favor of the mercantile claims, the mercantile claims had been relinquished, and the other claims provided for; he asked whether the complaints of the merchants would not have been as universal and as loud as they would have been just?

Besides the omissions in favor of Great Britain, already pointed out with respect to the execution of the Treaty of Peace, he observed, that conditions were annexed to the partial execution of it in the surrender of the Western posts, which increased the general inequality of this part of the Treaty, and essentially affected the value of those objects.

The value of the posts to the United States was to be estimated by their influence—1st, on the Indian trade; 2d, on the conduct and temper of the Indians towards the United States.

Their influence on the Indian trade depended principally on the exclusive command they gave to the several carrying places connected with the posts. These places were understood to be of such importance in this respect, that those who possessed them exclusively would have a monopoly, or nearly a monopoly, of the lucrative intercourse with a great part of the savage nations. Great Britain having hitherto possessed these places exclusively, has possessed this advantage. It was expected that the exclusive transfer of them would transfer the advantage to the United States. By the Treaty now concluded, the carrying places are to be enjoyed in common, and it will be determined by the respective advantages under which British and American traders will engage in the trade, which of them is to share most in it. In this point of view he thought the regulation highly impolitic and injurious. He would say little of the advantage which the British would have in their superior capital: that must be encountered in all our commercial rivalships. But there was another consideration which ought to have great weight on this subject. The goods imported for the Indian trade through Canada pay no duties. Those imported through the United States for that trade, will have paid duties from seven to ten per cent., and every one must see that a drawback is impracticable, or would be attended with an expense which the business would not bear. So far, then, as the importance of the posts is to be considered in a commercial view, they are, in a very great measure, stripped of it by the condition annexed to the surrender of them. Instead of a monopoly in our favor, the carrying places are made common under circumstances which may leave a monopoly in the hands of Great Britain. And this is done, too, by an article which is to last forever.

Second. The influence of the posts on the general conduct of the Indians, is well known to depend chiefly on their influence on the Indian trade. In proportion, therefore, as the condition annexed to the surrender of posts affects the one, it must affect the other. If the British should continue to enjoy the Indian trade, they would continue to influence the Indian conduct; if not in the same degree as heretofore, at least in so great a degree as to condemn the article in question.

He mentioned the permission to aliens to hold land in perpetuity as a very extraordinary feature in this part of the Treaty. He would not inquire how far this might be authorized by Constitutional principles. But he would continue to say, that no example of such a stipulation was to be found in any Treaty that ever was made, either where territory was ceded, or where it was acknowledged by one nation to another. Although it was common and right in such cases to make regulation in favor of the property of the inhabitants, yet he believed, that in every case that had ever happened, the owners of landed property were universally required to swear allegiance to the new sovereign, or to dispose of their landed property within a reasonable time.

He took notice also of the inequality of the stipulation which opened all the ports of the United States, as the condition of having those of an unimportant province of Great Britain opened in return.

With respect to the Mississippi he could not but consider the clause relating to it as being singularly reprehensible. Happily the adjustment of our claims with Spain had been brought about before any evil operation of the clause had been experienced. But the tendency of it, he thought, could not be doubted. It was the more remarkable, that this extension of the privileges of Great Britain on the Mississippi beyond those in the Treaty of Peace, should have been admitted into the new Treaty, because it is supposed by the Treaty itself, that Great Britain may be deprived, by her real boundary, of all pretensions to a share in the banks and waters of the Mississippi.

With respect to the great points in the Law of Nations, comprehended in the stipulations of the Treaty, the same want of real reciprocity, and the same sacrifice of the interests of the United States, were conspicuous.

It was well known to have been a great and favorite object with the United States, "that free ships make free goods." They have established this principle in all their other Treaties. They have witnessed with anxiety the general effort, and the successful advances towards incorporating this principle into the Law of Nations; a principle friendly to all neutral nations, and particularly interesting to the United States. He knew that at a former period it had been conceded on the part of the United States that the Law of Nations stood as the present Treaty regulates it. But it did not follow that more than acquiescence in that doctrine was proper. There was an evident distinction between silently acquiescing in it, and giving it the support of a formal and positive stipulation. The former was all that could have been required, and the latter was more than ought to have been unnecessarily yielded.

In the enumeration of contraband articles, the Treaty was liable to similar observations. The circumstances and interests of the United States had given way to the particular views of the other party. The example in all other Treaties has been disregarded. Hemp, tar, pitch, turpentine, &c., important staples of this country, are, without even a pretext of reciprocity, subjected to confiscation. No nation which produced these articles had, he believed, Treaties at present making the same sacrifice, except Denmark, who, in the year 1780, had been induced, he knew not by what means, into an explanation of the Treaty of 1670, by which these articles are declared to be contraband. He observed, that this supplementary and explanatory agreement between Great Britain and Denmark appeared to have been the model selected for the contraband list in the Treaty now in question. The enumeration in the latter was transcribed, word for word, from the former, with a single exception, which might be thought remarkable. The article of *horses*, which was included in the original, was dropped in the copy. In this particular the article had departed from *Vattel* also, although in general the Treaty seemed to have availed itself wherever it readily could of his authority.

But, what was far more remarkable, the copy had proceeded just as far as answered the purposes of Great Britain, and stopped at the very point where the original would have answered the just and essential purposes of the United States. After enumerating the articles to be deemed contraband, the Danish article goes on in the words following, viz: "But it is expressly declared that among contraband merchandises shall not be comprehended fish and meats, whether fresh or salted, wheat, flour, corn,

or other grain, beans, oil, wine, and generally whatever serves for the nourishment and support of life, all of which may at all times be sold and transported like any other merchandises, even to places held by an enemy of the two Crowns, provided they be not besieged or blockaded.”

This view of the subject naturally led him to take notice of the clause in the British Treaty relating to provisions; which, to say the least, wore an ambiguous countenance that was extremely disagreeable, or which rather seemed to carry a necessary implication that provisions, though not bound to besieged or blockaded places, might, according to the existing Law of Nations, be regarded as contraband. According to the genuine Law of Nations, no articles which are not expressly and generally contraband, are so, except in the single case of their going to a besieged place; yet it is admitted in the Treaty that there are other cases when provisions may be contraband, whence the implication results, that one of the cases might be that which had been assumed and put in force by Great Britain in relation to the United States. The little cases which might be devised as appurtenant to the law which condemns what is bound to blockaded places, cannot satisfy the import of the stipulation, because such cases cannot be presumed to have been in the contemplation of the parties. And if the particular case of provisions bound to a country at war, although not to a besieged place, was not meant to be one of the cases of contraband, according to the existing Law of Nations, how necessary was it to have said so; and how easy and natural would that course have been, with the Danish example on the subject before their eyes.

On the supposition that provisions in our own vessels bound to countries at war with Great Britain, can be now seized by her for her own use, on the condition stipulated, this feature of the Treaty presents itself in a very serious light, indeed, especially if the doctrine be resorted to as laid down by the Executive, in the letter of the then Secretary of State [Mr. Jefferson] to Mr. Pinckney, on the 7th September, 1793. This letter is a comment on the British instructions of June 8, 1793, for seizing neutral provisions. After stating the measure as a flagrant breach of the Law of Nations, and as ruinous to our commerce and agriculture, it has the following paragraph: “This act, too, tends directly to draw us from that state of peace in which we are wishing to remain. It is an essential character of neutrality to furnish no aids not stipulated by Treaty,” that is, said Mr. M., by a Treaty made before the war, “to one party which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain and her friends, we are equally bound to permit it to France. To restrain it, would be a partiality which must lead to war; and between restraining it ourselves and permitting her enemies to restrain it unrightfully is no difference. She would consider this as a mere pretext, of which she would not be the dupe; and on what honorable ground could we otherwise explain it? Thus we should see ourselves plunged, by this unauthorized act of Great Britain, into a war with which we meddle not, and which we wish to avoid, if justice to all parties and from all parties will enable us to avoid it.” He entreated the Committee to bestow on this interesting Executive document all the attention which it demanded.

The article prohibiting sequestration was next considered by Mr. M. He said he should probably be among the last who would be disposed to resort to such an



expedient for redress. But he could not approve of a perpetual and irrecoverable abandonment of a defensive weapon, the existence of which might render the use of it unnecessary. The situation of this country in relation to Great Britain was a peculiar one. As we had not fleets and armies to command a respect for our rights, we ought to keep in our hands all such means as our situation gave us. This article was another instance in which no regard was paid to reciprocity. British subjects, it was well known, had and were likely to have in this country a great deal of the property of the king made sacred. American citizens, it was as well known, had little, and were likely to have little of the kind in Great Britain. If a real reciprocity had been intended, why were not other kinds of private property, as vessels and their cargoes, equally protected against violation? These, even within the jurisdiction of Great Britain, are left open to seizure and sequestration, if Great Britain finds it expedient. And why was not property on the high seas under the protection of the Law of Nations, which is said to be a part of the law of the land, made secure by a like stipulation? This would have given a face of equality and reciprocity to the bargain. But nothing of the sort makes a part of it; where Great Britain had a particular interest at stake, the Treaty watchfully provides for it; when the United States have an equal interest at stake and equally entitled to protection, it is abandoned to all the dangers which it has experienced.

After taking this brief notice of the positive evils in this part of the Treaty, he might, he said, add the various omissions which were chargeable on it. But as he should not pretend to exhaust the subject, he would mention one only: the not providing for the respect due to the exhibition of sea papers. He could not but regard this omission as truly extraordinary, when he observed that in almost every modern Treaty, and particularly all our other Treaties, an article on this subject was regularly inserted. Indeed, it had become almost an article of course in the Treaties of the present century.

Thirdly. The commercial articles of the Treaty presented the third aspect under which he was to consider it. In the free intercourse stipulated between the United States and Great Britain, it could not be pretended that any advantage was gained by the former. A Treaty was surely not necessary to induce Great Britain to receive our raw materials and to sell us her manufactures. On the other hand, consider what was given up by the United States.

When the Government came into operation, it is well known that the American tonnage employed in the British trade bore the most inconsiderable proportion to the British tonnage. There being nothing on our side to counteract the influence of capital and other circumstances on the British side, that disproportion was the natural state of things. As some balance to the British advantages, and particularly that of her capital, our laws had made several regulations in favor of our shipping, among which was the important encouragement resulting from the difference of ten per cent. in the duties paid by American and foreign vessels. Under this encouragement the American tonnage has increased in a very respectable proportion to the British tonnage. Nor has Great Britain ever deemed it prudent to attempt any countervailing measures for her shipping, well knowing that we could easily keep up the differences by further measures on our side. But by the Treaty, she has reserved to herself the right to take

such countervailing measures against our existing regulations; and we have surrendered our rights to pursue further defensive measures against the influence of her capital. It is justly to be apprehended, therefore, that under such a restoration of the former state of things, the American tonnage will relapse to its former disproportion to the British tonnage.

When he turned his attention to the West India branch of the subject, there was still greater cause for wonder and dissatisfaction. As the Treaty now stood, Great Britain was left as free as she ever had been to continue the entire monopoly of the intercourse to British vessels. Recollecting, as he did, and as every member of the Committee must do, the whole history of this subject from the peace of 1783, through every subsequent stage of our Independence down to the mission of the late Envoy, it was impossible for him to express his astonishment that any Treaty of Commerce should have ever been acceded to which abandoned the very object for which such a Treaty was ever contemplated. He never could have believed that the time was so near when all the principles, claims, and calculations, which have heretofore prevailed among all classes of people, in every part of the Union, on this interesting point, were to be so completely renounced. A Treaty of Commerce with Great Britain, excluding a reciprocity for our vessels in the West India trade, is a phenomenon which had filled him with more surprise than he knew how to express.

He might be told, perhaps, 1st. That Great Britain granted to no other nation the privilege granted to the United States of trading at all with her West Indies; and, 2dly. That this was an important relaxation of the Colony system established among the nations of Europe.

To the first, it was enough to reply, that no other nation bore the same relation to the West Indies, as the United States were essential to those Islands; and the trade with them had been permitted purely on that account, and not as a beneficial privilege to the United States.

To the second, that it was not true that the Colony system required an exclusion of foreign vessels from the carrying trade between the Colonies and foreign countries, on the contrary, the principle and practice of the Colony system were to prohibit, as much as would be convenient, all trade between the Colonies and foreign countries; but when such a trade was permitted at all as necessary for the Colonies, then to allow the vessels of such foreign countries a reciprocal right of being employed in the trade. Great Britain had accordingly restrained the trade of her Islands in this country as far as her interest in them would permit. But had she allowed our vessels their reciprocal right to carry on the trade so far as it was not restrained? No. Here she forced a monopoly in her own favor, contrary to justice, and contrary to the Colony system of every European nation having Colonies; which, without a single exception, never opens the trade between their Colonies and other countries without opening it equally to vessels on both sides. This is evidently nothing more than right and fair. A Colony is a part of an Empire. If a nation choose, they may prohibit all trade between a Colony and a foreign country, as they may between any other part of their dominions and a foreign country. But if they permit such a trade at all, it must be free to vessels on both sides as well in the case of Colonies as of any other parts of their dominions.

Great Britain has the same right to prohibit foreign trade between London and the United States as between Jamaica and the United States; but if no such prohibition be made with respect to either, she is equally bound to allow foreign vessels a common right with her own in both. If Great Britain were to say that no trade whatever should be carried on between London and the United States, she would exercise a right which we could not complain of. If she were to say that no American vessel should be employed in the trade, it would produce just complaint, and justify a reciprocal regulation as to her vessels. The case of the trade from a port in the West Indies is precisely similar.

To place the omission of the Treaty to provide a reciprocity for our vessels in the West India trade in its true light, it would be proper to attend to another part of the Treaty, which tied up the hands of this country against every effort for making it the interest of Great Britain to yield to our reasonable claims.

He then pointed to the clause which restrains the United States from imposing prohibitions or duties in any case on Britain which did not extend to all other nations; observing that the clause made it impossible to operate on the unreasonable policy of that nation, without suspending our commerce at the same time with all other nations whose regulations with respect to us might be ever so favorable and satisfactory.

The fifteenth article had another extraordinary feature, which must strike every observer. In other Treaties, putting the parties on the footing of the most favored nation, it was stipulated that where new favors were granted to a particular nation in return for favors received, the party claiming the new favor should pay the price of it. This was just and proper where the footing of the most favored nation is established at all. But this article gives to Great Britain the full benefit of all privileges that may be granted to any other nation, without requiring from her the same or equivalent privileges with those granted by such nation. Hence it would happen that if Spain, Portugal, or France, should open their Colonial ports to the United States in consideration of certain privileges in our trade, the same privileges would result gratis, and *ipso facto*, to Great Britain. He considered this stipulation as peculiarly impolitic, and that it could not fail, in the view of the Committee, to form a very solid and weighty objection to the Treaty.

He was not unaware of the stress that would be laid on the article relating to the East Indies. He should leave to others better acquainted than himself with this branch of the subject to explain it. He made two observations, however: one was, that judicious and well informed gentlemen, equally judicious and well informed with any who could be consulted, considered the article as offering not a shadow of advantage to the United States. The other was, that no privilege was stipulated which had not been uniformly heretofore granted without stipulation; and as the grant could have proceeded from no motive but a pure regard to the British interest in that country, there was every reasonable security that the trade would continue open as it had been, under the influence of the same consideration.

Such being the character of the Treaty, with respect to the execution of the Treaty of Peace, the great principles of the Law of Nations, and the regulations of commerce, it

never could be viewed as having any claim to be carried into effect on its own account.

Was there, then, any consideration extraneous to the Treaty that could furnish the requisite motives? On this subject, he observed that the House was wholly without information. And for himself he was ready to declare that he had neither seen, nor known, nor heard, of any circumstances in the general posture of things, or in the particular relation of this country to them, that could account for the unequal and injurious arrangements which we were now called upon for laws to execute.

But there was something farther to be taken into the account. The continuance of the spoliations on our trade, and the impressment of our seamen, whether, as stated in the motion of the gentleman from Pennsylvania [Mr. Maclay], to be understood as practical comments on the Treaty, or as infractions of it, could not but enforce on the minds of the Committee the most serious reflections. Here he referred again to the passage he had read in the letter from Mr. Jefferson to Mr. Pinckney, and asked, if, as there stated by the Executive, our neutrality and peace were to be exposed, by permitting practices of that kind, what might be thought of our giving effect, in the midst of such practices, to a Treaty from which a countenance might be derived by the nation for going on with them.

He was aware that the Executive, notwithstanding the doctrine and policy laid down as above, had finally concurred in the Treaty under such circumstances. But he did not consider that as invalidating the reasoning drawn from the present state of things. He might, he said, be stepping on delicate ground, but he could not think it improper to remark, that it was a known fact that the Executive actually paused for some weeks after the concurrence of the Senate, before the Treaty received his signature; that it is fairly to be presumed that a renewal of the spoliations, and a recollection of the light in which they had been represented, were a ground of the pause; that on that supposition he was probably influenced in signing the Treaty when he did, by an expectation that such a mark of confidence in the British Government would produce an abolition of the unlawful proceeding, and, consequently, if it had been foreseen that the spoliations would have been continued as we find them to be, the Treaty would not have been then signed, or if it had not then been signed, it would not be signed, under the circumstances of the moment when it falls under our consideration.

He should conclude, he said, with taking notice of two considerations which had been much used as inducements to carrying the Treaty into effect.

1. It was said that the greater part of the Treaty was to continue two years only after the present war in Europe; and that no very great evils could grow out of it within that period. To this he replied, in the first place, that ten of the articles containing many very objectionable stipulations were perpetual. In the next place, that it would be in the power of Great Britain, at the expiration of the other articles, to produce the same causes for a renewal of them, as are now urged in their favor. If we are now to enforce the Treaty, lest Great Britain should stir up the Indians, and refuse to pay the merchants for the property of which she has plundered them, can she not at the end of two or three years plunder them again to the same or a greater amount? Cannot the

same apprehensions also be then revived with respect to the Indians, and will not the arguments then be as strong as they are now, for renewing the same Treaty, or making any other equal sacrifice that her purposes may dictate?

2. It was asked, what would be the consequence of refusing to carry the Treaty into effect? He answered, that the only supposable consequence was, that the Executive, if governed by the prudence and patriotism, which he did not doubt would govern that department, would, of course, pursue the measures most likely to obtain a reconsideration and remodification of the offensive parts of the Treaty. The idea of war, as a consequence of refusing to give effect to the Treaty, was too visionary and incredible to be admitted into the question. No man would say that the United States, if an independent people, had not a right to judge of their own interests, and to decline any Treaty that did not duly provide for them. A refusal, therefore, in such cases, could give no cause, nor pretext, nor provocation, for war or for any just resentment. But apart from this, was it conceivable that Great Britain, with all the dangers and embarrassments which are thickening upon her, would wantonly make war on a country which was the best market she had in the world for her manufactures, which paid her an annual balance in specie of ten or twelve millions of dollars, and whose supplies were moreover essential to an important part of her dominions? Such a degree of infatuation ought not to be ascribed to any nation. And at the present crisis, for reasons well known, an unprovoked war with Great Britain, on this country, would argue a degree of madness greater than under any other circumstances that could well be imagined.

With all the objections therefore to the Treaty which he had stated, he hoped that it would not now be carried into effect; and that an opportunity would take place for reconsidering the subject on principles more just and more favorable to the United States.<sup>1</sup>

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Dec. 19, 1796.

Mad. Mss.

Dear Sir

The returns from N. Hampshire, Vermont, S. C., & Georg<sup>a</sup> are still to come in, & leave the event of the Election in some remaining uncertainty. It is but barely possible that Adams may fail of the highest number. It is highly probable, tho' not absolutely certain, that Pinkney will be third only on the list. You must prepare yourself therefore to be summoned to the place Mr. Adams now fills. I am aware of the objections arising from the inadequateness of the importance of the place to the sacrifices you would be willing to make to a greater prospect of fulfilling the patriotic wishes of your friends; and from the irksomeness of being at the head of a body whose sentiments are at present so little in unison with your own. But it is expected that as you had made up your mind to obey the call of your country, you will let it decide on the particular place where your services are to be rendered. It may even be said, that as you submitted to the election knowing the contingency involved in it, you are bound to abide by the event whatever it may be. On the whole, it seems *essential* that you should not refuse the station which is likely to be your lot. There is reason to believe, also, that your neighbourhood to *Adams*<sup>1</sup> may *have a valuable effect on his councils* particularly in *relation to our external system*. You know that *his feelings* will not *enslave him to the example of his predecessor*. It is certain that *his censures of our paper system & the intrigues at new York for setting P [inckney] above him,* have fixed an *enmity with the British faction*. Nor should it pass for nothing, that the true interest of *new england* particularly requires reconciliation with France as the road to her commerce, *add to the whole that he is said to speak of you now in friendly terms* and will no doubt be *soothed by your acceptance of a place subordinate to him*. It must be confessed however that all these calculations are qualified by *his political principles and prejudices*. But they add weight to the *obligation, from which you must not withdraw yourself*.

You will see in the answer to the P's speech much *room for criticism*. You must, for the present, be *content to know that it resulted from a choice of evils*. His *reply to the foreign paragraph indicates a good effect on his mind*. Indeed *he cannot but wish to avoid entailing a war on his successor*. The *danger lies in the fetters he has put on himself & in the irritation & distrust of the French government*.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Jan<sup>y</sup> 15, 1797.

Mad. Mss.

Dear Sir

The last mail brought me your favour of Jan<sup>y</sup> 1, inclosing an unsealed one for Mr. A. & submitting to my discretion the eligibility of delivering it. In exercising this delicate trust I have felt no small anxiety, arising by no means however from an apprehension that a free exercise of it could be in collision with your real purpose, but from a want of confidence in myself, & the importance of a wrong judgment in the case. After the best consideration I have been able to bestow, I have been led to suspend the delivery of the letter, till you should have an opportunity of deciding on the sufficiency or insufficiency of the following reasons. 1. It is certain that Mr. Adams, on his coming to this place, expressed to different persons a respectful cordiality towards you, & manifested a sensibility to the candid manner in which your friends had in general conducted the opposition to him. And it is equally known that your sentiments towards him personally have found their way to him in the most conciliating form. This being the state of things between you, it deserves to be considered whether the idea of bettering it is not outweighed by the possibility of changing it for the worse. 2. There is perhaps a general air on the letter which betrays the difficulty of your situation in writing it, and it is uncertain what the impression might be resulting from this appearance. 3. It is certain that Mr. A. is fully apprized of the trick aimed at by his Pseudo friends of N. Y. and there may be danger of his suspecting in mementos on that subject, a wish to make his resentment an instrument for revenging that [of] others. A hint of this kind was some time ago dropped by a judicious & sound man who lives under the same roof, with a wish that even the Newspapers might be silent on that point. 4. May not what is said, of “the sublime delights of riding in the storm, &c.” be misconstrued into a reflection on those who have no distaste to the helm at the present crisis? You know the temper of Mr. A. better than I do: but I have always conceived it to be rather a ticklish one. 5. The tenderness due to the zealous & active promoters of your election, makes it doubtful whether their anxieties & exertions ought to be depreciated by anything implying the unreasonableness of them. I know that some individuals who have deeply committed themselves, & probably incurred the political enmity at least of the P. elect, are already sore on this head. 6. Considering the probability that Mr. A.’s course of administration may force an opposition to it from the Republican quarter, & the general uncertainty of the posture which our affairs may take, there may be real embarrassments from giving written possession to him, of the degree of compliment & confidence which your personal delicacy & friendship have suggested,

I have ventured to make these observations because I am sure you will equally appreciate the motive & the matter of them; and because I do not view them as inconsistent with the duty & policy of cultivating Mr. Adam’s favorable dispositions, and giving a fair start to his Executive career. As you have, no doubt retained a copy

of the letter I do not send it back as you request. It occurs however that if the subject should not be changed in your view of it, by the reasons which influence mine, & the delivery of the letter be accordingly judged expedient, it may not be amiss to alter the date of it; either by writing the whole over again, or authorizing me to correct that part of it.

The special communication is still unmade. It is I am told to be extremely voluminous. I hope, under the sanction of the P.'s reply to our address, that it will be calculated rather to heal than irritate the wounded friendship of the two Countries. Yet, I cannot look around at the men who counsel him, or look back at the snares into which he has hitherto been Drawn without great apprehensions on this subject. Nothing from France subsequent to the arrival of Pinkney. The negociations for peace you will see, are suspended. The accession of Spain to the war enforces the probability that its calamities are not likely yet to be terminated. The late News from the Rhine & from Italy are on the whole favorable to the French. The last battle was on the 27th Oc<sup>r</sup> in the Hunspruck, and ended in a victory on their side. The House of Rep<sup>s</sup>. are on direct taxes, which seem to be so much nauseated & feared by those who have created both the necessity & odium of them, that the project will miscarry. Hamilton, you will recollect assured the farmers that all the purposes of the Gov<sup>t</sup> could be answered without resorting to lands Houses or stock on farms. This deceptive statement with other devices of his administration, is rising up in judgment ag<sup>st</sup>. him, and will very probably soon blast the prospects which his ambition & intrigues have contemplated. It is certain that he has lost ground in N. Y. of late; & his treachery to Adams, will open the eyes of N. England.



[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Philad<sup>a</sup> Jan<sup>y</sup> 15, 97.

Mad. Mss.

Hond Sir

The last post brought me your favor of Jan<sup>y</sup>. 2<sup>d</sup>. It will be well for you to send on your list of articles wanted as soon as possible. I hope Kyser will not disappoint us in the Clover Seed: and that other chances at Fred<sup>g</sup> & elsewhere will be watched. As I shall get some at all events even here, I wish a Box to be made as soon as can be done. It will be the more necessary the more scanty the supply. I am astonished at the price given to J<sup>s</sup> Coleman for his fellow James. I am sure the profits I make will not justify any thing like that. His other fellow is slow, & infirm tho of good dispositions; and on the latter consideration & my desire to open land, I am willing to keep him as heretofore. If J. C. can get a better bargain I do not expect or wish him to make any sacrifice in my favor. I really do not see in the general prospect of things, or in my particular case, any reason for my enlarging the price.

I promised Doc<sup>f</sup> Priestly at his request last year, a sample of our red earth, which I forgot to bring with me. He lately reminded me of it, and I am anxious now to repair the omission. For this purpose I must beg you have a few pounds taken from the ridge back of the Garden, put into a box & sent immediately to M<sup>f</sup> Blair to come around by the first vessel. As I am particularly anxious on this point I hope it will not escape your attention.

Sam<sup>l</sup> French's claim is refused on the ground of his not having served to the end of the war, in the army of the U. S. without which the law does not give him a title to land. We are all as usual & offer our affections. Fanny writes as you will see by the inclosed.

Y<sup>R</sup> Aff<sup>E</sup> Son

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Philad<sup>a</sup>, Jany 29, 1797.

Mad. Mss.

Dear Sir

Yours conveying an unsealed letter to Mr. Tazewell came duly to hand, and will be turned to the use you wish. As you take the Philad<sup>a</sup> Gazette in which the Belligerent answer to Adêt's note has been printed in toto, I refer to that for the posture & prospect of things with France. The British party since this overt patronage of their cause, no longer wear the mask. A war with France & an alliance with G. B., enter both into print and conversation; and no doubt can be entertained that a push will be made to screw up the P. to that point before he quits the office. The strides latterly made with so much inconsistency as well as weakness in that direction, prepare us for receiving every further step without surprise. No further discovery has been made of the mind of the P. elect. I cannot prevail on myself to augur much that is consoling from him. Nothing from abroad; nor more at home than you will gather from the Newspapers.

[\[Back to Table of Contents\]](#)

TO JAMES MADISON.

Philad<sup>a</sup> March 12, 1797.

Mad. Mss.

Hon<sup>'D</sup> Sir

I wrote you by the last mail, and add this by M<sup>r</sup> Jefferson. Lest my last letter should by any possibility have miscarried, I repeat my request that my name may not be suffered to get on the Pole for the County election. If M<sup>r</sup> Jefferson should call & say anything to counteract my determination I hope it will be regarded as merely expressive of his own wishes on the subject, & that it will not be allowed to have the least effect. In declining to go into the Assembly should there really be a disposition to send me there I am sincere & inflexible. I hope I shall hear from you by the next mail, on the subject of Mordecai & the horses; being extremely anxious now to be on the journey, especially as we are to make visits to Berkeley & Fred<sup>'k</sup> on the way home. At present the roads are made bad by a snow succeeded by rain which has nearly carried it off; but the winds of March will soon put them in order. If the same weather should have happened with you it will have been a fine opportunity for sowing the Clover seed I sent, & which I hope got to hand in time for the purpose. The greater part of what I sent was purchased for a vessel intended to sail last fall, & cost 15 doll<sup>ts</sup> which with freight &c will exceed the Richmond price. I really think it was an error to be deterred by that price, considering the immense importance of the article, especially in laying a foundation for a meliorating plan of husbandry. The proper remedy for such a disappointment, I am told by a very experienced & intelligent farmer of this neighbourhood, is to sow in the fall on the stubble of the wheat or rye. He says this is his practice whenever he can not get seed for Spring sowing the fields or when the seed does not take effect, & that the protection & putrefaction of the stubble ensures a full crop the following year, so that there is no other loss than the first fall pasture. I consider this as a valuable hint, to beginners as it doubles the chance of getting Clover into a rotation.

You will see by the inclosed paper that the last acc<sup>ts</sup> from Paris respecting negotiations for peace & the temper of France towards this Country, are not favorable. This resentment is the fruit of the British Treaty, which many of its zealous advocates begin now to acknowledge was an unwise & unfortunate measure. The accounts are not authentic, & probably not accurate, but coming through so many different channels they are thought to be true in substance.

We continue well & unite in our usual offerings. Flour at 9½ dollars.

Your Affect<sup>E</sup> Son

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Feb<sup>y</sup>, 1798.

Mad. Mss.

Dear Sir,—

Since my last I have rec<sup>d</sup> yours of Feb<sup>y</sup> 8, with a continuation of the Gazettes down to that date, with the exception only mentioned already of the Gazette of Jan<sup>y</sup> 23. I am glad to find the public opinion to be taking the turn you describe on the subject of arming. For the public opinion alone can now save us from the rash measures of our hot-headed Executive: it being evident from some late votes of the House of Rep<sup>s</sup>, particularly in the choice of Managers for the Impeachment, that a majority there as well as in the Senate are ready to go as far as the controul of their constituents will permit. There never was perhaps a greater contrast between two characters than between those of the present President & his predecessor, altho' it is the boast & prop of the present that he treads in the steps of his predecessor. The one cool considerate & cautious, the other headlong & kindled into flame by every spark that lights on his passions: the one ever scrutinizing into the public opinion, and ready to follow where he could not lead it; the other insulting it by the most adverse sentiments & pursuits. W. a hero in the field, yet overweighing every danger in the Cabinet—A. without a single pretension to the character of a soldier, a perfect Quixotte as a statesman: the former chief magistrate pursuing peace every where with sincerity, tho' mistaking the means; the latter taking as much pains to get into war, as the former took to keep out of it. The contrast might be pursued into a variety of other particulars—the policy of the one in shunning connections with the arrangements of Europe, of the other in holding out the U. S. as a makeweight in the Balances of power; the avowed exultation of W. in the progress of liberty every where, & his eulogy on the Revolution & people of France posterior even to the bloody reign & fate of Robespierre—the open denunciations by Adams of the smallest disturbance of the ancient discipline order & tranquillity of despotism, &c &c &c. The affair of Lyon & Griswold<sup>1</sup> is bad eno' every way, but worst of all in becoming a topic of tedious & disgraceful debates in Congress. There certainly could be no necessity for removing it from the decision of the parties themselves before that tribunal, & its removal was evidently a sacrifice of the dignity of the latter to the party manœuvre of ruining a man whose popularity & activity were feared. If the state of the House suspended its rules in general, it was under no obligation to see any irregularity which did not force itself into public notice; and if Griswold be a man of the sword, he sh<sup>d</sup> not have permitted the step to be taken, if not, he does not deserve to be avenged by the House. No man ought to reproach another with cowardice, who is not ready to give proof of his own courage. I have taken some pains but in vain to find out a person who will engage to carry the Mail from Fred<sup>s</sup>. to Charlottesville. When I was in the neighbourhood of the latter I suggested the propriety of an effort there for the purpose, but do not know that it will be more successful. Our winter has continued without snow & rather dry, and our Wheat fields wear the most discouraging aspect.

Adieu.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

April 2d, 1798.

Mad. Mss.

Dear Sir,—

Since my last, I am in debt for your two favors of the 15th & 22, the Gazettes of the 3, 6 7 & 8 Ulto, with a regular continuation to the 22d—two statements from the Treasury Department, and Paine's letter to the French people & armies. The President's message<sup>1</sup> is only a further development to the public, of the violent passions, & heretical politics, which have been long privately known to govern him. It is to be hoped however that the H. of Rep<sup>s</sup> will not hastily eccho them. At least it may be expected that before war measures are instituted, they will recollect the principle asserted by 62 vs. 37, in the case of the Treaty, and insist on a full communication of the intelligence on which such measures are recommended. The present is a plainer, if it be not a stronger case, and if there has been sufficient defection to destroy the majority which was then so great & so decided, it is the worst symptom that has yet appeared in our Councils. The constitution supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the Legisl. But the Doctrines lately advanced strike at the root of all these provisions, and will deposit the peace of the Country in that Department which the Constitution distrusts as most ready without cause to renounce it. For if the opinion of the P. not the facts & proofs themselves are to sway the judgment of Congress, in declaring war, and if the President in the recess of Congr<sup>s</sup>. create a foreign mission, app<sup>t</sup>. the minister, & negotiate a War Treaty, without the possibility of a check even from the Senate, untill the measures present alternatives overruling the freedom of its judgment; if again a Treaty when made obliges the Legis. to declare war contrary to its judgment, and in pursuance of the same doctrine, a law declaring war, imposes a like moral obligation, to grant the requisite supplies until it be formally repealed with the consent of the P. & Senate, it is evident that the people are cheated out of the best ingredients in their Gov<sup>t</sup>, the safeguards of peace which is the greatest of their blessings. I like both your suggestions in the present crisis. Congress ought clearly to prohibit arming, & the P. ought to be brought to declare on what ground he undertook to grant an indirect licence to arm. The first instructions were no otherwise legal than as they were in pursuance of the law of Nations, & consequently in execution of the law of the land. The revocation of the instructions is a virtual change of the law, & consequently a usurpation by the Ex. of a legislative power. It will not avail to say that the law of Nations leaves this point undecided, & that every nation is free to decide it for itself. If this be the case, the regulation being a Legislative not an Executive one, belongs to the former, not the latter Authority; and comes expressly within the power, "to define the law of Nations," given to Congress by the Constitution. I do not expect however that the Constitutional party in the H. of R. is strong enoto do what ought to be done in the present instance. Your 2<sup>d</sup> idea that an adjournment for the purpose of consulting the constituents on the subject of war, is

more practicable because it can be effected by that branch alone if it pleases, & because an opposition to such a measure will be more striking to the public eye. The expedient is the more desirable as it will be utterly impossible to call forth the sense of the people generally before the season will be over, especially as the Towns, &c., where there can be most despatch in such an operation are on the wrong side, and it is to be feared that a partial expression of the public voice, may be misconstrued or miscalled, an evidence in favor of the war party. On what do you ground the idea that a decln of war requires ? of the Legislature? The force of your remark however is not diminished by this mistake, for it remains true, that measures are taking or may be taken by the Ex. that will end in war, contrary to the wish of the Body which alone can declare it.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

April 15, 1798.

Mad. Mss.

Dear Sir,—

My last answered yours of the 21, since which I recd on friday last your three favors of the 29 Ult. of Apl 5 & 6.<sup>1</sup> I have no reason to suspect that any of your letters have miscarried, or been opened by the way. I am less able to say whether mine have all reached you, as I have generally written them in haste, & neglected to keep a note of their dates. I will thank you to mention in your acknowledgement of this, whether you recd one from me inclosing a letter to F. A. Muhlenburg, & whether he certainly rec<sup>d</sup> it. It related to a case of humanity & required an answer which has never come to hand.

The effect of the P<sup>'s</sup> speech in F. is less to be wondered at, than the speech itself, with other follies of a like tendency is to be deplored. Still the mode & degree of resisting them is rather meeting folly with folly, than consulting the true dignity & interest which ought to prescribe such cases. The conduct of Taleyrand is so extraordinary as to be scarcely credible. I do not allude to its depravity, which, however heinous, is not without examples. Its unparalleled stupidity is what fills one with astonishment. Is it possible that a man of sagacity as he is admitted to be, who has lived long eno. in this Country to understand the nature of our Govt—who could not be unaware of the impossibility of secrecy & the improbability of success in pursuing his propositions thro' the necessary forms, who must have suspected the Ex. rather of a wish to seize pretexts for widening the breach between the two Republics, than to make use of any means however objectionable to reconcile their differences; who must have been equally suspicious of the probable inclination of some one or other of the Envoys—is it possible, that such a man under such circumstances, could have committed both his character & safety, by such a proposition? If the evidence be not perfectly conclusive, of which I cannot judge, the decision ought to be agst the evidence, rather than on the side of the infatuation. It is easy to foresee however the zeal & plausibility with which this part of the despatches will be inculcated, not only for the general purpose of enforcing the war measures of the Ex. but for the particular purpose of diverting the public attention from the other more important part, which shews the speech & conduct of the P. to be now the great obstacle to accommodation. This interesting fact must nevertheless finally take possession of thinking minds; and strengthen the suspicion, that whilst the Ex. were pursuing ostensible plans of reconciliation, and giving instructions which might wear that tendency, the success of them was indirectly counterworked by every irritation & disgust for which opportunities could be found in official speeches & messages, answers to private addresses harangues in Congress and the vilest insults & calumnies of Newspapers under the patronage of Government. The readiness with which the papers were communicated & the quarter proposing the call for them, would be entitled to praise, if a mass of other circumstances did not force a belief that the view in both, was more to inflame than to



inform the public mind. It is not improbable that the influence of the first impressions in checking the rising spirit in N. England, and bearing up the party of Jay in N. Y. whose reelection is brought into danger by the pestilent consequences experienced from his Treaty, had considerable share in the motive.

The negative declaration proposed by Mr. S.<sup>1</sup> is liable to so many specious objections, that I shall be surprised if a willing majority does not take advantage of them. In ordinary cases, the mode of proceeding is certainly ineligible. But it seems equally obvious that cases may arise, for which that is the proper one. Three of these occur, where there does not appear any room to doubt on the subject. 1. where nothing less than a declaration of pacific intentions from the department entrusted with the power of war, will quiet the apprehensions of the constituent body, or remove an uncertainty which subjects one part of them to the speculating arts of another. 2. where it may be a necessary antidote to the hostile measures or language of the Ex. Department. If war sentiments be delivered in a speech to Congress which admits of a direct answer, & the sentiments of Congress be against war it is not doubted that the counter sentiments might & ought to be expressed in the answer. Where an extra message delivers like sentiments, and custom does not permit a like explanation of the sentiments of the Legislature, there does not appear any equivalent mode of making it, except that of an abstract vote. 3. Where public measures or appearances, may mislead another nation into distrust of the real object of them, the error ought to be corrected; and in our Gov<sup>t</sup>—where the question of war or peace lies with Congress, a satisfactory explanation cannot issue from any other Department. In Govts where the power of deciding on war is an Ex. prerogative it is not unusual for explanations of this kind to be given either on the demands of foreign Nations, or in order to prevent their improper suspicions. Should a demand of this sort be at any time made on our Gov<sup>t</sup>.—the answer must proceed, if thro' an Executive functionary, from the war prerogative, that is, from Congr—and if an answer could be given, on demand, a declaration without a demand may certainly be made with equal propriety, if there be equal occasion for it. The discovery of Mr. A.'s dislike to the City of Washington will cause strong emotions. What sort of conscience is that which feels an obligation on the Gov<sup>t</sup> to remove thither, and a liberty to quit it the next day? The objection to the magnificence of the President's House belongs to a man of very different principles from those of Mr. A. The increase of expence therefore without a probable increase of salary in proportion, must be the real ground of objection. I have looked over the two papers which you consider as so threatening in their tendency.<sup>1</sup> They do not, I own, appear to me exactly in the same light; nor am I by any means satisfied that they are from the pen you ascribe them to. If they are, there certainly has been a disguise aimed at in many features of the stile. I differ still more from you as to the source from which an antidote, if necessary, ought to come. But waiving every thing of that sort, there is really a crowd & weight of *indispensable* occupations, on my time, which it would be very tedious to explain, but wch I pledge myself, will justify me in leaving such tasks to others, not only commanding more time for them, but in every respect more favorably situated for executing them with advantage & effect. And it is with no small pleasure I observe that some pens are employed which promise the public all the lights with respect to their affairs, which can be conveyed to them thro' the channels of the press.

It is now become certain that not half crops of wheat can be made. Many will not get back more than their seed, & some not even that. We have lately had a severe spell of N. E. rain, which in this neighbourhood swept off at least 15 Per C<sup>t</sup> of the Cattle; and from accts in different directions it appears to have been equally fatal. We are at present in the midst of a cold N. W. spell, which menaces the fruit. The tops of the Blue Mountains are tinged with snow, & the Therm<sup>r</sup> this morning was at 31°. It does not appear however that the mischief is yet done. The coming night, if no sudden change takes place, must, I think, be fatal.

If Mr. Bailey has not yet taken up his note, be so good as to have the inclosed forwarded to him.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

May 20, 1798.

Mad. Mss.

The Alien bill<sup>2</sup> proposed in the Senate is a monster that must forever disgrace its parents. I should not have supposed it possible that such an one could have been engendered in either House, & still persuade myself, that it cannot possibly be fathered by both. It is truly to be deplored that a standing army should be let in upon us by the absence of a few sound votes. It may however all be for the best. These addresses to the feelings of the people from their enemies may have more effect in opening their eyes, than all the arguments addressed to their understandings by their friends. The President, also, seems to be co-operating for the same purpose. Every answer he gives to his addressers unmasks more and more his principles & views. His language to the young men at Ph<sup>a</sup>. is the most abominable & degrading that could fall from the lips of the first magistrate of an independent people, & particularly from a Revolutionary patriot. It throws some light on his meaning when he remarked to me, “that there was not a single principle the same in the American & French Revolutions;” & on my alluding to the contrary sentiment of his predecessor expressed to Adêt on the presentment of the Colours, added, “that it was false let who would express it.” The abolition of Royalty was it seems not one of his Revolutionary principles. Whether he always made this profession is best known to those, who knew him in the year 1776.—The turn of the elections in N. Y. is a proof that the late occurrences have increased the noise only & not the number of the Tory party. Besides the intrinsic value of the acquisition, it will encourage the hopes & exertions in other States. You will see by the Newspapers the turn which a Townmeeting took in Fredericks<sup>bg</sup>. I forgot to acknowledge the pamphlet containing the last Despatch from the Envoys recd with your letter of the 10th. It is evidently more in the forensic than Diplomatic stile, and more likely in some of its reasonings to satisfy an American Jury than the French Government. The defence of the provision article is the most shallow that has appeared on that subject. In some instances the reasoning is good, but so tedious and tautologous as to insult the understanding as well as patience of the Directory, if really intended for them, and not for the partial ear of the American public. The want of rain begins to be severely felt, and every appearance indicates a continuance of it. Since the 10th of April there has fallen but one inch of water, except a very partial shower of less than  $\frac{1}{2}$  an inch.

Adieu. Affec<sup>Ly</sup>

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

June 3, 1798.

Mad. Mss.

Dear Sir,—

Friday's mail brought me your favor of May 24. The letter from S. Bourne had previously reached us thro' a Fred<sup>s</sup> paper. It is corroborated I find by several accounts from different sources. These rays in the prospect will if I can judge from the sensations in this quarter, have an effect on the people very different from that which appears in the public councils. Whilst it was expected that the unrelenting temper of France would bring on war, the mask of peace was worn by the war party. Now that a contrary appearance on the side of France is intimated, the mask is dropped, and the lye openly given to their own professions by pressing measures which must force France into War. I own I am not made very sanguine by the reported amendment in the posture of our Negotiators, first because the account may not be very correct, and next because there are real difficulties to be overcome, as well as those which the pride of one or other of the parties may create, not to mention the probable arrival of what has passed here before the scene is closed there. But the palpable urgency of the Ex. & its partizans to press war in proportion to the apparent chance of avoiding it, ought to open every eye to the hypocrisy which has hitherto deceived so many good people. Should no such consequence take place it will be a proof of infatuation which does not admit of human remedy. It is said, and there are circumstances which make me believe it, that the hot-headed proceedings of Mr. A. are not well relished in the cool climate of Mount Vernon. This I think may fairly be inferred from the contrast of characters and conduct, but if it has been expressed it must have been within a very confidential circle. Since my last there has been a sequel of fine & extensive rains. We have had a tolerable, tho' not an equal or sufficient share of them. Your neighbourhood, I fancy, has fared better.

If Barnes has not sent off the Glass pullies &c. please to order as much of the proper chord as will be wanted for the latter.

Very Aff<sup>Y</sup> Y<sup>R</sup>

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

June 10, 1798.

Mad. Mss.

Dear Sir,—

I have duly received your favor of the 31 Ult: & am glad to find mine are recd as regularly as yours. The law for capturing French privateers may certainly be deemed a formal commencement of hostilities, and renders all hope of peace vain, unless a progress in amicable arrangements at Paris not to be expected, should have secured it agst the designs of our Govern<sup>t</sup>. If the Bill suspending commerce with the French Dominions passes, as it doubtless will, the French Government will be confirmed in their suspicion begotten by the British Treaty, of our coalition in the project of starving their people, and the effect of the measure will be to feed the English at the expence of the farmers of this Country. Already flour is down, I hear, at 4 dollars a barrel. How far the views of the Gov<sup>t</sup> will be answd by annihilating the ability to pay a land tax at the very moment of imposing it, will be best explained by the experim<sup>t</sup>. Looking beyond the present moment it may be questioned whether the interest of G. B. will be as much advanced by the sacrifice of our trade with her enemies as may be intended. The use of her manufactures here depends on our means of payment, & then on the sale of our produce to the markets of her enemies. There is too much passion, it seems in our Councils to calculate consequences of any sort. The only hope is that its violence by defeating itself may save the Country. The answers of Mr. Adams to his addressers form the most grotesque scene in the tragicomedy acting by the Govern<sup>t</sup>. They present not only the grossest contradictions to the maxims measures & language of his predecessor and the real principles & interests of his Constituents, but to himself. He is verifying compleatly the last feature in the character drawn of him by Dr. F., however his title may stand to the two first, “Always an honest man, often a wise one, but sometimes wholly out of his senses.” I thank you for the offspring of the Senatorial Muse, which shall be taken care of. It is truly an unique. It is not even prose run mad.<sup>1</sup> Monroe is much at a loss what course to take in consequence of the wicked assault on him by Mr. A. and I am as much so as to the advice that ought to be given him. It deserves consideration perhaps that if the least occasion be furnished for reviving Governmental attention to him, the spirit of party revenge may be wreaked thro’ the forms of the Constitution. A majority in the H. of R. & ? of the Senate seem to be ripe for everything. A temperate & dignified animadversion on the proceeding, published with his name, as an appeal to the candor & justice of his fellow Citizens agst the wanton & unmanly treatment, might perhaps be of use. But it w<sup>d</sup> be difficult to execute it in a manner to do justice to himself, & inflict it on his adversary, without clashing with the temper of the moment. Hoping for the pleasure of congratulating you soon, on your release from your painful situation, I close with the most affectionate assurance that I am yours<sup>2</sup>

[\[Back to Table of Contents\]](#)

## RESOLUTIONS OF 1798.1

In the House of Delegates

Friday, December 21, 1798.

[1.] *Resolved*, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic, and that they will support the Government of the United States in all measures warranted by the former.

[2.] That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

[3.] That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

[4.] That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

[5.] That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the “Alien and Sedition Acts,” passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government and which, by uniting legislative and judicial powers to those of [the] executive, subvert the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power

not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto,—a power which more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

[6.] That this State having by its Convention which ratified the Federal Constitution expressly declared that, among other essential rights, “the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States,” and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution,—it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

[7.] That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

[8.] That the Governor be desired to transmit a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

Attest:

John Stewart.

1798, December 24. Agreed to by the Senate.

H. Brooke.

A true copy from the original deposited in the office of the General Assembly.

John Stewart, *Keeper of Rolls*.

[\[Back to Table of Contents\]](#)

## RESOLUTIONS OF 1799.

In the House of Delegates,

Friday, January 4, 1799.

*Resolved*, That the General Assembly of Virginia will co-operate with the authorities of the United States in maintaining the independence, Union, and Constitution thereof, against the hostilities or intrigues of all foreign Powers whatsoever; and that although differences of opinion do exist in relation to internal and domestic measures, yet a charge that there is a party in this Commonwealth under the influence of any foreign Power is unfounded and calumnious.

*Resolved*, That the General Assembly do, and will always, behold with indignation, depredations on our commerce, insults on our citizens, impressments of our seamen, or any other injuries committed on the people or Government of the United States by foreign nations.

*Resolved*, Nevertheless, that our security from invasion and the force of our militia render a standing army unnecessary; that the policy of the United States forbids a war of aggression; that our whole reliance ought to be on ourselves; and, therefore, that while we will repel invasion at every hazard, we shall deplore and deprecate the evils of war for any other cause.

*Resolved*, That a copy of the foregoing resolutions be sent to each of the Senators and Representatives of this State in Congress.

Attest:

John Stewart, C. H. D.

1799, January 10th. Agreed to by the Senate.

H. Brooke, C. S.

A true copy of the original deposited in the office of the General Assembly.

John Stewart, *Keeper of Rolls*.



[\[Back to Table of Contents\]](#)

## ADDRESS OF THE GENERAL ASSEMBLY TO THE PEOPLE OF THE COMMONWEALTH OF VIRGINIA.

Fellow-Citizens,—

Unwilling to shrink from our representative responsibility, conscious of the purity of our motives, but acknowledging your right to supervise our conduct, we invite your serious attention to the emergency which dictated the subjoined resolutions. Whilst we disdain to alarm you by ill-founded jealousies, we recommend an investigation, guided by the coolness of wisdom, and a decision bottomed on firmness but tempered with moderation.

It would be perfidious in those entrusted with the guardianship of the State sovereignty, and acting under the solemn obligation of the following oath, “I do swear that I will support the Constitution of the United States,” not to warn you of encroachments which, though clothed with the pretext of necessity, or disguised by arguments of expediency, may yet establish precedents which may ultimately devote a generous and unsuspecting people to all the consequences of usurped power.

Encroachments springing from a government whose organization can not be maintained without the co-operation of the States, furnish the strongest excitements upon the State Legislatures to watchfulness, and impose upon them the strongest obligation to preserve unimpaired the line of partition.

The acquiescence of the States under infractions of the federal compact, would either beget a speedy consolidation, by precipitating the State governments into impotency and contempt; or prepare the way for a revolution, by a repetition of these infractions, until the people are roused to appear in the majesty of their strength. It is to avoid these calamities that we exhibit to the people the momentous question, whether the Constitution of the United States shall yield to a construction which defies every restraint and overwhelms the best hopes of republicanism.

Exhortations to disregard domestic usurpation, until foreign danger shall have passed, is an artifice which may be forever used; because the possessors of power, who are the advocates for its extension, can ever create national embarrassments, to be successively employed to soothe the people into sleep, whilst that power is swelling, silently, secretly, and fatally. Of the same character are insinuations of a foreign influence, which seize upon a laudable enthusiasm against danger from abroad, and distort it by an unnatural application, so as to blind your eyes against danger at home.

The sedition act presents a scene which was never expected by the early friends of the Constitution. It was then admitted that the State sovereignties were only diminished by powers specifically enumerated, or necessary to carry the specified powers into effect. Now, Federal authority is deduced from implication; and from the existence of State law, it is inferred that Congress possess a similar power of legislation; whence

Congress will be endowed with a power of legislation in all cases whatsoever, and the States will be stripped of every right reserved, by the concurrent claims of a paramount Legislature.

The sedition act is the offspring of these tremendous pretensions, which inflict a death-wound on the sovereignty of the States.

For the honor of American understanding, we will not believe that the people have been allured into the adoption of the Constitution by an affectation of defining powers, whilst the *preamble* would admit a construction which would erect the will of Congress into a power paramount in all cases, and therefore limited in none. On the contrary, it is evident that the objects for which the Constitution was formed were deemed attainable only by a particular enumeration and specification of each power granted to the Federal Government; reserving all others to the people, or to the States. And yet it is in vain we search for any specified power embracing the right of legislation against the freedom of the press.

Had the States been despoiled of their sovereignty by the generality of the preamble, and had the Federal Government been endowed with whatever they should judge to be instrumental towards union, justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers.

It is vicious in the extreme to calumniate meritorious public servants; but it is both artful and vicious to arouse the public indignation against calumny in order to conceal usurpation. Calumny is forbidden by the laws, usurpation by the Constitution. Calumny injures individuals, usurpation, States. Calumny may be redressed by the common judicatures; usurpation can only be controlled by the act of society. Ought *usurpation*, which is most mischievous, to be rendered less hateful by *calumny*, which, though injurious, is in a degree less pernicious? But the laws for the correction of calumny were not defective. Every libellous writing or expression might receive its punishment in the State courts, from juries summoned by an officer, who does not receive his appointment from the President, and is under no influence to court the pleasure of Government, whether it injured public officers or private citizens. Nor is there any distinction in the Constitution empowering Congress exclusively to punish calumny directed against an officer of the General Government; so that a construction assuming the power of protecting the reputation of a citizen officer will extend to the case of any other citizen, and open to Congress a right of legislation in every conceivable case which can arise between individuals.

In answer to this, it is urged that every Government possesses an inherent power of self-preservation, entitling it to do whatever it shall judge necessary for that purpose.

This is a repetition of the doctrine of implication and expediency in different language, and admits of a similar and decisive answer, namely, that as the powers of Congress are defined, powers inherent, implied, or expedient, are obviously the creatures of ambition; because the care expended in defining powers would otherwise have been superfluous. Powers extracted from such sources will be indefinitely

multiplied by the aid of armies and patronage, which, with the impossibility of controlling them by any demarcation, would presently terminate reasoning, and ultimately swallow up the State sovereignties.

So insatiable is a love of power that it has resorted to a distinction between the freedom and licentiousness of the press for the purpose of converting the third amendment of the Constitution, which was dictated by the most lively anxiety to preserve that freedom, into an instrument for abridging it. Thus usurpation even justifies itself by a precaution against usurpation; and thus an amendment universally designed to quiet every fear is adduced as the source of an act which has produced general terror and alarm.

The distinction between liberty and licentiousness is still a repetition of the Protean doctrine of implication, which is ever ready to work its ends by varying its shape. By its help, the judge as to what is licentious may escape through any constitutional restriction. Under it men of a particular religious opinion might be excluded from office, because such exclusion would not amount to an establishment of religion, and because it might be said that their opinions are licentious. And under it Congress might denominate a religion to be heretical and licentious, and proceed to its suppression. Remember that precedents once established are so much positive power; and that the nation which reposes on the pillow of political confidence, will sooner or later end its political existence in a deadly lethargy. Remember, also, that it is to the press mankind are indebted for having dispelled the clouds which long encompassed religion, for disclosing her genuine lustre, and disseminating her salutary doctrines.

The sophistry of a distinction between the liberty and the licentiousness of the press is so forcibly exposed in a late memorial from our late envoys to the Minister of the French Republic, that we here present it to you in their own words:

“The genius of the Constitution, and the opinion of the people of the United States, cannot be overruled by those who administer the Government. Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplates with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this *liberty* is often carried to excess; that it has sometimes degenerated into *licentiousness*, is seen and lamented, *but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measures might be which might correct without enslaving the press, they have never yet been devised in America.* No regulations exist which enable the Government to suppress whatever calumnies or invectives any individual may choose to offer to the public eye, or to punish such calumnies and invectives otherwise than by a legal prosecution in courts which are alike open to all who consider themselves as injured.”

As if we were bound to look for security from the personal probity of Congress amidst the frailties of man, and not from the barriers of the Constitution, it has been

urged that the accused under the sedition act is allowed to prove the truth of the charge. This argument will not for a moment disguise the unconstitutionality of the act, if it be recollected that opinions as well as facts are made punishable, and that the truth of an opinion is not susceptible of proof. By subjecting the truth of opinion to the regulation, fine, and imprisonment, to be inflicted by those who are of a different opinion, the free range of the human mind is injuriously restrained. The sacred obligations of religion flow from the due exercise of opinion, in the solemn discharge of which man is accountable to his God alone; yet, under this precedent the truth of religion itself may be ascertained, and its pretended licentiousness punished by a jury of a different creed from that held by the person accused. This law, then, commits the double sacrilege of arresting reason in her progress towards perfection, and of placing in a state of danger the free exercise of religious opinions. But where does the Constitution allow Congress to create crimes and inflict punishment, provided they allow the accused to exhibit evidence in his defense? This doctrine, united with the assertion, that sedition is a common law offence, and therefore within the correcting power of Congress, opens at once the hideous volumes of penal law, and turns loose upon us the utmost invention of insatiable malice and ambition, which, in all ages, have debauched morals, depressed liberty, shackled religion, supported despotism, and deluged the scaffold with blood.

All the preceding arguments, arising from a deficiency of constitutional power in Congress, apply to the alien act; and this act is liable to other objections peculiar to itself. If a suspicion that aliens are dangerous constitute the justification of that power exercised over them by Congress, then a similar suspicion will justify the exercise of a similar power over natives; because there is nothing in the Constitution distinguishing between the power of a State to permit the residence of natives and of aliens. It is, therefore, a right originally possessed, and never surrendered, by the respective States, and which is rendered dear and valuable to Virginia, because it is assailed through the bosom of the Constitution, and because her peculiar situation renders the easy admission of artisans and laborers an interest of vast importance.

But this bill contains other features, still more alarming and dangerous. It dispenses with the trial by jury; it violates the judicial system; it confounds legislative, executive, and judicial powers; it punishes without trial; and it bestows upon the President despotic power over a numerous class of men. Are such measures consistent with our constitutional principles? And will an accumulation of power so extensive in the hands of the Executive, over aliens, secure to natives the blessings of republican liberty?

If measures can mould governments, and if an uncontrolled power of construction is surrendered to those who administer them, their progress may be easily foreseen, and their end easily foretold. A lover of monarchy, who opens the treasures of corruption by distributing emolument among devoted partisans, may at the same time be approaching his object and deluding the people with professions of republicanism. He may confound monarchy and republicanism, by the art of definition. He may varnish over the dexterity which ambition never fails to display, with the pliancy of language, the seduction of expediency, or the prejudices of the times; and he may come at length to avow that so extensive a territory as that of the United States can only be governed

by the energies of monarchy; that it cannot be defended, except by standing armies; and that it cannot be united except by consolidation.

Measures have already been adopted which may lead to these consequences. They consist—

In fiscal systems and arrangements, which keep a host of commercial and wealthy individuals imbedded, and obedient to the mandates of the treasury.

In armies and navies, which will, on the one hand, enlist the tendency of man to pay homage to his fellow-creature who can feed or honor him; and on the other, employ the principle of fear, by punishing imaginary insurrections, under the pretext of preventive justice.

In the extensive establishment of a volunteer militia, rallied together by a political creed, armed and officered by executive power, so as to deprive the States of their constitutional right to appoint militia officers, and to place the great bulk of the people in a defenceless situation.

In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy both by indulgencies and severities; and can act as spies over the free exercise of human reason.

In destroying, by the sedition act, the responsibility of public servants and public measures to the people, thus retrograding towards the exploded doctrine “that the administrators of the Government are the masters, and not the servants, of the people,” and exposing America, which acquired the honour of taking the lead among nations towards perfecting political principles, to the disgrace of returning first to ancient ignorance and barbarism.

In exercising a power of depriving a portion of the people of that representation in Congress bestowed by the Constitution.

In the adoration and efforts of some known to be rooted in enmity to Republican Government, applauding and supporting measures by every contrivance calculated to take advantage of the public confidence, which is allowed to be ingenious, but will be fatally injurious.

In transferring to the Executive important legislative powers; particularly the power of raising armies, and borrowing money without limitation of interest.

In restraining the freedom of the press, and investing the Executive with legislative, executive, and judicial powers, over a numerous body of men.

And, that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the Constitution as will rapidly remove every restraint upon Federal power.

Let history be consulted; let the man of experience reflect: nay, let the artificers of monarchy be asked what further materials they can need for building up their favorite system.

These are solemn but painful truths; and yet we recommend it to you not to forget the possibility of danger from without, although danger threatens us from within. Usurpation is indeed dreadful; but against foreign invasion, if that should happen, let us rise with hearts and hands united, and repel the attack with the zeal of freemen who will strengthen their title to examine and correct domestic measures, by having defended their country against foreign aggression.

Pledged as we are, fellow-citizens, to these sacred engagements, we yet humbly and fervently implore the Almighty Disposer of events to avert from our land war and usurpation, the scourges of mankind; to permit our fields to be cultivated in peace; to instil into nations the love of friendly intercourse; to suffer our youth to be educated in virtue, and to preserve our morality from the pollution invariably incident to habits of war; to prevent the laborer and husbandman from being harassed by taxes and imposts; to remove from ambition the means of disturbing the commonwealth; to annihilate all pretexts for power afforded by war; to maintain the Constitution; and to bless our nation with tranquillity, under whose benign influence we may reach the summit of happiness and glory, to which we are destined by *nature* and *nature's God*.

Attest:

John Stewart, C. H. D.

1799, January 23. Agreed to by the Senate.

H. Brooke, C. S.

A true copy from the original deposited in the office of the General Assembly.

John Stewart, *Keeper of Rolls*.

[\[Back to Table of Contents\]](#)

## REPORT ON THE RESOLUTIONS. 1

House of Delegates, Session of 1799-1800.

*Report of the Committee to whom were referred the Communications of various States, relative to the Resolutions of the last General Assembly of this State, concerning the Alien and Sedition Laws.*

Whatever room might be found in the proceedings of some of the States, who have disapproved of the resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December, 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty, as well as dignity, of the General Assembly, to hasten an oblivion of every circumstance which might be construed into a diminution of mutual respect, confidence, and affection among the members of the Union.

The committee have deemed it a more useful task to revise, with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and to inquire whether there be any errors of fact, of principle, or of reasoning, which the candor of the General Assembly ought to acknowledge and correct.

The first of the resolutions is in the words following:

*“Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States and the Constitution of this State against every aggression, either foreign or domestic, and that they will support the Government of the United States in all measures warranted by the former.”*

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the Constitution of the United States, and of their own State, against every aggression, both foreign and domestic, and to support the Government of the United States in all measures warranted by their Constitution, are duties which the General Assembly ought always to feel, and to which, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their next resolution—

*“The General Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that for this end it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence, and the public happiness.”*

The observation just made is equally applicable to this solemn declaration of warm attachment to the Union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the Union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which can alone secure its existence, and the public happiness thereon depending.

The third resolution is in the words following:

“That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.”

On this resolution the committee have bestowed all the attention which its importance merits. They have scanned it not merely with a strict, but with a severe eye; and they feel confidence in pronouncing that, in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences.

The resolution declares, *first*, that “it views the powers of the Federal Government as resulting from the compact to which the States are parties”; in other words, that the Federal powers are derived from the Constitution; and that the Constitution is a compact to which the States are parties.

Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the committee are not unapprized of a late doctrine which opens another source of Federal powers not less extensive and important than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The committee satisfy themselves here with briefly, remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground that the powers not given to the Government were withheld from it, and that if any doubt could have existed on this subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the 12th amendment, now a part of the Constitution, which expressly declares “that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The other position involved in this branch of the resolution, namely, “that the States are parties to the Constitution” or compact, is, in the judgment of the committee, equally free from objection. It is indeed true that the term “States” is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which



it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments established by those societies; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it where the true sense can be collected with certainty from the different applications. In the present instance, whatever different construction of the term "States," in the resolution, may have been entertained, all will at least concur in that last mentioned; because in that sense the Constitution was submitted to the "States"; in that sense the "States" ratified it; and in that sense of the term "States" they are consequently parties to the compact from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government "as limited by the plain sense and intention of the instrument constituting that compact," and "as no farther valid than they are authorized by the grants therein enumerated." It does not seem possible that any just objection can lie against either of these causes. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other, to a declaration that it ought to have the execution and effect intended by them. If the powers granted be valid, it is solely because they are granted; and if the granted powers are valid because granted, all other powers not granted must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer "that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, because the States, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed either in a hasty manner or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, where,

by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole—every part being deemed a condition of every other part, and of the whole—it is always laid down that the breach must be both wilful and material, to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only deeply essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition “the case of a *deliberate, palpable, and dangerous* breach of the Constitution by the exercise of *powers not granted* by it.” It must be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the Constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly it must be a case not resulting from a partial consideration or hasty determination, but a case stamped with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the Constitution, would justify the interposition of the parties to it. As cases might easily be stated which none would contend ought to fall within that description, cases, on the other hand, might with equal ease be stated, so flagrant and so fatal as to unite every opinion in placing them within the description.

But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate, palpable, and dangerous* nature. It specifies the object of the interposition which it contemplates to be solely that of arresting the progress of the *evil* of usurpation, and of maintaining the authorities, rights, and liberties appertaining to the States as parties to the Constitution.

From this view of the resolution it would seem inconceivable that it can incur any just disapprobation from those who, laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it in interposing even so far as to arrest the progress of the evil, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution, in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

On this objection it might be observed, *first*, that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of

the judicial department; *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection, is that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise or sanction dangerous powers beyond the grant of the Constitution, and, consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another; by the judiciary as well as by the executive or the legislature.

However true, therefore, it may be that the judicial department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annual the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.

The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy to which republics are liable, as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines not unfrequent at the present day with those which characterized the epoch of our Revolution, and which form the basis of our republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unseasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind, and at no time, perhaps, more necessary than at present.

The fourth resolution stands as follows:

“That the General Assembly doth also express its deep regret that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases, (which, having been copied from the very limited grant of powers in the former articles of Confederation, were the less liable to be misconstrued,) so as to destroy the meaning

and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed, monarchy.”

The *first* question here to be considered is, whether a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter.

The General Assembly having declared their opinion merely by regretting, in general terms, that forced constructions for enlarging the Federal powers have taken place, it does not appear to the committee necessary to go into a specification of every instance to which the resolution may allude. The Alien and Sedition Acts being particularly named in a succeeding resolution, are of course to be understood as included in the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the Bank Law, which, from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force; and the Carriage Tax, distinguished also by circumstances in its history having a similar tendency. Those instances alone, if resulting from forced construction, and calculated to enlarge the powers of the Federal Government, as the committee cannot but conceive to be the case, sufficiently warrant this part of the resolution. The committee have not thought it incumbent on them to extend their attention to laws which have been objected to, rather as varying the constitutional distribution of powers in the Federal Government, than as an absolute enlargement of them; because instances of this sort, however important in their principles and tendencies, do not appear to fall strictly within the text under review.

The other questions presenting themselves are—1. Whether indications have appeared of a design to expound certain general phrases copied from the “Articles of Confederation,” so as to destroy the effect of the particular enumeration explaining and limiting their meaning. 2. Whether this exposition would by degrees consolidate the States into one sovereignty. 3. Whether the tendency and result of this consolidation would be to transform the republican system of the United States into a monarchy.

1. The general phrases here meant, must be those “of providing for the common defence and general welfare.”

In the “Articles of Confederation,” the phrases are used as follows, in Article VIII: “All charges of war, and all other expenses that shall be incurred *for the common defence and general welfare*, and allowed by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall from time to time direct and appoint.”

In the existing Constitution they make the following part of Section 8: “The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States.”

This similarity in the use of these phrases, in the two great Federal charters, might well be considered as rendering their meaning less liable to be misconstrued in the latter; because it will scarcely be said that in the former they were ever understood to be either a general grant of power, or to authorize the requisition or application of money by the old Congress to the common defence and general welfare, except in the cases afterwards enumerated, which explained and limited their meaning; and if such was the limited meaning attached to these phrases in the very instrument revised and re-modeled by the present Constitution, it can never be supposed that, when copied into this Constitution, a different meaning ought to be attached to them.

That, notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the Constitution so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the Debates of the Federal Legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases in their indefinite meaning.

To these indications might be added, without looking further, the official Report on Manufactures, by the late Secretary of the Treasury, made on the 5th of December, 1791, and the Report of a Committee of Congress, in January, 1797, on the promotion of Agriculture. In the first of these it is expressly contended to belong “to the discretion of the National Legislature to pronounce upon the objects which concern the *general welfare*, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the National Councils, *as far as regards an application of money*.” The latter Report assumes the same latitude of power in the national councils, and applies it to the encouragement of agriculture by means of a society to be established at the seat of Government. Although neither of these Reports may have received the sanction of a law carrying it into effect, yet, on the other hand, the extraordinary doctrine contained in both has passed without the slightest positive mark of disapprobation from the authority to which it was addressed.

Now, whether the phrases in question be construed to authorize every measure relating to the common defence and general welfare, as contended by some—or every measure only in which there might be an application of money, as suggested by the caution of others—the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follow these general phrases in the Constitution; for it is evident that there is not a single power whatever which may not have some reference to the common defence or the general welfare; nor a power of any magnitude, which, in its exercise, does not involve or admit an application of money. The government, therefore, which possesses power in either one or other of these extents, is a government without the limitations formed by a

particular enumeration of powers; and, consequently, the meaning and effect of this particular enumeration is destroyed by the exposition given to these general phrases.

This conclusion will not be affected by an attempt to qualify the power over the “general welfare,” by referring it to cases where the *general welfare* is beyond the reach of *separate* provisions by the *individual States*, and leaving to these their jurisdictions in cases to which their separate provisions may be competent; for, as the authority of the individual States must in all cases be incompetent to general regulations operating through the whole, the authority of the United States would be extended to every object relating to the general welfare which might, by any possibility, be provided for by the general authority. This qualifying construction, therefore, would have little, if any, tendency to circumscribe the power claimed under the latitude of the terms “general welfare.”

The true and fair construction of this expression, both in the original and existing Federal compacts, appears to the committee too obvious to be mistaken. In both, the Congress is authorized to provide money for the common defence and *general welfare*. In both, is subjoined to this authority an enumeration of the cases to which their powers shall extend. Money cannot be applied to the *general welfare*, otherwise than by an application of it to some *particular* measure conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with and is enforced by the clause in the Constitution which declares that “no money shall be drawn from the Treasury, but in consequence of appropriations by law.” An appropriation of money to the general welfare would be deemed rather a mockery than an observance of this constitutional injunction.

2. Whether the exposition of the general phrases here combatted would not by degrees consolidate the States into one sovereignty, is a question concerning which the committee can perceive little room for difference of opinion. To consolidate the States into one sovereignty, nothing more can be wanted than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States to all cases of the “general welfare”—that is to say, *to all cases whatever*.

3. That the obvious tendency and inevitable result of a consolidation of the States into one sovereignty, would be to transform the republican system of the United States into a monarchy, is a point which seems to have been sufficiently decided by the general sentiment of America. In almost every instance of discussion relating to the consolidation in question, its certain tendency to pave the way to monarchy seems not to have been contested. The prospect of such a consolidation has formed the only topic of controversy. It would be unnecessary, therefore, for the committee to dwell long on the reasons which support the position of the General Assembly. It may not be improper, however, to remark two consequences evidently flowing from an extension of the Federal powers to every subject falling within the idea of the “general welfare.”

One consequence must be, to enlarge the sphere of discretion allotted to the Executive Magistrate. Even within the legislative limits properly defined by the Constitution, the difficulty of accommodating legal regulations to a country so great in extent and so various in its circumstances has been much felt, and has lead to occasional investments of power in the Executive, which involve perhaps as large a portion of discretion as can be deemed consistent with the nature of the Executive trust. In proportion as the objects of legislative care might be multiplied, would the time allowed for each be diminished, and the difficulty of providing uniform and particular regulations for all be increased. From these sources would necessarily ensue a greater latitude to the agency of that department which is always in existence, and which could best mould regulations of a general nature so as to suit them to the diversity of particular situations. And it is in this latitude, as a supplement to the deficiency of the laws, that the degree of Executive prerogative materially consists.

The other consequence would be, that of an excessive augmentation of the offices, honors, and emoluments, depending on the Executive will. Add to the present legitimate stock all those of every description which a consolidation of the States would take from them and turn over to the Federal Government, and the patronage of the Executive would necessarily be as much swelled in this case as its prerogative would be in the other.

This disproportionate increase of prerogative and patronage must, evidently, either enable the Chief Magistrate of the Union, by quiet means, to secure his re-election from time to time, and finally to regulate the succession as he might please; or, by giving so transcendent an importance to the office, would render the elections to it so violent and corrupt, that the public voice itself might call for an hereditary in place of an elective succession. Whichever of these events might follow, the transformation of the republican system of the United States into a monarchy, anticipated by the General Assembly from a consolidation of the States into one sovereignty, would be equally accomplished; and whether it would be into a mixed or an absolute monarchy might depend on too many contingencies to admit of any certain foresight.

The resolution next in order is contained in the following terms:

“That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the ‘Alien and Sedition Acts,’ passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of a free Government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which, more than any other, ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.”

The subject of this resolution having, it is presumed, more particularly led the General Assembly into the proceedings which they communicated to the other States, and being in itself of peculiar importance, it deserves the most critical and faithful investigation, for the length of which no other apology will be necessary.

The subject divides itself into—*first*, “The Alien Act”; *secondly*, “The Sedition Act.”

Of the “Alien Act,” it is affirmed by the resolution—1st. That it exercises a power nowhere delegated to the Federal Government. 2d. That it unites legislative and judicial powers to those of the Executive. 3d. That this union of power subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the Federal Constitution.

In order to clear the way for a correct view of the first position several observations will be premised.

1. In the first place, it is to be borne in mind that it being a characteristic feature of the Federal Constitution, as it was originally ratified, and an amendment thereto having precisely declared, “That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people”; it is incumbent in this as in every other exercise of power by the Federal Government, to prove from the Constitution that it grants the particular power exercised.

The next observation to be made is, that much confusion and fallacy have been thrown into the question by blending the two cases of *aliens, members of a hostile nation*, and *aliens, members of friendly nations*. These two cases are so obviously and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded; and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of Congress, passed at the same session, and comprised in the same publication; the one providing for the case of “alien enemies”, the other, “concerning aliens” indiscriminately, and, consequently, extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the Federal authority over them; the Constitution having expressly delegated to Congress the power to declare war against any nation, and, of course, to treat it and all its members as enemies. With respect to aliens who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of Congress is denied to be constitutional; and it is, accordingly, against this act that the protest of the General Assembly is expressly and exclusively directed.

A third observation is, that were it admitted, as is contended, that the “act concerning aliens” has for its object, not a *penal*, but a *preventive* justice, it would still remain to be proved that it comes within the constitutional power of the Federal Legislature; and, if within its power, that the Legislature has exercised it in a constitutional manner.



In the administration of preventive justice the following principles have been held sacred: that some probable ground of suspicion be exhibited before some judicial authority; that it be supported by oath or affirmation, that the party may avoid being thrown into confinement by finding pledges or sureties for his legal conduct, sufficient in the judgment of some judicial authority; that he may have the benefit of a writ of *habeas corpus*, and thus obtain his release if wrongfully confined; and that he may at any time be discharged from his recognisance, or his confinement, and restored to his former liberty and rights on the order of the proper judicial authority, if it shall see sufficient cause.

All these principles of the only preventive justice known to American jurisprudence are violated by the Alien Act. The ground of suspicion is to be judged of, not by any judicial authority, but by the Executive Magistrate alone. No oath or affirmation is required. If the suspicion be held reasonable by the President, he may order the suspected alien to depart the territory of the United States, without the opportunity of avoiding the sentence by finding pledges for his future good conduct. As the President may limit the time of departure as he pleases, the benefit of the writ of *habeas corpus* may be suspended with respect to the party, although the Constitution ordains that it shall not be suspended unless when the public safety may require it, in case of rebellion or invasion—neither of which existed at the passage of the act; and the party being, under the sentence of the President, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen, on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest judicial authority* should see the most sufficient cause for it.

But, in the last place, it can never be admitted that the removal of aliens, authorized by the act, is to be considered, not as punishment for an offence, but as a measure of precaution and prevention. If the banishment of an alien from a country into which he has been invited as the asylum most auspicious to his happiness—a country where he may have formed the most tender connexions; where he may have invested his entire property, and acquired property of the real and permanent, as well as the movable and temporary kind; where he enjoys, under the laws, a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for, and where he may have nearly completed his probationary title to citizenship; if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war and of unusual licentiousness on that element, and possibly to vindictive purposes which his emigration itself may have provoked; if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired whether it can be constitutionally inflicted, on mere suspicion, by the single will of the Executive Magistrate, on persons convicted of no personal offence against the laws of the land, nor involved in any offence against the law of nations, charged on the foreign State of which they are members.

One argument offered in justification of this power exercised over aliens is, that the admission of them into the country being of favor, not of right, the favor is at all times revocable.

To this argument it might be answered, that, allowing the truth of the inference, it would be no proof of what is required. A question would still occur, whether the Constitution had vested the discretionary power of admitting aliens in the Federal Government or in the State governments.

But it cannot be a true inference, that, because the admission of an alien is a favor, the favor may be revoked at pleasure. A grant of land to an individual may be of favor, not of right; but the moment the grant is made, the favor becomes a right, and must be forfeited before it can be taken away. To pardon a malefactor may be a favor, but the pardon is not, on that account, the less irrevocable. To admit an alien to naturalization, is as much a favor as to admit him to reside in the country; yet it cannot be pretended that a person naturalized can be deprived of the benefits any more than a native citizen can be disfranchised.

Again, it is said, that aliens not being parties to the Constitution, the rights and privileges which it secures cannot be at all claimed by them.

To this reasoning, also, it might be answered that, although aliens are not parties to the Constitution, it does not follow that the Constitution has vested in Congress an absolute power over them. The parties to the Constitution may have granted, or retained, or modified, the power over aliens, without regard to that particular consideration.

But a more direct reply is, that it does not follow, because aliens are not parties to the Constitution, as citizens are parties to it, that, whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws than they are parties to the Constitution; yet it will not be disputed that, as they owe, on one hand, a temporary obedience, they are entitled, in return, to their protection and advantage.

If aliens had no rights under the Constitution, they might not only be banished, but even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that, except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one-half may be also aliens.

It is said further, that, by the law and practice of nations, aliens may be removed, at discretion, for offences against the law of nations; that Congress are authorized to define and punish such offences; and that to be dangerous to the peace of society is, in aliens, one of those offences.

The distinction between alien enemies and alien friends is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public

ministers, are under the municipal law, and must be tried and punished according to that law only.

This argument also, by referring the alien act to the power of Congress to define and *punish* offences against the law of nations, yields the point that the act is of a *penal*, not merely of a preventive operation. It must, in truth, be so considered. And if it be a penal act, the punishment it inflicts must be justified by some offence that deserves it.

Offences for which aliens, within the jurisdiction of a country are punishable, are—first, offences committed by the nation of which they make a part, and in whose offences they are involved; secondly, offences committed by themselves alone, without any charge against the nation to which they belong. The first is the case of alien enemies; the second, the case of alien friends. In the first case, the offending nation can no otherwise be punished than by war, one of the laws of which authorizes the expulsion of such of its members as may be found within the country against which the offence has been committed. In the second case—the offence being committed by the individual, not by his nation, and against the municipal law, not against the law of nations—the individual only, and not the nation, is punishable; and the punishment must be conducted according to the municipal law, not according to the law of nations. Under this view of the subject, the act of Congress for the removal of alien enemies, being conformable to the law of nations, is justified by the Constitution and the “act” for the removal of alien friends, being repugnant to the constitutional principles of municipal law, is unjustifiable

Nor is the act of Congress for the removal of alien friends more agreeable to the general practice of nations than it is within the purview of the law of nations. The general practice of nations distinguishes between alien friends and alien enemies. The latter it has proceeded against, according to the law of nations, by expelling them as enemies. The former it has considered as under a local and temporary allegiance, and entitled to a correspondent protection. If contrary instances are to be found in barbarous countries, under undefined prerogatives, or amid revolutionary dangers, they will not be deemed fit precedents for the Government of the United States, even if not beyond its constitutional authority.

It is said that Congress may grant letters of marque and reprisal; that reprisals may be made on persons as well as property; and that the removal of aliens may be considered as the exercise, in an inferior degree, of the general power of reprisal on persons.

Without entering minutely into a question that does not seem to require it, it may be remarked that reprisal is a seizure of foreign persons or property, with a view to obtain that justice for injuries done by one State, or its members, to another State, or its members, for which a refusal of the aggressors requires such a resort to force under the law of nations. It must be considered as an abuse of words to call the removal of persons from a country a seizure or reprisal on them; nor is the distinction to be overlooked between reprisals on persons within the country and under the faith of its laws, and on persons out of the country. But laying aside these considerations, it is evidently impossible to bring the alien act within the power of granting reprisals,

since it does not allege or imply any injury received from any particular nation for which this proceeding against its members was intended as a reparation. The proceeding is authorized against aliens *of every nation*; of nations charged neither with any similar proceedings against American citizens, nor with any injuries for which justice might be sought in the mode prescribed by the act. Were it true, therefore, that good causes existed for reprisals against one or more foreign nations, and that neither the persons nor property of its members under the faith of our laws could plead an exemption, the operation of the act ought to have been limited to the aliens among us belonging to such nations. To license reprisals against all nations for aggressions charged on one only, would be a measure as contrary to every principle of justice and public law as to a wise policy, and the universal practice of nations.

It is said that the right of removing aliens is an incident to the power of war vested in Congress by the Constitution.

This is a former argument in a new shape only, and is answered by repeating, that the removal of alien enemies is an incident to the power of war; that the removal of alien friends is not an incident to the power of war.

It is said that Congress are, by the Constitution, to protect each State against invasion; and that the means of *preventing* invasion are included in the power of protection against it.

The power of war, in general, having been before granted by the Constitution, this clause must either be a mere specification for greater caution and certainty, of which there are other examples in the instrument, or be the injunction of a duty superadded to a grant of the power. Under either explanation it cannot enlarge the powers of Congress on the subject. The power and the duty to protect each State against an invading enemy would be the same under the general power, if this regard to greater caution had been omitted.

Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore, not incident to war cannot be incident to a particular modification of war. And as the removal of alien friends has appeared to be no incident to a general state of war, it cannot be incident to a partial state or a particular modification of war.

Nor can it ever be granted that a power to act on a case when it actually occurs, includes a power over all the means that may *tend to prevent* the occurrence of the case. Such a latitude of construction would render unavailing every practical definition of particular and limited powers. Under the idea of preventing war in general, as well as invasion in particular, not only an indiscriminate removal of all aliens might be enforced, but a thousand other things still more remote from the operations and precautions appurtenant to war might take place. A bigoted or tyrannical nation might threaten us with war, unless certain religious or political regulations were adopted by us; yet it never could be inferred, if the regulations which would prevent war were such as Congress had otherwise no power to make, that the power to make them would grow out of the purpose they were to answer. Congress

have power to suppress insurrections, yet it would not be allowed to follow that they might employ all the means tending to prevent them, of which a system of moral instruction for the ignorant, and of provident support for the poor, might be regarded as among the most efficacious.

One argument for the power of the General Government to remove aliens would have been passed in silence, if it had appeared under any authority inferior to that of a report made during the last session of Congress to the House of Representatives by a committee, and approved by the House. The doctrine on which this argument is founded is of so new and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report:

“The act [concerning aliens] is said to be unconstitutional, because to remove aliens is a direct breach of the Constitution, which provides, by the 9th section of the 1st article, that the migration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808.”

Among the answers given to this objection to the constitutionality of the act, the following very remarkable one is extracted:

“Thirdly, that as the Constitution has *given to the States* no power to remove aliens during the period of the limitation under consideration, in the mean time, on the construction assumed, there would be no authority in the country empowered to send away dangerous aliens, which cannot be admitted.”

The reasoning here used would not in any view be conclusive, because there are powers exercised by most other Governments, which, in the United States, are withheld by the people, both from the General Government and from the State governments. Of this sort are many of the powers prohibited by the Declarations of Right prefixed to the constitutions, or by the clauses in the constitutions in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined, that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both Governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded there could surely be no absurdity in supposing that alien friends, who, if guilty of treasonable machinations, may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by any arbitrary and unusual process, either under the one Government or the other.

But it is not the inconclusiveness of the general reasoning in this passage which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the States are given to them by the Constitution of the United States; and the inference from this principle, that the powers supposed to be necessary which are not so given to the State governments, must reside in the Government of the United States.

The respect which is felt for every portion of the constituted authorities forbids some of the reflections which this singular paragraph might excite; and they are the more readily suppressed, as it may be presumed, with justice perhaps as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said that a law on the same subject with the Alien Act, passed by this State originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens was not theretofore regarded by the Virginia Legislature as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to “suspicious persons, being the subjects of any foreign power or State who shall have *made a declaration of war*, or actually *commenced hostilities*, or from whom the President shall apprehend *hostile designs*,” whereas the act of Congress relates to aliens, being the subjects of foreign powers and States who have neither declared war nor commenced hostilities, nor from whom hostile designs are apprehended.

2. It is next affirmed by the Alien Act, that it unites legislative, judicial, and executive powers, in the hands of the President.

However difficult it may be to mark in every case with clearness and certainty the line which divides legislative power from the other departments of power, all will agree that the powers referred to these departments may be so general and undefined as to be of a legislative, not of an executive or judicial nature, and may for that reason be unconstitutional. Details, to a certain degree, are essential to the nature and character of law; and on criminal subjects, it is proper that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required, in exercising a legislative trust, than a general conveyance of authority—without laying down any precise rules by which the authority conveyed should be carried into effect—it would follow that the whole power of legislation might be transferred by the Legislature from itself, and proclamations might become substitutes for laws. A delegation of power in this latitude would not be denied to be a union of the different powers.

To determine, then, whether the appropriate powers of the distinct departments are united by the act authorizing the Executive to remove aliens, it must be inquired whether it contains such details, definitions, and rules, as appertain to the true character of a law; especially a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The Alien Act declares “that it shall be lawful for the President to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect* are concerned in any treasonable or *secret machinations* against the Government thereof, to depart,” &c.

Could a power be given in terms less definite, less particular, and less precise? To be *dangerous to the public safety*—to be *suspected of secret machinations* against the Government; these can never be mistaken for legal rules or certain definitions. They leave everything to the President. His will is the law.

But it is not a legislative power only that is given to the President. He is to stand in the place of the judiciary also. His suspicion is the only evidence which is to convict; his order, the only judgment which is to be executed.

Thus it is the President whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive.

3. It is affirmed that this union of power subverts the general principles of free government.

It has become an axiom in the science of government, that a separation of the legislative, executive, and judicial departments is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

4. It is affirmed that such a union of power subverts the particular organization and positive provisions of the Federal Constitution.

According to the particular organization of the Constitution, its legislative powers are vested in the Congress, its executive powers in the President, and its judicial powers in a supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must, consequently, subvert the constitutional organization of them.

That positive provisions in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts that the Act relates to alien friends, and that alien friends, being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests is the Sedition Act.

Of this Act it is affirmed: 1. That it exercises in like manner a power not delegated by the Constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the Constitution. 3. That this is a power which more than any other ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the Constitution.

Here, again, it will be proper to recollect that the Federal Government being composed of powers specifically granted, with a reservation of all others to the States or to the people, the positive authority under which the Sedition Act could be passed must be produced by those who assert its constitutionality. In what part of the Constitution, then, is this authority to be found?

Several attempts have been made to answer this question, which will be examined in their order. The committee will begin with one which has filled them with equal astonishment and apprehension, and which, they cannot but persuade themselves, must have the same effect on all who will consider it with coolness and impartiality, and with a reverence for our Constitution in the true character in which it issued from the sovereign authority of the people. The committee refer to the doctrine lately advanced, as a sanction to the Sedition Act, "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every possible subject of legislation, both civil and criminal, makes a part of the law of these States, in their united and national capacity.

The novelty, and, in the judgment of the committee, the extravagance of this pretension, would have consigned it to the silence in which they have passed by other arguments which an extraordinary zeal for the Act has drawn into the discussion; but the auspices under which this innovation presents itself have constrained the committee to bestow on it an attention which other considerations might have forbidden.

In executing the task, it may be of use to look back to the colonial state of this country, prior to the Revolution; to trace the effect of the Revolution which converted the Colonies into independent States; to inquire into the import of the Articles of Confederation, the first instrument by which the Union of the States was regularly established; and, finally, to consult the Constitution of 1787, which is the oracle that must decide the important question.

In the state prior to the Revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption, it is equally certain that it was the separate law of each colony within its respective limits, and was unknown to them as a law pervading and operating through the whole as one society.

It could not possibly be otherwise. The common law was not the same in any two of the Colonies, in some the modifications were materially and extensively different. There was no common legislature by which a common will could be expressed in the form of a law; nor any common magistracy by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history furnishes no foothold for the patrons of this new doctrine.



Did, then, the principle or operation of the great event which made the Colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was, that the Colonies were co-ordinate members with each other and with Great Britain, of an empire united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American Parliament, as in the British Parliament. And the royal prerogative was in force in each Colony by virtue of its acknowledging the King for its executive magistrate, as it was in Great Britain by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America, produced the Revolution.

There was a time, indeed, when an exception to the legislative separation of the several component and co-equal parts of the empire obtained a degree of acquiescence. The British Parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice without right, and contrary to the true theory of the Constitution. The convenience of some regulations, in both cases, was apparent; and as there was no legislature with power over the whole, nor any constitutional pre-eminence among the legislatures of the several parts, it was natural for the legislature of that particular part which was the eldest and the largest to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British Parliament operated in favor of that part of the empire which seemed to bear the principle share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of conveniency and equity, it was not complained of nor much inquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye opened to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever*, ended in the discovery that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our Revolution, no support nor colour can be drawn from it for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the Revolution.

The Articles of Confederation are the next source of information on this subject.

In the interval between the commencement of the Revolution and the final ratification of these Articles, the nature and extent of the Union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alleged that the “common law” could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all the Charter of Confederation must have been its parent.

Here again, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to, as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst, on the other hand, every such inference or pretext is absolutely precluded by Article II, which declares “that each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled.”

Thus far it appears that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as national law by the present Constitution of the United States? This is the final question to be examined.

It is readily admitted that particular parts of the common law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which the powers delegated to the Government; and so far also as such other parts may be adopted by Congress as necessary and proper for carrying into execution the powers expressly delegated. But the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the Constitution which seems to have been relied on in this case is the 2d section of Article III: “The judicial power shall extend to all cases *in law and equity* arising *under this Constitution*, the laws of the United States, and treaties made or which shall be made under their authority.”

It has been asked, what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution, other than those arising under the common law? and it is inferred that the common law is accordingly adopted or recognized by the Constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any colour for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provisions of the Constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the Government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertence. But it is not necessary to decide on such a dilemma. The expression is fully satisfied and its accuracy justified by two descriptions of cases to which the judicial authority is extended, and neither of which implies that the common law is the law of the United States. One of these descriptions comprehends the case growing out of the restrictions on the legislative power of the States. For example, it is provided that “no State shall emit bills of credit,” or “make any thing but gold and silver coin a tender in payment of debts.” Should this

prohibition be violated, and a suit *between citizens of the same State* be the consequence, this would be a case arising under the Constitution before the judicial power of the United States. A second description comprehends suits between citizens and foreigners, of citizens of different States, to be decided according to the State or foreign laws, but submitted by the Constitution to the judicial power of the United States, the judicial power being in several instances extended beyond the legislative power of the United States.

To this explanation of the text the following observations may be added:

The expression “cases in law and equity” is manifestly confined to cases of a civil nature, and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph of the same section is in harmony with this construction. It is in these words: “In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases (including cases of law and equity arising under the Constitution) the Supreme Court shall have *appellate* jurisdiction both as to law and *fact*; with such exceptions and under such regulations as Congress shall make.”

This paragraph, by expressly giving an *appellate* jurisdiction in cases of law and equity arising under the Constitution, to *fact* as well as to law, clearly excludes criminal cases where the trial by jury is secured, because the fact in such cases is not a subject of appeal. And, although the appeal is liable to such *exceptions* and regulations as Congress may adopt, yet it is not to be supposed that an *exception of all* criminal cases could be contemplated, as well because a discretion in Congress to make or omit the exception would be improper, as because it would have been unnecessary. The exception could as easily have been made by the Constitution itself, as referred to the Congress.

Once more: the amendment last added to the Constitution deserves attention as throwing light on this subject. “The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity* commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign power.” As it will not be pretended that any criminal proceeding could take place against a State, the terms *law* or *equity* must be understood as appropriate to *civil* in exclusion of *criminal* cases.

From these considerations it is evident that this part of the Constitution, even if it could be applied at all to the purpose for which it has been cited, would not include any cases whatever of a criminal nature, and consequently would not authorize the inference from it that the judicial authority extends to *offences* against the common law as offences arising under the Constitution.

It is further to be considered that, even if this part of the Constitution could be strained into an application to every common-law case, criminal as well as civil, it

could have no effect in justifying the Sedition Act; which is an exercise of legislative and not of judicial power: and it is the judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution in which a description of the law of the United States is found. The first is contained in Article III, Section 2, in the words following: "This Constitution, the laws of the United States, and treaties made or which shall be made under their authority." The second is contained in the second paragraph of Article VI, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The first of these descriptions was meant as a guide to the judges of the United States; the second, as a guide to the judges of the several States. Both of them consist of an enumeration which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfactory reason why it was not expressed in the enumeration.

In aid of these objections the difficulties and confusion inseparable from a constructive introduction of the common law would afford powerful reasons against it.

Is it to be the common law with or without the British statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the date of the eldest or the youngest of the Colonies?

Or are the dates to be thrown together and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent as well as prior to the establishment of the Constitution?

Is regard to be had to future as well as to past changes?

Is the law to be different in every State as differently modified by its code, or are the modifications of any particular State to be applied to all?

And, on the latter supposition, which, among the State codes would form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction furnish other objections equally conclusive, unless the text were peremptory in its meaning and consistent with other parts of the instrument.

These consequences may be in relation to the legislative authority of the United States, to the executive authority; to the judicial authority; and to the governments of the several States.

If it be understood that the common law is established by the Constitution, it follows that no part of the law can be altered by the Legislature; such of the statutes already passed as may be repugnant thereto would be nullified, particularly the Sedition Act itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms, and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected and the common law be held, like other laws, liable to revision and alteration by the authority of Congress, it then follows that the authority of Congress is co-extensive with the objects of common law—that is to say, with every object of legislation; for to every such object does some branch or other of the common law extend. The authority of Congress would therefore be no longer under the limitations marked out in the Constitution. They would be authorized to legislate in all cases whatsoever.

In the next place, as the President possesses the executive powers of the Constitution, and is to see that the laws be faithfully executed, his authority also must be co-extensive with every branch of the common law. The additions which this would make to his power, though not readily to be estimated, claim the most serious attention.

This is not all, it will merit the most profound consideration, how far an indefinite admission of the common law, with a latitude in construing it, equal to the construction by which it is deduced from the Constitution, might draw after it the various prerogatives making part of the unwritten law of England. The English Constitution itself is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department a discretion little short of a legislative power.

On the supposition of its having a constitutional obligation, this power in the judges would be permanent and irremediable by the Legislature. On the other supposition the power would not expire until the Legislature should have introduced a full system of statutory provisions. Let it be observed, too, that besides all the uncertainties above enumerated, and which present an immense field for judicial discretion, it would

remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

A discretion of this sort has always been lamented as incongruous and dangerous, even in the Colonial and State courts, although so much narrowed by positive provisions in the local codes on all the principal subjects embraced by the common law. Under the United States, where so few laws exist on those subjects, and where so great a lapse of time must happen before the vast chasm could be supplied, it is manifest that the power of the judges over the law would, in fact, erect them into legislators, and that for a long time it would be impossible for the citizens to conjecture, either what was or would be law.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual States, is as obvious as it would be fatal. As this law relates to every subject of legislation, and would be paramount to the Constitutions and laws of the States, the admission of it would overwhelm the residuary sovereignty of the States, and by one constructive operation new model the whole political fabric of the country.

From the review thus taken of the situation of the American colonies prior to their independence; of the effect of this event on their situation; of the nature and import of the Articles of Confederation; of the true meaning of the passage in the existing Constitution from which the common law has been deduced; of the difficulties and uncertainties incident to the doctrine; and of its vast consequences in extending the powers of the Federal Government, and in superseding the authorities of the State governments—the committee feel the utmost confidence in concluding that the common law never was, nor by any fair construction ever can be, deemed a law for the American people as one community; and they indulge the strongest expectation that the same conclusion will finally be drawn by all candid and accurate inquirers into the subject. It is, indeed, distressing to reflect that it ever should have been made a question, whether the Constitution, on the whole face of which is seen so much labor to enumerate and define the several objects of Federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law—a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the Constitution as a system of limited and specified powers. A severer reproach could not, in the opinion of the committee, be thrown on the Constitution, on those who framed or on those who established it, than such a supposition would throw on them.

The argument, then, drawn from the common law, on the ground of its being adopted or recognised by the Constitution, being inapplicable to the Sedition Act, the committee will proceed to examine the other arguments which have been founded on the Constitution.

They will waste but little time on the attempt to cover the act by the preamble to the Constitution, it being contrary to every acknowledged rule of construction to set up this part of an instrument in opposition to the plain meaning expressed in the body of

the instrument. A preamble usually contains the general motives or reasons for the particular regulations or measures which follow it, and is always understood to be explained and limited by them. In the present instance, a contrary interpretation would have the inadmissible effect of rendering nugatory or improper every part of the Constitution which succeeds the preamble.

The paragraph in Article I, Section 8, which contains the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare, having been already examined, will also require no particular attention in this place. It will have been seen that, in its fair and consistent meaning, it cannot enlarge the enumerated powers vested in Congress.

The part of the Constitution which seems most to be recurred to, in the defence of the Sedition Act, is the last clause of the above section, empowering Congress “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.”

The plain import of this clause is, that Congress shall have all the incidental or instrumental powers necessary and proper for carrying into execution all the express powers, whether they be vested in the Government of the United States, more collectively, or in the several departments or officers thereof.

It is not a grant of new powers to Congress, but merely a declaration, for the removal of all uncertainty, that the means of carrying into execution those otherwise granted are included in the grant.

Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, it may be exercised by Congress. If it be not, Congress cannot exercise it.

Let the question be asked, then, whether the power over the press exercised in the Sedition Act be found among the powers expressly vested in the Congress. This is not pretended.

Is there any express power, for executing which it is a necessary and proper power?

The power which has been selected, as least remote, in answer to this question, is that “of suppressing insurrections”; which is said to imply a power to *prevent* insurrections, by punishing whatever may *lead* or *tend* to them. But it surely cannot, with the least plausibility, be said, that the regulation of the press, and a punishment of libels, are exercises of a power to suppress insurrections. The most that could be said would be that the punishment of libels, if it had the tendency ascribed to it, might prevent the occasion of passing or executing laws necessary and proper for the suppression of insurrections.

Has the Federal Government no power, then, to prevent as well as to punish resistance to the laws?

They have the power, which the Constitution deemed most proper, in their hands for the purpose. The Congress has power, before it happens, to pass laws for punishing it; and the executive and judiciary have power to enforce those laws when it does happen.

It must be recollected by many, and could be shown to the satisfaction of all, that the construction here put on the terms “necessary and proper” is precisely the construction which prevailed during the discussions and ratifications of the Constitution. It may be added, and cannot too often be repeated, that it is a construction absolutely necessary to maintain their consistency with the peculiar character of the Government, as possessed of particular and definite powers only, not of the general and indefinite powers vested in ordinary Governments; for if the power to *suppress insurrections* includes a power to *punish libels*, or if the power to *punish* includes a power to *prevent*, by all the means that may have that *tendency*, such is the relation and influence among the most remote subjects of legislation, that a power over a very few would carry with it a power over all. And it must be wholly immaterial whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution limited powers.

This branch of the subject will be closed with a reflection which must have weight with all, but more especially with those who place peculiar reliance on the judicial exposition of the Constitution as the bulwark provided against undue extensions of the legislative power. If it be understood that the powers implied in the specified powers have an immediate and appropriate relation to them, as means necessary and proper for carrying them into execution, questions on the constitutionality of laws passed for this purpose will be of a nature sufficiently precise and determinate for judicial cognizance and control. If, on the other hand, Congress are not limited in the choice of means by any such appropriate relation of them to the specified powers; but may employ all such means as they may deem fitted to *prevent* as well as to *punish* crimes subjected to their authority; such as may have a *tendency* only to *promote* an object for which they are authorized to provide; every one must perceive that questions relating to means of this sort must be questions for mere policy and expediency, on which legislative discretion alone can decide, and from which the judicial interposition and control are completely excluded.

2. The next point which the resolution requires to be proved is, that the power over the press exercised by the Sedition Act is positively forbidden by one of the amendments to the Constitution.

The amendment stands in these words: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, *or abridging the freedom of speech or of the press*; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”



In the attempts to vindicate the Sedition Act it has been contended—1. That the “freedom of the press” is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in Congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

Although it will be shown, on examining the second of these positions, that the amendment is a denial to Congress of all power over the press, it may not be useless to make the following observations on the first of them:

It is deemed to be a sound opinion that the Sedition Act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognised by principles of the common law in England.

The freedom of the press under the common law is, in the defences of the Sedition Act, made to consist in an exemption from all *previous* restraint on printed publications by persons authorized to inspect and prohibit them. It appears to the committee that this idea of the freedom of the press can never be admitted to be the American idea of it; since a law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British Government and the American Constitutions will place this subject in the clearest light.

In the British Government the danger of encroachments on the rights of the people is understood to be confined to the executive magistrate. The representatives of the people in the Legislature are not only exempt themselves from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the Executive. Hence it is a principle, that the Parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people—such as their Magna Charta, their Bill of Rights, &c.—are not reared against the Parliament, but against the royal prerogative. They are merely legislative precautions against executive usurpations. Under such a government as this, an exemption of the press from previous restraint, by licensers appointed by the King, is all the freedom that can be secured to it.

In the United States the case is altogether different. The People, not the Government, possess the absolute sovereignty. The Legislature, no less than the Executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in the United States the great and essential rights of the people are secured against legislative as well as against executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws. This security of the freedom of the press requires that it should be exempt not only from previous restraint by the Executive, as in Great Britain, but from legislative

restraint also; and this exemption, to be effectual, must be an exemption not only from the previous inspection of licensers, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot, in this point of view, be the standard of its freedom in the United States.

But there is another view under which it may be necessary to consider this subject. It may be alleged that although the security for the freedom of the press be different in Great Britain and in this country, being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also; yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints.

The committee are not unaware of the difficulty of all general questions which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only how far the difference between the nature of the British Government and the nature of the American Governments, and the practice under the latter may show the degree of rigor in the former to be inapplicable to and not obligatory in the latter.

The nature of governments elective, limited, and responsible in all their branches, may well be supposed to require a greater freedom of animadversion than might be tolerated by the genius of such a government as that of Great Britain. In the latter it is a maxim that the King, an hereditary, not a responsible magistrate, can do no wrong, and that the Legislature, which in two-thirds of its composition is also hereditary, not responsible, can do what it pleases. In the United States the executive magistrates are not held to be infallible, nor the Legislatures to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom in the use of the press should be contemplated?

Is not such an inference favoured by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law on the subject of the press, and the occasional punishment of those who use it with a freedom offensive to the Government, it is well known that with respect to the responsible members of the Government, where the reasons operating here become applicable there, the freedom exercised by the press and protected by public opinion far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times animadverted on by the press with peculiar freedom, and during the elections for the House of Commons, the other responsible part of the Government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict

limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands. And it will not be a breach either of truth or of candour to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the State governments than the persons and presses most zealous in vindicating the act of Congress for punishing similar animadversions on the Government of the United States.

The last remark will not be understood as claiming for the State governments an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression; who reflect that to the same beneficent source the United States owe much of the lights which conducted them to the ranks of a free and independent nation, and which have improved their political system into a shape so auspicious to their happiness? Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing at this day under the infirmities of a sickly Confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the *universal* expositor of American terms, which may be the same with those contained in that law. The freedom of conscience and of religion are found in the same instruments which assert the freedom of the press. It will never be admitted that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the committee do not, however, by any means intend to rest the question on them. They contend that the article of amendment, instead of supposing in Congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to Congress of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article.

When the Constitution was under the discussions which preceded its ratification, it is well known that great apprehensions were expressed by many, lest the omission of some positive exception, from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn, by construction, within some of the powers vested in Congress, more especially of the

power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the Constitution, that all powers not given by it were reserved; that no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers, nor incident to any of them; and consequently that an exercise of any such power would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the Sedition Act are at variance with the reasoning which then justified the Constitution, and invited its ratification.

From this posture of the subject resulted the interesting question, in so many of the Conventions, whether the doubts and dangers ascribed to the Constitution should be removed by any amendments previous to the ratification, or be postponed in confidence that, as far as they might be proper, they would be introduced in the form provided by the Constitution. The latter course was adopted; and in most of the States, ratifications were followed by propositions and instructions for rendering the Constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the Convention of this State will be hereafter seen.

In pursuance of the wishes thus expressed, the first Congress that assembled under the Constitution proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the Congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt that no power whatever over the press was supposed to be delegated by the Constitution, as it originally stood, and that the amendment was intended as a positive and absolute reservation of it.

But the evidence is still stronger. The proposition of amendments made by Congress is introduced in the following terms:

“The Conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution.”

Here is the most satisfactory and authentic proof that the several amendments proposed were to be considered as either declaratory or restrictive, and, whether the one or the other as corresponding with the desire expressed by a number of the States, and as extending the ground of public confidence in the Government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of Congress, the amendment could neither be said to correspond with the desire expressed by a number of the States, nor be calculated to extend the ground of public confidence in the Government.

Nay, more; the construction employed to justify the Sedition Act would exhibit a phenomenon without a parallel in the political world. It would exhibit a number of respectable States, as denying, first, that any power over the press was delegated by the Constitution; as proposing, next, that an amendment to it should explicitly declare that no such power was delegated; and, finally, as concurring in an amendment actually recognising or delegating such a power.

Is, then, the Federal Government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?

The Constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power—above all, if it be expressly forbidden, by a declaratory amendment to the Constitution—the answer must be, that the Federal Government is destitute of all such authority.

And might it not be asked, in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the Constitution, than that it should be left to a vague and violent construction, whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

Might it not be likewise asked, whether the anxious circumspection which dictated so many peculiar limitations on the general authority would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the Federal Government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, all together, account for the policy of binding the hand of the Federal Government from touching the channel which alone can give efficacy to its responsibility to its constituents, and of leaving those who administer it to a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the Constitution or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument, by which it has appeared that a power over the press is clearly excluded from the number of powers delegated to the Federal Government.

3. And, in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the Sedition Act ought, “more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.”

Without scrutinizing minutely into all the provisions of the Sedition Act, it will be sufficient to cite so much of section 2d as follows: “And be it further enacted, that if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing or writings against the Government of the United States, or either house of the Congress of the United States, or the President of the United States, with an intent to defame the said Government or either house of the said Congress, or the President, or to bring them or either of them into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, &c.—then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.”

On this part of the act, the following observations present themselves:

1. The Constitution supposes that the President, the Congress, and each of its Houses, may not discharge their trusts, either from defect of judgment or other causes. Hence they are all made responsible to their constituents, at the returning periods of election; and the President, who is singly intrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.
2. Should it happen, as the Constitution supposes it may happen, that either of these branches of the Government may not have duly discharged its trust; it is natural and proper, that, according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.
3. Whether it has, in any case, happened that the proceedings of either or all of those branches evince such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.
4. Whenever it may have actually happened that proceedings of this sort are chargeable on all or either of the branches of the Government, it is the duty, as well as right, of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. And it cannot be avoided that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course that, during its continuance, two elections of the entire House of Representatives, an election of a part of the Senate, and an election of a President, were to take place.

6. That, consequently, during all these elections, intended by the Constitution to preserve the purity or to purge the faults of the Administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be screened, under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigor, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act are those only which are false and malicious, and intended to defame, and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act and leaving in force the common law of libels, which punishes truth equally with falsehood, and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the corporal punishment, which the common law also leaves to the discretion of the court. This merit of intention, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act, at one time, by contrasting it with the rigors of the common law otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But, whatever may have been the meritorious intentions of all or any who contributed to the Sedition Act, a very few reflections will prove that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the Government with the full and formal proof necessary in a court of law.

But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions, and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again: it is no less obvious that the intent to defame, or bring into contempt, or disrepute, or hatred—which is made a condition of the offence created by the act—cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication, it is manifestly impossible to punish the intent to bring those who administer the Government into disrepute or contempt, without striking at the right of freely discussing public characters and measures; because those who engage in such discussions must expect and intend to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit, therefore, the intent to excite those unfavorable sentiments against those who administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press as may expose them to contempt, or disrepute or hatred, where they may deserve it, that, in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them, and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes against the just and natural effects of a culpable administration will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected, lastly, that the right of electing the members of the Government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force, although it should not be continued beyond the term to which it is limited. Should there happen, then, as is extremely probable in relation to some or other of the branches of the Government, to be competitions between those who are and those who are not members of the Government, what will be the situations of the competitors? Not equal; because the characters of the former will be covered by the Sedition Act from animadversions exposing them to disrepute among the people, whilst the latter may be exposed to the contempt and hatred of the people without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain. And from both these situations will not those in power derive an



undue advantage for continuing themselves in it, which, by impairing the right of election, endangers the blessings of the Government founded on it?

It is with justice, therefore, that the General Assembly have affirmed, in the resolution, as well that the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right, as that this particular right is levelled at by the power exercised in the Sedition Act.

The Resolution next in order is as follows:

“That this State having, by its Convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, ‘the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States;’ and, from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.”

To place this Resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form:

“We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly and now met in Convention, having fully and freely investigated and discussed the proceedings of the Federal Convention, and being prepared, as well as the most mature deliberation hath enabled us, to decide thereon—do, in the name and in behalf of the people of Virginia declare and make known that the powers granted under the Constitution, being derived from the people of the United States, may be resumed by them whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby remains with them, and at their will. That, therefore, no right of any denomination can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.”

Here is an express and solemn declaration by the Convention of the State, that they ratified the Constitution in the sense that no right of any denomination can be cancelled, abridged, restrained, or modified, by the Government of the United States, or any part of it, except in those instances in which power is given by the Constitution; and in the sense, particularly, “that among other essential rights, the liberty of conscience and freedom of the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States.”

Words could not well express in a fuller or more forcible manner the understanding of the Convention, that the liberty of conscience and the freedom of the press were *equally* and *completely* exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the Convention, after ratifying the Constitution, proceeded to prefix to certain amendments proposed by them a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech and of the press.

Similar recommendations having proceeded from a number of other States, and Congress, as has been seen, having, in consequence thereof, and with a view to extend the ground of public confidence, proposed, among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press, and Virginia having concurred in the ratifications which made them a part of the Constitution, it will remain with a candid public to decide whether it would not mark an inconsistency and degeneracy, if an indifference were now shown to a palpable violation of one of those rights—the freedom of the press; and to a precedent, therein, which may be fatal to the other—the free exercise of religion.

That the precedent established by the violation of the former of these rights may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable by a comparison of the grounds on which they respectively rest, and from the scope of reasoning by which the power over the former has been vindicated.

*First.* Both of these rights, the liberty of conscience and of the press, rest equally on the original ground of not being delegated by the Constitution, and, consequently, withheld from the Government. Any construction, therefore, that would attack this original security for the one must have the like effect on the other.

*Secondly.* They are both equally secured by the supplement to the Constitution, being both included in the same amendment, made at the same time, and by the same authority. Any construction or argument, then, which would turn the amendment into a grant or acknowledgment of power with respect to the press, might be equally applied to the freedom of religion.

*Thirdly.* If it be admitted that the extent of the freedom of the press secured by the amendment is to be measured by the common law on this subject, the same authority may be resorted to for the standard which is to fix the extent of the “free exercise of religion.” It cannot be necessary to say what this standard would be; whether the common law be taken solely as the unwritten, or as varied by the written law of England.

*Fourthly.* If the words and phrases in the amendment are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press under the limitation that its freedom be not abridged, the same argument results from the same consideration for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For if Congress may regulate the freedom of the press, provided they do not abridge it, because it is said only “they shall not abridge it,” and is not said “they shall make no law respecting it,” the analogy of reasoning is conclusive that Congress may *regulate* and even *abridge* the free exercise of religion, provided they do not *prohibit* it; because it is said only “they shall not prohibit it,” and is *not* said “they shall make no law *respecting*, or no law *abridging* it.”

The General Assembly were governed by the clearest reason, then, in considering the Sedition Act, which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience; and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.

The two concluding resolutions only remain to be examined. They are in the words following:

“That the good people of this Commonwealth having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the Union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State in maintaining, unimpaired, the authorities, rights, and liberties reserved to the States respectively, or to the people.

“That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.”

The fairness and regularity of the course of proceeding here pursued have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the judiciary of the United States, and not the State Legislatures, to declare the meaning of the Federal Constitution.

But a declaration that proceedings of the Federal Government are not warranted by the Constitution is a novelty neither among the citizens nor among the Legislatures of the States; nor are the citizens or the Legislature of Virginia singular in the example of it.

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the Federal Government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinion, unaccompanied with

any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will—possibly, to a change in the opinion of the judiciary, the latter enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the Federal Government, where can be the impropriety of communicating the declaration to other States, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the States, where the Constitution imposes no restraint, is as allowable among the State governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the State Legislatures to the Federal Legislature as the immediate constituents of one of its branches.

The Legislatures of the States have a right also to originate amendments to the Constitution, by a concurrence of two-thirds of the whole number, in applications to Congress for the purpose. When new States are to be formed by a junction of two or more States, or parts of States, the Legislatures of the States concerned are, as well as Congress, to concur in the measure. The States have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases a communication among them results from the object which is common to them.

It is, lastly, to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other States for co-operating with Virginia in maintaining the rights reserved to the States or to the people, be in any degree liable to the objections which have been raised against it.

If it be liable to objection it must be because either the object or the means are objectionable.

The object being to maintain what the Constitution has ordained, is in itself a laudable object.

The means are expressed in the terms “the necessary and proper measures.” A proper object was to be pursued by means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and for this purpose either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the terms could refer.

In the example given by the State of declaring the Alien and Sedition Acts to be unconstitutional, and of communicating the declaration to other States, no trace of improper means has appeared. And if the other States had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

It is no less certain, that other means might have been employed which are strictly within the limits of the Constitution. The Legislatures of the States might have made a direct representation to Congress with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective Senators in Congress their wish that two-thirds thereof would propose an explanatory amendment to the Constitution; or two-thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a Convention for the same object.

These several means, though not equally eligible in themselves, nor, probably, to the States, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other States a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehend danger to liberty from the establishment of the General Government over so great a country, the appeal was emphatically made to the intermediate existence of the State governments, between the people and that Government; to the vigilance with which they would descry the first symptoms of usurpation; and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed is, the repetition, in the first, of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this State. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this State has borne in the establishment of our National Independence, in the establishment of our National Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to these facts they will be able to convince themselves that the Representatives of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own conscientiousness and the justice of an enlightened public, who will perceive in the resolutions themselves the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated.

The extensive view of the subject thus taken by the committee has led them to report to the House, as the result of the whole, the following Resolution:

*Resolved*, That the General Assembly having carefully and respectfully attended to the proceedings of a number of the States, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and reconsidered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their protest against “the Alien and Sedition Acts,” as palpable and alarming infractions of the Constitution.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

March 15, 1800.

Mad. Mss.

Dear Sir,—

Since my last I have been favored with the following inclosures.—The Bill relating to Electors<sup>1</sup> Ramsay's oration, the Report on ways & means, a motion by Bingham, and the resolution for excluding the Judges from other offices.

It is not to be denied that the Const<sup>n</sup>. might have been properly more full in prescribing the election of P. & V. P. but the remedy is an amendment to the Const<sup>n</sup>., and not a legislative interference. It is evident that this interference ought to be and was meant to be as little permitted as possible; it being a principle of the Const<sup>n</sup>. that the two departments should be independent of each other, and dependent on their Constituents only. Should the spirit of the Bill be followed up, it is impossible to say, how far the choice of the Ex. may be drawn out of the Constitutional hands, and subjected to the management of the Legislature. The danger is the greater, as the Chief Magistrate, for the time being may be bribed into the usurpations by so shaping them as to favor his re-election. If this licentiousness in constructive perversions of the Constitution, continue to increase, we shall soon have to look into our code of laws, and not the Charter of the people, for the form as well as the powers of our Government. Indeed such an unbridled spirit of construction as has gone forth in sundry instances, would bid defiance to any possible parchment securities against usurpation.

I understand that the general ticket law is represented at Phil<sup>a</sup> as generally unpopular. I have no reason to believe this to be the fact. On the Contrary, I learn that the information collected at Richmond on this subject is satisfactory to the friends of the law.

The ground has been covered for six weeks with snow; and there is still a remnant of it. It has given a very unusual backwardness to all the preparations for the ensuing crops, but we hope for some amends from its influence on the winter grain.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

April 4, 1800.

Mad. Mss.

Dear Sir

Your favor by M<sup>r</sup> Trist was duly handed to me, since which I have rec<sup>d</sup> the Report on imports under your cover, & yesterday your favor of the 25<sup>ult.</sup>: accompanied with the Pamphlet & M<sup>r</sup>. Nicholas's motion on the Electoral Bill, which appears to be so fair & pertinent, that a rejection of it in favor of any other modification proposed, must fix a new brand on the Authors. The spirit manifested in the Senate steadily, & in the other House occasionally, however mischievous in its immediate effects, cannot fail I think to aid the progress of reflection & change among the people. In this view our public malady may work its own cure, and ultimately rescue the republical principal from the imputation brought on it by the degeneracy of the public Councils. Such a demonstration of the rectitude & efficacy of popular sentiment, will be the more precious, as the late defection of France has left America the only Theatre on which true liberty can have a fair trial. We are all extremely anxious to learn the event of the Election in N. Y. on which so much depends. I have nothing to add to what I have already said on the prospect with us. I have no reason whatever to doubt all the success that was expected. If it should *fall in your way*, you will oblige me by inquiring whether there be known in Philad<sup>a</sup> any composition for encrusting Brick that will effectually stand the weather: and particularly what is thought of common plaister thickly painted with white lead overspread with sand. I wish to give some such dressing to the columns of my Portico, & to lessen as much as possible the risk of the experiment.

Affectionately Yrs



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Oct 21 1800.

Mad. Mss.

Dear Sir

This will be handed you by M<sup>r</sup>. Altson of S. Carolina,<sup>1</sup> who proposes to call at Montecello on his return from a Northern tour. He will probably be well known to you by other introductions; but those which he has brought to me, as well as a short acquaintance with him make me feel an obligation to add mine. He appears to be intelligent, sound in his principles, and polished in his manners. Coming fresh from N. Y. through Pen<sup>a</sup>. & Maryl<sup>d</sup> he will be able to furnish many details on late occurrences. The fact of most importance mentioned by him & which is confirmed by letters I have from Burr & Gilston, is that the vote of Rho: Island will be assured on the right side. The latter gentleman expresses much anxiety & betrays some jealousy with respect to the *integrity* of the Southern States in keeping the former one in view for the secondary station. I hope the event will skreen all the parties, particularly Virginia from any imputation on this subject: tho' I am not without fears, that the requisite concert may not sufficiently pervade the several States. You have no doubt seen the late Paris Statement, as well as the comment on it by observator who is manifestly Hamilton. The two papers throw a blaze of light on the proceedings of our administration & must I think, co-operate with other causes, in opening thoroughly the eyes of the people.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Jany 10, 1801.

Mad. Mss.

Dear Sir,—

Mrs Browne having been detained at Fredg for some time, I did not receive your favor of the 19th in time to be conveniently acknowledged by the last mail. The succeeding one of the 26th came to hand on the 7th instant only, a delay that fixes blame on the post office either in Washington or Fredg. In all the letters & most of the Newspapers which I have lately rec<sup>d</sup>. thro' the post office, there is equal ground for complaint.

I find that the vote of Kentucky establishes the tie between the Repub: characters, and consequently throws the result into the hands of the H. of R. Desperate as some of the adverse party there may be, I can scarcely allow myself to believe that enough will not be found to frustrate the attempt to strangle the election of the people, and smuggle into the Chief Magistracy the choice of a faction. It would seem that every individual member, who has any standing or stake in society, or any portion of virtue or sober understandg must revolt at the tendency of such a manœuvre. Is it possible that Mr. A. sh<sup>d</sup>. give his sanction to it if that should be made a necessary ingredient? or that he would not hold it his duty or his policy, in case the present House should obstinately refuse to give effect to the Constn, to appoint, which he certainly may do before his office expires as early a day as possible, after that event, for the succeeding House to meet, and supply the omission. Should he disapp<sup>t</sup>. a just expectation in either instance, it will be an omen, I think, forbidding the steps towards him which you seem to be meditating. I would not wish to discourage any attentions which friendship, prudence, or benevolence may suggest in his behalf, but I think it not improper to remark, that I find him infinitely sunk in the estimation of all parties. The follies of his administration, the oblique stroke at his Predecessor in the letter to Coxe, and the crooked character of that to T. Pinkney<sup>1</sup>, are working powerfully ag<sup>st</sup>. him. Added to these causes is the pamphlet of H. which, tho' its recoil has perhaps more deeply wounded the author, than the object it was discharged at, has contributed not a little to overthrow the latter staggering as he before was in the public esteem.

On the supposition of either event, whether of an interregnum in the Executive, or of a surreptitious intrusion into it, it becomes a question of the first order, what is the course demanded by the crisis. Will it be best to acquiesce in a suspension or usurpation of the Executive authority till the meeting of Cong<sup>s</sup>. in De<sup>r</sup>. next, or for Congs to be summoned by a joint proclamation or recommendation of the two characters havg a majority of votes for President. My present judgment favors the latter expedient. The prerogative of convening the Legislature must reside in one or other of them, and if both concur, must substantially include the requisite will. The intentions of the people would undoubtedly be pursued. And if, in reference to the Const<sup>n</sup>., the proceeding be not strictly regular, the irregularity will be less in form than any other adequate to the emergency; and will lie in form only rather than

substance; whereas the other remedies proposed are substantial violations of the will of the people, of the scope of the Constitution, and of the public order & interest. It is to be hoped however that all such questions will be precluded by a proper decision of nine States in the H. of R.

I observe that the French Convention is represented as highly obnoxious to the Senate. I should not have supposed that the opposition would be hinged on the article surrendering public vessels. As the stipulation is mutual it certainly spares our pride, sufficiently to leave us free to calculate our interest, and on this point there cannot be a difference of opinion. I was less surprized at the obstacle discovered in the British Treaty, the latter of which combined with the repeal of the French Treaty, beget a suspicion that in some quarters at least the present posture of things has been long anticipated. It is certain however that the Convention leaves G. B. on a better footing than the B. Treaty placed her, and it is remarkable that E. 1 D. 2 & Murray, should have concurred in the arrangement, if it have any real interference with bona fide engagements to G. B. It may be recollected that the privilege given to British prizes was not purchased like that to French prizes, by any peculiar services to us; and never had any other pretext, than the alledged policy of putting the two great rival nations of Europe as nearly as possible on an equal footing. Notwithstanding this pretext for the measure, H. in his late pamphlet acknowledges the error of it. It would be truly extraordinary if a measure intended for this equalizing purpose, should be construable into an insuperable barrier to the equality proposed. It is of vast moment both in a domestic & foreign view, that the Senate should come to a right decision. The public mind is already sore & jealous of that body, and particularly so of the insidious & mischievous policy of the British Treaty. It is strongly averse also to war, and would feel abhorrence of an unjust or unnecessary war with any nation. It is much to be wished that these facts may not be disregarded in the question before the Senate. If there be anything fairly inadmissible in the Convn it would be better to follow the example of a qualified ratification, than rush into a provoking rejection. If there be anything likely, however unjustly, to beget complaints or discontents on the part of G. B. early & conciliatory explanations ought not to be omitted. However difficult our situation has been made, justice & prudence will it is hoped, steer us through it peacefully. In some respects the task is facilitated at the present moment. France has sufficiently manifested her friendly disposition, and what is more, seems to be duly impressed with the interest she has in being at peace with us. G. B., however intoxicated with her maritime ascendancy is more dependent every day on our commerce for her resources, must for a considerable length of time look in a great degree to this Country, for bread for herself, and absolutely for all the necessaries for her islands. The prospect of a Northern Confederacy of Neutrals cannot fail, in several views, to inspire caution & management towards the U. S. especially as, in the event of war or interruption of commerce with the Baltic, the essential article of naval Stores can be sought here only. Besides these cogent motives to peace and moderation, her subjects will not fail to remind her of the great pecuniary pledge they have in this Country, and which under any interruption of peace or commerce with it, must fall under great embarrassments, if nothing worse.—As I have not restrained my pen from this hasty effusion, I will add for your consideration one other remark on the subject. Should it be found that G. B. means to oppose pretensions drawn from her Treaty, to any part of the late one with F. may she not be diverted from it, by the idea

of driving us into the necessity of soothing France, by stipulations to take effect at the expiration of the Treaty with G. B. and that w<sup>d</sup>. be a bar to the renewal of the latter. Or in case the pretensions of G. B. should defeat the Treaty now before the Senate, might not such an expedient be made a plaister for the wound given to F?

My health still suffers from several complaints, and I am much afraid that any changes that may take place are not likely to be for the better. The age and very declining state of my father are making also daily claims on my attention, and from appearances it may not be long before these claims may acquire their full force. All these considerations mingle themselves very seriously with one of the eventual arrangements contemplated. It is not my purpose however to retract what has passed in conversation between us on that head. But I cannot see the necessity, and I extremely doubt the propriety, should the contest in hand issue as is most probable, of my anticipating a relinquishment of my home. I cannot but think, & feel that there will be an awkwardness to use the softest term, in appearing on the political Theatre before I could be considered as regularly called to it, and even before the commencement of the authority from which the call would proceed. Were any solid advantage at stake, this scruple might be the less applicable, but it does not occur that the difference of not very many days, can be at all material. As little can I admit that the circumstance of my participation in the Ex. business, could have any such effect on either the majority or minority as has occurred; or if a partiality in any particular friends could be gratified by a knowledge of such an arrangement, that the end would not be as well attained by its being otherwise made known to them that it was to take place, as by its being announced by my appearance on the spot. I only add that I am sensible of the obligation of respecting your conclusion whatever it may finally be, but I cannot but hope that it may be influenced by the considerations which I have taken the liberty to hint.

You may recollect a difficulty suggested in mak<sup>g</sup>. app<sup>ts</sup>. with<sup>t</sup> a Senate, in case of resignations *prior to March 4*. How have you solved it?

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

February 28, 1801.

Mad. Mss.

Dear Sir,—

Your favor of the 1st instant was to have been acknowledged a week ago, but the irregularity of the post occasioned by high waters has delayed it to the present opportunity. I have now to acknowledge your two subsequent ones of the 12th & 19th. In compliance with the last, I had proposed to leave home in a few days, so as to be with you shortly after the 4th of March. A melancholy occurrence has arrested this intention. My father's health for several weeks latterly seemed to revive, and we had hopes that the approach of milder seasons would still further contribute to keep him with us. A few days past however he became sensibly worse, and yesterday morning rather suddenly, tho' very gently the flame of life went out. It is impossible for me now to speak of my movements with precision. Altho' the exact degree of agency devolving on me remains to be known, a crowd of indispensable attentions must necessarily be due from me. In this posture of things I can only say that I shall wait the return of the post after this reaches, by which I hope to learn whether your intended continuance at Washington will admit, and the state of things will require, my being there before you leave it. By this information I shall be governed, unless imperiously controuled by circumstances here.

The conduct of M<sup>f</sup> A. is not such as was to have been wished or perhaps, expected. Instead of smoothing the path for his successor, he plays into the hands of those who are endeavoring to strew it with as many difficulties as possible; and with this view does not manifest a very squeamish regard to the Const<sup>n</sup>. Will not his app<sup>ts</sup>. to offices, not vacant actually at the time, even if afterwards vacated by acceptances of the translations, be null?

The result of the contest in the H. of R. was generally looked for in this quarter. It was thought not probable that the phalanx would hold out ag<sup>st</sup>. the general revolt of its partizans out of doors & without any military force to abet usurpation. How fortunate that the latter has been withheld: and what a lesson to America & the world, is given by the efficacy of the public will when there is no army to be turned ag<sup>st</sup>. it!

I observe that a Com<sup>e</sup>. is app<sup>d</sup>. to enquire into the effects of the late fires.<sup>1</sup> This is no doubt proper; but does not I think promise much. More is to be expected from the scrutinies of honest heads of Dep<sup>ts</sup>, aided by the documents & other evidences which they will have time & the best means of examining. I take for granted one of the first steps of the new adm<sup>n</sup> will be to institute returns, particularly in the Navy & war dep<sup>ts</sup>., of the precise state in which every circumstance involved in them, comes into the new hands. This will answer the double purpose of enabling the public to do justice both to the authors of past errors & abuses and the authors of future reforms.

I rec<sup>d</sup> a few days ago the inclosed letter from Mr. Page. Altho' there are parts of it, which might well be omitted in the transmission to you, yet the length of the proper extracts tempts me to shun the trouble of making them. In justice to Doc<sup>r</sup>. Tucker, I say with pleasure, that I have always regarded him as a man of the greatest moral & political probity, truly attached to Republican principles, of a very ingenious mind, extensive information, & great exactitude in his ideas & habits of business; and, consequently well fitted for public service.—The letter from Callendar seems from its contents to have been meant for you, tho. superscribed to me.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

May 6, 1801.

Mad. Mss.

Dear Sir

M<sup>r</sup> Camp handed me yesterday your two favors of the 11 & 12 of March. I can say nothing determinate as to the prospect of him & M<sup>r</sup> Lambert, because I do not yet know what arrangements may be contemplated throughout the Departments. I think however it would be unwise in any of the Candidates to neglect other resources: the number of them being such as greatly to reduce the chance to individuals, & it being not improbable that in some of departments at least the number of offices themselves may be reduced. I have not yet rec<sup>d</sup>. your letter for Chancel<sup>r</sup> Livingston nor the letter from Mr. Skipwith to which you refer. He will not embark on his foreign Mission till the ratification of the Treaty in France arrives here.

Callender I find is under a strange error on the subject of his fine, and in a strange humor in consequence of it. [1](#) I inclose an open letter for him which you will please to read & forward. How has the delay in giving effect to the remission of the fine happened? It ought to be known & explained to him. What I state to him as the view of the President I have from the P. himself, & therefore cannot be mistaken in.

I have been here a few days only & can say nothing to you from the Department. I find myself in the midst of arrears of papers &c &c, which little accord with my unsettled health.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Washington June 1, 1801.

Mad. Mss.

Dear Sir.—

I have recd your favor of the 23d Ult: Callendar made his appearance here some days ago in the same temper which is described in your letter. He seems implacable towards the principal object of his complaints and not to be satisfied in any respect without an office. It has been my lot to bear the burden of receiving & repelling his claims. What feelings may have been excited by my plain dealing with him I cannot say, but am inclined to think he has been brought by it to some reflections which will be useful to him. It is impossible however to reason concerning a man, whose imagination & passions have been so fermented. Do you know too, that besides his other passions, he is under the tyranny of that of *love*. Strange as it may appear, this came out, under a charge of *secrecy*, in a way that renders the fact unquestionable. The object of his flame is in Rich<sup>d</sup>. I did not ask her name; but presume her to be young, beautiful in his eyes at least, and in a sphere above him. He has flattered himself & probably been flattered by others into a persuasion that the emoluments & reputation of a post office would obtain her in marriage. Of these recommendations however he is sent back in despair. With respect to the fine, even, I fear that delays, if nothing more may still torment him & lead him to torment others. The case stands thus. Randolph, had sent on, but not settled his accounts, in which there was a credit to the U. S. for the am<sup>t</sup>. of the fine. In settling the Acc<sup>t</sup>. the credit is struck out, & the Controller has notified him, that the 200 dollrs are to be paid to Callander. Whether he will do it without a suit, is the question. If he will not, and the result can be anticipated, in any way, it will be fortunate, as Callendar's irritation produced by his wants, is whetted constantly by his suspicion that the difficulties, if not intended, are the offspring of indifference in those who have interposed in his behalf. I cannot but hope that the late Marshall will see the propriety of not opposing the order of the Treasury Dep<sup>t</sup>. There was certainly no pretext for his refusal at all to refund the money, as I understand his own statement leaves him a debtor of ab<sup>t</sup>. 1,660 drs, & that of the Treasury Dep<sup>t</sup>. ab<sup>t</sup>. 2,500 drs to the U. States.

You see by the papers that our Mediterranean trade is in jeopardy if not attacked, and that the arrears of stipulated remittances are urged as the ground of complaint. Whether this be or be not more than a pretext, it is certainly extraordinary that the arrears sh<sup>d</sup>. have been suffered so to accumulate. From Europe in general we hear little more than what you see in print. It is said that Portugal is presented with the alternative of shutting her ports vs G. B. & receiving a F. or Spanish Garrison, or of being annexed & guarantied as a province of Spain. The legations to that Country & Batavia are to be abolished. The letters &c., for the purpose to go to Smith & Murray, will be ready for the signature of the P. on Monday.



Intelligence has come thro' several channels which makes it probable that Louisiana has been ceded to France. This is but little wonderful considering the calculations, into which F. has been led by the transactions for several years back. You will readily view this subject in all its aspects. If any ideas occur on it that can be of service, favor me with them.

Remind Mr. Randolph if you please, that I have never yet heard from him in answer to my enquiries on several points—particularly the practicability and method of getting sold a partnership Mill of value. I understand it is doubted by some lawyers in Rich<sup>d</sup>. (Mr. Wickham probably) whether a suit will effect it, as long as the separate property of the partners is sufficient. I am afraid the delay has already diminished the chance of an advantageous sale, should a decree be obtainable.

Mrs. M. joins me in the most respectful salutations to Mrs. Monroe & yourself.

[\[Back to Table of Contents\]](#)

## TO RUFUS KING.1

Department of State Washington 15th June 1801.

D. Of S. Mss.  
Instr.

Sir:

Your communications by Mr. Sitgreaves on the subject of the proposed conversion of the claims against the United States, under the 6th Article of the Treaty of 1796 into a definite sum, have been duly received and taken into consideration by the President. Although there may be good ground to contest the real justice of the amount of debt which will be assumed by such a stipulation, yet considering all the actual circumstances, which are now to be taken into view; allowing particularly due weight to the advantage of substituting an amicable and final adjustment of the controversy, in place of the apparent improbability of obtaining any proper amendment of the 6th article, and of all the demands embarrassments and uncertainties incident to its present form, before a tribunal composed as is the board of commissioners under it, the President has determined on the expediency of your pursuing into effect the negociation in which you are engaged. It is his express instruction, however, that no encouragement be given to pretensions on the British side, by carrying into the negociation a sum higher than that of six hundred thousand pounds, as mentioned in your No. 6, of the 7th of March last, and that no sum beyond that be finally admitted into the commutation.

It is taken for granted that in case the claims against the United States be liquidated into a net sum, there will be no difficulty in so arranging it as to be applicable to the payment of the indemnification, awarded from time to time, under the seventh article of the Treaty, in favor of our citizens, whose claims according to an estimate of Mr. Samuel Cabot of May 9th 1798, amount to £1,250,000. Such an arrangement must be the less objectionable, as a discharge of the debt by instalments would no doubt be the alternative mode, and it will have the advantage of putting aside all possible inducements to delay the award of indemnifications, with a view to avoid the immediate advances of money necessary to satisfy them.

The President considers it as a matter of course also, that an adjustment of the controversies under the 6th article will be followed by an instant renewal of the proceedings under the seventh article, and by every reasonable exertion for hastening them to a just conclusion.

A number of your letters hitherto received remain to be acknowledged. But the subject of the dispatches by Mr. Sitgreaves has appeared to claim an answer, distinct, and without delay. I cannot but briefly add, however, that we have the mortification to find that notwithstanding all the forbearances and endeavors of the United States, for the establishment of just and friendly relations with Great Britain, accounts continue to arrive from different quarters, of accumulating trespasses on our commerce and neutral rights. This is particularly the case not only with respect to the Bahama

Islands, but to Jamaica. Mr. Savage under date of 11th April last, states that “since the 15th January, thirty vessels which appear to be American property have been detained and brought into this port, and from the best information I have been able to obtain from several Masters, their value has been computed by me at the enormous sum of seven hundred and sixteen thousand dollars, some few have been acquitted after being decreed to pay both Relators and Defendants costs, which upon the smallest calculation is never less than fifteen hundred dollars and in some instances three times that sum.”

It will be an agreeable circumstance if the result of your correspondence with the British Ministry shall be found to mitigate these outrages, it being the sincere desire of the United States, and of the government to see every obstacle removed to that entire confidence and harmony and good will between the two countries, which can be firmly established on no other foundations than those of reciprocal justice and respect.<sup>1</sup>

With very great respect, I have &c.

[\[Back to Table of Contents\]](#)

## TO RUFUS KING.

Washington Department of State 24th July 1801.

D. Of S. Mss.  
Instr.

Sir:

My letter of the 15th of June acknowledged the receipt of your communications of April 20th and 21st by Mr. Sitgreaves. Your several favors received prior to that date and since and not acknowledged complete your new series including No. 16 with the addition of No. 19.

Having already communicated to you the decision of the President with regard to the proposed commutation of the claims against the United States under Art VI of the Treaty of 1794, into a nett sum of six hundred thousand pounds sterling I have nothing new to add on that subject beyond my wishes that the negotiation may be brought to a speedy as well as a final issue. Your letter of May 30th the last one received countenances such an expectation more than the preceding appearances. There is notwithstanding too much room to remark that with due allowances for other pressures on the attention of the British government, a due share of it has not been given to a subject which they profess to consider of so much importance to that good understanding between the two countries, which they also profess to have so severely at heart.

But if complaint be justifiable for the delays attending the proposed liquidation of the debts, on which a difference of opinion, and a tedious discussion were to be apprehended, what must be thought of the difficulties and delays thrown in the way of other subjects; some of them acknowledged to be just in the precise form given to them, others unsusceptible of any specious controversy; and others of a nature and magnitude to make the most trying appeal to the interests and sensibility of the United States.

By your letter of March 10th 1800, it appears that the proposition for explaining the list of contraband of war contained in the XVIII Art. of the Treaty, and thereby instigating the vexations of our lawful commerce under the pretext of that article, tho' admitted as early as the summer of 1799, after full examination and minute discussion, to be in a form proper to be adopted has not even yet carried into effect, nor is it known that any adequate measures have been taken to arrest or redress the abuses.

The Articles proposed to be added to the Treaty for placing our vessels trading in the Mississippi under the same security with our other coasting vessels and declaring that neither party shall impress on the high seas, seamen out of vessels of the other, tho' resting on such solid grounds of reason, and the latter so acknowledged by Lord St. Vincent himself, and though known to have been for many years a source of peculiar

irritation in this country, have neither of them been formally stipulated or practically enforced.

Even the proposed removal of the obstacles of form to the restitution of the Maryland Bank Stock, a measure prescribed by the clearest obligations of moral and legal right, has experienced all the procrastination incident to the most doubtful and intricate topics of negotiation.

Adding to these considerations, the perseverance of the British Government in not effectually controlling the depredations on our commerce, the immense amount of the depredations, the violations of all principal, rule, and decorum in many of their subordinate Tribunals, the difficulties, delay, and ruinous expense of seeking redress in the higher ones, the numerous instances in which insult has been added to injury, during the seizures and condemnations of our vessels; adding again the number and manner of impressments committed on American Seamen, native as well as naturalized, with their protections in their hands, and on neutral aliens voluntarily engaged in the service of our vessels, together with the long period thro' which this enormity, as well as that of the depredations on our commerce, has been suffered to go on, in spite of all the arguments expostulations, and remonstrances which have been opposed to them; adding finally, that this mass of injustice and aggression has fallen on a nation whose proceedings towards the British nation and government have been regulated by the most faithful attention both to the stipulations arising from its neutral character; which [is] acknowledged by that government to have furnished no just topic for reproach or complaint; which is felt and admitted also to be the greatest consumer of British exports the most valuable source of those raw and bulky materials, which employ both their manufacturers and the navigation, in fact in all senses, the best customer, and latterly the fund in a great measure of the necessaries of life to themselves, as it must be at all times to a great part of their dependent dominions; all these considerations thrown into one view make it difficult to decide whether the greater wonder ought to be exacted by the steady course of rectitude observed on the part of the United States, or the wanton abuses of power on the part of Great Britain, by the unexampled patience of the former or the unpolitic experiment made on it by the latter.

To give full force to these remarks it would be requisite to state the precise extent of the two principal injuries viz: the spoliations on our trade, and the impressment of our seamen. The materials however in this office give a more limited information on the first of these, than such as are probably in your hands or within your reach. The value of the property unlawfully seized and condemned since the Treaty of 1794, and consequently in violation of that Treaty, must amount at a moderate computation to some millions of dollars.

The imperfect lists of impressed seamen which have been obtained by our Agents and reported to this Department swell the number to near two thousand, more than four fifths of whom are natives of the United States, not more than seventy are British subjects, and more than seventy Aliens both to Great Britain and the United States, and consequently so distinguishable by the language and other signs as to take away all color of apology for the outrage. Of the whole number of seamen thus deprived of

their rights and forced into the hardships and dangers of a foreign service in time of war, about one third only have been set at liberty; notwithstanding the time, the pains and the expense which have been used for that purpose by their country.

Examples might be multiplied, both of deprivations and impressments, showing also in the strongest manner that the extent of them is not the only offensive light in which they are to be viewed. Your own recollection and researches can readily supply these examples. You will find several of the first kind in the hands of Mr. Williams referred to him by the Consul at Lisbon. In relation to impressments it will not be improper to cite a very marked instance which has lately been transmitted. By a letter from Mr. Smith the Minister Plenipotentiary of the United States at Lisbon it appears "that on the night of the 7th April last, between the hours of 11 & 3 o'clock three American vessels were boarded while at anchor in that Harbour, by a boat belonging to the British frigate Diana, Captain Stephenson, manned by an officer and several men, who armed with pistols and drawn cutlasses after committing sundry acts of outrage and menacing the lives of unarmed men in their beds, forcibly pressed and carried away a seaman from one of the said ships."

It is to be observed that in aggravation of this atrocious assault, it was made during the middle of the night, within the jurisdiction of a friend both to Great Britain and the United States, that it proceeded from a ship of war, commanded by a commissioned officer, and was executed by a party headed by an officer: A greater indignity could scarcely be offered to the United States or to Portugal, or a more flagrant outrage to individuals. It is indeed said that the Captain of the Frigate disclaimed all knowledge of the transaction: But have the real authors of it been brought to punishment? Has the unfortunate seaman been restored? An apology without these satisfactions is a mockery and nothing more. As it appears by Mr. Smith's letter to the Department of State, that you have been furnished with an account of this atrocity, it is not doubted that you will have presented it in its true light to the British Government and as the fact is so precise and so indisputable, and the officers can be so easily identified, it would be but a reasonable reliance that instant trial and punishment must have ensued, if the inefficacy of demands on the justice of the British Government on such subjects, had not so much familiarized the United States to disappointment.

The complaints daily arriving at this office show that our mariners are impressed without the least respect for their legal protections, certified, in the most authentic forms; that after impressment they are often menaced or maltreated into enlistments, and then (in direct contradiction to the principle on which British seamen voluntarily engaged on board American vessels are taken off as British subjects) claimed as regular members of British crews, that they are in fine, not only subject to the discipline and dangers of the foreign service, but exposed to be made prisoners by the powers at war with Great Britain, and involved with British subjects in all the calamities of that situation.

Of this last fact the following proof is selected out of a number that might be produced, because being the last received it is the first that offers itself, and because it includes a very singular aggravation of the original trespass

Mr. Mountflorenc writes from Paris on the 15th of April 1801 “that many of our seamen are daily captured on board English vessels by French cruisers, and brought into the ports of France. The British Commissary of Prisoners of war here had constantly claimed such American sailors as English, to have them exchanged as such. These Americans being put on board of a Cartel, were not suffered to land on their arrival in a British port, but were immediately taken on board some tender and carried to the nearest English man of war. By these means these poor fellows were deprived of the possibility of making their cases known to our Agent for seaman in London. Such at least is the information given me by some sailors.”

It cannot be pleaded that the seamen in question were taken in vessels where they had entered voluntarily. These instances if they exist at all are so few that the supposition cannot be admitted. Nor does it mitigate the wrong on the part of Great Britain, that they have suffered another wrong from the French Republic in not being set at liberty on arriving within its jurisdiction, according to the law and practice of nations. A redress of the latter wrong will be pursued, thro’ the Minister Plenipotentiary, who is shortly to go to that country and with the less doubt of success as Mr. Mountflorenc says, that an interposition in his ex-official character has obtained the discharge of a number of our seamen mingled with British prisoners.

It has been felt as a duty to the public rights, and also as a just respect to the public sensibility, not to pass lightly over the spoliations and impressments which the British Government has so long authorized or tolerated. Hitherto, the patience here has been nourished by a hope that right and reason would by degrees be consulted by power, or at least that peace might quickly close the scene of its abuses. This hope has not lost altogether its influence. But it is proper to be known that the wrongs have made a deep impression on the American mind, and that if no satisfactory change of conduct be soon apparent, and the war be likely to go on, the policy of this Country, can scarcely fail to take some shape more remedial than that hitherto given to it. Should any necessity of this sort be imposed, the inconvenience which may result from it cannot in any degree be chargeable to the United States. The desire not being more than the same respect for their rights which they scrupulously pay to the rights of Great Britain. They have manifested every disposition to cultivate good will and liberal intercourse between the two Countries. The sacrifices made to this disposition are indubitable proofs of its sincerity. The President wishes it to be understood, that his disposition is in perfect concurrence with that of the community, and that every proper demonstration of it, will be found in the course of his administration. At the same time he equally wishes it to be understood and impressed, that whilst nothing is necessary on the part of Great Britain to the establishment of a thorough and lasting cordiality in the United States but a return of the justice and respect of which they offer the example it is not less certain, that without such a return, their cordiality must not be expected to be either entire or lasting.

I had written thus far when your letters of May 15 and 19 and June 1 came to hand, all at the same time. The contents of them, tho’ much is left to be done, for the removal of our complaints, especially on the subject of our seamen, afford very great and sincere pleasure.

If the measures for suppressing the licentious proceedings of the Cruisers and Courts in the West Indies, be carried into full effect, they will cut off no inconsiderable source of the ravages on our trade. It is somewhat apprehended however, that the orders may be evaded as heretofore, whilst the present establishment of Courts continues, and that the tediousness of the parliamentary reform of these may conspire with the lateness of its date, to afford a long period for the harvest of abuses, and to shorten that within which they are to be corrected. Nevertheless it is of great importance in every view, that your endeavors should not be relaxed in urging all these measures of reform. The amendments which you have suggested to the Bill introduced into the House of Commons seem well calculated to render it more effectual, and consequently more conciliatory, and will on both accounts improve its character. As the British Government has now repeatedly and so solemnly disavowed the principle on which so many condemnations have been made to the West Indies, it may be reasonably expected that it will provide a summary and complete redress for the individuals injured by them. In most of the cases, the principle of condemnation is expressed in the sentence and removes all difficulty, and when this has been omitted it will not be difficult to deduce it from the libel or other circumstances of the case. You will conform to the injunctions of the President by pursuing this object with the attention which is due to the parties interested. Whenever it shall be known that a summary provision has been assented to, this Department will give all the assistance it can, towards extending the benefit of it to the individual claimants. The removal of Admiral Parker, and Captain Pellen from the American station, and on the grounds assigned for it, is another indication of a juster policy towards the United States which deserves to be acknowledged.

No time was lost in presenting more particularly to the attention of the President, your letter of June 1st stating the interview with Lord H. in which he communicated to you for the information of the President, the orders given at the British ports in the Mediterranean, in favor of the American squadron sent into that sea. The President has received this communication with a lively satisfaction, and charges you to assure his British Majesty, that he feels all the value of the good offices he has been pleased to interpose, both as they afford a seasonable accommodation to the little squadron dispatched for the protection of our Mediterranean Trade, and as they are a pledge of those friendly sentiments and that liberal policy which the United States sincerely wish to be reciprocal and perpetual between the two nations.

The cession of Louisiana from Spain to France, as intimated in your letter of 29 March had been previously mentioned from several quarters, and has since been repeated from others as an arrangement believed to have taken place. Although no official or regulation confirmation of the fact has been received, it is more than a probability and has been the subject of instructions to Mr. Pinckney the Minister of the United States at Madrid, as it will also be to Mr. Livingston the Minister going to Paris. They will both make use of the proper [means] to prevent a change of our Southern neighbours, that is to say the means of peace and persuasion. Should Great Britain interpose her projects also in that quarter, the scene will become more interesting, and require still greater circumspection on the part of the United States. You will doubtless be always awake to circumstances which may indicate her views, and will lose no time in making them known to the President. Considering the facility



with which her extensive Navy can present itself on our part, that she already flanks us on the North, and that if possessed of Spanish countries contiguous to us, she might soon have a range of settlements in our rear, as well as flank us on the South also, it is certainly not without reason that she is the last of Neighbours that would be agreeable to the United States.

It will be agreeable and may be useful for you to know that the Seasons on which our summer harvests depended have been unaccountably favorable, and particularly the crops of Wheat throughout the United States are estimated to exceed by one half the produce of any preceding year, at the same time, that the quality is uncommonly excellent.

With sentiments &c.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY. 1

Washington, Department of State,  
October 25th, 1801.

D. Of S. Mss.  
Instr.

Sir:

In the instructions, accompanying your Commission, it was not forgotten, that the trespasses of Spain on our commerce had laid the foundation for strong complaints and reclamations on the part of the United States; and it was accordingly made your duty to press them in a proper manner on the Spanish Government. As this violation of our neutral rights prevailed most during the misunderstanding between the United States and the French Republic, and was generally marked under, or confounded with the Commission and flag of the latter it was hoped that with the termination of that misunderstanding, would have terminated also the abuses which Spain had permitted her subjects to connect with it. By the documents hereto annexed consisting of a letter from the President of the Insurance Company of North America, a memorial from the Chamber of Commerce of Philadelphia, a letter from Thomas Fitzsimons Esq. and several private letters from the Captains and Supercargoes of the captured vessels, you will find that instead of fulfilling this reasonable hope, the predatory cruizers from the port of Algeciras have assumed a recent activity peculiarly alarming to our merchants. American property to a very heavy amount has already been a prey to the Spanish Gun boats from that asylum, and it is justly apprehended from the extent of our commerce flowing thro' the same channel, that a still greater portion of it will be exposed to the same fate. This apprehension is the greater, as the general disarming of our merchantmen, produced by the reconciliation with France, removes the check heretofore given to the predatory boats by the means of resisting their enterprizes.

The pretext for the seizure of our vessels seems at present to be, that Gibraltar has been proclaimed in a state of Blockade, and that the vessels are bound to that port. Should the proceeding be avowed by the Spanish Government, and defended on that ground, you will be able to reply.

1st That the proclamation was made as far back as the 15th of Feby 1800, and has not since been renewed; that it was immediately protested against by the American and other neutral Ministers at Madrid, as not warranted by the real state of Gibraltar, and that no violations of neutral commerce having followed the proclamation, it was reasonably concluded to have been rather a menace against the enemies of Spain, than a measure to be carried into execution against her friends.

2nd That the State of Gibraltar is not and never can be admitted by the United States to be that of a real blockade. In this doctrine they are supported by the law of Nations as laid down in the most approved Commentators, by every Treaty which has undertaken to define a blockade, particularly 1 those of latest date among the maritime nations of Europe, and by the sanction of Spain herself, as a party to the armed

neutrality in the year 1781. The spirit of Articles XV and XVI of the Treaty between the United States and Spain, may also be appealed to as favoring a liberal construction of the rights of the parties in such cases. In fact this idea of an investment, a seige or a blockade, as collected from the authorities referred to, necessarily results from the force of those terms; and though it has been sometimes grossly violated or evaded by powerful nations in pursuit of favorite objects, it has invariably kept its place in the code of public law, and cannot be shown to have been expressly renounced in a single stipulation between particular nations.

3d That the situation of the naval force at Algeciras in relation to Gibraltar has not the shadow of likeness to a blockade as truly and legally defined. This force can neither be said to invest, besiege or blockade the Garrison, nor to guard the entrance into the port. On the contrary the gun boats infesting our commerce have their stations in another harbour separated from that of Gibraltar by a considerable Bay; and are so far from beleaguering their enemy at that place, and rendering the entrance into it dangerous to others, that they are, and ever since the proclamation of a blockade, have been, for the most part kept at a distance by a superior naval force which makes it dangerous to themselves to approach the spot.

4th That the principle on which the blockade of Gibraltar is asserted, is the more inadmissible, as it may be extended to every other place in passing to which vessels must sail within the view and reach of the armed boats belonging to Algeciras. If because a neutral vessel bound to Gibraltar can be annoyed and put in danger by way-laying cruizers, which neither occupy the entrance into the harbour nor dare approach it, and by reason of that danger is liable to capture, every part of the Mediterranean coasts and islands, to which neutral vessels must pass thro' the same danger, may with equal reason be proclaimed in a state of blockade, and the neutral vessels bound thereto made equally liable to capture; or if the armed vessels from Algeciras alone, should be insufficient to create this danger in passing into the Mediterranean, other Spanish vessels co-operating from other stations, might produce the effect, and thereby not only blockade any particular port, or the ports of any particular nation, but blockade at once a whole sea, surrounded by many nations. Like blockades might be proclaimed by any particular nation enabled by its naval superiority to distribute its ships at the mouth of the same, or any similar sea, or across channels or arms of the sea, so as to make it dangerous for the commerce of other nations to pass to its destination. These monstrous consequences condemn the principle from which they flow, and ought to unite against it every nation, Spain among the rest, which has an interest in the rights of the sea. Of this Spain herself appears to have been sensible in the year 1780, when she yielded to Russia ample satisfaction for seizures of her vessels made under the pretext of a general blockade of the Mediterranean, and followed it with her accession to the definition of a blockade contained in the armed neutrality.

5th That the United States have the stronger ground for remonstrating against the annoyance of her vessels on their way to Gibraltar, inasmuch as with very few exceptions, their object is not to trade there for the accommodation of the Garrison, but merely to seek advice or convoy for their own accommodation in the ulterior objects of their voyage. In disturbing their course to Gibraltar, therefore, no real

detriment results to the enemy of Spain, whilst a heavy one is committed on her friends. To this consideration it may be added that the real object of a blockade is, to subject the enemy to privations, which may co-operate with external force compelling them to surrender, an object which cannot be alleged in a case, where it is well known that Great Britain can and does at all times by her command of the sea, secure to the Garrison of Gibraltar every supply which it wants.

6th It is observable that the Blockade of Gibraltar is rested by the proclamation on two considerations, one that it is necessary to prevent illicit traffic, by means of neutral vessels, between Spanish subjects and the Garrison there; the other that it is a just reprisal on Great Britain for the proceedings of her naval armaments against Cadiz and St. Lucar. The first can surely have no weight with neutrals, but on a supposition never to be allowed, that the resort to Gibraltar under actual circumstances, is an indulgence from Spain not a right of their own; the other consideration without examining the analogy between the cases referred to and that of Gibraltar, is equally without weight with the United States, against whom no right can accrue to Spain from its complaints against Great Britain; unless it could be shown that the United States were in an unlawful collusion with the latter, a charge which they well know that Spain is too just and candid to insinuate. It cannot even be said that the United States have acquiesced in the depredations committed by Great Britain under whatever pretexts on their lawful commerce. Had this indeed been the case, the acquiescence ought to be regarded as a sacrifice made by prudence to a love of peace, of which all nations furnish occasional examples, and as involving a question between the United States and Great Britain, of which no other nation could take advantage against the former. But it may be truly affirmed, that no such acquiescence has taken place. The United States have sought redress for injuries from Great Britain as well as from other nations. They have sought it by the means which appeared to themselves, the only rightful judges, to be best suited to their object; and it is equally certain that, redress has in some measure been obtained, and that the pursuit of complete redress is by no means abandoned.

7th Were it admitted that the circumstances of Gibraltar in February 1800, the date of the Spanish proclamation, amounted to a real blockade, and that the proclamation was therefore obligatory on neutrals; and were it also admitted that the present circumstances of that place amount to a real blockade (neither of which can be admitted) still the conduct of the Algeciras cruizers is altogether illegal and unwarrantable. It is illegal and unwarrantable, because, the force of the proclamation must have expired whenever the blockade was actually raised, as must have been unquestionably the case, since the date of the proclamation, particularly and notoriously when the port of Algeciras itself was lately entered and attacked by a British fleet, and because on a renewal of the Blockade, either a new proclamation ought to have issued, or the vessels making for Gibraltar, ought to have been pre-announced of their danger and permitted to change their course as they might think proper. Among the abuses committed under pretext of War, none seem to have been carried to greater extravagance or to threaten greater mischief to neutral commerce, than the attempts to substitute fictitious blockades by proclamation, for real blockades formed according to the law of nations; and consequently none against which it is more necessary for neutral nations to remonstrate effectually before the innovations

acquire maturity and authority, from repetitions on one side and silent acquiescence on the other.

In these observations, which it may be proper for you to make to the Spanish Government, in case justice should not have been yielded by it to the interpositions which will no doubt have been previously tried by Col<sup>o</sup>. Humphreys or yourself, or by both. Letters from the former of the 21 and 29 of August shew that several cases of seizure had been made known to him, and that he had it in view to carry them before the Spanish Government. Considering the amicable disposition manifested in general by that Government towards the United States, and the mutual interest it has in maintaining perfect harmony with them, the President indulges the strongest hopes that the earliest opportunity will have been seized for repairing the wrongs which have been committed, and for preventing a repetition of them Should this hope prove falacious, it will be your duty to press these objects, by fair and frank representations, aided by the communications now made to you, and by an appeal to the express instructions from the President included in them; mingling always with your requisitions assurances of the cordial sentiments cherished by the United States towards Spain and their entire confidence in her disposition to evince that justice and respect for our rights which is not less congenial with her own high character than it is necessary for our satisfaction

I have the honor to be, &c.

[\[Back to Table of Contents\]](#)

## TO RUFUS KING.

Department of State,  
December 22, 1801

D. Of S. Mss.  
Instr.

Sir.

In my last of the 10th instant, I took occasion to remark to you the extensive injury threatened to our navigation by the countervailing Act of Great Britain, the inconsistency of that act, in our judgment, with the true sense of the Treaty of 1794, and the several remedies for the case, which occurred for consideration;—among which that of a revision of the British Act, and an adjustment of it to a more equitable rule, was suggested as an object proper to be sought by your immediate interposition with the British Government. The circumstances of haste and indisposition under which the latter was written rendered the development of the subject so incompetent that it cannot be too soon resumed.

I must repeat that the Treaty of 1794 in authorizing a countervailing duty on the part of Great Britain, can be fairly understood to mean no more than that the navigation of the two countries might be put on as equal a footing as it would have remained on, if the regulation of Congress to be countervailed, had never passed. This position does not appear to be susceptible of denial or controversy. In order to re-establish such an equality, either of two courses would have been sufficient; first that of repealing the regulations of Congress charged with introducing an inequality in our favor; or secondly that of enacting in Great Britain regulations countervailing or balancing the inequality, and consequently having the like effect of re-establishing an equality. As the first course was not taken by the United States, and as that taken by Great Britain has produced a greater inequality in her favor than before existed against her, an important question now to be considered is, by what remodification, her countervailing act can be made to produce the just equality contemplated by the Treaty, in place of that transposed and augmented inequality resulting from the Act in its present form.

It seems clear that the British act in its present form has departed from the rule of justice and equality by making her own tariff instead of that of the United States the basis of an act for countervailing and equalizing a discrimination founded on the latter tariff. The deviation, though leaving a sufficient advantage to the British navigation, would be more striking if the Act had adhered to the rigour of the British tariff as the assumed construction of the Treaty would have authorized. The difference, for example, of one shilling and six pence sterling per hundred pounds of tobacco might have been raised as high as five shillings, amounting to twelve or fifteen dollars per Hogshead. Pig iron is another example: the difference of 6½ per ton might have been raised to more than 30 p Ct. of the value of the article. The British tariff in General being much greater than that of the United States one tenth of the former operating as

a bounty in favour of British ships must proportionally exceed the operation of one tenth of the latter in favour of American ships.

Another observation to be made is, that the British act by imposing the countervailing burden on the productions of the United States, has made it impossible to regulate it according to any principle of sufficient uniformity and equality in relation to the ships of the two countries. How compare together things so different as the merchandize and manufactures of one country, with the heterogeneous productions of the other? In what mode is the value of the latter to be ascertained in British ports; as exactly as the value of the former is ascertained in the American ports? or if this difficulty should not be insurmountable, in the articles taxed according to their value; how, in what proportion, and by what classifications, are the American articles to be subjected to different rates in Great Britain, corresponding with the different rates of 7-½. 10 12-½ per Cwt 7c. assessed in the United States on the articles of Great Britain? or by what rule could an average of these rates, considering the inequality in value and bulk of the several classes of articles to which they are applied, be deduced, that would put the navigation of the two countries on that bona fide equality which the Treaty requires? or again, laying aside all the perplexities, how is it possible even to find a practicable rule of comparison and equalization for articles taxed not according to value; but according to quantity; and where the quantity may be defined in articles on one side by weight, and in articles on the other side by measure, and in some instances without any precise reference to either.

In addition to these considerations, it is of decisive importance that the tendency of a countervailing regulation applied to the productions of the United States imported into Great Britain is to favour the carriage of these in British bottoms; as the carriage of British manufactures in American bottoms, is favoured by the discriminating duty of the United States. Now as the productions of the United States, from their bulky character, employ at least ten times the tonnage which is required for the exports of Great Britain, and as it is always to be kept in view that the object of the Treaty was not to encourage or discourage the productions or manufactures, or even the Commerce of both countries, but merely to give a fair equality and competition to the vessels navigating between them, it follows both that an undue advantage accrues to the British navigation, and that the object of the Treaty is proportionally violated by any discriminating burden on the productions of the United States, which will give to British bottoms a preference in the carriage of them. If a regulation of this sort could be just or within the meaning of the compact at all, it ought to be so contrived as to give a preference to the same number of British vessels in carrying the productions of the United States to Great Britain as there is of American vessels enjoying under our law a preference in bringing British merchandize to the United States; that is to say, on the supposition that our exports to Great Britain employ ten times as many vessels as her exports to this country, that her countervailing regulations ought to secure to her vessels the carriage of only of our productions, or in any point of view, such a proportion only as would leave to the vessels of the United States as much of the carriage of our productions as with their carriage of the manufactures of Great Britain, imported into this country, would divide equally between American and British vessels the joint amount of the carriage between the two countries. It is manifest however, that no regulation could be so skilfully shaped as to produce such a result.

And it is equally certain that the regulation actually adopted by Great Britain must have the effect of monopolizing the transportation of the whole mass of our bulky articles, whilst the most that can be hoped by the United States will be a monopoly for their vessels of British articles not amounting to one tenth of that bulk. Nay, even this very unequal monopoly cannot be expected; because, of the many British vessels bound for our productions, it would often happen that some instead of coming in ballast would take a cargo without freight or with little freight, and in that way increase the balance of their navigation against the American side of the account.

If these remarks be in any degree just, they must prove that with a view to a bona fide and practicable mode of imposing a countervailing duty Great Britain must withdraw it from the American productions which are so various in themselves and so dissimilar to her articles of merchandise as to admit of no rational comparison between them for the purpose in question, as well as renounce the use of a tariff so much exceeding that which is the basis of our discriminating duty, and must seek for a countervailing rule where alone it can be found, viz in the application of the same duty to the same objects which in the regulation of the United States produced the state of things which is to be countervailed. She must impose on her exports to this Country, in american bottoms the same discrimination of 10 p Cent as our law imposes on her exports to this Country in British bottoms. This will produce a real and precise countervailing effect, and this alone can produce one that will be real and precise.

To this expedient for redressing at once, the existing inequality in favour of British bottoms, and the inequality in favour of american bottoms complained of at the date of the Treaty, and provided against by that instrument it may be objected that the american tariff applied to British Articles in american ports, might not be applicable to the same articles on their leaving British ports. But it is probable that the adjustment of our tariff to the latter case would be made with as little difficulty and in fewer words than are now employed in the complicated regulations on this subject contained in the British Statute. It may also be objected that as american vessels bound with cargoes from Great Britain to the United States might clear out for other countries the additional duty of 10 p Cent might be eluded, and the British thereby deprived of the benefits of the Treaty. To this objection the answer is, that the abuse might be guarded against by requiring in Great Britain security from american vessels that they shall produce a certificate of their having delivered their cargoes elsewhere than in the ports of the United States; or by an engagement on the part of the United States to require from their vessels bringing cargoes from Great Britain, a certificate of their having there paid the discriminating duty, or by both of these regulations. It may be further answered, that however imperfect or inconvenient these precautions may be, they are less objectionable than the palpable violation of equality existing under the present countervailing act. Lastly it may be said by the British administration that such a modification of the countervailing act would be the same thing with a repeal of all discrimination, and that the latter as the more simple and convenient remedy, ought to be preferred. Should this be said it will amount to an admission of the solidity of our objections to the present countervailing Act which works a very different effect, and will lead to the measure of repealing both that act and the Act of Congress—so far as they relate to the additional duty of 10 p Cent. If



this measure can be immediately accomplished, it claims a preference, on the whole, over any other expedient, and if the British Government is disposed to come into it, an act of Parliament can readily be passed with a clause suspending its operation on a proclamation to be issued by the Executive authority on due notice of a correspondent repeal by Congress. And Congress if so disposed, can also immediately pass an act for the purpose with a like suspending clause. This might be the more expected as it is probable the difficulty, hinted in my last, as incident to a repeal of the discriminating duty here may be got over, and as such a proposition, which you will find in the newspaper, herewith sent, is now depending before the House of Representatives. In the meantime however, until these concurrent repeals shall be put into force, our navigation will continue to suffer, unless some alleviating regulation can be obtained from the equity and liberal policy of the British Government.

Were the constitution not a barrier to duties on exports, it would not be very difficult for Congress to provide a remedy of themselves by repealing the present discrimination on imports, and imposing on our exports in British bottoms precisely the same duty, which her countervailing clauses adds on the importation of them in american bottoms, into Great Britain. Such measure could not be complained of by Great Britain, and the principle of it is exactly the same with that of the measure above contended for, as a necessary substitute for the present countervailing act of Great Britain; in case the better remedy of a repeal of the Acts on both sides, cannot be put into immediate train.

From the view here taken of the subject it seems advisable that you promote through the medium of proper representations and explanations to the British Government, a repeal of the countervailing part of the British statute, on the condition above stated, so far as respects the difference of 10 p Ct. With respect to the tonnage duty, which is made the same in its rates with that of ours, and which in case the 10 p Ct. duty be removed, is not likely to operate on more of our vessels than our tonnage duty will on British vessels, it may perhaps be well not to include that in the repeal, especially as it would have the effect of subtracting that much from our revenue. A better course will be, if the British Parliament be pliant on the occasion for the repealing act to be so modified as to apply to one or both discriminations, as may concur with the Act of Congress which also if Congress should view the subject in the same light can be modified in a similar manner.

The temptation of Great Britain to detain our seamen in her service, having expired with the war, it is hoped there will be no difficulty in obtaining a general discharge of them, without the further trouble of proof, or particular enquiry. And you will perceive the propriety of hastening the measure, as much as possible for the sake of those who may be on board of ships allotted for distant stations or service. Whenever these unfortunate people may be discharged, justice will require that their dues of every sort, be paid off, and their return to their own Country be provided for.

The Convention with France has received the sanction requested from the Senate, by the President, and the Proclamation of it has issued accordingly, you will find it in one of the inclosed newspapers.

With the highest respect & consideration, &c.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State,  
March 30th, 1802.

D. Of S. Mss.  
Instr.

Sir:

My last was of the 5th of February, and 27th of March. I have as yet received no letter from you since your arrival at Madrid. By one from Col<sup>o</sup> Humphreys, written a few days after it took place, we learn that you were then confined by indisposition, and had not presented your credentials. We are anxious to hear from you on the several subjects with which you have been charged; particularly on that of Louisiana. By a Treaty entered into between Spain and France in March 1801, and lately published in the Paris newspapers, it appears that in an antecedent treaty, the cession of that Country had been stipulated by Spain. Still it is possible that the cession may have been since annulled; and that such was, or was to be the case, has been stated in verbal accounts from Madrid. At Paris, Mr. Livingston has been given to understand by the French Government, that the Cession had never been more than a subject of conversation between the two governments. No information however, has been received from him subsequent to the publication of the Treaty of March 1801, which must have led to some more decisive explanations.

The copies herewith inclosed, of a memorial of sundry inhabitants living on Waters running from the United States thro' Florida into the Gulph of Mexico, and of a letter from the late Mr Hunter representative in Congress of the Mississippi Territory, will present to your attention a subject of some importance at this time, and of very great importance in a future view. The Treaty with Spain having as these documents observe, omitted to provide for the use of the Mobbille, Catahoochee and other rivers running from our territory through that of Spain, by the citizens of the United States in like manner with the use of the Mississippi, it will be proper to make early efforts to supply the defect. Should a Cession, indeed, including the Spanish Territory Eastward of the Mississippi have finally taken place, it can answer no purpose to seek from the Spanish Government, this supplemental arrangement. On the contrary supposition, you will avail yourself of the most favourable moment and manner of calling its attention to the object. In support of our claim you will be able to use the arguments which inforced that to the navigation of the Mississippi. If it should be observed, that a greater proportion of these rivers, than of the Mississippi, run thro' the exclusive territory of Spain, it may be a set off, that the upper parts of the rivers run exclusively thro' the territory of the United States, and do not merely divide it, like the Mississippi from that of Spain. But neither the one nor the other circumstance can essentially affect our natural rights. Should the Spanish Government be favourably disposed, it will be proper for you to pave the way for a formal convention on the subject, endeavouring to obtain in the mean time, such regulations from its authority, and such instructions to its officers as will answer the purposes of our citizens. Among other hardships of which they now complain, and for which a regulation is

particularly wanted, one I understand is, that the article cotton, which is acquiring rapid importance in that quarter, must, after it has been conveyed to Mobile, be shipped to New Orleans and pay a duty of about 12½ p Cent before it can be exported.

The copies of a letter from E. J. Berry and of another from E. Jones herewith also inclosed, present another subject which will claim your attention. This is not the only complaint that has been received, of abuses relating to the effects of Americans deceased within the Spanish jurisdiction on the Mississippi. It seems so reasonable and necessary that the Consul residing there, or persons deriving authority from the deceased owner, should be allowed to take charge of such effects, that it is hoped a regulation for that purpose may be obtained from the justice and liberality of the Spanish Government. \* \* \*

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.1

Washington, Department of State,  
May 1st 1802.

D. Of S. Mss.  
Instr.

Sir,

My last of which a duplicate is now sent, was of the twenty-sixth day of March. I have since received yours not then acknowledged including the Dispatch of Feby 26 which came to hand two days ago.

The conduct of the French Government in paying so little attention to its obligations under the Treaty, in neglecting its debts to our citizens, in giving no answers to your complaints and expostulations, which you say is the case with those of other foreign Ministers also, and particularly in its reserve as to Louisiana, which tactily contradicted the language first held to you by the Minister of Foreign Relations, gives tokens as little auspicious to the true interests of France herself, as to the Rights and the just objects of the United States. We have the better ground to complain of this conduct, as it is so much at variance with the example given by the Government here. The appropriation was no sooner carried thro' the Legislative forms, than the settlement of French claims under the Treaty commenced; and with the advantage of every facility that could be afforded on our part in ascertaining them; and as Mr Pichon was authorized to receive those due to individuals not applying, the whole amount has been already discharged, excepting in a very few cases which may require further examination. The claims were liquidated according to the nett proceeds of the sales, as heretofore intimated to you, altho' it is still believed that restitution according to the gross amount or value at the time of capture, not only would be more favorable to the United States but more in itself. The payment to Mr Pichon without a special Power from the claimants was by no means the choice of the President, but was so much pressed, as a test of the disposition of this Country towards the French Republic at a critical moment, that it could not be properly refused. The sum received by him is \$140,841.25 Cents. That paid to individuals is \$74,667.41.

It is proper to observe to you that in all cases where sales were made by the American Captors prior to the date of the Convention, without the trial and condemnation requisite, we have admitted the title to restitution without regarding the lapse of time between the capture and the Convention, or making a question how far cases of that description were within the contemplation of the instrument. You will of course avail yourself of this proceeding on the part of the United States to enforce a correspondent rule in their favour, in case a different one should be contended for by the French Government. You will not fail to insist also, if occasion should require that in cases where the time allowed for appeals, had not run out at the date of the Convention, it could not be necessary for the claimants afterwards to enter appeals. The Convention by recognizing all claims not barred by final condemnation at its date, evidently rescued them from all further subjection to judicial investigation.

The Cession of Louisiana to France becomes daily more and more a source of painful apprehensions. Notwithstanding the Treaty of March 1801, and notwithstanding the general belief in France on the subject, and the accounts from St. Domingo that part of the armament sent to that island were eventually destined for Louisiana, a hope was still drawn from your early conversations with Mr. Talleyrand that the French Government did not mean to pursue the object. Since the receipt of your last communication, no hope remains but from the accumulating difficulties of going thro' with the undertaking, and from the conviction you may be able to impress that it must have an instant and powerful effect in changing the relations between France and the United States. The change is obvious, and the more it can be developed in candid and friendly appeals to the reflections of the French Government, the more it will urge it to revise and abandon the project. A mere neighbourhood could not be friendly to the harmony which both countries have so much an interest in cherishing but if a possession of the mouth of the Mississippi is to be added to other causes of discord, the worst events are to be apprehended. You will consequently spare no efforts that will consist with prudence and dignity, to lead the Councils of France to proper views of this subject, and to an abandonment of her present purpose. You will also pursue by prudent means the enquiry into the extent of the Cession, particularly whether it includes the Floridas as well as New Orleans; and endeavour to ascertain the price at which these, if included in the Cession, would be yielded to the United States. I cannot in the present state of things be more particular on this head, than to observe that in every view it would be a most precious acquisition, and that as far as the terms could be satisfied by charging on the acquisition itself, the restitutions, and other debts to american Citizens, great liberality would doubtless be indulged by this Government. The President wishes you to devote every attention to this object, and to be frequent and particular in your communications relating to it.

According to the latest accounts from St. Domingo the French troops had been considerably successful in dispersing the Blacks, but it is uncertain how long the War there may be protracted by the irregular enterprizes of the latter, and by the advantages they derive from the climate. You will have found from the Newspapers, that much irritation and perplexity were the consequence of all conduct on the part of the French Commander, on his arrival, met as we learn from Mr Lear, by a conduct not less blameable on the part of the Americans trading there. To the other errors of General Le Clerc he has lately revoked the permission given to Mr Lear to exercise the functions of Commercial Agent, alleging for a reason that he had no authority for granting the permission, and had inconsiderately taken the step in the hurry of his arrival. He acknowledged at the same time, that he had been led to consider Mr. Lear as rendered justly obnoxious to him by throwing discredit on his Bills, and promoting irritations between the French and the Americans. In this view of Mr. Lears conduct Le Clerc must have been grossly misled by calumnies and intrigues, for the conduct of Mr. Lear has been in every respect highly meritorious, for the prudence, the moderation, the candor and conciliatory tone of it. Of this Le Clerc may be expected to be by degrees satisfied, as Mr. Pichon already is; and so far the evil may be mitigated; but with various other circumstances connected with the transactions at St Domingo, it has been unfavourable to the kind sensations which it has been our endeavour to cherish. You will remark also in the Newspapers that the idea of a visit from the French fleet, and of pecuniary succours from the Government of the United

States, has excited not a little sensibility in some quarters of the Union. It was at one time the purpose of Admiral Vellaret to come to this Country with part of his fleet, and as it was feared that he would come without money or credit to obtain supplies for even the first wants, it was anticipated that applications would be made for a Loan in some form or other from the Government of the United States. The fleet however has not arrived and is understood not to be coming, and no application has in fact been made for pecuniary facilities, other than that of purchasing for purposes of the United States in Europe, bills drawn on the French Government; which application was rejected for reasons sufficiently obvious. It is now said that the Batavian part of the fleet is destined to the Chesapeake and will probably arrive in a few days.

Congress will probably adjourn on Monday. For an account of their proceedings and other domestic occurrences, I refer you to the printed papers herewith sent.

With sentiments of great respect &c. &c.

P. S. I have communicated to the President your wish to make a visit to England, and have the pleasure to inform you of his consent. He leaves the time and duration of your absence to your own judgment, assuring himself that both will be [in] due subordination to the important duties of your station.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State, May 11th, 1802.

D. Of S. Mss.  
Instr.

Sir:

My last was of the 30th of March. We are still without a line from you since your arrival at Madrid, and feel an increasing solicitude to hear from you on the subject of Louisiana. The latest information from Paris has confirmed the fact that it was ceded by a Treaty prior to that of March 1801; and notwithstanding the virtual denial of the cession in the early conversations between Mr. Livingston and the Minister of Foreign relations, a refusal of any explanations at present, seems to admit that the cession has taken place. Still there are chances of obtaining a reversal of the transaction. The repugnance of the United States to it is and will be pressed in a manner that cannot be without some effect. It is known that most of the French statesmen best informed on the subject, disapprove of it. The pecuniary difficulty of the French Government must also be felt as a check; whilst the prospect of a protracted and expensive war in St. Domingo must form a very powerful obstacle to the execution of the project. The Counsels of England appear to have been torpid on this occasion. Whether it proceed from an unwillingness to risk a fresh altercation with France, or from a hope that such a neighbourhood between France and the United States would lead to collisions which might be turned to her advantage, is more than I can decide. The latter consideration might justly have great weight with her, but as her eyes may be more readily turned to the immediate and certain purposes to be answered to her rival, it is to be presumed, that the policy of England will contribute to thwart the acquisition. What the intentions of Spain may be, we want to learn from you. Verbal information from inofficial sources has led us to infer that she disowns the instrument of Cession, and will vigorously oppose it. Should the Cession actually fail from this or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President that every effort and address be employed to obtain the arrangement by which the Territory on the East side of the Mississippi including New Orleans may be ceded to the United States, and the Mississippi made a common boundary, with a common use of its navigation, for them and Spain. The inducements to be held out to Spain, were intimated in your original instructions on this point. I am charged by the President now to add, that you may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the Territory including New Orleans on this side; but, in case it be necessary may make the proposition yourself, in the forms required by our Constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, as securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain; and will derive from this consideration additional motives to discharge with a prudent zeal the task committed to you.

With sentiments of Great respect &c. &c.



[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.

Department of State, July 6th, 1802.

D. Of S. Mss.  
Instr.

Sir,

I have lately been furnished by Captains Rogers and Davidson, with the respective narratives of the outrageous treatment which they suffered from the French administration at St. Domingo. These documents are now forwarded to you, and will enable you to press the subject on the French Government with the advantage to be derived from an accurate knowledge of its details. The insulting cruelties practised on these respectable citizens, and the absurd pretexts for them alleged by the General in Chief, have produced irritations and disgusts in this country which the French Government will not disregard, if it sincerely means, as we are willing to believe it does, to concur with the Government of the United States in consolidating the friendship between the two nations, by the exercise of reciprocal justice and respect. We trust that your claims of satisfaction in this case, will meet with the most candid and ready attention; and that besides the reparation of losses in property, which as they relate to Davidson, are stated at 1196 dollars, such animadversions will fall on the guilty as will heal as far as possible, the personal indignities offered to the American citizens.

The affinity subsisting between General Le Clerc, and the Chief Consul, has probably emboldened the former to overleap the barriers which his duty opposed to his power; and may be now much relied on by him as an asylum against the consequences due to his excesses. This supposition is strengthened by the resentment he has expressed at the interposition and expostulations of Mr. Pichon, with whom he will no longer communicate, and whose letters he has transmitted with a complaint to the French Government. A copy of this letter is herewith sent to you.

On another hand it would seem that he is anxious to exculpate himself in the eyes of his own government, or to divert its attention from his own misconduct, to causes of resentment which he is imputing to the United States. With the first view an attempt was lately made at Cape Francois to engage the Americans there to sign a paper certifying that General Le Clerc had in no instance given just ground of dissatisfaction. Not a name I am told could be obtained.

To the other view viz, of diverting resentment from himself may be ascribed 1 the loud complaints with which he is said to dwell on the freedom of the American presses, in reproaching French transactions, and particularly his own, 2 his charge against this country of supplying or attempting to supply the party of Toussaint with the implements of War, 3 The suggestion of a covert acknowledgement of Toussaint's usurped authority, now observed in the form of the Commission given to the Commercial Agents of the United States, last sent to St. Domingo.

It will not be difficult to reply to these charges if they should shew themselves in your communications with the French Government. The presses and even the parliamentary debates in G. Britain, since the definitive Treaty of peace, use as unrestrained and offensive a language, as the Newspapers of the United States. It cannot be unknown that our presses are not under the regulation of the Government, which is itself constantly experiencing more or less of their abuse; and that besides the ordinary excesses to which all free presses are liable from the passions or indiscretions of citizens, those of the United States may for obvious reasons, be easily made the vehicle of insidious publications by persons among us who are not citizens, and who would gladly kindle animosities between France and the United States. It is a fact, that some of the most offensive accounts which have been printed, of the proceedings in St. Domingo, are now known to have been written from the spot, by British subjects, not by American citizens.

With respect to supplies of Military articles to the party of Toussaint, the answer is obvious, and must be satisfactory. Without admitting the fact that any such articles were at any time so supplied, it may be observed, that the French Government can have no desire to recur to the past periods as of present dispositions; and that it is the duty and the intent of both countries not to remove the veil which the reconciliation so happily concluded, has thrown over preceding occurrences. The conduct of the American administration since that event, can not be even suspected of the slightest irregularity or unfriendliness on this subject; nor as is believed, has a single instance happened since the arrival of the French armament, and the regulations by Genl. Le Clerc adapted to the revolt which ensued, in which an American citizen has engaged in commerce of any sort with Toussaint or his adherents. The precautions taken by the French commanders were a sufficient bar to such an attempt; and had it been otherwise, it was explicitly declared to the French Minister here, and to Admiral Villaret, as you will have seen by communications already made to you, that our offending citizens would be considered by the President as fairly subjected to the penalties of their illegal conduct.

As to the complaint against the form of the Commissions given to Mr. Lear and the other Agents in St. Domingo, of which a copy is herewith included, it is proper to observe that when Mr. Lear presented his to Genl. Le Clerc, no objection or criticism was made. The first objection accompanied the order of departure given about the beginning of June to Mr. Caldwell the Commercial Agent at St. Domingo by the Officer commanding the Spanish part of the Island. From the language used on the occasion, which violated decorum not less than truth, and from other circumstances, it is inferred that the cavil was not made without the authority of Genl. Le Clerc, and consequently that it will enter into the complaints which he may find it convenient to present to his Government against that of the United States. On this subject observations of great force might be drawn from the very peculiar situation in which St. Domingo seemed to be left by the temporary and accommodating policy of the French Republic itself, which finding it inconvenient to enforce its authority over the island or to furnish it with subsistence from its own sources, was anxious of course, that it might be fed from neutral sources, in other words from the U. States; and with every relaxation of ordinary forms necessary for so essential a purpose. But it is not necessary to resort to this consideration. The form of the Commission, which refers

generally to the authority over the island without naming the French Republic is understood to have been copied from the usage of other countries, and has been long tho' not enviably practised by the Government of the United States. More than a dozen instances might be specified, one of which is as far back as the year 1702, and several as the year 1794, and for places such as Trieste, Hamburg, Bremen &c where there could be no other inducement to such a form, than the presumed regularity of it. In truth, it has from the commencement of the present administration been a principle with the President which has been as strictly observed as it has been sincerely declared, to avoid in the intercourse with St. Domingo every measure and circumstance which might controvert the authority of the French Republic; or give ground of umbrage to the French Government. On this principle particularly by every instruction given to the Commercial Agents sent to that Island.

With sentiments of great respect &c. &c. &c.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.

Department of State, October 15th, 1802.

D. Of S. Mss.  
Instr.

Sir,

On my return from Virginia after an absence of two Months, I found here your letter of July 30th. Those of May 10, 12, 20, 28 June 8th & July 3d had been previously received.

The zeal and energy with which you are urging on the French Government a fair construction and fulfilment of the Convention, and a discharge of all our just demands, render it unnecessary to repeat to you our anxiety that the example of good faith given by the United States should not remain without a satisfactory reciprocity. The precise tone in your communications most likely to favor this result, can best be decided by your own judgment.

In a general view, the sounded policy evidently prescribes one, that will cherish whatever good will or confidence may be felt towards the United States, and that will charge on that side the blame of any failure in the pursuit of our objects. It must be left to your own decision also how far a direct resort to the Head of the Government may promise [more] success than the ordinary channels of communicating with him. The delays and obstacles met with in the latter recommend the experiment, if there be no objections to it drawn from usage or other considerations not perceived at this distance. The experiment, which will of course be made with as little danger as possible of needless umbrage to the intermediate Organ, may at least lead to a knowledge of the ground finally meant to be taken by the Chief Consul; and to which the further instructions of the President must be accommodated.

The suspense which has taken place in relation to Louisiana and the Floridas, is favorable to the efforts for diverting the French Government from its unwise project. Whether we regard the sentiments prevailing in this Country on the subject, or the striking tendencies of the project itself, no pains ought to be spared for putting an end to it. If the occasion can be so improved as to obtain for the United States, on convenient terms, New Orleans and Florida, the happiest of issues will be given to one of the most perplexing of occurrences. I postpone more particular remarks on this subject, until the President shall know the impressions on the French Councils, resulting from the views of it to which you will be led by the dispatches of which Mr. Dupont was the bearer.

The answer to your note on the case of Capt. Rodgers and Davidson, is by no means such as there was a right to expect. Genl. Le Clerc having himself stated the reasons on which he proceeded, other and better reasons could not be presumed; and it seems impossible not to regard his reasons rather as an insult than a justification. My letter

of July 6 will renew this subject: and it is to be hoped that a reconsideration by the French Government will do more justice to it.1 \* \* \*

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State, November 27th, 1802.

D. Of S. Mss.  
Instr.

Sir,

Your dispatches by Mr. Codman were delivered by him two days ago; but being voluminous, and the documents in the Spanish language, not yet fully translated, I am not able at present to convey to you the sentiments of the President on the subject. My letter of October 25th will have explained to you the scope of our claims on the Spanish Government; and I now only repeat the confidence entertained that as far as your success in the Convention has not corresponded therewith, your efforts will be renewed to bring about a supplemental provision; particularly in behalf of our citizens whose losses proceeded from aliens within Spanish responsibility.

A letter from a confidential citizen at New Orleans, of which a copy is inclosed, has just informed us, that the Intendant at that place, by a proclamation from which an extract is also inclosed, had prohibited the deposit of american effects, stipulated by the Treaty of 1795; and as the letter is interpreted, that the river was also shut against the external commerce of the U. States from that port. Whether it be the fact or not that this latter prohibition has also taken place, it is evident that the useful navigation of the Mississippi so essentially depends on a suitable depository for the articles of commerce that a privation of the latter is equivalent to a privation of both.

This proceeding is so direct and palpable a violation of the Treaty of 1795, that in candor it is to be imputed rather to the Intendent solely, than to instructions of his Government. The Spanish Minister takes pains to impress this belief, and it is favoured by private accounts from New Orleans mentioning that the Governor did not concur with the Intendant. But from whatever source the measure may have proceeded the President expects that the Spanish Government will neither lose a moment in countermanding it, nor hesitate to repair every damage which may result from it. You are aware of the sensibility of our Western citizens to such an occurrence. This sensibility is justified by the interest they have at stake. The Mississippi is to them everything. It is the Hudson the Delaware, the Potomac and all the navigable rivers of the atlantic States formed into one stream. The produce exported thro' that channel last year amounted to \$1,622,672 from the District of Kentucky and Mississippi only, and will probably be fifty p Cent more this year (from the whole Western Country, Kentucky alone has exported for the 1st half of this year \$591,432 in value) a great part of which is now or shortly will be afloat for New Orleans and consequently exposed to the effects of this extraordinary exercise of power. Whilst you presume therefore in your representations to the Spanish Government, that the conduct of its officers is no less contrary to its intentions, than it is to its good faith, you will take care to express the strongest confidence, that the breach of the Treaty will be repaired in every way which justice and a regard for a friendly neighbourhood may require.

I have communicated the information received from New Orleans to the Chevalier D'Yrujo, with a view to obtain his immediate interposition as you will find by the inclosed copy of a letter to him. He readily undertakes to use it with all the effect he can give it, by writing immediately on the subject to the local authority at New Orleans. I shall write at the same time to Mr. Hulings, who will enforce as far as he may have an opportunity the motives for recalling the unwarrantable prohibitions. It is to be hoped that the Intendant will be led to see the error which he has committed, and to correct it, before a very great share of its mischief will have happened. Should he prove as obstinate as he has been ignorant or wicked, nothing can temper the irritation and indignation of the Western Country, but a persuasion that the energy of their own Government will obtain from the justice of that of Spain, the most ample redress.

It has long been manifest, that whilst the injuries to the United States, so frequently occurring from the Colonial offices scattered over our hemisphere and in our neighbourhood, can only be repaired by a resort to the respective sovereigns in Europe, that it will be impossible to guard against the most serious inconveniences. The instance before us strikes with peculiar force, and presents an occasion on which you may advantageously suggest to the Spanish Government, the expediency of placing in their Minister on the Spot an authority to controul or correct the mischievous proceedings in their Colonial officers towards our citizens; without which any of fifteen or twenty individuals, not always among either the wisest or best of men, may at any time threaten the good understanding of the two Countries. The distance between the United States and the old Continent, and the mortifying delays of explanations across the Atlantic, on emergencies in our neighbourhood, render such a provision indispensable, and it cannot be long before all the Governments of Europe having American Colonies must see the policy of making it.

I Am, &C. &C. &C.

[1] See vol. v., p. 339 and 340, n. Madison's motion introduced this day was:

“That from and after the — day of — next the tonnage on all such vessels be raised to —; and from and after the — day of — next no such vessel shall be permitted to export from the United States any unmanufactured article being the growth and produce thereof.”

This having been disagreed to he offered June 30th the following:

*“And be it further enacted,* That in all cases where vessels belonging to the citizens of the United States may be prohibited from bringing any articles from any foreign port or place, by laws or regulations of the sovereign thereof, into any port or place within the United States, the vessels belonging wholly or in part to the subjects of such sovereign shall, after the — day of — during the continuance of such prohibition, be prohibited from bringing like articles into the United States, on pain of being seized and forfeited to their use. And the masters or owners of all foreign vessels clearing from any port of the United States, with any articles, the growth, produce, or manufacture thereof, shall give bond, with sufficient security, that no part of the said

articles shall be delivered at any port or place to which vessels belonging to citizens of the United States may not be permitted to transport like articles from the United States.

*“And be it further enacted, That in all cases where vessels belonging to citizens of the United States may be prohibited by the laws or regulations of that foreign country from carrying thereto articles not the growth, produce, or manufacture of the United States, the vessels belonging wholly or in part to the subjects, citizens, or inhabitants of such country shall, after the — day of — and during the continuance of such prohibition, be prohibited in like manner from bringing any articles not the growth, produce, or manufacture of such country into the United States, on pain of being seized and forfeited to their use.”*

[\[1\]](#)

TO EDMUND PENDLETON.

N. York March 4, 1790.

Dear Sir

Your recommendation of Docr M (illegible) was handed me some time ago. I need not tell you that I shall always rely on your vouchers for merit, or that I shall equally be pleased with opportunities of forwarding your wishes.

The only Act of much consequence which the present Session has yet produced, is one for enumerating the Inhabitants as the basis of a reapportionment of the Representation. The House of Reps has been chiefly employed of late on the Report of the Secy of the Treasury. As it has been printed in all the Newspapers I take for granted that it must have fallen under your eye. The plan which it proposes is in general well digested, and illustrated & supported by very able reasoning. It has not however met with universal concurrence in every part. I have myself been of the number who could not suppress objections. I have not been able to persuade myself that the transactions between the U. S. and those whose services were most instrumental in saving their country, did in fact extinguish the claims of the latter on the justice of the former; or that there must not be something radically wrong in suffering those who rendered a bona fide consideration to lose  $\frac{7}{8}$  of their dues, and those who have no particular merit towards their country to gain 7 or 8 times as much as they advanced. In pursuance of this view of the subject, a proposition was made for redressing in some degree, the inequality. After much discussion, a large majority was in the negative. The subject at present before a Committee of the whole, is the proposed assumption of the State debts. On this, Opinions seem to be pretty equally divided. Virga is endeavoring to incorporate with the measure some effectual provision for a final settlement and payment of balances among the States. Even with this ingredient, the project will neither be just nor palatable, if the assumption be referred to the present epoch, and by that means deprives the States who have done most, of the benefit of their exertions. We have accordingly made an effort, but



without success to refer the assumption to the state of the debts at the close of the war. This would probably add ? more to the amount of the Debts, but would more than compensate for this by rendering the measure more just & satisfactory. A simple unqualified assumption of the existing debts would bear peculiarly hard on Virginia. She has paid I believe a greater part of her quotas since the peace than Massts. She suffered far more during the war. It is agreed that she will not be less a Creditor on the final settlement, yet if such an assumption were to take place she would pay towards the discharge of the debts, in the proportion of ? and receive back to her Creditor Citizens or  $\frac{1}{8}$ , whilst Massts would pay not more than or  $\frac{1}{8}$ , and receive back not less than ?. The case of S Carola is a still stronger contrast. In answer to this inequality we are referred to the final liquidation for which provision may be made. But this may *possibly* never take place. It will *probably* be at some distance. The payment of the balances among the States will be a fresh source of delay & difficulties. The merits of the plan independently of the question of equity, are also controvertible, tho' on the other side there are advantages which have considerable weight.

We have no late information from Europe more than what the Newspapers contain. France seems likely to carry thro' the great work in which she has been laboring. The Austrian Netherlands have caught the flame, and with arms in their hands have renounced the Government of the Emperor forever. Even the lethargy of Spain begins to awake at the voice of liberty which is summoning her neighbors to its standard. All Europe must by degrees be aroused to the recollection and assertion of the rights of human nature. Your good will to mankind will be gratified with this prospect, and your pleasure as an American be enhanced by the reflection that the light which is chasing darkness & despotism from the old World, is but an emanation from that which has procured and succeeded the establishment of liberty in the new.—*Mad. MSS.*

## TO EDMUND RANDOLPH.

N. Y., Mar 14, 1790.

My Dear Friend,—

I have recd the few lines you dropped me from Baltimore, and daily expect those promised from Fredg. I am made somewhat anxious on the latter point, by the indisposition under which you were travelling.

The question depending at your departure was negatived by a very large majority, though less than stated in the Newspapers. The causes of this disproportion which exceeds greatly the estimate you carried with you cannot be altogether explained. Some of them you will conjecture. Others, I reserve for conversation if the subject should ever enter into it. As far as I have heard, the prevailing sense of the people at large does not coincide with the decision, and that delay and other means might have produced a very different result.

The assumption of the State debts has of late employed most the H. of Reps. A majority of 5 agreed to the measure in Come of the Whole. But it is yet to pass many defiles, and its enemies will soon be reinforced by N. Carolina. The event is consequently very doubtful. It could not be admissible to Virga unless subservient to final justice, or so varied as to be more consistent with intermediate justice. In neither of these respects has Va been satisfied, and the whole delegation is agst the measure except *Bland!!*<sup>1</sup>

The *substance* of the Secretary's arrangements of the Debts of the Union has been agreed to in Come of the Whole and will probably be agreed to by the House. The number of alterations have been reduced for the sake of greater simplicity, and a disposition appears at present, to shorten the duration of the Debt. According to the Report, the Debt wd subsist 40 or 50 years, which, considering intermediate probabilities, amounts to a perpetuity. Adieu

Mr. Jefferson is not arrived. He has notified his acceptance & is expected in a day or two.—*Mad. MSS.*

## TO EDMUND RANDOLPH.

N. Y., Mar. 21, 1790.

Dear Sir

Your favor of the 10th came to hand yesterday. I feel much anxiety for the situation in which you found Mrs. Randolph; but it is somewhat alleviated by the hopes which you seem to indulge. The language of Richmond on the proposed discrimination does not surprise me. It is the natural language of the towns, and decides nothing. Censure I well knew would flow from those sources. Should it also flow from other sources, I shall not be the less convinced of the right of the measure, or the less satisfied with myself for having proposed it. The conduct of the Gentlemen in Amherst & Culpeper proves only that their personal animosity is unabated. Here it is a charge agst me that I sacrificed the federal to anti federal Sentiments. I am at a loss to divine the use that C [a] b [e] ll and S-t [even] can make of the circumstance.

The debates occasioned by the Quakers have not yet expired.<sup>2</sup> The stile of them has been as shamefully indecent as the matter was evidently misjudged. The true policy of the Southn members was to have let the affair proceed with as little noise as possible, and to have made use of the occasion to obtain along with an assertion of the powers of Congs. a recognition of the restraints imposed by the Constitution.

The State debts have been suspended by the preceding business more than a Week. They lose ground daily, & the assumption will I think ultimately be defeated. Besides a host of objections agst the propriety of the measure in its present form, its practicability becomes less & less evident. The case of the paper money in Georgia S. C., N. C., &c to R. Isld, is a most serious difficulty. It is a part of the debts of those States, and comes in part within the principle of the assumption.

A packet arrived a few days ago but threw little light on the affairs of Europe. Those of France do not recede but their advance does not keep pace with the wishes of liberty. Remember me to Mr. M— & his land lady.

YRs AffLy

Mr. Jefferson is not yet here. The bad roads have retarded him. We expect him today or tomorrow. I am this instant told he is come.—*Mad. MSS.*

TO EDMUND PENDLETON.

N. York April 4, 1790.

Dear Sir

You will see by the papers herewith covered that the proposed assumption of the State debts continues to employ the deliberations of the House of Reps. The question seems now to be near its decision, and unfortunately, tho' so momentous a one, is likely to turn on a very small majority, possibly on a single vote. The measure is not only liable to many objections of a general cast, but in its present form is particularly unfriendly to the interests of Virginia. In this light it is viewed by all her representatives except Col: Bland.

The American Revolution with its foreign and future consequences, is a subject of such magnitude that every circumstance connected with it, more especially every one leading to it, is already and will be more and more a matter of investigation. In this view I consider the proceedings in Virginia during the crisis of the Stamp-Act as worthy of particular remembrance, and a communication of them as a sort of debt due from her cotemporary citizens to their successors. As I know of no memory on which my curiosity could draw for more correct or more judicious information, you must forgive this resort to yours. Were I to consult nothing but my curiosity, my enquiries would not be very limited. But as I could not indulge that motive fully, without abusing the right I have assumed, my request goes no farther than that you will, as leisure & recollection may permit, *briefly* note on paper—by whom & how the subject commenced in the Assembly, where the resolutions proposed by Mr. Henry *really* originated; what was the sum of the arguments for and against them, and who were the principal speakers on each side; with any little anecdotes throwing light on the transaction, on the characters concerned in it, or on the temper of the Colony at the time.<sup>1</sup>

Begging pardon again for the tax I am laying on your benevolence, I remain Dear Sir

Your Most AffectE & Hble ServT.—*Mad. MSS.*

TO HENRY LEE.

N. York April 13th, 1790.

Dear Sir

Your favor of the 4th ult by Col Lee was received from his hands on Sunday last. I have since recd that of the 3d Instant. The antecedent one from Alexandria, though long on the way, was recd. some time before. In all these, I discover strong marks of the dissatisfaction with which you behold our public prospects. Though in several respects they do not comport with my wishes, yet I cannot feel all the despondency which you seem to give way to. I do not mean that I entertain much hope of the Potomac; that seems pretty much out of sight; but that other measures in view, however improper, will be less fatal than you imagine. <sup>2</sup>The plan of discrimination has met with the reception in Virginia on which I calculated. The towns would for obvious reasons disrelish it, and for a time they always set public opinion. The country in this region of America, in general, if I am not misinformed, has not been in unison with the cities, nor has any of the latter except this, been unanimous against the measure. Here the sentiment was in its full vigor, and produced every exertion that could influence the result.

I think with you that the Report of the Secretary of the Treasury is faulty in many respects; it departs particularly from that simplicity which ought to be preserved in finance, more than anything else. The novelty and difficulty of the Task he had to execute form no small apology for his errors, and I am in hopes that in some instances they will be diminished, if not remedied.

The proposed assumption of the State debts has undergone repeated discussions, and contradictory decisions. The last vote was taken yesterday in a Committee of the whole and passed in the negative 31 vs. 29. The minority do not abandon however their object, and tis impossible to foretell the final destiny of the measure. It has some good aspects, and under some modifications would be favorable to the pecuniary interests of Virginia, and not inconsistent with the general principle of justice. In any attainable form it would have neither of these recommendations, and is moreover liable to strong objections of a general nature. It would certainly be wrong to force an affirmative decision on so important and controvertible a point by a bare majority, yet I have little hope of forbearance from that scruple. Mass & S. Carolina with their allies of Connecticut & N. York are too zealous to be arrested in their project, unless by the force of an adverse majority.

I have recd your reflections on the subject of a public debt with pleasure; in general they are in my opinion just and important. Perhaps it is not possible to shun some of the evils you point out, without abandoning too much the re-establishment of public credit. But as far as this object will permit I go on the principle that a Public Debt is a Public curse, and in a Rep Govt a greater than in any other.

I have mentioned Mr Lee<sup>1</sup> to Mr Jefferson who tells me that he found every place preoccupied, and that he has not thought proper to make changes where no special reasons existed; various applications have been made previous to that in behalf of your friend, several had passed through my hands, some of them from Virginia.

I never heard of the report you mention of the Vice Presdt. It is but justice to say that I cannot believe it to have originated in fact.

I lament with you the inability which impedes arrangements at the Great Falls, which would be of benefit in a Public as well as private view. The prospect of aid in this quarter does not strike me as it seems to do you. Money is destined to other projects at this juncture. Besides I am on no peculiar footing, that could favor an experiment, and could never make it less auspiciously than at present. It gives me much concern that it is not more in my power to forward our object.

Present me most respectfully to Mrs Lee & believe me

AffLy Yrs.

—*Mad. MSS.*

TO JAMES MONROE.

N. Y. Apl. 17. 1790.

Dear Sir

An answer to your favor of the 5th has been delayed by my hourly expectation of hearing from Taylor. A few days ago he came to Town and I have had an interview and settlement with him. The balance with the interest at 7 per Ct. was 864 dollars. He has not however executed the conveyance for want of some chart which he could not get here, but has entered into bond to do so by August, with good security. As far as I can learn our bargain is a good one. Land in the vicinity has sold in small parcels at more than 20/. I am told. The present moment however it is said is not favorable to the market. By waiting I think it probable it may be sold to your profit or If you continue to be anxious to get rid of it immediately, I have no objection to taking the whole on myself. Before you decide I would recommend that you consult by letter some of your friends here who can judge better than I can do, and who have more leisure & opportunity for making the requisite enquiry into the prospect. Should you chuse to make me the sole proprietor, it will be most convenient that the deed be executed from Taylor to me. In that event also, I beg you to let me know the state in which the accts. between us was left, by your former advances for me, and my settlements for your furniture &c.<sup>1</sup> My papers on this subject are either not here or so concealed among others that I cannot find them.

The House of Representatives are still at the threshold of the Revenue business. The Assumption of the State debts is the great obstacle. A few days ago it was reconsidered & rejected by 31 agst 29. The measure is not however abandoned. It will be tried in every possible shape by the zeal of its patrons. The Eastern members talk a strange language on the subject. They avow, some of them at least, a determination to oppose all provision for the public debt which does not include this, and intimate danger to the Union from a refusal to Assume. We shall risk their prophetic menaces if we should continue to have a majority.—*Mad. MSS.*

## TO JAMES MADISON.

N. York May 2d. 1790.

HonD Sir

I wrote some days ago to my brother Ambrose since which little has taken place worth adding. The inclosed newspapers contain a sketch of what has been done in the House of Reps. I mentioned to my brother that I thought it better to ship or postpone the sale of Tobo than to sell at the present price in the Country. I am more & more convinced that this will be prudent. The price has risen considerably in Europe, and from causes that will be more likely to carry it still higher than let it fall lower. As long indeed as grain keeps up which the state of Europe makes it probable will be for some time, the culture of that article in America, particularly Virginia will divert labor from others, and from Tobo among the rest. This alone will prevent a low price, by circumscribing the quantity raised.

The influenza or something like it but less severe has revisited this quarter of the Union. I have had an attack which has kept me at home for several days. I am now pretty well over it, and shall resume my seat in the House tomorrow, or at least shall be able to do it. If no business of consequence should press, perhaps I may indulge myself with two or three holidays for the sake of exercise & recreation. Remind my brother A. to send me a copy of the weather &c. from your diary for the months of Feby. March & April, including the heat & cold noted by the Thermometer. When May is over he can send me that also.

Tell Mr. G. Eve that I have heard of a sett of Gill's Commentory. The Price of the Old Testament is £8. of the new £9. Pensylva curry My brother Ambr. last letter gave me great pleasure by acquainting me that my mothers health was increasing. I hope it continues to do so.—*Mad. MSS.*

## TO JAMES MONROE.

N. Y., June 1, 1790.

Dear Sir

Your favor of the 19th of May has been duly received. The information relating to your little daughter has been communicated as you desired. I hope she is by this time entirely recovered. Your friends in Broadway were well two evenings ago.

I have paid the money to Taylor, and hope you will take the time you intimate for replacing my advances on your account.

The assumption has been revived and is still depending. I do not believe it will take place, but the event may possibly be governed by circumstances not at present fully in view. The funding bill for the proper debt of the U. S. is engrossed for the last reading. It conforms in substance to the plan of the Secretary of the Treasury. You will have seen by late papers that an experiment for navigation and commercial purposes has been introduced. It has powerful friends, and from the present aspect of the H. of Reps will succeed there by a great majority. In the Senate its success is not improbable if I am rightly informed. You will see by the inclosed paper that a removal from this place has been voted by a large majority of our House. The other is pretty nearly balanced. The Senators of the 3 Southern States are disposed to couple the permanent with the temporary question. If they do I think it will end in either an abortion of both or in a decision of the former in favour of the Delaware. I have good reason to believe that there is no serious purpose in the Northern States to prefer the Potowmac, and that if supplied with a pretext for a very hasty decision, they will indulge their secret wishes for a permanent establishment on the Delaware. As R. I. is again in the Union & will probably be in the Senate in a day or two, The Potowmac has the less to hope & the more to fear from this quarter. Our friend Col: Bland was a victim this morning to the influenza united with the effects & remains of previous indisposition. His mind was not right for several days before he died. The President has been at the point of death but is recovered. Mr Jefferson has had a tedious spell of the head-ache. It has not latterly been very severe, but is still not absolutely removed. My best respects to Mrs Monroe. With sincere regard I am Dear Sir.—*Mad. MSS.*

## TO JAMES MADISON.

N. York June 13, 1790.

HonD Sir

My last was to my brother A. and acknowledged the receipt of the Diary. I inclose one for the month of April which you can compare with your own for the same month. I enclose also a few grains of *upland* rice, brought from Timor by Capt. Bligh lately distinguished by an adventure which you must have seen in the newspapers. He was

returning from a voyage of discovery in the South seas, and turned out of his ship with a few others by a mutinous crew in a long boat which continued more than 40 days at sea.<sup>1</sup> A little rice of which the enclosed is a part was all that he saved out of a fine collection. It will be best to give the grains their first vegetation in a flower pot of rich earth, and then shift the contents of the pot into the ground so as not to disturb the roots. A few of the grains may be tried at once in the garden in a strong soil. You will see by the inclosed newspapers that the seat of Govt. has been again on the carpet. After a variety of questions which the state of the votes as you will at once remark do not truly explain, a very unexpected result has happened in favor of Baltimore. It is possible that a like fortuitous one may take place in the Senate, but it does not appear probable. It is much to be apprehended that the final event will not square with the pretensions of the Potowmac, tho' in the chances to which this question is liable, it may possibly turn out otherwise.—I am anxious to hear the progress of my brothers health, and that of my sister Nelly. I hope yours continues good. Mine has been reestablished for some time.—*Mad. MSS.*

## TO JAMES MONROE.<sup>1</sup>

New York, June 17, 1790.

Dear Sir,—

You will find in the inclosed papers some account of the proceedings on the question relating to the seat of Government. The Senate have hung up the vote for Baltimore, which, as you may suppose, could not have been seriously meant by many who joined in it. It is not improbable that the permanent seat may be coupled with the temporary one. The Potowmac stands a bad chance, and yet it is not impossible that in the vicissitudes of the business it may turn up in some form or other.

The assumption still hangs over us. The negative of the measure has benumbed the whole revenue business. I suspect that it will yet be unavoidable to admit the evil in some qualified shape. The funding bill is before the Senate, who are making very free with the plan of the Secretary. A committee of that body have reported that the alternatives be struck out, the interest reduced absolutely to 4 per cent., and, as I am informed, the indents be not included in the provision for the principal.

## TO EDMUND PENDLETON.

New York, June 22, 1790.

Dear Sir,—

The pressure of business as the session approaches its term, the earlier hour at which the House of Representatives has for some time met, and the necessity of devoting a part of the interval to exercise, after so long a confinement, have obliged me to deny myself the pleasure of communicating regularly with my friends. I regret much that



this violation of my wishes has unavoidably extended itself to the correspondences on which I set the greatest value, and which, I need not add, include yours. The regret is the greater, as I fear it will not be in my power to atone for past omissions by more punctuality during the residue of the session. In your goodness alone I must consequently look for my title to indulgence.

The funding and Revenue systems are reduced by the discord of opinions into a very critical state. Out of this extremity, however, some effective provision must, I think, still emerge. The affair of the State debts has been the great source of delay and embarrassment, and, from the zeal and perseverance of its patrons, threatens a very unhappy issue to the session, unless some scheme of accommodation should be devised. The business of the seat of Government is become a labyrinth, for which the votes printed furnish no clue, and which it is impossible in a letter to explain to you. We are endeavoring to keep the pretensions of the Potowmac in view, and to give to all the circumstances that occur a turn favorable to it. If any arrangement should be made that will answer our wishes, it will be the effect of a coincidence of causes as fortuitous as it will be propitious. You will see by the papers inclosed that Great Britain is itching for war. I do not see how one can be avoided, unless Spain should be frightened into concessions. The consequences of such an event must have an important relation to the affairs of the United States. I had not the pleasure of seeing Col. Hoomes during his momentary stay in New York, but had that of hearing that he gave a very favorable account of your health.

[\[1\]](#)It was decided against him by a vote of 39 to 20.

TO EDMUND PENDLETON.

Philada, Feby 13, 1791.

Dear Sir

Since the receipt of your favor of the 15th Jany, I have had the further pleasure of seeing your valuable observations on the Bank, more at length, in your communications to Mr. White. The subject has been decided, contrary to your opinion, as well my own, by large majorities in both Houses, and is now before the President.<sup>1</sup> The power of incorporating cannot by any process of safe reasoning, be drawn within the meaning of the Constitution as an appurtenance of any express power, and it is not pretended that it is itself an express power. The arguments in favor of the measure, rather increased my dislike to it because they were founded on remote implications, which strike at the very essence of the Govt as composed of limited & enumerated powers. The Plan is moreover liable to a variety of other objections which you have so judiciously developed.

The Excise is not yet returned by the Senate. It has undergone sundry alterations in that House, but none that affect its principle or will affect its passage. In many respects it is displeasing to me, and a greater evil than a direct tax. But the latter wd. not be listened to in Congs and wd perhaps be not less offensive to the ears of the

people at large, particularly in the Eastern part of the Union. The Bill contains, as you would wish, an optional clause permitting the owners of Country stills to pay the tax on their capacity, or to keep an acct of the liquors actually distilled, and pay according to that & no more.

The Bill for admitting Kentucky has passed into a law, and another for extending the privileges to Vermont who is knocking at the door for it, has come from the Senate and will not be opposed in the House of Reps. The Bill for selling the Public lands, has made some progress & I hope will go through. The fate of the Militia & several other important Bills is problematical at the present Session which will expire on the 4th of next month.

With the sincerest affection I am Dear Sir, mo: respectfully yours.

The inclosed paper I observe has a sketch of some of the argts. agst the Bank. They are extremely mutilated, and in some instances perverted, but will give an idea of the turn which the question took.

## TO AMBROSE MADISON.[1](#)

Philada March 2d, 1791.

### Dear Brother

Tomorrow will put an end to our existence. Much of the business has been laid over to the next session which is to be held the 4th Monday in Ocr. The most important bill lately past is that for establishing a Bank. You will see in the inclosed gazetteer the ground on which it was attacked & defended. The bill remained with the President to the last moment allowed him, and was then signed by him. Since the passage of that Bill one has passed for taking Alexa into the district for the seat of Gov't if the Presidt finds it convenient. This is a confirmation of that measure & passed by a very large majority.

I enclose the report of the Secy at War on Col: Taylor's case which you will hand to him. The grounds on which the claim is objected to are stated. The Report has not been decided on by Congs; and having but very lately been made lies over to another session. I can not yet fix on the time of my setting out for Virga. I shall at least wait till the Roads are safer than at present & am not sure that I may not make a trip into New England before I return. I have often projected this gratification to my curiosity, and do not foresee a more convenient opportunity, especially if I should be able to form a party for the purpose. I shall write you again before I make any definite arrangements. Remember me affectly to all.

I have recd yours of the 20th Feby from Falmouth. The young lady you mention has I find connections of the best sort in this place.

## TO AMBROSE MADISON.<sup>1</sup>

Philada April 11, 1791.

Dear Brother

I herewith inclose by a conveyance to Fredericksburg three pamphlets as requested by my father, the other by yourself: to which is added a list of the seeds &c sent lately to Mr Maury, according to the information contained in my last. I have not heard from you in answer to my letter on the subject of Tobacco. I have informed Mr Maury of my request to you to forward a few of the Hhds to this place, and have requested him to ship the rest as usual to his broker in Liverpool. I shall set out at a pretty early day from this place, and shall in company with Mr. Jefferson go at least as far northwardly as Lake George, with which route I shall be able to make some private business partly my own, and partly that of a friend coincide. Whether I shall afterwards extend my route Eastwardly I do not yet decide. I have not yet made any purchase of sugar or coffee as desired by my father. Both articles have fallen, the former is however still high, the latter is tolerably cheap. I shall look at some from the Isle of France today or tomorrow, and shall probably before I leave this provide a supply of that article for the family to whom be so good as to remember me affectly.

## TO THOMAS JEFFERSON.

N. York May 1, 1791.

Dear Sir

Finding on my arrival at Princeton that both Doctr. Witherspoon & Smith had made excursions on the vacation, I had no motive to detain me there; and accordingly pursuing my journey I arrived here the day after I left Philada. my first object was to see Dorhman. He continues to wear the face of honesty, and to profess much anxiety to discharge the claims of Mazzei; but acknowledges that all his moveable property has been brought under such fetters by late misfortunes that no part of it can be applied to that use. His chief resource consisted of money in London which has been attached, improperly as he says, by his brother. This calamity brought on him a protest of his bills, and this a necessity of making a compromise founded on a hypothecation of his effects. His present reliance is on an arrangement which appeals to the friendship of his brother, and which he supposes his brother will not decline when recovered from the misapprehensions which led him to lay his hands on the property in London. A favorable turn of fortune may perhaps open a prospect of immediate aid to Mazzei, but as far as I can penetrate, he ought to count but little on any other resource than the ultimate security of the Western township. I expect to have further explanations however from Dorhman, and may then be better able to judge. I have seen Freneau and given him a line to you.<sup>1</sup> He sets out for Philada. today or tomorrow, though it is not improbable that he may halt in N. Jersey. He is in the habit I find of translating the *Leyden Gazette* and consequently must be fully equal

to the task you had allotted for him. He had supposed that besides this degree of skill, it might be expected that he should be able to translate with equal propriety into French; and under this idea, his delicacy had taken an insuperable objection to the undertaking. Being now set right as to this particular, and being made sensible of the advantages of Philada. over N. Jersey for his private undertaking, his mind is taking another turn, and if the scantiness of his capital should not be a bar, I think he will establish himself in the former. At all events he will give his friends then an opportunity of aiding his decision by their information & counsel. The more I learn of his character talents and principles, the more I should regret his burying himself in the obscurity he had chosen in N. Jersey. It is certain that there is not to be found in the whole catalogue of American Printers, a single name that can approach towards a rivalry.

I send you herewith a copy of Priestley's answer to Burke which has been reprinted here. You will see by a note page 56 how your idea of limiting the right to bind posterity is germinating under the extravagant doctrines of Burke on that subject. Paine's answer has not yet been recd here. The moment it can be got Freneau tells me it will be published in Childs' paper.<sup>1</sup> It is said that the pamphlet has been suppressed in England, and that the Author withdrew to France before or immediately after its appearance. This may account for his not sending copies to his friends in this Country.

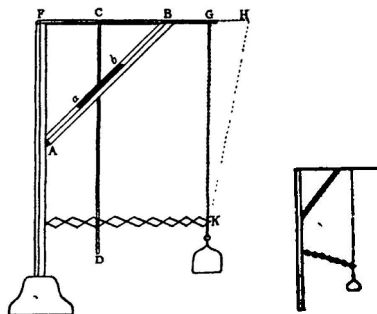
From conversations which I have casually heard, it appears that among the enormities produced by the spirit of speculation & fraud, a practice is spreading of taking out administration on the effects of deceased soldiers and other claimants leaving no representatives. By this knavery if not prevented a prodigious sum will be unsaved by the Public, and reward the worst of its Citizens. A number of adventurers are already engaged in the pursuit, and as they easily get security as Administrators and as easily get a Commission on the usual suggestion of being creditors, they desire nothing more than to ascertain the name of the party deceased or missing, trusting to the improbability of their being detected or prosecuted by the public. It cannot but have happened & is indeed a fact well understood that the unclaimed dues from the U. S. are of very great amount. What a door is here open, for collusion also if any of the Clerks in the Acct. offices are not proof against the temptation!

We understood in Philada that during the suspension of the Bank Bill in the hands of the President, its partizans here indulged themselves in reflections not very decent. I have reason to believe that the licentiousness of the tongues of speculators & Tories far exceeded anything that was conceived. The meanest motives were charged on him, and the most insolent menaces held over him, if not in the open streets, under circumstances not less marking the character of the party.

In returning a visit to Mr. King yesterday, our conversation fell on the Conduct of G. B. towards the U. S., which he evidently laments as much as he disapproves. He took occasion to let me understand, that altho' he had been averse to the appearance of precipitancy in our measures, he should readily concur in them after all probability should be over of voluntary relaxations in the measures of the other party, and that the next session of Congress would present such a crisis if nothing to prevent it should intervene. He mentioned also that a young gentleman here (a son of W. Smith now Ch

Justice of Canada) gives out, as information from his friends in England that no Minister will be sent to this Country until one shall have previously arrived there. What credit may be due to this person or his informers I do not know. It shews at least that the conversation and expectations which lately prevailed are dying away.

A thought has occurred on the subject of your mechanism for the table, which in my idle situation will supply me with another paragraph, if of no other use. <sup>1</sup> The great difficulty incident to your contrivance seemed to be that of supporting the weight of the castor without embarrassing the shortening & lengthening of the moveable radius. Might not this be avoided by suspending the castor by a chain or chord on a radius above, and requiring nothing more of yours than to move the swinging apparatus: thus, A. B. moveable on a shoulder at A would be a necessary brace, and must allow C. D. to pass thro' it and play from a. to b. as the tongs are shortened or lengthened. The use of C. D. would be to connect F. G. & the tongs, so as to make them move together on the common perpendicular axis. As the distance from C to D must vary with with [sic] the protraction of the tongs, the connecting bar ought to be long accordingly, and pass through witht being fixed to the tongs. Its office would in that state be sufficiently performed. The objections to this plan are the height of the perpendicular axis necessary to render the motion of the castor easy, and to diminish the degree in which it wd mount up at the end of the table. Perhaps the objection may be fatal. 2. The nicety of adjusting the friction of the tongs so as not to be inconvenient to the hand, and be sufficient to stop & hold the castor at any part of the table. In this point of view perhaps a slide on a spring would be better than the tongs. In that case C. D. might be fixed, and not moveable in the brace. By projecting F. G. to H. the castor might be made to swing perpendicularly not at the part of the table least distant, but at ye mean distance from the Center, and the difference between its greatest & least elevation & pressure diminished. But inconveniences of another sort might be increased by this expedient. If the tongs or slide were to be placed not horizontally, but inclining so as to lessen the effect of the pressure of the castor without being less moveable by the hand, the 2d objection might be lessened. It wd in that case be of less consequence to project the upper radius as proposed.



I am afraid you will hardly understand what I have attempted to describe, and I have not time if the thing deserved it, to write the letter over again for the present mail.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

N. York May 12, 1791.

Dear Sir

Your favor of the 9th was recd last evening. To my thanks for the several inclosures I must add a request that the letter to Boynton which came in one of them may be handed to him by one of your servants. The directory will point out his habitation.

I had seen Payne's pamphlet with the preface of the Philada Editor.<sup>2</sup> It immediately occurred that you were brought into the Frontispiece in the manner you explain. But I had not foreseen the particular use made of it by the British partizans. Mr. Adams can least of all complain. Under a mock defence of the Republican Constitutions of his Country, he attacked them with all the force he possessed, and this in a book with his name to it whilst he was the Representative of his Country at a foreign Court. Since he has been the 2d Magistrate in the new Republic, his pen has constantly been at work in the same cause, and tho' his name has not been prefixed to his anti republican discourses, the author has been as well known as if that formality had been observed. Surely if it be innocent & decent in one servant of the public thus to write attacks agst its Government, it cannot be very criminal or indecent in another to patronize a written defence of the principles on which that Govt is founded. The sensibility of H [ammond]<sup>1</sup> & B [ond]<sup>2</sup> for the indignity to the Brit. Constt is truly ridiculous. If offence cd be justly taken in that quarter, what would France have a right to say to Burke's pamphlet and the Countenance given to it & its author, particularly by the King himself? What in fact might not the U. S. say, whose revolution & democratic Governments come in for a large share of the scurrility lavished on those of France?

I do not foresee any objection to the route you propose. I had conversed with Beckley on a trip to Boston &c and still have that in view, but the time in view for starting from this place, will leave room for the previous excursion. Health recreation & curiosity being my objects, I can never be out of my way.<sup>3</sup>

Not a word of news here. My letters from Virginia say little more than those you had recd. Carrington says the returns have come in pretty thickly of late and warrant the estimate founded on the Counties named to me some time ago. As well as I recollect, these averaged upwards of 8000 souls, and were considered by him as under the general average.

Yrs AffectLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

New York June 23d 1791.

Dear Sir

I received your favor of the 21st yesterday, inclosing post notes for 235 dollars. I shall obtain the bills of Mrs Elsworth<sup>4</sup> & the Smith this afternoon and will let you know the amount of them. There is a bill from the Taylor amounting to £6,—7 which I shall pay. The articles for which it is due are in my hands and will be forwarded by the first opportunity. If a good one should fall within your notice, it may be well for you to double the chance of a conveyance by giving a commission for the purpose. I have applied to Rivington for the Book but the only copies in Town seem to be of the *8th Edition*. This however is advertised as “enlarged &c by the Author,” who I am told by Berry & Rogers is now living & a correspondent of theirs. It is not improbable therefore that your reason for preferring the 6th Ed: may be stronger in favor of this. Let me know your pleasure on the subject & it shall be obeyed.

I am at a loss what to decide as to my trip to the Eastward. My inclination has not changed, but a journey without a companion, & in the stage which besides other inconveniences travels too rapidly for my purpose, makes me consider whether the next fall may not present a better prospect. My horse is more likely to recover than at the time of your departure. By purchasing another, in case he should get well, I might avoid the Stage, but at an expence not altogether convenient.

You have no doubt seen the French Regulations on the subject of Tobo, which commence hostilities agst the British Navigation Act. Mr. King tells me an attack on Payne has appeared in a Boston paper under the name of Publicola,<sup>1</sup> and has an affinity in the stile as well as sentiments to the discourses on Davila. I observed in a late paper here an extract from a Philada pamphlet on the Bank. If the publication has attracted or deserves notice I should be glad of a copy from you. I will write again in a few days, in the mean time remaining,



YRs Mo: AffecLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

New York June 27, 1791.

Dear Sir

By a Capt: Simms who setts off this afternoon in the Stage for Philadelphia I forward the Bundle of Cloaths from the Taylor. His bill is inclosed with that of Mrs Elseworth including the payment to the Smith.

I have seen Col: Smith more than once. He would have opened his budget fully to me, but I declined giving him the trouble. He has written to the President a statement of all his conversations with ye. British Ministry, which will get into your hands of course. He mentioned to me his wish to have them put there in the first instance and your situation on his arrival as an apology for not doing it. From the complexion of the little anecdotes & observations which dropped from him in our interviews I suspect that report has as usual far overrated the importance of what has been confided to him. General professions which mean nothing, and the sending a Minister which can be suspended at pleasure, or which if executed may produce nothing, are the amount of my present guesses.

Mr. Adams seems to be getting faster & faster into difficulties. His attack on Payne, which I have not seen, will draw the public attention to his obnoxious principles, more than everything he has published. Besides this, I observe in McLean's paper here, a long extract from a sensible letter republished from Poughkeepsie, which gives a very unpopular form to his anti-republican doctrines, and presents a strong contrast of them with a quotation from his letter to Mr. Wythe in 1776.

I am still resting on my oars with respect to Boston. My Horse has had a relapse which made his recovery very improbable. Another favorable turn has taken place, and his present appearance promises tolerably well. But it will be some time before he can be used, if he should suffer no other check. Adieu —*Mad. MSS.*

Yrs

TO JAMES MADISON.

N. York July 2d. 1791.

HonD. Sir

Your favor of the 29th of May never came to hand till yesterday when it fell in with me at this place. My brother's of nearly the same date had done so a few days before.



My answer to his went by the last mail. I refer to it for the information yours requests. I had indeed long before advised you both to ship to Leiper all the good Tobacco of your crops. It is certainly the best you can do with it.

The tour I lately made with Mr. Jefferson of which I have given the outline to my brother was a very agreeable one, and carried us thro an interesting country new to us both. I postpone the details of our travels till I get home which as I mentioned to my brother will be in Augst. I cannot yet say whether it will be towards the middle or last of the month. It gives me much satisfaction to learn that my mother has so far recovered. I hope her health may continue to mend. You do not mention whether she has been or is to be at any of the Springs—I shall attend to the articles you wish for family use on my way thro' Philada unless I should meet with them on satisfactory terms here.

The Report in Georgia relating to me is as absolute a falsehood as ever was propagated. So far am I from being concerned in the Yazoo transaction, that from the nature of it, as it has been understood by me, I have invariably considered it as one of the most disgraceful events that have appeared in our public counsels, and such is the opinion which I have ever expressed of it. I do not think it necessary to write to Genl Mathews, because a report of such a nature does not seem to merit a formal contradiction. I wish him to know however that I am sensible of his friendly attention, and will thank Mr. Taylor, when an opportunity offers, to let him know as much.

The latest accounts from abroad are various & contradictory. The most authentic make it probable that there will be no war between England & Russia, and that there will be peace between the latter & the Turks at the expence of the Turks. From a concurrence of information it is probable also that a public minister from G. B. may pretty soon be expected. If He brings powers & dispositions to form proper commercial arrangements, it will be an interesting change in the councils of that nation; especially as an execution of the Treaty of peace must be a preliminary in the business.

The Crops in general thro' the Country I have passed & heard from are promising. Wheat is selling at Phila. at abt. a dollar a bushel & here in the usual proportion.

Remember me affectly to all, & accept the dutiful respects of your son.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York July 10, 1791.

Dear Sir,

Your favor of the 6th. came to hand on friday. I went yesterday to the person who advertised the Maple Sugar for the purpose of executing your commission on that subject. He tells me that the cargo is not yet arrived from Albany, but is every hour expected; that it will not be sold in parcels of less than 15 or 16 hundred lbs & only at

auction, but that the purchasers will of course deal it out in smaller quantities; that a part is grained and a part not; and that the price of the former will probably be regulated by that of good Muscavado which sells at about £5 N. Y. Currency a Ct. I shall probably be at Flushing in two or three days and have an opportunity of executing your other Com<sup>missions</sup> on the spot. In case of disappointment, I shall send the Letter & money to Prince by the best conveyance to be had. The Maple Seed is not arrived. The Birch Bark has been in my hands some days and will be forwarded as you suggested.

The Bank shares have risen as much in the Market here as at Philadelphia. It seems admitted on all hands now that the plan of the institution gives a moral certainty of gain to the Subscribers with scarce a physical possibility of loss. The subscriptions are consequently a mere scramble for so much public plunder which will be engrossed by those already loaded with the spoils of individuals. The event shews what would have been the operation of the plan, if, as *originally proposed* subscriptions had been limited to the 1st of april and to the favorite species of stock which the Bank Jobbers had monopolized. It pretty clearly appears also in what proportions the public debt lies in the Country. What sort of hands hold it, and by whom the people of the U. S. are to be governed. Of all the shameful circumstances of this business, it is among the greatest to see the members of the Legislature who were most active in pushing this Job openly grasping its emoluments. Schuyler is to be put at the Head of the Directors, if the weight of the N. Y. subscribers can effect it. Nothing new is talked of here. In fact stock-jobbing drowns every other subject. The Coffee-House is in an eternal buzz with the Gamblers.

I have just understood that Freneau is now here & has abandoned his Philada project. From what cause I am wholly unable to determine; unless those who know his talents & hate his political principles should have practiced some artifice for the purpose.

I have given up for this season my trip Eastward. My bilious situation absolutely forbade it. Several lesser considerations also conspired with that objection. I am at present free from a fever but have sufficient evidence, in other shapes that I must adhere to my defensive precautions.

The pamphlet on Weights &c, was put into my hands by Doer Kemp with a view to be forwarded after perusal to you. As I understand it is a duplicate and to be kept by you. Always & mo: affectly.

—*Mad. MSS.*

YRs

TO THOMAS JEFFERSON.

N. York July 13, 1791.

Dear Sir

I received last evening your very kind enquiries after my health. My last will have informed you of the state of it then. I continue to be incommoded by several different shapes of the bile; but not in a degree that can now be called serious. If the present excessive heat should not augment the energy of the cause, I consider myself as in a good way to get rid soon of its effects.

Beckley has just got back from his Eastern trip. He says that the partizans of Mr. Adam's heresies in that quarter are perfectly insignificant in point of number, that particularly in Boston he is become distinguished for his unpopularity, that Publicola is probably the manufacture of his son out of materials furnished by himself, and that the publication is generally as obnoxious in New England as it appears to be in Pennsylvania. If young Adams be capable of giving the dress in which Publicola presents himself, it is very probable he may have been made the Editor of his Father's doctrines. I hardly think the Printer would so directly disavow the fact if Mr. Adams was himself the writer. There is more of method also in the arguments, and much less of clumsiness & heaviness in the style, than characterize his writings. I mentioned to you some time ago an extract from a piece in the Poughkeepsie paper as a sensible comment on Mr. Adams' doctrines. The whole has since been republished here, and is evidently from a better pen than any of the Anti-publicolas I have seen. In Greenleaf's paper of to-day is a second letter from the same quarter, which confirms the character I have given of the Author.

We understand here that 800 shares in the Bank, committed by this City to Mr. Constable, have been excluded by the manner in which the business was conducted. that a considerable number from Boston met with the same fate. and that Baltimore has been kept out in toto. It is all charged on the manœuvres of Philada. which is said to have secured a majority of the whole to herself. The disappointed individuals are clamorous of course, and the language of the place marks a general indignation on the subject. If it should turn out that the cards were packed for the purpose of securing the game to Philada or even that more than half the Institution and of course the whole direction of it, have fallen into the hands of that City, some who have been loudest in their plaudits whilst they expected to share in the plunder, will be equally so in sounding the injustice of monopoly, and the danger of undue influence on the Government.

The Packet is not yet arrived. By a vessel arrived yesterday Newspapers are recd. from London which are said to be later than any yet come to hand. I do not find that any particular facts of moment are handed out. The miscellaneous articles come to me thro' Childs' paper, which you get sooner than I could rehearse to you. It has been

said here by the Anglicans that the President's message to Congs. on the subject of the commercial disposition of G. B. has been asserted openly by Mr. Pitt to be misrepresentation. and as it would naturally be traced to Govr. Morris it has been suggested that he fell into the hands of the Chevr. Luzerne who had the dexterity to play off his negotiations for French purposes. I have reason to believe that B[eckwith] has had a hand in throwing these things into circulation. I wish you success with all my heart in your efforts for Payne.<sup>1</sup> Besides the advantage to him which he deserves, an appointment for him, at this moment would do public good in various ways.

Always & Truly Yours.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug 4, 1791.

My Dear Sir

It being probable that I shall leave this place early in the ensuing week I drop you an intimation of it, that you may keep back my letters that may fall into your hands for me, or that you might intend to favor me with.

The outward bound Packet for Halifax & London sailed today. The one expected for some time past is not yet arrived, and I do not learn that any foreign news is recd. thro any other channel. Stock & scrip continue to be the sole domestic subjects of conversation. The former has mounted in the late sales above par, from which a superficial inference would be drawn that the rate of interest had fallen below 6 Per Ct. It is a fact however which explains the nature of these speculations, that they are carried on with money borrowed at from Per Ct. a month, to 1 Per Ct. a week.

Adieu YRs. Mo: AffecLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug: 8 1791.

My Dear Sir

I take the liberty of putting the inclosed into your hands that in case Col: Lee should have left Philada. the contents may find their way to Col: Fisher who is most interested in them. And I leave it open for the same purpose. The Attorney will be a fit channel in the event of Col: Lee's departure, for conveying the information.

You will find an allusion to some mysterious cause for a phenomenon in Stocks. It is surmised that the deferred debt is to be taken up at the next session, and some anticipated provision made for it. This may either be an invention of those who wish

to sell, or it may be a reality imparted in confidence to the purchasers or smelt out by their sagacity. I have had a hint that something is intended and has dropt from — —[1](#) which has led to this speculation. I am unwilling to credit the fact, untill I have further evidence, which I am in a train of getting if it exists. It is said that packet boats & expresses are again sent from this place to the Southern States, to buy up the paper of all sorts which has risen in the market here. These & other abuses make it a problem whether the system of the old paper under a bad Government, or of the new under a good one, be chargeable with the greater substantial injustice. The true difference seems to be that by the former the few were the victims to the many; by the latter the many to the few. It seems agreed on all hands now that the bank is a certain & gratuitous augmentation of the capitals subscribed, in a proportion of not less than 40 or 50 Per Ct. and if the deferred debt should be immediately provided for in favor of the purchasers of it in the deferred shape, & since the unanimous vote that no change shd. be made in the funding system, my imagination will not attempt to set bounds to the daring depravity of the times. The stock-jobbers will become the pretorian band of the Government, at once its tool & its tyrant; bribed by its largesses, & overawing it by clamours & combinations. Nothing new from abroad. I shall not be in Philada. till the close of the Week.

Adieu. Yrs Mo: AffY.—*Mad. MSS.*

TO JAMES MADISON.

Philada Ocr. 30, 1791.[1](#)

Hond Sir

We arrived here yesterday morning was a week, having been obliged to push through the bad weather by the discovery first made at Mount Vernon that the meeting of Congress was a week earlier than was calculated at our setting out. The President had been under the same mistake, and had but just been apprized of it. Many others had equally miscalculated.

Being obliged to attend immediately on my arrival to public business I have not been able to give the attention to yours and that of others which I wished. I have however seen Mr Leiper so far as to learn from him that your Fredericksburg Tobo. is in his hands, and that a shilling or two more may be expected for it than for the preceding shipment. As soon as the sale is made, and I can execute the other commissions you have given me, I will write you an account of the whole. The price of the best Sugars is I find £4—8 Virga currency per Ct and coffee about 1/ do per lb.

The past week has been spent rather in preparations for the business of the present Session of Congs than in the actual commencement of it. You will find what has been done in the inclosed papers.—Mr. Hammond the expected Minister from G. Britain arrived in the last packet & has been here some days. His public character has not yet been announced in form. If any communications have been made by him on the subject of his mission, they are known to the Executive Department alone. I am

extremely anxious to know the state of my mothers health which was so unsettled when I left home. I am looking out for the information by every mail. present my dutiful regards to her.—*Mad. MSS.*

## TO ROBERT PLEASANTS.

Philada. Ocr 30, 1791.

Sir

The delay in acknowledging your letter of the 6th June last proceeded from the cause you conjectured. I did not receive it till a few days ago, when it was put into my hands by Mr. James Pemberton, along with your subsequent letter of the 8th August.<sup>1</sup>

The petition relating to the Militia bill contains nothing that makes it improper for me to present it. I shall therefore readily comply with your desire on that subject. I am not satisfied that I am equally at liberty with respect to the other petition. Animadversions such as it contains, and which the authorized object of the petitioners did not require on the slavery existing in our country, are supposed by the holders of that species of property, to lessen the value by weakening the tenure of it. Those from whom I derive my public station are known by me to be greatly interested in that species of property, and to view the matter in that light. It would seem that I might be chargeable at least with want of candour, if not of fidelity, were I to make use of a situation in which their confidence has placed me to become a volunteer in giving a public wound, as they would deem it, to an interest on which they set so great a value. I am the less inclined to disregard this scruple, as I am not sensible that the event of the petition would in the least depend on the circumstance of its being laid before the House by this or that person.

Such an application as that to our own Assembly on which you ask my opinion, is a subject in various respects, of great delicacy and importance. The consequences of every sort ought to be well weighed by those who would hazard it. From the view under which they present themselves to me, I cannot but consider the application as likely to do harm rather than good. It may be worth your own consideration whether it might not produce successful attempts to withdraw the privilege now allowed to individuals, of giving freedom to slaves. It would at least be likely to clog it with a condition<sup>1</sup> that the persons freed should be removed from the Country; there being arguments of great force for such a regulation, and some would concur in it who in general disapprove of the institution of slavery.

I thank you Sir for the friendly sentiments you have expressed towards me; and am with respect and esteem.

Your Obed<sup>t</sup>. Hble Serv<sup>t</sup>.—*Mad. MSS.*

TO JAMES MADISON.

Philada. Novr. 13, 1791.

Hon<sup>d</sup>. Sir

I recd yesterday a letter from my brother Ambrose which gave me the first information I have had since I left home concerning the state of my mothers health. I am extremely glad to find she had so much mended and hope her health may continue to grow better.

My brother signified to me that Miss Boynton wished a furr instead of a chip hat to be sent her. Unluckily the latter had been bought, packed up, & sent off in a trunk with the other articles, before his letter got to hand. It was consequently too late to make the change. If she wishes the other hat to be procured & forwarded, no time in giving me notice is to be lost, as the progress of the winter will soon put an end to the intercourse with Virginia by water. I have provided all the articles desired by my brother except the shoes for himself, which owing to a variance between the shoemakers & their journeymen on the point of wages, could not be got. His linnen is packed up with the coffee sent you. His crate of ware, will go by itself addressed to the care of Mr. J. Blair. The remainder of his articles are in a Trunk which contains moreover the articles for Mrs. Mason & Fanny; except the Breast pin which has been delayed by the absence of the artist. I must take some private oppy. to send it to my brother W. in Richmond. The trunk is already gone, or will go in a day or two addressed to Mr Maury. Besides the articles abovementioned, I have put into it a parcel of cloaths which I consign to the disposal of my mother—Finding that sugar was not likely to fall, I procured you a supply of that article as well as of coffee. They have both been sent off about a week ago addressed to Mr Maury, and are probably by this time in Fredericksbrg. The quantity of Sugar is 400 lb. and of coffee 150lb, 50lb of it being of the Bourbon sort.

The Nail rods you want are not to be got in the City, and the price of the sheet bags is 2/9 Pa curry a pound, which so far exceeds your limitation, that I declined sending it.—Mr. Leiper has not yet sold your Tobo. he says two Hhds are pretty good; the others very deficient in substance. He speaks favorably of the manner in which the Tobo has been handled & put up, & thinks its value would have been much greater, if it had been tapped lower. In answer to my enquiry as to stemmed Tobo he says the difference will vary from 25 to 33 per Ct. If any should be sent him he recommends care in taking out the stem, so as to tear the leaf as little as possible—your loan-office Certificates have been funded as I learn from Messrs Wister & Ashton your letter arrived in time, and according to the office construction of the law, the defect of liquidation prior to June, did not stand in the way—The six per Cts. I am just told have got up to 24/ in the pound, giving credit till March. If you chuse to sell, you will let me know—as soon as I get in all the bills from those of whom I have purchased the different articles for yourself my brother A &c., I will forward an account of the

whole. Mr. Freneau has sent papers to Fredg. for subscribers whose names I brought with me. I must beg you to collect & send us, as soon as possible the other subscriptions in Orange—and get the same done for Culpeper.

The inclosed paper will give you a glance of what is going on in Congress who have not yet entered into the substantial parts of their business. It will also let you know all that I could add as to foreign information.

## YR AffectN Son—*Mad. MSS.*

[1] From Freneau's *National Gazette*, vol. i., November 21, 1791. The first number of the *Gazette* appeared October 31, 1791. See also Madison to Jefferson, *ante*, ii., 246.

[1] The multiplying power in some instances, animal as well as vegetable, is astonishing. An animal plant of two seeds produces in 20 years, 1,048,576; and there are plants which bear more than 40,000 seeds. The roe of a codfish is said to contain a million of eggs; mites will supply a thousand in a day; and there are viviparous flies which produce 2000 at once. See Stillingfleet and Bradley's philosophical account of nature.

[1] Emigrants from Europe, enjoying freedom in a climate similar to their own, increase at a rate of five per cent a year. Among Africans suffering or (in the language of some) enjoying slavery in a climate similar to their own, human life has been consumed in an equal ratio. Under all mitigations latterly applied in the British West-Indies, it is admitted that an annual decrease of one per cent. has taken place.—What a comment on the African Trade!

[1] The most remarkable instances of swarms of people that have been spared without diminishing the parent stock, are the colonies and colonies of colonies among the antient Greeks. Milentum, which was itself a colony, is reported by Pliny, to have established no less than eighty colonies, on the Hellespont, the Propontis, and the Euxine. Other facts of a like kind are to be found among the Greek historians.

[1] Irish is meant to be included.

[1] This is stated as the fact is, not as it ought to be. The United States are reasonably entitled to half the freight, if, under regulations, perfectly reciprocal in every channel of navigation, they could acquire that share. According to Lord Sheffield, indeed, the United States are well off, compared with other nations; the tonnage employed in the trade with the whole of them, previous to the American Revolution, having belonged to British subjects, in proportion of more than eleven twelfths. In the year 1660, other nations owned about  $\frac{1}{4}$ ; in 1700 less than  $\frac{1}{2}$ , in 1725  $\frac{1}{3}$ , in 1750  $\frac{1}{4}$ , in 1774 less than that proportion. What the proportion is now, is not known. If such has been the operation of the British navigation law on other nations, it is our duty, without enquiring into their acquiescence in its monopolizing tendency, to defend ourselves against it, by all the fair and prudent means in our power.

This is admitted to be a very vague estimate. The proportion of our exports which are



either necessaries of life or have some profitable connection with manufactures might be pretty easily computed. The actual profit drawn from that proportion is a more difficult task; but if tolerably ascertained and compared with the proportion of such of our imports as are not for mere consumption would present one very interesting view of the commerce of the United States.

[1] From Easter 1775 to Easter 1776, was expended the sum of £.1,556,804:6-3 sterling. See Anderson vol. v. p. 275. This well informed writer conjectures the annual expence to be near £.2,000,000 sterling. It is to be regretted that the number and expence of the poor in the United States cannot be contrasted with such statements. The subject well merits research, and would produce the truest eulogium on our country.

[1] From *The National Gazette*, December 5, 1791.

[1]

TO HENRY LEE.

Philada. Decr 18th 1791.

My Dear Sir

I have received your favor of the 8th & handed to Freneau the subscriptions inclosed for him. His paper in the opinion here justifies the expectations of his friends and merits the diffusive circulation they have endeavoured to procure it.

I regret that I can administer no balm to the wound given by the first report of our western disaster.<sup>2</sup> You will have seen the official account which has gone into all the Newspapers. It does not seem to contain any of the saving circumstances you are so anxious to learn. The loss of blood is not diminished, and that of impression, is as great as the most compleat triumph of the savages can render it. The measures planning for the reparation of the calamity are not yet disclosed. The suspected relation of Indian hostility to the Western Posts, became here as with you, a subject of pretty free conversation. Mr. Hammond has officially disavowed by authority from his Court the imputation of encouraging those hostilities through the Government of Canada. He has also contradicted on his personal conviction, the allegations of like countenance to the hostile proceedings of Bowles in the Southern quarter. Nothing is yet public with respect to his general communications with the Executive. Major Thomas Pinkney is to be Minister at London.

The representation bill is still on hand. The Senate after detaining it a considerable time, and trying sundry improper expedients for making out a ratio of a different aspect from the simple and obvious one proposed to them, at length agreed by the casting voice of the Chair to alter the ratio of 1 for 30,000 to 1 for 33,000. The H of Reps. disagreed tho' by a bare majority only. The Senate have insisted, and tomorrow will decide the eventual temper of the H of Reps on the subject. Should they be firm

enough to adhere, the Senate will probably recede. Should a conference be proposed I auger unfavorably of the issue. The chance will be much bettered if Col. Lee who we hear is on the road, should arrive in time. Whatever the decision of the House of Reps. may be, it will turn on very few votes, possibly on that of the chair.

On the subject of Great Falls, I insist that you do not sacrifice or risk the prospect on my account. Your honor cannot forbid, whilst my poverty continues to require, that you transfer your friendly purpose from me to some other friend, whose resources will better correspond with it. Mine cannot be relied on, and I should be particularly unhappy at being accessory to the danger of one who had been so anxious to be instrumental to my advantage.

Let me beg you to reconsider your resolution, and not to let me stand in the way of your success, which I ought to wish much more on your account, than on my own being on this occasion under particular obligations to you, and on all your affectionate friend.

—*Mad. MSS.*

[1] From *The National Gazette*, December 19, 1791.

[1] From *The National Gazette*, December 19 and 22, 1791.

[2] March 18, 1780. See *ante*, vol. i., p. 58, *et seq.*

[1] *As the depreciation of our money has been ascribed to a wrong cause, so, it may be remarked, have effects been ascribed to the depreciation, which result from other causes. Money is the instrument by which men's wants are supplied, and many who possess it will part with it for that purpose, who would not gratify themselves at the expence of their visible property. Many also may acquire it, who have no visible property. By increasing the quantity of money therefore, you both increase the means of spending, and stimulate the desire to spend; and if the objects desired do not increase in proportion, their price must rise from the influence of the greater demand for them. Should the objects in demand happen, at the same juncture, as in the United States, to become scarcer, their price must rise in a double proportion.*

*It is by this influence of an augmentation of money on demand, that we ought to account for the proportional level of money in all countries, which Mr. Hume attributes to its direct influence on prices. When an augmentation of national coin takes place, it may be supposed either, 1. not to augment demand at all; or, 2. to augment it so gradually that a proportional increase of industry will supply the objects of it; or, 3. to augment it so rapidly that the domestic market may prove inadequate, whilst the taste for distinction natural to wealth, inspires, at the same time, a preference for foreign luxuries. The first case can seldom happen. Were it to happen, no change in prices, nor any efflux of money, would ensue; unless indeed, it should be employed, or loaned abroad. The superfluous portion would be either hoarded or turned into plate. The second case occurs only where the augmentation of money advances with a very slow and equable pace; and would be attended neither*

*with a rise of prices, nor with a superfluity of money. The third is the only case, in which the plenty of money would occasion it to overflow into other countries. The insufficiency of the home market to satisfy the demand would be supplied from such countries as might afford the articles in demand; and the money would thus be drained off, till that and the demand excited by it, should fall to a proper level, and a balance be thereby restored between exports and imports.*

*The principle on which Mr. Hume's theory, and that of Montesquieu's before him, is founded, is materially erroneous. He considers the money in every country as the representative of the whole circulating property and industry in the country; and thence concludes that every variation in its quantity must increase or lessen the portion which represents the same portion of property or labor. The error lies in supposing, that because money serves to measure the value of all things, it represents and is equal in value to all things. The circulating property in every country, according to its market rate, far exceeds the amount of its money. At Athens oxen, at Rome sheep, were once used as a measure of the value of all things. It will hardly be supposed, they were therefore equal in value to all other things.*

[1] From *The National Gazette*, January 2, 1792.

TO HENRY LEE.

Philadelphia, Jany 1st, 1792.

My Dear Sir

.....

You already know the fate of the apportionment Bill—the subject was revived in the Senate, but I understand has been suspended in order to give an opportunity to the house of Reps. to procede in a second Bill if it pleases—Nothing however has been done in it, and it is difficult to say when or in what form the business will be resumed—The subject most immediately in hand in the House of Reps. is the Post office Bill, which has consumed much time and is still in an unfinished state—you see in the Newspapers historical sketches of its progress—

The Senate have of late been much occupied by the nominations of the President for foreign courts—that is, Mr. Thomas Pinkney for London—Govr Morris, for Paris, & Short for the Hague—a considerable diversity of opinion is said to prevail, and to be the cause of delay in coming to a decision—

The disturbances in Hispaniola continue without abatement, and tis certain that the contagion is reaching Jamaica—

The plan for retrieving our Western affairs is not yet before the Legislature—

I enclose the report of the Secy of the Treasury on Manufactures—What think you of the commentary (pages 36 & 37) on the terms “general welfare”?—The federal Govt

has been hitherto limited to the specified powers, by the Greatest Champions for Latitude in expounding those powers—If not only the *means*, but the *objects* are unlimited, the parchment had better be thrown into the fire at once—I sent you by Mr Brackenridge a number of Surveys for our friend Baron Steuben, and have acquainted him with a state of the business as far as I could collect it—Whenever you can supply any further information I shall be ready to aid in forwarding it to him—

With The Sincerest Affection Yrs Always.—*Mad. MSS.*

Lee was then Governor of Virginia. He replied to the letter, January 8

“. . . But really I have discovered no one measure of the genl. got. which has been attended with success, except the fiscal schemes whose completion the moment the abominable principles on which they are built became sanctioned by the national Legislature, were certain.

“I find you was one & first of three in your house appointed to draft an answer to the late presidential speech—Read the first clause of your reply and tell me how you would impute the prosperity of the U. States in any degree, much more in the degree you did, to the laws of Congress. No man loves and venerates the P. more than I do, and to hurt his feelings would be doleful to my heart; but had I been a member of your house, I should certainly in defiance of all other considerations arrest that servile custom of re-echoing whatever is communicated without respect to fact. We owe our prosperity such as it is, for it is nothing extraordinary to our own native vigor as a people & to a continuation of peace, not to the wisdom or care of govt. . Indelibly stained is the wisdom the honor & justice of the govt by those fashionable treasury schemes imitative of the base principles & wicked measures adopted thro necessity in corrupt monarchies and long since reprobated (tho continued) by the wise & good in the countrys where they exist. . . . I deeply lament the sad event, but really I see no redress, unless the govt itself be destroyed. This is risking too much because great evils indubitably must grow from discord & the people must suffer greatly whatever may be the event of such an experiment. The money interest is growing daily more & more formidable, they are industrious, they combine they concert measures, they beset every avenue of information, & they bespatter the character of every individual who dares to utter an opinion hostile to the fiscal measures—So that the chance of successful opposition is more & more doubtful. Men hate to risk without tolerable hopes of success. To this cause I impute the submission of so many well informed heads & honest hearts to the base perversion of the constitution of the U. S.

“Never did practice so flatly contradict theory as the paper & the administration of it so far. . . .”—*Mad. MSS.*

The reply to the President’s speech, adopted October 27, which Madison had drawn up was perfunctory. The opening clause to which Lee objected read:

“In receiving your Address, at the opening of the present session, the House of Representatives have taken an ample share in the feelings inspired by the actual prosperity and flattering prospects of our country; and whilst, with becoming gratitude to Heaven, we ascribe this happiness to the true source from which it flows, we behold with an animated pleasure the degree in which the Constitution and Laws of the United States have been instrumental in dispensing it.”

Lee wrote again, Jany. 17, 1792:

“. . . In that funding system will undo us, such an unnecessary wanton base infamous plan never was fostered for a moment by a people circumstanced as we were: yet it has not only been fostered but absolutely rivetted upon us—While we deprecate & lament the obnoxious event we must submit to it, because effectual opposition may beget civil discord & civil war.

“I wish to god the debt could be discharged, the banditti paid off, & a like scheme prohibited in future. . . .”—*Mad. MSS.*

The next letter, January 29, is endorsed by Madison: “Evidence of General H. Lee’s disaffection to the policy & measures of the Federal Government during several of the early years of Washington’s administration, and of his partiality for Freneau’s National Gazette.” It proceeds:

“. . . I admire the constitution, I revere the principles on which it is founded & love affectionately the objects which it contemplated. All that grieves me is, the perverseness of its administration. The effects heretofore produced are spurious, but have been so successful as to render in my judgment a change of constitution in operation certain altho there will be no change for a long time in names. . . .”—*Mad. MSS.*

The letter contains no direct allusion to Freneau’s paper, but on February 6 he wrote:

“. . . Freneau’s Gazette you mention has not reached me, nor indeed have I for two mails got any papers from him. This precariousness in the reception of his paper will cramp the circulation of it, for which I am exceedingly sorry as it is rising fast into reputation.

“Innes is so pleased with the attention of the editor to political matters and to the independence evidenced in his selection of home information that he has desired me to procure for him the Gazette and to request that all the papers from the beginning be forwarded.

“This you will please to do & give Innes’s address & residence.

“I intend to urge Davies the public printer here to re-publish [*illegible*] & such other political matters as serve to inform the people.”—*Mad. MSS.*

[\[2\]](#) From *The National Gazette*, January 19, 1792.

[1] From *The National Gazette*, January 23, 1792.

[1] From *The National Gazette*, January 30, 1792.

[1] From *The National Gazette*, February 2, 1792.

[1] From *The National Gazette*, February 6, 1792.

[1] From *The National Gazette*, February 20, 1792.

[1] February 6, 1792, in the debate on the bill to encourage the cod fisheries Madison repeated his constitutional views substantially as in his speech of February 8, 1791.

## TO EDMUND PENDLETON.

Philada Feby 21, 1792.

Dear Sir

Your favor of the 8th did not come to hand till this afternoon. I thank you for the very just & interesting observations contained in it. I have not yet met with an opportunity of forwarding the Report on Manufactures; nor has that subject been yet regularly taken up. The constitutional doctrine however advanced in the Report, has been anticipated on another occasion, by its zealous friends; and I was drawn into a few hasty animadversions the substance of which you will find in one of the inclosed papers. It gives me great pleasure to find my exposition of the Constitution so well supported by yours.

The Bill concerning the election of a President & Vice President and the eventual successor to both, which has long been depending, has finally got through the two Houses. It was made a question whether the number of electors ought to correspond with the new apportionment or the existing House of Reps. The text of the Constitution was not decisive, and the Northern interest was strongly in favor of the latter interpretation. The intrinsic rectitude however of the former turned the decision in both houses in favor of the Southern. On another point the Bill certainly errs. It provides that in case of a double vacancy, the Executive powers shall devolve on the Prest pro tempore of the Senate & he failing, on the Speaker of the House of Reps.<sup>2</sup> The objections to this arrangement are various, 1. it may be questioned whether these are officers in the constitutional sense. 2. if officers whether both could be introduced. 3. as they are created by the Constitution, they would probably have been there designated if contemplated for such a service, instead of being left to the Legislative selection. 4. Either they will retain their *Legislative* stations, and then incompatible functions will be blended; or the incompatibility will supersede those stations, & then those being the substratum of the adventitious functions, these must fail also. The Constitution says, Congs. may declare *what officers &c.* which seems to make it not an appointment or a translation; but an annexation of one office or trust to another office. The House of Reps proposed to substitute the Secretary of State, but the Senate disagreed, & there being much delicacy in the matter it was not pressed by the former.

Another Representation Bill has gone to the Senate modelled on the double idea mentioned in my last. 1 for 30,000 is the ratio fixed both for the late & the proposed Census. The fate of the Bill in the Senate is problematical. The Bill immediately before the H. of Reps is a Militia Bill.

I have nothing to add to the contents of the Newspapers on other subjects foreign or domestic.

With the highest esteem & sincere affn

I Remain Dear Sir YRs

—*Mad. MSS.*

[\[1\]](#) From *The National Gazette*, March 5, 1792.

TO JAMES MADISON.

Philada March 15, 1792.

HonD Sir

The last letter recd. from you was that of Feby 1. Since my answer to that the state of the roads & rivers has been such as to render the conveyance of letters very tedious if not uncertain, and thence to produce the interval between that date & the present. I now inclose 5nos. of the *National Gazette*—which continue the intelligence through out the period of my silence—You will find noticed the progress of the business in Cons and particularly the bills that have passed into laws. The representation-bill which as it went to the Senate proposed again the simple ratio of 1 for 30,000 applied to the respective members in each state, and a second census within a short time to be followed by a like ratio, has come back with the latter provision struck out, and the former so altered as to make the number of Reps amount to 120, instead of 112. This is the more extraordinary as the No. 112 was considered before as too great and a ratio of 1 for 33,000 insisted on & the bill sacrificed to it. The secret of the business is that by these different rules the relative number of Eastn & Southn members is varied. The number of 120 is made out by applying 1 for 30,000 to the aggregate population of the U. S. and allowing to *fractions* of certain amount an additional member. [1](#)

The House of Reps have been for several days taken up with the Georgia election, which will probably consume several more, a good deal of the more important business still remains to be done; altho' there seems to be a pretty general determination to close the session early in next week.

Leiper has not yet sold your Tobo. The price continues so low that he thinks a change must be for the better & ought to be waited for. The price of sugar has rather risen of



late, and seems likely to remain high for some time. The state of the public debt has fallen considerably as you will see by the inclosed papers. You had better have complied with my advice with regard to your little interest in that article, and had in my opinion still better send me a power of attorney as to the principal as well as the interest. With my dutiful regards to my mother.—*Mad. MSS.*

[1] From *The National Gazette*, March 22, 1792.

[1] From *The National Gazette*, March 29, 1792.

[1] From *The National Gazette*, April 2, 1792

[1]

TO JAMES MADISON.

Apl 17th 1792.

HonD Sir

Col. Wadsworth<sup>2</sup> of Connecticut wishes to procure a Barrel or half Barrel of the best Peach Brandy, & I have undertaken to use my efforts for the purpose. If it can be got at all it is probably in our neighbourhood. I recollect particularly that Col. Geo. Taylor had some that we thought good & which is perhapsto be obtained. If that or any better can be had I shall be glad that one of my brothers would take the trouble of engaging it & having it forwarded. The older the better provided the quality be excellent. If age be wanting, the quality should be such as will be made excellent by age. To secure it against fraud, it is desired that the cask be cased with an outer one; the cask itself to be of wood that will give it no ill taste. The price will not be considered so much as the character of the spirits, it being for the use of the gentleman himself—If no brandy be on hand that will do, perhaps the ensuing fall if the peaches be not destroyed, may supply the defect. In that case it might be well to speak in time to some person & have a barrel distilled with special care for the purpose. The brandy is to be shipped from Fredericksburg addressed to Watson & Greenleaf at New York—for Col. Wadsworth Mr Maury or Mr. Glassell will forward it if sent to either of them. I have nothing to add to the papers enclosed having written a few days ago, & being now in haste.

YR AffeC Son.—*Mad. MSS.*

SUBSTANCE OF A CONVERSATION WITH THE  
PRESIDENT, 5TH MAY, 1792.

In consequence of a note this morning from the President, requesting me to call on him I did so; when he opened the conversation by observing, that having some time



ago communicated to me his intention of retiring from public life on the expiration of his four years, he wished to advise with me on the *mode* and *time* most proper for making known that intention. He had he said spoken with no one yet on those *particular points*, and took this opportunity of mentioning them to me, that I might consider the matter, and give him my opinion, before the adjournment of Congress, or my departure from Philadelphia. He had he said forborne to communicate his intentions to any other persons whatever, but Mr. Jefferson, Col. Hamilton, General Knox, and myself, and of late to Mr. Randolph. Col. Hamilton and Genl. Knox he observed were extremely importunate that he should relinquish his purpose, and had made pressing representations to induce him to it Mr. Jefferson had expressed his wishes to the like effect. He had not however persuaded himself that his continuance in Public life could be of so much necessity or importance as was conceived, and his disinclination to it was becoming every day more & more fixed, so that he wished to make up his mind as soon as possible on the points he had mentioned. What he desired was to prefer that mode which would be most remote from the appearance of arrogantly presuming on his re-election in case he should not withdraw himself, and such a time as would be most convenient to the Public in making the choice of his successor. It had he said at first occurred to him, that the commencement of the ensuing Session of Congress would furnish him with an apt occasion for introducing the intimation, but besides the lateness of the day, he was apprehensive that it might possibly produce some notice in the reply of Congress that might entangle him in farther explanations. I replied that I would revolve the subject as he desired and communicate the result before my leaving Philada but that I could not but yet hope there would be no necessity at this time for his decision on the two points he had stated. I told him that when he did me the honor to mention the resolution he had taken, I had forborne to do more than briefly express my apprehensions that it would give a surprize and shock to the public mind, being restrained from enlarging on the subject by an unwillingness to express sentiments sufficiently known to him; or to urge objections to a determination, which if absolute, it might look like affectation to oppose; that the aspect which things had been latterly assuming, seemed however to impose the task on all who had the opportunity of urging a continuance of his public services; and that under such an impression I held it a duty, not indeed to express my wishes which would be superfluous, but to offer my opinion that his retiring at the present juncture might have effects that ought not to be hazarded; that I was not unaware of the urgency of his inclination; or of the peculiar motives he might feel to withdraw himself from a situation into which it was so well known to myself he had entered with a scrupulous reluctance; that I well recollected the embarrassments under which his mind labored in deciding the question on which he had consulted me, whether it could be his duty to accept his present station after having taken a final leave of public life; and that it was particularly in my recollection that I then entertained & intimated a wish that his acceptance, which appeared to be indispensable, might be known hereafter to have been in no degree the effect of any motive which strangers to his character might suppose, but of the severe sacrifice which his friends knew, he made of his inclinations as a man, to his obligations as a citizen; that I owned I had at that time contemplated, & I believed, suggested as the most unequivocal tho' not the only proof of his real motive, a voluntary return to private life as soon as the state of the Government would permit, trusting that if any premature casualty should unhappily cut off the possibility of this proof, the evidence

known to his friends would in some way or other be saved from oblivion and do justice to his character; that I was not less anxious on the same point now than I was then; and if I did not conceive that reasons of a like kind to those which required him to undertake still required him to retain for some time longer, his present station, or did not presume that the purity of his motives would be sufficiently vindicated, I should be the last of his friends to press, or even to wish, such a determination.

He then entered on a more explicit disclosure of the state of his mind; observing that he could not believe or conceive himself any wise necessary to the successful administration of the Government; that, on the contrary he had from the beginning found himself deficient in many of the essential qualifications, owing to his inexperience in the forms of public business, his unfitness to judge of legal questions, and questions arising out of the Constitution; that others more conversant in such matters would be better able to execute the trust; that he found himself also in the decline of life, his health becoming sensibly more infirm, & perhaps his faculties also; that the fatigues & disagreeableness of his situation were in fact scarcely tolerable to him; that he only uttered his real sentiments when he declared that his inclination would lead him rather to go to his farm, take his spade in his hand, and work for his bread, than remain in his present situation; that it was evident moreover that a spirit of party in the Government was becoming a fresh source of difficulty, and he was afraid was dividing some (alluding to the Secretary of State and Secy of the Treasury) more particularly connected with him in the administration; that there were discontents among the people which were also shewing themselves more & more, & that altho' the various attacks against public men & measures had not in general been pointed at him, yet in some instances it had been visible that he was the indirect object, and it was probable the evidence would grow stronger and stronger that his return to private life was consistent with every public consideration, and, consequently that he was justified in giving way to his inclination for it.

I was led by this explanation to remark to him, that however novel or difficult the business might have been to him, it could not be doubted that with the aid of the official opinions & informations within his command his judgment must have been as competent in all cases, as that of any one who could have been put in his place, and in many cases certainly more so; that in the great point of conciliating and uniting all parties under a Govt which had excited such violent controversies & divisions, it was well known that his services had been in a manner essential; that with respect to the spirit of party that was taking place under the operations of the Govt. I was sensible of its existence but considered that as an argument for his remaining, rather than retiring, until the public opinion, the character of the Govt., and the course of its administration shd be better decided, which could not fail to happen in a short time, especially under his auspices; that the existing parties did not appear to be so formidable to the Govt as some had represented; that in one party there might be a few who retaining their original disaffection to the Govt might still wish to destroy it, but that they would lose their weight with their associates, by betraying any such hostile purposes; that altho' it was pretty certain that the other were in general unfriendly to republican Govt and probably aimed at a gradual approximation of ours to a mixed monarchy, yet the public sentiment was so strongly opposed to their views, and so rapidly manifesting itself, that the party could not long be expected to retain a

dangerous influence; that it might reasonably be hoped therefore that the conciliating influence of a temperate & wise administration would before another term of four years should run out, give such a tone & firmness to the Government as would secure it against danger from either of these descriptions of enemies; that altho' I would not allow myself to believe but that the Govt would be safely administered by any successor elected by the people, yet it was not to be denied that in the present unsettled condition of our young Government, it was to be feared that no successor would answer all the purposes to be expected from the continuance of the present chief magistrate, that the option evidently lay between a few characters; Mr. Adams, Mr. Jay, & Mr. Jefferson were most likely to be brought into view; that with respect to Mr. Jefferson his extreme repugnance to public life & anxiety to exchange it for his farm & his philosophy made it doubtful with his friends whether it would be possible to obtain his own consent, and if obtained, whether local prejudices in the Northern States, with the views of Pennsylvania in relation to the seat of Govt, would not be a bar to his appointment. With respect to Mr. Adams, his monarchical principles, which he had not concealed, with his late conduct on the representation bill, had produced such a settled dislike among republicans every where, & particularly in the Southern States, that he seemed to be out of the question. It would not be in the power of those who might be friendly to his private character & willing to trust him in a public one, notwithstanding his political principles to make head against the torrent. With respect to Mr. Jay his election would be extremely dissatisfactory on several accounts. By many he was believed to entertain the same obnoxious principles with Mr. Adams, & at the same time would be less open and therefore more successful in propagating them. By others (a pretty numerous class) he was disliked & distrusted, as being thought to have espoused the claims of British Creditors at the expence of the reasonable pretensions of his fellow Citizens in debt to them. Among the Western people, to whom his negotiations for ceding the Mississippi to Spain were generally known, he was considered as their most dangerous enemy & held in peculiar distrust & disesteem. In this state of our prospects which was rendered more striking by a variety of temporary circumstances, I could not forbear thinking that altho' his retirement might not be fatal to the public good, yet a postponement of it was another sacrifice exacted by his patriotism.

Without appearing to be any wise satisfied with what I had urged he turned the conversation to other subjects; & when I was withdrawing repeated his request that I would think of the points he had mentioned to me, & let him have my ideas on them before the adjournment. I told him I would do so, but still hoped his decision on the main question would supersede for the present all such incidental questions.

Wednesday Evening, May 9, 1792.

Understanding that the President was to set out the ensuing morning for Mount Vernon, I called on him to let him know that as far as I had formed an opinion on the subject he had mentioned to me, it was in favor of a direct address of notification to the public in time for its proper effect on the election, which I thought might be put into such a form as would avoid every appearance of presumption or indelicacy, and seemed to be absolutely required by his situation. I observed that no other mode deserving consideration had occurred, except the one he had thought of & rejected,

which seemed to me liable to the objections that had weighed with him. I added that if on farther reflection I shd. view the subject in any new lights, I would make it the subject of a letter tho' I retained my hopes that it would not yet be necessary for him to come to any opinion on it. He begged that I would do so, and also suggest any matters that might occur as proper to be included in what he might say to Congress at the opening of their next Session; passing over the idea of his relinquishing his purpose of retiring in a manner that did not indicate the slightest assent to it.

Friday, May 25, 1792.

I met the President on the road returning from Mount Vernon to Philada, when he handed me the letter dated at the latter place on the 20th of May,<sup>1</sup> the copy of the answer to which on the 21st of June is annexed.—*Mad. MSS.*

## COPY OF A LETTER TO PRESIDENT WASHINGTON.

Orange June 21, 1792.

Dear Sir

Having been left to myself for some days past, I have made use of the opportunity for bestowing on your letter of the 20th Ult, handed to me on the road, the attention which its important contents claimed. The questions which it presents for consideration are—1. at what time a notification of your purpose to retire will be most convenient? 2. what mode will be most eligible? 3. whether a valedictory address will be requisite or advisable? 4. if either, whether it would be more properly annexed to the notification or postponed to your actual retirement.

1. The answer to the first question involves two points: first the expediency of delaying the notification; secondly the propriety of making it before the choice of electors takes place, that the people may make the choice with an eye to the circumstances under which the trust is to be executed. On the first point, the reasons for as much delay as possible are too obvious to need recital. The second, depending on the times fixed in the several States which must be within 34 days preceding the first wednesday in December, requires that the notification should be in time to pervade every part of the Union, by the beginning of November. Allowing six weeks for this purpose, the middle of September, or perhaps a little earlier would seem a convenient date for the act.

2. With regard to the mode, none better occurs than a simple publication in the newspapers. If it were proper to address it through the medium of the general Legislature, there will be no opportunity. Nor does the change of situation seem to admit a recurrence to the State Govts, which were the channels used for the former valedictory address. A direct address to the people who are your only constituents can be made I think with most propriety, thro' the independent channel of the press, thro' which they are as a constituent Body usually addressed.

3. On the third question I think there can be no doubt that such an address is rendered *proper* in itself by the peculiarity & importance of the circumstances which mark your situation; and *advisable* by the salutary & operative lessons of which it may be made the vehicle. The precedent at your military exit might also subject an omission now to conjectures & interpretations which it would not be well to leave room for.

4. The remaining question is less easily decided. Advantages & objections lie on both sides of the alternative. The occasion on which you are *necessarily* addressing the people evidently introduces, most easily & most delicately, any *voluntary* observations that are meditated. In another view a farewell address before the final moment of departure is liable to the appearance of being premature & awkward. On the opposite side of the alternative however a postponement will beget a dryness & an abridgement in the first address little corresponding with the feelings which the occasion would naturally produce both in the author & the objects of it; and tho' not liable to the above objection, would require a resumption of the subject apparently more forced, and on which the impressions having been anticipated & familiarized, and the public mind diverted perhaps to other scenes, a second address would be received with less sensibility & effect than if incorporated with the impressions incident to the original one. It is possible too that previous to the close of the term, circumstances might intervene in relation to public affairs, or the succession to the Presidency which would be more embarrassing, if existing at the time of a valedictory appeal to the public, than if unknown at the time of that delicate measure.

On the whole my judgment leans to the propriety of blending the acts together; and the more so as the crisis which will terminate your public career will still afford an opportunity, if any immediate contingency shd call for a supplement to your farewell observations. But as more correct views of the subject, may produce a different result in your mind, I have endeavored to fit the draught inclosed to either determination. You will readily observe that in executing it, I have arrived at that plainness & modesty of language which you had in view, & which indeed are so peculiarly becoming the character & the occasion; & that I have had, little more to do as to the matter than to follow the very just & comprehensive outline which you had sketched. I flatter myself, however, that in every thing which has depended on me, much improvement will be made before so interesting a paper shall have taken its last form.

Having thus, Sir, complied with your wishes, by proceeding on a supposition that the idea of retiring from public life is to be carried into execution, I must now gratify my own by hoping that a reconsideration of the measure, in all its circumstances and consequences will have produced an acquiescence in one more sacrifice, severe as it may be, to the desires & interests of your country. I forbear to enter into the arguments which plead for it, in my mind, because it would be only repeating what I have already taken the liberty of fully explaining. But I could not conclude such a letter as the present without a repetition of my ardent wishes & hopes that our country may not at this important conjuncture be deprived of the inestimable advantage of having you at the head of its Counsels.

J. M. Jr

***[Draught Enclosed In The Above.]***

The period which will close the appointment with which my fellow-citizens have honored me, being not very distant, and the time actually arrived at which their thoughts must be designating the Citizen who is to administer the Executive Government of the U. S. during the ensuing term, it may be requisite to a more distinct expression of the public voice that I should apprise such of my fellow Citizens as may retain their partiality towards me, that I am not to be numbered among those out of whom a choice is to be made. I beg them to be assured that the resolution which dictates this intimation has not been taken without the strictest regard to the relation which as a dutiful citizen I bear to my country; and that in withdrawing that tender of my service which silence in my situation might imply, I am not influenced by the smallest deficiency of zeal for its future interests, or of grateful respect for its past kindness; but by the fullest persuasion, that such a step is compatible with both. The impressions under which I entered on the present arduous trust were explained on the proper occasion. In discharge of this trust, I can only say, that I have contributed towards the organization & administration of the Government the best exertions of which a very fallible judgment was capable. For any errors which may have flowed from this source, I feel all the regret which an anxiety for the public good can excite; not without the double consolation however arising from a consciousness of their being involuntary, and an experience of the candor which will interpret them. If there were any circumstances which could give value to my inferior qualifications for the trust, these circumstances must have been temporary. In this light was the undertaking viewed when I ventured upon it. Being moreover still farther advanced into the decline of life, I am every day more sensible that the increasing weight of years, renders the private walks of it in the shade of retirement as necessary as they will be acceptable to me. May I be allowed to add, that it will be among the highest as well as the purest enjoyments that can sweeten the remnant of my days, to partake in a private station in the midst of my fellow Citizens, of that benign influence of good laws under a free Government which has been the ultimate object of all our wishes, and in which I confide as the happy reward of our cares & labors. May I be allowed further to add as a consideration far more important, that an early example of rotation in an office of so high & delicate a nature may equally accord with the republican spirit of our constitution & the ideas of liberty & safety entertained by the people.

(If a farewell address is to be added at the expiration of the term, the following paragraph may conclude the present:)

Under these circumstances, a return to my private station according to the purpose with which I quitted it, is the part wch. duty as well as inclination assigns me. In executing it I shall carry with me every tender recollection which gratitude to my fellow Citizens can awaken; and a sensibility to the permanent happiness of my country that will render it the object of my unceasing vows and most fervent supplications.

(Should no further address be intended, the preceding clause may be omitted, & the present address proceed as follows:)

In contemplating the moment at which the curtain is to drop forever on the public scenes of my life, my sensations anticipate & do not permit me to suspend, the deep acknowledgments required by that debt of gratitude which I owe to my beloved country for the many honors it has conferred on me, for the distinguished confidence it has reposed in me, and for the opportunities I have thus enjoyed of testifying my inviolable attachment by the most steadfast services which my faculties could render. All the returns I have now to make will be in those vows which I shall carry with me to my retirement & to my grave, that Heaven may continue to favor the people of the U. S. with the choicest tokens of its beneficence; that their union & brotherly affection may be perpetual; that the free constitution, which is the work of their own hands, may be sacredly maintained; that its administration in every Department may be stamped with wisdom & with virtue, & that this character may be ensured to it by that watchfulness over public servants & public measures which on one hand will be necessary to prevent or correct a degeneracy, and that forbearance on the other, from unfounded or indiscriminate jealousies which would deprive the public of the best services by depriving a conscious integrity of one of the noblest incitements to perform them; that, in fine, the happiness of the people of America under the auspices of liberty may be made compleat, by so careful a preservation & so prudent a use of this blessing as will acquire them the glorious satisfaction of recommending it to the affection, the praise, & the adoption of every nation which is yet a stranger to it.

And may we not dwell with well-grounded hopes on this flattering prospect, when we reflect on the many ties by which the people of America are bound together, & the many proofs they have given of an enlightened judgment and a magnanimous patriotism.

We may all be considered as the children of one common country. We have all been embarked in one common cause. We have all had our share in common sufferings & common successes. The portion of the earth allotted for the Theatre of our fortunes fulfils our most sanguine desires. All its essential interests are the same; whilst the diversities arising from climate, from soil, & from other local & lesser peculiarities, will naturally form a mutual relation of the parts that must give to the whole a more entire independence, than has perhaps fallen to the lot of any other nation.

To confirm these motives to an affectionate & permanent Union & to secure the great objects of it, we have established a common Government, which being free in its principles, being founded in our own choice, being intended as the guardian of our common rights & the patron of our common interests, & wisely containing within itself a provision for its own amendment as experience may point out its errors, seems to promise everything that can be expected from such an institution; and if supported by wise counsels, by virtuous conduct, & by mutual & friendly allowances, must approach as near to perfection as any human work can aspire, & nearer than any which the annals of mankind have recorded.

With these wishes & hopes I shall make my exit from civil life, and I have taken the same liberty of expressing them which I formerly used in offering the sentiments which were suggested by my exit from military life. If, in either instance I have presumed more than I ought on the indulgence of my fellow citizens, they will be too generous to ascribe it to any other cause, than the extreme solicitude which I am bound to feel, & which I can never cease to feel, for their liberty their prosperity & their happiness<sup>1</sup> —*Mad. MSS.*

## TO EDMUND RANDOLPH.

Orange Sept 13, 1792.

### My Dear Friend

Your favor of the 12<sup>th</sup> Ult having arrived during an excursion into Albemarle, I did not receive it till my return on yesterday. I lose not a moment in thanking you for it, particularly for the very friendly paragraph in the publication in Fenno's paper. As I do not get his paper here, it was by accident I first saw this extraordinary manouvre of calumny, the quarter, the motive, and the object of which speak of themselves. As it respects Mr. Jefferson I have no doubt that it will be of service both to him & the public, if it should lead to such an investigation of his political opinions and character as may be expected. With respect to myself the consequence in a public view, is of little account. In any view, there could not have been a charge founded on a grosser perversion of facts, & consequently against which I could feel myself more invulnerable.

That I wished & recommended Mr. Freneau to be appd. to his present Clerkship is certain. But the Department of State was not the only, nor as I recollect the first one to which I mentioned his name & character. I was governed in these recommendations by an acquaintance of long standing, by a respect for his talents, & by a knowledge of his merit & sufferings in the course of the revolution. Had I been less abstemious in my practice from solicitations in behalf of my friends, I should probably have been more early in thinking of Mr. F. The truth is, that my application when made did not originate with myself. It was suggested by another Gentleman<sup>1</sup> who could feel no motive but a disposition to patronize merit, & who wished me to co-operate with him. That with others of Mr. Freneau's particular acquaintances I wished & advised him to establish a press at Philada instead of one meditated by him in N Jersey, is also certain, I advised the change because I thought his interest would be advanced by it, & because as a friend I was desirous that his interest should be advanced. This was my primary & governing motive. That as a consequential one, I entertained hopes that a free paper meant for general circulation, and edited by a man of genius of republican principles, & a friend to the Constitution, would be some antidote to the doctrines & discourses circulated in favour of Monarchy and Aristocracy & would be an acceptable vehicle of public information in many places not sufficiently supplied with it, this also is a certain truth; but it is a truth which I never could be tempted to conceal, or wish to be concealed. If there be a temptation in the case, it would be to make a merit of it.



But that the establishment of Mr. F's press was wished in order to sap the Constitution, and that I forwarded the measure, or that my agency negotiated it by an illicit or improper connection between the functions of a translating Clerk in a public office, & those of an Editor of a Gazette, these are charges which ought to be as impotent as they are malicious. The first is surely incredible, if any charge could be so; & the second is I hope at least improbable, & not to be credited, until unequivocal proof shall be substituted for anonymous & virulent assertions.

When I first saw the publication I was half disposed to meet it with a note to the printer, with my name subscribed. I was thrown into suspense however by reflecting that as I was not named, & was only incidentally brought into view, such a step might be precipitate, if not improper, in case the principal should not concur in such a mode of vindication. 2. that I was not enough acquainted with the turn the thing might take, and the light in which it might be viewed on the spot. 3. that in a case the least doubtful, prudence would not rush into the newspapers. These considerations have been since sanctioned by the opinion of two or three judicious & neutral friends whom I have consulted. The part finally proper however remains to be decided and on that I shall always be thankful for the ideas of my friends most in a condition to judge.<sup>1</sup> —*Mad. MSS.*

[1] From *The National Gazette*, September 26, 1792.

[1] From *The National Gazette*, December 20, 1792. This was the last of Madison's contributions to the *Gazette*. He left a volume of the paper, marking with his initials those which he wrote. Mr. Rives, in his *Life and Times of Madison*, iii., 250, n., gives a list of the articles which is slightly inaccurate.

## TO EDMUND PENDLETON.

Philada, Decr 6, 1792.

Dear Sir

I am just favored with yours of the 28th Ult. I wish I could remove your anxiety for the French. The last accounts are so imperfect & contradictory that it is difficult to make anything of them. They come also thro' the Brussels & English channels, which increases the uncertainty. It appears on the whole that the combination agst the revolution, and particularly agst their new Republic, is extremely formidable, and that there is still greater danger within from the follies and barbarities which prevail in Paris. On the other hand it seems tolerably clear that the nation is united against Royalty, and well disposed to second the Government in the means of defence. At this distance it is impossible to appreciate particular measures, or foresee the turn which things may finally take.

The Newspaper tax noticed by the P has been referred to a Come but no report has yet been made. It is of great importance that some change should take place that will remove the obstruction which has been thrown in the way of information to the

people. In all Govts the public censorship is necessary in order to prevent abuses. In such an one as ours, where the members are so far removed from the eye of their Constituents, an easy & prompt circulation of public proceedings is peculiarly essential.

The election of a vice P has excited in this quarter considerable animation and called forth comparative portraits of the political characters of Mr Adams & Govr Clinton the only candidates brought into the field. The former has been exhibited in all its monarchical features; and the latter in the anti federal colors it wore in 1788. There are not sufficient data here to calculate with certainty the event of the contest. The probability is rather favorable to Mr. A., but not in such a degree as to prevent pretty keen apprehensions among his friends. As the opposition to him is levelled entirely agst his political principles, and is made under very great disadvantages, the extent of it, whether successful or not, will satisfy him that the people at large are not yet ripe for his system.

We are informed by the last advices from Europe that the harvest has generally been scanty, & that in England, particularly it has suffered prodigiously from the wetness of the season. From this cause, and the general state of things abroad, a great demand on our stock is anticipated. Wheat is already up at 9s, & flour at 45s of this currency. The rise must soon communicate itself to Virginia & it is to be hoped the farmers will not lose the benefit of it by premature sales. We all regret the detention of Col. Taylor. I hope the cause of it has ceased & that we shall soon have his arrival in proof of it. It is probable that Mr. Jefferson will not remain very long in his public station; but it is certain that his retirement is not to be ascribed to the Newspaper calumnies which may have had that in view. With the greatest affection I remain, Dr sir,  
Yrs—*Mad. MSS.*

[1] John Taylor of Caroline, an uncompromising state rights man, who succeeded Lee in the Senate.

[1] Samuel Jordan Cabell, who was elected to the fourth Congress.

[2] Proposed by Giles of Virginia, but instigated by Madison, and supported by him in a speech, March 1. The hatred between Hamilton and Madison was of a year's standing. Its cause is fully explained in Hamilton's letter to Edward Carrington, March 26, 1792. Hamilton's *Works* (Lodge), viii., 205.

[1] Minister of the Interior of the French Republic.

[1] The President's proclamation of neutrality had appeared April 22 Madison wrote to Jefferson, June 10

“Every Gazette I see (except that of the U. S.) exhibits a spirit of criticism on the anglist complexion charged on the Executive politics. I regret extremely the position into which the P. has been thrown. The unpopular cause of Anglomania is openly laying claim to him. His enemies masking themselves under the popular cause of France are playing off the most tremendous batteries on him. The proclamation was

in truth a most unfortunate error. It wounds the national honor, by seeming to disregard the stipulated duties to France. It wounds the popular feelings by a seeming indifference to the cause of liberty. And it seems to violate the forms & spirit of the Constitution, by making the executive Magistrate the organ of the disposition the duty & the interest of the Nation in relation to War & peace, subjects appropriated to other departments of the Government. It is mortifying to the real friends of the P. that his fame & his influence should have been unnecessarily made to depend in any degree on political events in a foreign quarter of the Globe; and particularly so that he should have anything to apprehend from the success of liberty in another country, since he owes his pre-eminence to the success of it in his own. If France triumphs, the ill-fated proclamation will be a millstone, which would sink any other character, and will force a struggle even on his.”—*Mad. MSS.*

[1] Madison’s partisanship saw wrong where none existed. The proclamation said the “duty and interest of the United States” required impartial conduct towards the belligerents and declared it to be “the disposition of the United States” to observe such conduct.

[1] “Have you time & the means of impressing Wilson Nicholas (who will be much with E. R.), with the necessity of giving him a strong & perfect understanding of the public mind?”—Jefferson to Madison, June 2, 1793. Jefferson’s *Writings* (Ford), vi., 278.

Edmund Randolph had been sent to Virginia by Washington to find out the disposition of the state towards Genet’s activities.

[1] Projected in connection with the negotiations with Spain then pending. John Marshall was thirty-eight years old.

[1] The letters of Pacificus (Hamilton.)

[1] Pacificus. (Note in Madison’s hand.)

[1] “I think it is better you should not know them,” was Jefferson’s reply. See his letter, August 3.—*Writings* (Ford), vi., 361.

[1] Pacificus (Alexander Hamilton) defended the proclamation of neutrality in eight articles in the *Gazette of the United States*, the last one appearing July 27; Jefferson was so alarmed at the effect they were producing that he wrote Madison, July 7; “Nobody answers him & his doctrines will therefore be taken for confessed. For God’s sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can & will enter the lists against him.” (*Writings*, vi., 338.) Madison’s five articles under the name Helvidius appeared in the same paper on the following dates: No. 1, August 24; No. 2, August 28, and September 11; No. 3, September 7; No. 4, September 14; and No. 5, September 18. The interest in the articles was extraordinary because there was no doubt who the real authors were. Madison’s arguments were chiefly directed against Hamilton’s first paper which unfolded his idea of the powers of the Executive. He had

when he began to write the articles the intention of meeting all of Hamilton's arguments, but he abandoned the task. All the letters were reprinted in 1845 by J. and G. S. Gideon (Washington) and in the *Writings of Hamilton* (Lodge), iv., 135, seven of the Pacificus papers are given.

## TO THOMAS JEFFERSON.

July 30, 1793.

As I intimated in my last I have forced myself into the task of a reply. I can truly say I find it the most grating one I ever experienced; and the more so as I feel at every step I take the want of counsel on some points of delicacy as well as of information as to sundry matters of fact. I shall be still more sensible of the latter want when I get to the attack on French proceedings, & perhaps to the last topic proposed by the writer, if I ever do get to it. As yet I have but roughly and partially gone over the first; & being obliged to proceed in scraps of time, with a distaste to the subject, and a distressing lassitude from the excessive & continued heat of the season, I cannot say when I shall finish even that. One thing that particularly vexes me is that I foreknow from the prolixity & pertinacity of the writer, that the business will not be terminated by a single fire, and of course that I must return to the charge in order to prevent a triumph without a victory. <sup>1</sup>Do you know what is the idea of France with regard to the defensive quality of the Guaranty; and of the criterion between offensive & defensive war which I find differently defined by different jurists; also what are the ideas of the P. on these points. I could lay my course with more advantage thro' some other parts of the subject if I could also know how far he considers the Procln as expressing a neutrality in the sense given to that term, or how far he approves the vindication of it on that ground.

I am sorry to find the journey to Virga<sup>2</sup> from which useful lessons were hoped, ending in a confirmation of errors. I can only account for it by supposing the public sentiment to have been collected from tainted sources, wch ought to have suggested to a cautious & unbiassed mind the danger of confiding in them. The body of the people are unquestionably attached to the Union, and friendly to the Constitution; but that they have no dissatisfaction at the measures & spirit of the Government, I consider as notoriously untrue. I am the more surprised at the misconception of our Friend as the two latest sources consulted, the two brothers<sup>3</sup> I mean, are understood to be both of them rightly disposed as well as correctly informed.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Augst 5, 93.

Your acct of the ticklish situation with respect to Genet in the 14th is truly distressing. His folly would almost beget suspicions of the worst sort. The consequences you point out in case matters come to an extremity are so certain & obvious that it is hardly conceivable he can be blind to them. Something must be done if possible to get him into a better train. I find by the paper of the 27, that Pacificus has entered & I suppose closed his last topic. I think it a feeble defence of one important point I am

striking at: viz., the making a declaration *in his sense of it*, before the arrival of Genet. I argue that the Act does not import a decision agst the cas: fed; from the manifest impropriety of doing so on the ground that France was the aggressor in *every* war, without at least waiting for evidence as to the question of fact who made the first attack admitting for the sake of argt that to be the intention. A difficulty has occurred which will retard my remarks more than I expected. They must be prepared for the *same Gazette* consequently copied into another hand I am laying a plan for havg it done here, but it cannot be done as quickly as I wish.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Augst 11, 93.

The task on which you have put me, must be abridged so as not to go beyond that period. You will see that the first topic is not yet compleated. I hope the 2d, & 3d, to wit the meang of the Treaty & the obligations of gratitude will be less essential. The former is particularly delicate; and tho' I think it may be put in a light that wd reflect ignominy on the author of P., yet I had rather not meddle with the subject if it cd be avoided. I cannot say when I shall be able to take up those two parts of the job. Just as I was embarking in the general subject I recd from the reputed Author of Franklyn a large pamphlet written by him agst the fiscal system, particularly the Bank; which I could not but attend to. It is put on a footing that requires me to communicate personally with Monroe, whom I ought to have seen before this, as the publication of the work is to be contrived for the Author. It really has merit, always for its ingenuity, generally for its solidity, and is enriched with many fine strokes of imagination, and a continued vein of pleasantry & keen satire, that will sting deeply. I have recd a letter from the Author, wishing to hear from me. I must therefore take a ride as far as Charlottesville as soon as I make out the next packet for you, and suspend the residue of the business till I return. I shall endeavour in my absence to fulfill a promise to Wilson Nicholas which will lengthen the suspension. I forwd. to F. a copy of the little thing of Ld Ch.; the last sentence is struck out as not necessary, and which may perhaps wound too indiscriminately certain characters not at present interested in supporting public corruptions.

The paper for J. F. could not otherwise get to him than with your aid. You must therefore take the trouble of having it handed into the post office whence the penny post will take it, unless you can do it at some shorter hand. I wish you would look over what is sd. critically, and if you think there be any thing of importance wrong, or that may do more harm than good, that you will either erase it, where that will not break the sense, or arrest the whole till I can make the correction Delay I know is bad; but vulnerable parts that wd. be seized for victories & triumphs would be worse. I beg you also to attend particularly to those passages slightly marked with a pencil the first, the declaration of the principles & sentiments of the Author—the 2d, beginning with, “Writers such as Locke & Montesquieu &c. to the pencil mark in the ¶ 3d the quotation from the Federalist. If you think the first had better be omitted it can come out without leavg the least gap—so can the 2d. my doubts as to that proceed from the danger of turning the controversy too much into the wilderness of Books. I use Montesquieu also, from memory, tho I believe witht inaccuracy—The 3d can also

come out with affecting the piece; and I wish you to erase it if you think the most scrupulous delicacy, conjecturing the author, wd disapprove it. One N<sup>o</sup> more or 2 short Nos will close the first topic and supersede the last. They will be sent as soon as finished & copied. These wd have been sent somewhat sooner, but for the delay caused by the last circumstance —*Mad. MSS.*

[1] The chapter on prerogative shows, how much the reason of the philosopher was clouded by the royalism of the Englishman.

[1] No. 75, written by Mr. Hamilton.

[1] No. 69, written by Mr. Hamilton.

[1] *Federalist*, No. 75, written by Mr. Hamilton.

[1]

TO THOMAS JEFFERSON.

Aug 20, 93.

. . . This hurries me; And has forced me to hurry what will be inclosed herewith, particularly the last No V, which required particular care in the execution. I shall be obliged to leave that & the greater part of the other Nos to be transcrd, sealed up & forwarded in my absence. It is certain therefore that many little errors will take place As I cannot let them be detained till I return, I must pray you to make such corrections as will not betray your hand. In pointing & *erasures* not breaking the sense, there will be no difficulty. I have already requested you to make free with the latter. <sup>2</sup> You will find more quotations from the Fedt. Dash them out if you think the most squeamish critic could object to them. In No 5 I suggest to your attention a long preliminary remark into which I suffered myself to be led before I was aware of the prolixity. As the piece is full long without it, it had probably better be lopped off. The propriety of the two last paragraphs claims your particular criticism. I wd not have hazarded them without the prospect of your revisal, & if proper your erasure. That which regards Spain &c may contain unsound reasoning, or be too delicate to be touched in a Newspaper. The propriety of the last, as to the President's answers to addressers depends on the truth of the fact, of which you can judge. I am not sure that I have seen all the answers. My last was of the 12th, & covered the 2 first Nos. of H[elvidius]. I am assured that it was put into the post office on tuesday evening. It ought therefore to have reached you on saturday last. As an oppy to Fredg may happen before more than the 3d No. may be transcribed, it is possible that this may be accompanied by that alone —*Mad. MSS.*

TO THOMAS JEFFERSON.

At Col. M. [Aug 22d, 1793.]

Dear Sir

I left home the day before yesterday which was the date of my last, it was to be accompanied by 2 & perhaps tho' not probably 3 additional Nos of H-I-v-d-s. The last to wit No 5, contained two paragraphs the one relating to the accession of S & P to the war against F the other to the answers of the P to the addresses on his proclamation, which I particularly requested you to revise, and if improper, to erase. The whole piece was more hurried than it ought to have been, and these paragraphs penned in the instant of my setting out which had been delayed as late as would leave enough of the day for the journey I mention this as the only apology for the gross error of fact committed with respect to the term neutrality, which it is asserted the P has not used in any of his answers. I find on looking into them here, that he used it in the first of all, to the Merchts of Philada, and in one other out of three which I have examined. I must make my conditional request therefore an absolute one as to that passage. If he should forbear the use of the term in all his answers subsequent to the perversion of it by Pacificus, it will strengthen the argument used; but that must be a future & contingent consideration. . . .—*Mad. MSS.*

TO THOMAS JEFFERSON.

Aug. 27, 1793.

Dear Sir

I wrote you a few lines by the last post from this place just to apprise you of my movement to it. I have since seen the Richmond & the Philada papers containing, the latter the certificate of Jay & King & the publications relating to the subject of it, the [former,] latter, the proceedings at Richmond dictated no doubt by the cabal at Philada. It is painful to observe the success of the management for putting Wythe at the head of them. I understand however that a considerable revolution has taken place in his political sentiments under the influence of some disgusts he has received from the State Legislature. By what has appeared I discover that a determination has been formed to drag before the public the indiscretions of Genet, and turn them & the popularity of the P to the purpose driven at Some impression will be made here of course. A plan is evidently laid in Richd to render it extensive. If an early & well-digested effort for calling out the real sense of the people be not made, there is room to apprehend they may in many places be misled. This has employed the conversation of — & myself. We shall endeavor at some means of repelling the danger, particularly by setting on foot expressions of the public mind in important Counties, and under the auspices of respectable names. I have written with this view to Caroline, and have suggested a proper train of ideas, and a wish that Mr P would patronize the measure. Such an example would have great effect. Even if it shd not be followed it would be considered as an authentic specimen of the *Country* temper; and would put other places on their guard agst the snares that may be laid for them. The want of opportunities, and our ignorance of trustworthy characters, will circumscribe our efforts in this way to a very narrow compass. The rains for several days have delayed my trip to the Gentleman named in my last. Unless to-morrow shd be a favorable day,



I shall be obliged to decline it altogether. In two or three days I shall be in a situation to receive & answer your letters as usual. That by Mr D R has not yet reached me.—*Mad. MSS.*

[1]The writer ought not in the same paper, No. VII., to have said. “Had the president announced his *own disposition*, he would have been chargeable with egotism, if not *presumption*.”

[1]Molasses.

[1]The writer is betrayed into an acknowledgment of this in his seventh number, where he applies his reasoning to Spain as well as to Great Britain and Holland. He had forgotten that Spain was not included in the proclamation.

[1]It being consid that it is at all times the right & at certain periods the duty of the people to declare their principles & opinions on subjts which concern the Natl interst, that at the prest conjuncture this duty is rendered the more indispensable by the prevailing practice of declly resolut, in places where ye. inhabts can more easily assemble & consult than in the Country at large, and where interests views & poll opinions different from those of the great body of the people, may happen to predominate, whence there may be danger of unfair & delusive inferences concerng the true & general sense of the people. It being also consid that under the disadvantage a great proportion of the people labr in their distant & dispersed situation from the want of timely & correct knowledge of particular incidents, & the conduct of particular persons connected with public transactions, it is most prudent & safe, to wait with a decent reserve for full & satisfactory information in relation thereto, & in public declarations to abide by those great principles, just sentiments & establ truths wch can be little affected by personal or transitory occurrences:

Therefore as the sense of the prest Meeting,

Resd, That ye. Constitution of the U. S. ought to be firmly & vigilantly supported agst all direct or indirect attempts that may be made to subvert or violate the same:

That as it is the interest of the U. S. to cultivate the preservation of peace by all just and hoble means, the Ex. Authy ought to be supported in ye exercise of its constl powers & functions for enforcing the laws existing for yt. purpose:

That ye. eminent virtues & services of our illustrious fellow Citizen G. W. P. of U. S. entitle him to ye highest respect & lastg gratitude of his Country, whose peace liby, & safety must ever remind it of his distingd agency in promoting the same.

That the eminent & generous aids rendd to the U. S. in their arduous struggle for liberty by the Fr Nation ought ever to be remd & ackd with gratitude & that the spectacle exhd by the severe & glorious contest in which it is now engaged for its own liberty, ought & must be peculiarly interesting to the wishes, the friendship & the sympathy of the people of America:



That all attempts which may be made in whatever form or disguise to alienate the good will of the people of America from the cause of liberty & republican Govt in F. have a tendency to weaken ye affection to the free principles of ye own Govt, and manifest designs wch ought to be narrowly watched & seasonably counteracted.

That such attempts to disunite Nations mutually attached to the cause of liberty, & viewed with unfriendly eyes by all who hate it, ought more particularly to be reprobated at the present crisis, when such vast efforts are making by a combination of Princes & Nobles to crush an example that may open the eyes of all mankind to their natl & pol rights:

That a dissolution of the noble & beneficial connection between the U. S. & F. wd obviously tend to forward a plan of connecting ym with G. B., as one great leadg step towds assimilating our Govt to the form & spirit of the British Monarchy; and that this apprehension is greatly strengthd by the active zeal displayed by persons disaffected to the Amn Revn & by others of known Monarchl principles, in propagating prejudices agst the French Nation & Revolution.—*Mad. MSS.*

[1] Given in *Washington's Writings* (Ford), xii., 337. The fever ceased to ravage the city before Congress met, and no action on the President's part was necessary. This was the last opinion given by Madison to Washington. Their relations were no longer cordial.

[1] *Annals of Congress, 3d Cong., 1793-1795*, 155. A test vote in Committee of the Whole showed that the House favored Madison's resolutions, but before they could be acted upon reports of fresh British outrages arrived and gave a more warlike turn to American legislation. Madison made a long and detailed explanation and defense of his resolutions, January 29. *Annals*, 566.

Joshua Barney and several other American captains detained in Jamaica wrote to him commending the resolutions, and Madison replied, May 1, 1794: "Having long regarded the principles on which those Resolutions were founded as the basis of a policy most friendly to the just interests of our country, and most honorable to its public councils, I cannot be insensible to the approbation they may obtain from my fellow-Citizens, and particularly from those more immediately attached to the prosperity of our commerce and navigation. Under this impression I have received the communication transmitted by you in such polite and friendly terms, and I hope it will be believed that I mingle with it all the sympathy which is due to the distresses of those who have been the victims of depredation."—*Mad. MSS.*

[1] From the Chamberlain MSS., Boston Public Library. The letter was in reply to one from Gates calling Madison, in consequence of his commercial resolutions, the coming man of America.

[1] Madison sold the tract, about 900 acres, to Theodorus Bailey and John B. Van Wyck for five dollars an acre, January 5, 1796.—*Mad. MSS.* See his letter to Jefferson, August 12, 1786. *Ante*, vol. ii., p. 265.

[1] The tension between the parties in Congress had become so great that Rufus King, Senator from New York, on May 11 proposed to John Taylor of Caroline, Senator from Virginia, that they agree on the terms of a peaceful dissolution of the Union. Taylor and Madison, to whom the conversation was reported, would not agree, and Madison thought King's proposal was made "probably in terrorem." See *Disunion Sentiment in Congress in 1794* (Hunt), Washington, 1905, in which Taylor's memorandum of the conversation with King and Oliver Ellsworth is given.

[2] The law laying a tax on carriages was passed June 5. In 1796 its constitutionality was tested before the Supreme Court, and the Court decided that being an indirect tax it was constitutional. Judge Samuel Chase, a fiery federalist, closed his opinion with this sentence: "As I do not think the tax on carriages is a *direct* tax, it is unnecessary, *at this time*, for me to determine, whether this court, *constitutionally* possesses the power to declare an act of Congress *void*, on the ground of its being made contrary to, and in violation of, the Constitution; but if the Court have such power, I am free to declare, that I will never exercise it, *but in a very clear case.*" 3 *Dallas*, 171.

Madison wrote to Jefferson, March 6, 1796, concerning the case:

"The Court has not given judgment yet on the Carriage tax. It is said the Judges will be unanimous for its constitutionality. Hamilton & Lee advocated it at the Bar, agst Campbell & Ingersoll. Bystanders speak highly of Campbells argument, as well as of Ingersoll's. Lee did not shine, and the great effort of his coadjutor as I learn, was to raise a fog around the subject, & to inculcate a respect in the Court for preceding sanctions in a doubtful case."—*Mad. MSS.*

[1] See *Writings of Monroe* (Hamilton), ii., 11 *et seq.*

[1] The Whiskey Rebellion.

[1] "The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws; and associations of men began to denounce threats against the officers employed. From a belief, that, by a more formal concert, their operation might be defeated, *certain self-created* societies assumed the tone of condemnation."—Washington's speech to Congress, November 19, 1794. *Writings* (Ford), xii., 491.

November 20, Madison, Sedgwick, and Scott were appointed to draft the reply to the speech. Madison drew it up and presented it November 21. It was in the customary formal, colorless style, but an attempt was made to introduce into it a clause denouncing the "self-created societies," which failed. Madison spoke in opposition, November 27:

. . . He conceived it to be a sound principle, that an action innocent in the eye of the law could not be the object of censure to a Legislative body. When the people have formed a Constitution, they retain those rights which they have not expressly delegated. It is a question whether what is thus retained can be legislated upon. Opinions are not the objects of legislation. You animadvert on the abuse of reserved

rights, how far will this go? It may extend to the liberty of speech, and of the press. It is in vain to say that this indiscriminate censure is no punishment. If it falls on classes, or individuals, it will be a severe punishment. He wished it to be considered how extremely guarded the Constitution was in respect to cases not within its limits. Murder, or treason, cannot be noticed by the Legislature. Is not this proposition, if voted, a vote of attainder? To consider a principle, we must try its nature, and see how far it will go: in the present case, he considered the effects of the principle contended for would be pernicious. If we advert to the nature of Republican Government, we shall find that the censorial power is in the people over the Government, and not in the Government over the people. As he had confidence in the good sense and patriotism of the people, he did not anticipate any lasting evil to result from the publications of these societies; they will stand or fall by the public opinion; no line can be drawn in this case. The law is the only rule of right: what is consistent with that, is not punishable; what is not contrary to that, is innocent, or at least not censurable by the Legislative body.

With respect to the body of the people, (whether the outrages have proceeded from weakness or wickedness,) what has been done, and will be done by the Legislature, will have a due effect. If the proceedings of the Government should not have an effect, will this declaration produce it? The people at large are possessed of proper sentiments on the subject of the insurrection; the whole Continent reprobates the conduct of the insurgents, it is not, therefore, necessary to take the extra step. The press, he believed, would not be able to shake the confidence of the people in the Government. In a Republic, light will prevail over darkness, truth over error, he had undoubted confidence in this principle. If it be admitted that the law cannot animadvert on a particular case, neither can we do it. Governments are administered by men: the same degree of purity does not always exist. Honesty of motives may at present prevail, but this affords no assurance that it will always be the case. At a future period, a Legislature may exist of a very different complexion from the present: in this view we ought not, by any vote of ours, to give support to measures which now we do not hesitate to reprobate. . . .

[1] Madison and Dolly Payne Todd were married by Rev. Dr. Balmaine, an Episcopal clergyman of Winchester, Va., a cousin of Madison's, on September 15, 1794, at "Harewood," near Charlestown, W. Va., the estate of George Steptoe Washington, a nephew of General Washington's, and the husband of Mrs. Madison's sister.

[1] This was the second naturalization law, approved January 29, 1795, which introduced the five years' residence previous to naturalization and the declaration of intention three years before. It required also that good character and attachment to the Constitution be established, and that any title of nobility the applicant might bear must be renounced. This act was really the parent of our naturalization system, and its chief author was Madison. The debate extended from December 22, 1794, to January 8, 1795, Madison making several short speeches. In the course of the debate (January 1) on the clause requiring renunciation of titles, Dexter of Massachusetts opposed it, and ridiculed certain tenets of the Catholic religion, declaring that priestcraft had done more harm than aristocracy. Madison replied:

“ . . . He did not approve the ridicule attempted to be thrown out on the Roman Catholics. In their religion there was nothing inconsistent with the purest Republicanism. In Switzerland about one-half of the Cantons were of the Roman Catholic persuasion. Some of the most Democratical Cantons were so; Cantons where every man gave his vote for a Representative. Americans had no right to ridicule Catholics. They had, many of them, proved good citizens during the Revolution. As to hereditary titles, they were proscribed by the Constitution. He would not wish to have a citizen who refused such an oath.”—*Annals*, 3d Cong., 1035.

[1] The letter is not in Madison’s hand, but some corrections in its body are.

[2] The treaty was concluded November 19, 1794, reached the United States soon after the adjournment of Congress, March 3, 1795, and was laid before the Senate in special session June 8. It was ratified June 24, with an amendment, providing that Article XII. be suspended. This article stipulated that American commerce with the West Indies should be restricted to American ports, and that British vessels engaged in West Indian commerce should have equal rights with American vessels in American ports. The Senate adjourned June 26. On June 12, four days after the treaty was laid before the Senate, and while it was still a secret document, Pierce Butler, Senator from South Carolina, wrote to Madison that he would send him by each post a sheet of the treaty till he had received the whole. He was to show it to Jefferson alone. He asked Madison to give him the benefit of his free opinion of the treaty (*Mad. Mss.*). Stevens Thomson Mason, Senator from Virginia, gave a copy of the treaty to *The Aurora*, which printed it June 30, one day before it was to have been made public by Washington.

[1] The letter is a rough draft and a blank is left in the original for the name of the person to whom it was sent. In the New York Public Library (Lenox) there is another draft, also in Madison’s hand, of the greater part of the letter. (See note 1, p. 244.) It is probable, therefore, that the letter was sent in substance to several of Madison’s correspondents.

[1] Hamilton. See the letters in Hamilton’s *Works* (Lodge), IV., 371.

[1] Among the Madison MSS. is a statement not in Madison’s hand, but doubtless written from a draft of his (dated August, 1795), relating to the treaty especially with reference to the British debts. It says that no law of any State passed since the treaty of 1783 had released the American debtor from any of his debts. Delays of payment and insolvencies had taken place. The treaty of 1794, however, settled that he was to bear the consequence of his own laches. Resolved into convenient shape the treaty of 1782 provided that the following things were to be done: (1) Great Britain was to acknowledge the absolute independence of the United States. This was the *sine qua non* of opening negotiations. (2) Hostilities were to cease on both sides. (3) Peace was to be an accomplished fact by the delivery to the United States of certain parts of the country then held by Great Britain. This stipulation had not been fulfilled by Great Britain. (4) In evacuating the posts the British forces were to abstain from certain descriptions of injurious acts, which had before taken place upon the evacuation of posts held by them for a time in America. This had not been carried out in the matter

of the negroes whom the enemy carried with him when he evacuated. (5) When all of these things had been done, then, and not until then, were the British owners and late owners of certain descriptions of property to meet with no lawful impediment to the recovery of the same. (6) When these stipulations had been carried out, certain persons were to receive the benefit of Congressional recommendations for the recovery of claims against citizens of the United States. (7) There were certain other stipulations affecting national and local rights, such as those concerning the fisheries and the Mississippi, at present untouched.

Great Britain had acknowledged our independence, hostilities had ceased, but she had evacuated but one place (New York) held by her when the treaty was framed, and in doing so had repeated the designated acts of injury from which she was required by the treaty to refrain. Putting this question aside, however, it could be correctly stated that, as long as the armed troops of one country occupied fortified places within the territory of another, peace was not in fact restored, and such being the case the demand of the British debts could not be legally made. A state of war still existed and British creditors were alien enemies, as they must continue to be until the British troops abandoned the posts they invasively occupied.

[1] From this paragraph to the end, the MS. in the New York Public Library (Lenox) is the same, with a few variations indicated in these notes.

[2] In the Lenox MS. this sentence is added: "These equitable and reciprocal claims of the U. S. are not even allowed the chance of arbitration."

[3] The Lenox MS. adds: ". . . if that article of the treaty shd be faithfully executed by G. Britain."

[1] "See Ordinance regulating captures in 1781."—Note in Madison's hand.

[1] The Lenox MS. adds: "[See their act of 5 Octr. 1780.]"

[1] This sentence does not appear in the Lenox MS.

[1] "A Vindication of Mr. Randolph's Resignation," Philadelphia, 1795. Samuel H. Smith. Randolph resigned August 19.

[2] Italics for cypher.

[1] The sentence to which the Republicans objected was. ". . . in justice to our own feelings, permit us to add the benefits which are derived from your presiding in our councils, resulting as well from *the undiminished confidence* of your fellow-citizens, as from your zealous and successful labors in their service." Madison wished to bring a less pronounced clause before the House, but Sitgreaves and Sedgwick overruled him. Josiah Parker, of Virginia, flatly declared that his confidence in the President *was* diminished, others that the confidence of a part of the people was diminished. On December 17th the House adopted the following, written by Madison:

"In contemplating that spectacle of national happiness which our country exhibits, and

of which you, Sir, have been pleased to make an interesting summary, permit us to acknowledge and declare the very great share which your zealous and faithful services have contributed to it, and to express the affectionate attachment which we feel for your character.”—*Annals*, 4th Cong., 1st Sess., 155.

[1] *Annals of Cong.*, 4th Cong., 1st Sess., 772.

The Senate’s amendment to the treaty having been accepted by the British government it was finally proclaimed by the President, February 29, 1796. On March 1 he sent a copy to each House of Congress. March 2 Edward Livingston offered his resolutions calling upon the President for copies of the instructions given Jay and other documents relating to the treaty, and on March 7 the debate began, lasting till April 7. On March 7 Madison moved to amend the resolutions by adding: “Except so much of said papers as, in his judgment, it may not be consistent with the interest of the United States, at this time, to disclose” (*Annals 4th Cong., 1st Sess.*, 438), but this was rejected. March 24 the call for the papers was agreed to, and on March 30 Washington’s refusal to send them was received. On April 6 Thomas Blount of North Carolina introduced the following, which Madison had written:

“*Resolved*, That, it being declared by the second section of the second article of the Constitution, that ‘the President shall have power, by and with the advice of the Senate, to make Treaties, provided two-thirds of the Senate present concur,’ the House of Representatives do not claim any agency in making Treaties; but, that when a Treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or in expediency of carrying such Treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good.

“*Resolved*, That it is not necessary to the propriety of any application from this House to the Executive, for information desired by them, and which may relate to any Constitutional functions of the House, that the purpose for which such information may be wanted, or to which the same may be applied, should be stated in the application.”—*Annals*, 771.

April 7 Madison’s resolutions were agreed to by a vote of 57 to 35. On April 29, in Committee of the Whole, by the casting vote of the chairman, Muhlenberg, it was resolved to carry the treaty into effect, and the next day this action was confirmed by a vote of 51 to 48. Madison’s party had suffered defeat and its ranks were broken.

## TO THOMAS JEFFERSON.

Philada, April 4, 1796.

. . . The Newspapers will inform you that the call for the Treaty papers was carried by 62 agst 37. You will find the answer of the President herewith inclosed. The absolute refusal was as unexpected as the tone & tenor of the message are improper &



indelicate. If you do not at once perceive the drift of the appeal to the Genl Convention & its journal, recollect one of Camillus' last numbers, & read the latter part of Murray's speech. There is little doubt in my mind that the message came from N. Y., when it was seen that an experiment was to be made, at the hazard of the P., to save the faction agst the Reps of the people. The effect of this reprehensible measure on the majority is not likely to correspond with the calculation of its authors. I think there will be sufficient firmness to face it with resolutions declaring the Constl powers of the House as to Treaties, and that in applying for papers, they are not obliged to state their reasons to the Executive. In order to preserve this firmness however, it is necessary to avoid as much as possible an overt rencontre with the Executive. The day after the message was recd, the bill guarantying the loan for the federal City, was carried thro' the H. of Reps by a swimming majority. . . .

According to my memory & that of others, the Journal of the Convention was, by a vote deposited with the P., to be kept sacred until called for by some competent authority. How can this be reconciled with the use he has made of it? Examine my notes if you please at the close of the business, & let me know what is said on the subject.—You will perceive that the quotation is nothing to the purpose. Most of the majority wd decide as the Convention did because they think there may be some Treaties, as a Mere Treaty of peace that would not require the Legislative power—a ratification by law also expressed a different idea from that entertained by the House of its agency.—*Mad. MSS.*

[1] *Annals of Cong., 4th Cong., 1st Sess., 976.* Madison also made notes for another speech on the treaty as follows:

The Patrons of the Treaty power to take part of Constn

— Easy to say P. & S. have power to Treaty & treaties supreme laws.

— Equally easy to say Congs have power to legisl: & then acts laws.

— Apparent collision the most they can pretend to.

— Difference of opinion. 1. as to extent of Treaty power.

2. as to nature of the oblign on Congs

— The prevailing opinion is that the power unlimited & the obligation inviolable so as to supersede all existing laws, & to make Congs ministerial in providing laws.

— If this high & paramount operation belong to Treaties it must proceed either

1.—from the nature of the Treaty & Legisl powers, or

2.—from the terms of the Constitution, or

3.—from some palpable absurdity or grievous inconvenience of the contrary doctrine

1— Not from the nature of the Treaty making & law making power.

— In general law—the highest exertion of power, & the legisl: supreme over other  
Departs

— No instance where Treaty power is not vested in the legislature, as Sweden,  
Poland, Venice, France, Spain.

— except G. B. where limited to *verge* [?] of *Prerogative* See Vattel p. 210 & 211, p.  
394 & 5.

In Govt of U. S.—law making power in some respects superior & directory—in no  
respect *less than* co-ordinate with other Depts

— Case of repealg a law

—of the same specific nature & force repeal equivalent to enactment when repealg or  
suspending law repealed

Besides then ye objection to [illegible] Supreme one capable of annulling the  
other—it is inconsonant to constl principles generally—& to the spirit of our own,  
that laws be repeald but by law

— Contended that Treaty power relates to a new Region of Legislation—embraces  
new objects & operates in new modes.

— Then can not interfere with the Region the objects or the modes of Congressl  
legislation.

— But if Treaties are to have the force given to them

They operate within the sphere of Congs

They operate on the same objects [illegible], on commerce

They operate in the same mode

by the same officers

under the same sanctions

with the same results.

It is true that they are distinguished by circumstances of mutuality—but this  
consideration or inducement only—not change in the operation itself.

Not even mutuality—as commercial laws—for money



A law in pursuance of contract, domestic or foreign law

From this view—the nature of ye case, no argument

See State Treaties & compacts. Can these repeal laws of U. S.?

2 Does not proceed from the terms of the Constitution

— if it does, obey,—but, it should be clear.

— *General & specific* grant to be otherwise expounded

— See text—Constitution, laws Treas to “land”—no superiority expressed contrary implied

— True meaning—Const. laws conformable to it—& Treaties consistant with both—genl code, supreme law [?]

This ye meaning if text stopt there —but following words preclude every other

— To express subordination of State laws—& not fedl laws—where less dbtful exempts the latter.

Maryd Va. N &° Ca. amends. See Ratifications f. 15—19—25 for sense of those States, as to fundl and inalienable rights.

See also f. 29 art 23d for sense of N. C. as explained by Mr. Holland.

3. Does it proceed from palpable absurdity, or grievous inconvenience?

— Unity in Govt remains

— inconvenience of conflicting authorities ye other meas [?]

— Foreign Gov. bound to know ours

It is said,—That Congress have no legislative agency, in case of Treaties, because of Constn silent, not devolve on them.

— all States where legisl & Ex. separate give the power, except G. B.

— Congs can pledge faith as to money &c

— States can make compacts by *Legis’l*

— Congs not Ex. consent to them

? If Congs had power to treat cd they supersede the specified powers of the Executive.

But if Congs cant treat, can alone legislate & as when they want Treaty depend on Ex. so when laws wanted Ex. depend on Congs.

Said that Parlt extorted from Perrogve that this that no negative on Treaties but one [?] and that the worst part of that Govt. and that interferes with Treaties, only for [illegible].

— Tory doctrine & not true, K. & Coms. both extort from order of nobles

— best part of Nat Govt —if King by treaty as with Hanovr cd. bring troops into G. B. fatal to legisl. & to liberty.

— if no interference, for same reason as no negative, Royal influence

— if to impeach & supplant—execute Treaty first, discuss it afterwards.

Old confederation

— Obscurity & irregularity, its characters

— No specific investment of powers in States

— Supremacy over State laws, now specified, now over Congs

— Unity of Govt now.—then variety of Gov.

Contemporary evidence

— heretofore demurred to as on

— Bank

— Carriage tax

— suability of States

But ready to meet it—Virga Debates

J. M. Vol. 2. f. 137—Vol. 3. f. 82—84-93 94-95.

G. W. Vol. 3. f. 83-84-86-87.

Corbin Vol. 2. 152. Vol. 3. 89-90.

E R—Vol. 3—85.

2 ideas—Treaty power limited

—reference to British model

N. Carolina Debates p. 152-153.

Pena do same illustration by Brit: Model.

Ratification &c. f. 3-5-13-16-18 & 19-21—25-27-29.

These explanatory, as well as alterative & inconsistant with idea of giving war &c to P. & S.

— Care of Small States

House of Reps less responsible &c.

— longer ye power & fewer ye hands more interest for it—more object of foreign seduction

— tendency to encroacht—to be tested by foreign experience—in *popular*—in *limited* Govt

— domestic experience

— further opportunities & prospects.

Objections

1. If war Ex. perrogve—then three powers of war
2. Treaty power extend to *all* powers of Congs.
3. Restrictions on Congs.—more on Treaties
4. Case of appropriations the stronger—as the check is reserved to the people, who can chuse new members, every two years.

Not conceivable that the people so jealous of the sword & the purse shd have intended to put both into ye hands of P. & S. & make Congress—the mere heralds to proclaim war—the agents—to recruit armies & the Cashiers, to pay out money for them.

TO JAMES MONROE.

Philada May 14, 1796.

. . . Many of the *means* <sup>1</sup>*by which this majority was brought abt will occur to you.* But it is to be *ascribed principally to an appeal to petitions under the mercantile influence, & the alarm of war.* A circular letter from the *Merchts of Phila* gave the signal to all other towns. The people were everywhere called on to chuse between peace & war, & to side with the Treaty if they preferred the former. This stratagem

*produced in many places a fever & in New Engd a delirium for the Treaty wh soon covered the table with petitions. The counter petitions, tho powerful from Phila, & respectable from some other quarters did not keep pace. Indeed there was not time for distant parts where the Treaty was odious to express their sentiments before the occ was over. Besides the alarm of war in the smaller States, a great excitement was produced in them by the appeal of the Pr in his message, to their particular interest in the powers of the Senate. What the effect of this whole business will be on the public mind cannot yet be traced with certainty. For the moment at least it presses hard on the republican interest. It probably would have been better if the great majority existing at one moment had been taken advantage of for a strong preface in the tone of Dearborn, and if the Treaty party had then carried their object with the consequences on their own heads. The final turn of the majority ought at least to have been sooner prepared for. This was in fact contemplated. But before some were ripe for the arrangement others were rotten. As soon as the subject was finished, an explanatory article, signed by Bond & Pickering, marked with sundry curious features, was laid before the Senate, & has, been ratified. The avowed object is to declare that the Indian Treaty which requires a special license to Traders residing at the Indian Towns shall not affect the Brith privileges, under the third article. This when known by the public, will justify an important ground of opposition to the Treaty. Adèt seems to have conducted himself with great circumspection throughout the crisis here, nor do I know what or whether anything escapes him since the conclusion of it. It will be deeply interesting to know how France will take it all. I hope no rash councils will prevail with her. You can foresee the consequences of such here. Whilst the war lasts Engld will command most attention, because she can do this country most harm. In peace, Fr will command most attention, because she can do it most good. This view of the subject, may perhaps be worth your development on fit occasions. Among the bills just passed the H. of Reprs is one prohibiting the sale of prizes in our ports. It did not pass without doubts & opposition. The real object with most was to protect Spanish & Dutch vessels as much as possible, on the supposition that the British Treaty protected hers in this respect agst all nations. It is now generally understood that the President will retire. Jefferson is the object on one side Adams apparently on the other. The secondary object still unsettled. The general result is rendered doubtful by the probable complexion of the New York legislature, and by a late law of Pen for chusing Electors by a genl ticket. If the decision should result to the House of Rs it will be safe. . . .—Mad. MSS.*

[1] Italics for cypher.

[1] Griswold called Lyon (not in debate) a coward, whereupon Lyon spat in Griswold's face and the two engaged in fisticuffs on the floor of the House.

[1] Of March 19th.

[1] In the letter of April 6th. Jefferson gave him the gist of the "X. Y. Z." correspondence.

[1] Sprigg, of Md.'s, resolution was that it was inexpedient to go to war with France.

[1] The papers appeared in Fenno's *United States Gazette*, signed "Marcellus" and were not, as Jefferson supposed, by Hamilton. "For heaven's sake, then take up your pen, and do not desert the public cause altogether," Jefferson wrote to Madison, April 5th.—*Writings* (Ford), vii. 231.

[1] The beginning of the letter relates entirely to building supplies which he wished Jefferson to procure for him.

[2] April 26th Jefferson wrote: "One of the war party, in a fit of unguarded passion, declared some time ago they would pass a citizen bill, an alien bill, and a sedition bill; accordingly, some days ago, Coit laid a motion on the table of the H of R for modifying the citizen law" *Writings* (Ford), vii., 244. May 3d he wrote: "The alien bill, proposed by the Senate, has not yet been brought in. That proposed by the H of R has been so moderated, that it will not answer the passionate purposes of the war gentlemen" (*Id.*, 247). The Senate bill reached Madison just before he wrote his letter of May 20th. This marks the beginning of his consideration of the subject.

[1] "I enclose for your perusal a poem on the alien bill, written by Mr. Marshall."—Jefferson to Madison, May 31, 1798, *Writings* (Ford), vii., 262.

[2] Congress adjourned July 16 to December 1. The alien bill was passed July 6, the sedition July 14, the naturalization bill was approved June 18. Jefferson went back to Monticello immediately after the adjournment, and he and Madison had few occasions for writing to each other during that summer.

[1] Madison intended to make his retirement from public life permanent and was busy with his farm and building additions to his house when the crisis drew him into public activity. Jefferson, George Nicholas, and himself consulted and agreed to concerted action on the part of Kentucky and Virginia against the alien and sedition laws, but Madison never saw the Kentucky resolutions until they were published. See his defence of both the Kentucky and Virginia resolutions against the charge that they embodied the principle of nullification, *post*, 1835-'36; also Warfield's *Kentucky Resolutions of 1798*. Madison gave the Virginia resolutions to John Taylor of Caroline to introduce, and but one alteration was made in the original draft. Paragraph 4, as Madison prepared it, was ". . . as it does hereby declare, that the acts aforesaid, are unconstitutional, *null, void and of no effect*," the words in italics being struck out as unnecessary repetition. Nevertheless, Madison was not perfectly easy in his mind over the question of whether the legislature was really the proper body for making the protest, as the following letter shows:

## TO THOMAS JEFFERSON.

Decr 29, 1798.

Dear Sir,—

I inclose a draught on Genl Moylan, out of which you will be pleased to pay yourself the price of the Nails, £48-11. 3*d.*, Va. Cy to let Barnes have as much as will discharge the balance I owe him, & to let what may remain lie till I write to you again. The P's speech corresponds pretty much with the idea of it which was preconceived. It is the old song with no other variation of the tune than the spirit of the moment was thought to exact. It is evident also that he rises in his pitch as the ecchoes of the S. & H. of R. embolden him, & particularly that he seizes with avidity that of the latter flattering his vigilance & firmness agst. illusory attempts on him, without noticing, as he was equally invited, the allusion to his pacific professions. The Senate as usual perform their part with alacrity in counteracting peace by dextrous provocations to the pride & irritability of the French Govt. It is pretty clear that their answer was cooked in the same shop with the speech.<sup>1</sup> The of the former calculated to impose on the public mind here, & the virulence of the latter still more calculated to draw from France the war, which cannot be safely declared on this side, taste strongly of the genius of that subtle partizan of England who has contributed so much to the public misfortunes. It is not difficult to see how A. could be made a puppet thro the instrumentality of creatures around him, nor how the Senate could be managed by similar artifice.

I have not seen the Result of the discussions at Richmond on the alien & sedition laws. It is to be feared their zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the *State* & that of the *Legislature*, on questions relating to the federal pact. On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the latter is the legitimate organ especially as a Convention was the organ by which the compact was made. This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the Genl Assembly agst the charge of Usurpation in the very act of protesting agst the usurpations of Congress.<sup>1</sup> I have not forgotten my promise of McGeehee's prices, but cd not conveniently copy them for the present mail.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Feby 8, 1799.

Dear Sir

I did not receive your last favor of the 16th Ulto till the mail after it was due, with the further delay of its coming by the way of Charlottesville. The last mail brought me not

a single Newspaper, tho' it was before in arrears. That there is foul play with them I have no doubt. When it really happens that the entire Mass cannot be conveyed, I suspect that the favorite papers are selected, and the others laid by; and that when there is no real difficulty the pretext makes room for the same partiality. The idea of publishing the Debates of the Convention ought to be well weighed before the expediency of it, in a public as well as personal view be decided on. Besides the intimate connection between them the whole volume ought to be examined with an eye to the use of which every part is susceptible. In the Despotism at present exercised over the rules of construction, and [illegible] reports of the proceedings that would perhaps be made out & mustered for the occasion, it is a problem what turn might be given to the impression on the public mind. But I shall be better able to form & explain my opinion by the time, which now approaches when I shall have the pleasure of seeing you. And you will have the advantage of looking into the sheets attentively before you finally make up your own. I have had a glance at Gerry's communications & P.s Report on it. It is impossible for any man of candor not to see in the former an anxious desire on the part of France for accommodation, mixed with the feelings which Gerry satisfactorily explains. The latter a narrow understanding and a most malignant heart. Taken, however, in combination with preceding transactions, it is a link that fits the chain. The P. could not do less in his speech than allow France an option of peace, nor his Minister do more than to insult & exasperate her if possible, into a refusal of it.

Inclosed is a letter to Barnes with two orders which I hope will suffice both for you & him. Should there be any deficit I can now make it up here on your return where possibly it may be more convenient for you to receive it. I inclose also a few more observations which are submitted to your discretion, under the usual reservation. They were sketched prior to the arrival of P's Report, to which they may appear to have reference; or they might have assumed still more of that aspect. The impression of your Seals have not been very distinct, but there has been no other suspicious circumstance attending them. I put into the letter to Barnes, the last of them that you may judge yourself of the appearance. If you find it not inconvenient in your strolls to buy me a cheap diamond [for cutting glass] & bring it with you, I shall be obliged to you to take that trouble. An indifferent one which I now have lost, and wish to replace it.—*Mad. MSS.*

[1] Under date of Philadelphia, February 7, 1799, Walter Jones, John Nicholas, Carter H. Harrison, Joseph Eggleston, Abraham B. Venable, and Richard Brent, Republican members of Congress from Virginia, wrote Madison:

“While the sentiments we entertain of your Talents, your experience & your Probity, have made your absence from the public councils, a subject of our very serious regret, our Confidence in the justness of your Motives assures us, that you stand completely justified.

“At the same time the Growth & conduct of the executive Party, since your retirement, have continued more & more to render the Inaction of republican Principles & Talents deplorable & injurious.

“Our extreme Sollicitude to give energy to those virtues, in every possible direction, has urged us jointly to address you. We hope that obstacles of your serving in the State legislature, may be less imperious, than those by which you were withdrawn from that of the Union—it is quite needless to point out *to you*, the powerful agency of *wise* and *firm* State measures in preserving the general government within the just Limits of the Constitution, which from the nature of things, it must be ever struggling to transcend; but our present position enables us to discover, perhaps more clearly, the perseverance & success of those struggles.

“We should be wanting in the Social Duties we profess, if we declined to invite you with earnestness, to take part in the councils of your State.

“Pretensions founded as yours are, can scarcely fail of success—our utmost aid, if it shall be in any way applicable, and our ardent wishes will attend you in the experiment.”—*Mad. MSS.*

Accordingly he consented to go to the House of Delegates and was elected in the autumn of 1799. Delaware, Rhode Island, Massachusetts, New York, Connecticut, New Hampshire, and Vermont having replied to the resolutions in dissent, Madison wrote the report.

## TO THOMAS JEFFERSON.

Richmond, Decr. 29, 1799.

Dear Sir,—

My promise to write to you before your leaving Albemarle was defeated by a dysenteric attack, which laid me up for about a week, and which left me in a state of debility not yet thoroughly removed. My recovery has been much retarded by the job of preparing a vindication of the Resolutions of last Session agst the replies of the other States, and the sophistries from other quarters. The Committee made their report a few days ago, which is now in the press and stands the order of the day for thursday next. A set of Resolutions proposed by Mr. Giles, instructing the Senators to urge the repeal of the unconstl acts, the disbanding of the army, and a proper arrangement of the militia, are also in the press, and stand the order of the same day for the same Committee. It is supposed that both these papers, the latter perhaps with some modifications, will go through the H. of Delegates. The Senate, owing to inattention & casualties, is so composed as to render the event there not a little uncertain. If an election, to fill the vacancy of Mr. H. Nelson who lately resigned, should send Mr. Andrews in preference to his competitor Mr. Saunders, I am told that the parties will be precisely in equilibrio, excepting only one or two whom circumstances now & then on particular questions, transfer from the wrong to the right side. It is hoped that this contingent fund of votes, will be applicable to the Vindication. On other important questions, there is much less expectation from it. There is a report here that the Legislature of N. Carolina now in session, have voted the Resolutions of Virginia under their table. The report is highly improbable, and I do not believe it. But it is



impossible to calculate the progress of delusion, especially in a State where it is said to be under systematic management, and where there is so little either of system or exertion opposed to it. We had a narrow escape yesterday from an increase of pay to the members, which would have been particularly unseasonable & injurious both within & without the State. It was rejected on the third reading by a small majority; and was so much a favorite, with the distant members particularly, that I fear it has left them in rather an ill humour. The late course of foreign events has probably made the same impression everywhere. If it should not render France less anxious to meet our advances, its good effects will be felt every way. If our Executive & their Envoys be sincere in their pacific objects, it will perhaps supply by their increased anxiety what may be lost on the other side. But there can be little confidence after what has been seen, that the negotiation would be influenced by this temper of the Envoys, instead of that which perverted it in the hands of their predecessors. This possibility of failure in the diplomatic experiment, will present the most specious obstacle to an immediate discharge of the army. It would be useful for the Assembly to know how this matter is viewed where you are. Mr. Dawson will be good eno' to write me on the subject. I intended to have written to him by this mail; but my time has been taken from me till the closing of the mail is approaching.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Richmond, Jany. 4, 1800.

Dear Sir,—

My last covered a copy of the Report on the Resolutions of last year. I now inclose a copy of certain resolutions moved by Mr. Giles, to which he means to add an instruction on the subject of the intercourse law which has been so injurious to the price of Tobo.. It is not improbable that the Resolutions when taken up, may undergo some mollifications, in the spirit and air of them. The Report has been under debate for two days. The attacks on it have turned chiefly on an alleged inconsistency between the comment now made and the arguments of the last session, and on the right of the Legislature to interfere in any manner with denunciations of the measures of the Genl Govt. The first attack has been parried by an amendment admitting that different constructions may have been entertained of the term “States” as “parties” &c but that the sense relied on in the report must be concurred in by all. It is in fact concurred in by both parties. On examination of the Debates of the last session, it appears that both were equally inaccurate & inconsistent in the grounds formerly taken by them. The attack on the right of the Legislature to interfere by declaration of opinion will form a material point in the discussion. It is not yet known how far the opposition to the Report will be carried into detail. The part relating to the Common law it is said will certainly be combated. You will perceive from this view of the matter, that it is not possible to guess how long, we shall be employed on it. There will in the event be a considerable majority for the Report in the House of Delegates, and a pretty sure one in the Senate. Can you send me a copy of Priestly's letters last published.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Jany. 9, 1800.

Dear Sir,—

The question on the Report printed, was decided by 60 for & 40 agst it, the day before yesterday, after a debate of five days. Yesterday & to-day have been spent on Mr. Giles' propositions, which with some softenings will probably pass, by nearly the same vote. The Senate is in rather a better state than was expected. The Debate turned almost wholly on the right of the Legislature to protest. The Constitutionality of the Alien & Sedition Acts & of the C. Law was waived. It was said that the last question would be discussed under Mr. Giles' propositions; but as yet nothing has been urged in its favour. It is probable however that the intention has not been laid aside. I thank you for the pamphlets.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Richmond, Jany. 12, 1800.

Dear Sir,—

My last informed you of the result of the debates on the justifying Report of the Select Committee. I am now able to add that of Mr. Giles's resolutions. The question on the whole was decided in the affirmative by a little upwards of a hundred against less than fifty. The vote was rather stronger on some of the particular resolutions, for example the instruction for disbanding the army. The alien sedition & Tobacco instructions passed without a count or a division. That relating to the common law, passed unanimously with an amendment qualifying it in the words of the paragraph in the Justifying Report under which certain defined parts of the C. L. are admitted to be the law of the U. S. This amendment was moved by the minority on the idea that it covers the doctrine they contend for. On our side it is considered as a guarded exposition of the powers expressed in the Constn. and those necessary & proper to carry them into execution. I am not able to say in what manner they misconstrue the definition, unless they apply the term "adopt" to the "Court" which would be equally absurd & unconstitutional. The Judges themselves will hardly contend that they can *adopt* a law, that is, make that law which was before not law. The difference in the majority on the Report & the resolutions, was occasioned chiefly by the pledge given agst the former by the members who voted agst the Resolutions of last year. The resolutions also underwent some improvements, which reconciled many to them who were not satisfied with their first tone & form. It is understood that the present assembly is rather stronger on the republican side than the last one: and that a few favorable changes have taken place in the course of the session. It is proposed to introduce tomorrow a bill for a general ticket in chusing the next Electors. I expect to leave this in a week; so that your subsequent favors will find me in Orange.

Shew this to Mr. Dawson.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Richmond Jany. 18, 1800.

Dear Sir,—

Since my last the Senate have agreed to the *Report & the Resolution* by 15 to 6. To the latter, they made an amend to the definition of the portion of C. L. in force in the U. S. by inserting the words “by Congress” after the word “adopted,” in order to repel the misconstruction which led the minority to concur in that particular resolution as it passed the H. of D. The amendt was agreed to by 82 to 40. The plan of a Genl Ticket was so novel that a great n<sup>o</sup> who wished it shrunk from the vote, and others apprehending that their Constts would be still more startled at it voted agst it, so that it passed by a majority of 5 votes only. The event in the Senate is rather doubtful; tho’ it is expected to get thro’. As the avowed object of it is to give Virga. *fair play*, I think if passed into a law, it will with proper explanations become popular. I expect to get away abt the middle of the week. The Assembly will rise perhaps at the end of it; tho’ possibly not so soon. I forgot to tell you that a renewed effort to raise the pay of the members to 3 drs has succeeded; a measure wrong in principle, and which will be hurtful in its operation. I have desired Barnes to pay you a balance in his hands, out of which you will please to pay yourself the balance due to your Nailory.—*Mad. MSS.*

[1] The bill “Prescribing the mode of deciding disputed elections of President and Vice President of the United States” originated in the Senate. It provided that the Senate and House should “on the — next following the day when a President and Vice President shall have been voted for” each choose four members to form a joint committee with power to examine into all disputes relative to the election of President and Vice President, except such as might relate to the number of votes by which the electors had been chosen. If the two houses on report of the joint committee should concur in rejecting any votes cast for President and Vice President they should not be counted. The bill was amended in the House, passed May 2, again amended by the Senate and finally rejected because of the Senate amendments May 10. *Annals of Cong., 6th Cong., 1779-1801, 694, 695, 697, 713.*

[1] Joseph Allston who married Theodosia, daughter of Aaron Burr.

[1] Pickering is meant. See Hamilton’s pamphlet in *Works of Hamilton* (Lodge) vi, 391.

[1] Ellsworth.

[2] Davie.

[1] There was a fire in the War Department November 8, 1800, and in the Treasury Department January 20, 1801. The Republicans at once charged that they were

incendiary. For the report of the committee of inquiry see Gibbs's *Administrations of Washington and Adams*, ii, 478, *et seq.*

[1] James Thompson Callender was sentenced in the spring of 1800 under the sedition law to nine months' imprisonment and to pay a fine of \$200. This law Jefferson considered to be "a nullity" and Callender, being released about the time Jefferson's administration began, conceived that the fine should be reimbursed him. Callender threatened the President, and Monroe seemed to be in great fear of him. He came to Washington in June, 1801, and confided everything to Madison, for whom he entertained great regard. *Life of Madison* (Hunt), 278 *et seq.*

[1] Minister to England Madison assumed office as Secretary of State May 2, 1801.

[1]

TO WILSON C. NICHOLAS.2

Washington, July 10, 1801.

My Dear Sir,—

I cannot at so late a day acknowledge your two favors of [blank] without an explanation, which I am sure your goodness will accept as an apology. Having brought with me to this place a very feeble state of health, and finding the mass of business in the department, at all times considerable, swelled to an unusual size by sundry temporary causes, it became absolutely necessary to devote the whole of my time & pen to my public duties, and consequently to suspend my private correspondences altogether, notwithstanding the arrears daily accumulating. To this resolution I have thus far adhered. I must now endeavor to make some atonement for the delay, and your case is among the first that is suggested both by obligation & inclination.

That one of your letters which is confidential has been imparted to no person whatever. The P. O. Genl. continues in the hands of Col. H., who, though not perhaps sufficiently in the views of the administration, is much respected personally, & is warmly espoused politically also by some of the purest and most weighty of our friends.3 It will be difficult to make a satisfactory arrangement for this debt that will not involve transaltions, &c., which will prevent a real vacancy. Besides this, I am inclined to believe that the P. would be afraid to draw on Virga agst competitions which wd. abound from other States. The individual spoken of by you would, as you must be well assured, be perfectly desired as an associate in the public business, on every consideration, unless it be on that of robbing another important station of his services.

Little has occurred which you have not found in the newspapers. The task of removing and appointing officers continues to embarrass the Ex. and agitate particular parts of the Union. The degree, the mode, & the times of performing it are often

rendered the more perplexing by the discord of information & counsel received from different persons whose principles & views are the same. In Connecticut the fever & murmur of discontent at the exercise of this power is the greatest. The removal of Goodrich & appt. of a respectable repugn. have produced a *remonstrance* to the President in the strongest terms that decorum would tolerate. The spirit in that State is so perverse that it must be rectified by a peculiar mixture of energy and delicacy. The Secyship of the Navy is still unfilled, Langdon havg. lately sent his final refusal. The P. has just offered it to Mr. Robt. Smith, who we hope will be prevailed on to take it.

Our news from abroad have not yet decided the fate of Egypt or furnished any sufficient data for calculating it. It is believed the Emperor Alexander will endeavor to keep at peace both with France & G. B., & at the same time not abandon the principle of the Coalition. This can only be done by mutually winking at mutual violations of their respective claims.

It is believed, or rather directly asserted by a consul just returned from St. Domingo, that Toussaint will proclaim in form the independence of that island within 2 or 3 weeks. This event presents many important aspects to the U. S., as well as to other nations, which will not escape your eye. Lear<sup>1</sup> had not arrived there when the above person came away. We are impatient for the information which may be expected from him.

You have probably heard the rumour of a cession of Louisiana to France by a late & latent treaty with Spain. The fact is not authenticated, but is extremely probable. If otherwise not probable, it is rendered so by the apparent policy of counteracting the Anglicism suspected in the Atlantic States & the alarm excited by Blount's affair of some combined project to throw that country into the hands of G. B. The subject engages our attention, and the proceedings deemed most suited to the complexity of the case, and the contrariety of interests & views involved in it, will be pursued. It may be inferred, I think, that if France becomes possessed of this object, her policy will take a shape fitted to the interests and conciliatory to the minds of the Western people. This and the preceding paragraph need not be of promiscuous use. I hope to leave this place within two weeks, or thereabouts, being admonished to hasten it by a late slight attack of bile to which my constn. is peculiarly prone.

[1] Minister to Spain.

[1] See late Treaties between Russia & Sweden & between Russia and Great Britain. (Note in the original.)

[1] Minister to France.

[1] On July 26 Madison wrote to Charles Pinckney:

The last information from Paris renders it certain that the Cession of Louisiana to France has actually been concluded, and that the Cession comprehends the two Floridas. In this state of the business it seems unnecessary to decide on the price which Spain might be led to expect for a cession of the Floridas including New

Orleans to the United States; and the more so as it would be of use for us previously to know the value of the places on the guaranty proposed in my letter to you of 25th September last. For the cession wished by the United States, must be an object of negotiation with the French Government. It will notwithstanding continue to be proper for you to cultivate the good dispositions of Spain in relation to it, both as they may not be entirely disregarded by France, and as in the turn of events, Spain may possibly be extricated from her engagements to France, and again have the disposal of the Territories in question.

*D. of S. MSS. Instr.*

[\[1\]](#)

## TO EDMUND PENDLETON.

N. York March 4, 1790.

Dear Sir

Your recommendation of Docr M (illegible) was handed me some time ago. I need not tell you that I shall always rely on your vouchers for merit, or that I shall equally be pleased with opportunities of forwarding your wishes.

The only Act of much consequence which the present Session has yet produced, is one for enumerating the Inhabitants as the basis of a reapportionment of the Representation. The House of Reps has been chiefly employed of late on the Report of the Secy of the Treasury. As it has been printed in all the Newspapers I take for granted that it must have fallen under your eye. The plan which it proposes is in general well digested, and illustrated & supported by very able reasoning. It has not however met with universal concurrence in every part. I have myself been of the number who could not suppress objections. I have not been able to persuade myself that the transactions between the U. S. and those whose services were most instrumental in saving their country, did in fact extinguish the claims of the latter on the justice of the former; or that there must not be something radically wrong in suffering those who rendered a bona fide consideration to lose  $\frac{7}{8}$  of their dues, and those who have no particular merit towards their country to gain 7 or 8 times as much as they advanced. In pursuance of this view of the subject, a proposition was made for redressing in some degree, the inequality. After much discussion, a large majority was in the negative. The subject at present before a Committee of the whole, is the proposed assumption of the State debts. On this, Opinions seem to be pretty equally divided. Virga is endeavoring to incorporate with the measure some effectual provision for a final settlement and payment of balances among the States. Even with this ingredient, the project will neither be just nor palatable, if the assumption be referred to the present epoch, and by that means deprives the States who have done most, of the benefit of their exertions. We have accordingly made an effort, but without success to refer the assumption to the state of the debts at the close of the war. This would probably add ? more to the amount of the Debts, but would more than

compensate for this by rendering the measure more just & satisfactory. A simple unqualified assumption of the existing debts would bear peculiarly hard on Virginia. She has paid I believe a greater part of her quotas since the peace than Massts. She suffered far more during the war. It is agreed that she will not be less a Creditor on the final settlement, yet if such an assumption were to take place she would pay towards the discharge of the debts, in the proportion of ? and receive back to her Creditor Citizens or  $\frac{1}{8}$ , whilst Massts would pay not more than or  $\frac{1}{8}$ , and receive back not less than ?. The case of S Carola is a still stronger contrast. In answer to this inequality we are referred to the final liquidation for which provision may be made. But this may *possibly* never take place. It will *probably* be at some distance. The payment of the balances among the States will be a fresh source of delay & difficulties. The merits of the plan independently of the question of equity, are also controvertible, tho' on the other side there are advantages which have considerable weight.

We have no late information from Europe more than what the Newspapers contain. France seems likely to carry thro' the great work in which she has been laboring. The Austrian Netherlands have caught the flame, and with arms in their hands have renounced the Government of the Emperor forever. Even the lethargy of Spain begins to awake at the voice of liberty which is summoning her neighbors to its standard. All Europe must by degrees be aroused to the recollection and assertion of the rights of human nature. Your good will to mankind will be gratified with this prospect, and your pleasure as an American be enhanced by the reflection that the light which is chasing darkness & despotism from the old World, is but an emanation from that which has procured and succeeded the establishment of liberty in the new.—*Mad. MSS.*

## TO EDMUND RANDOLPH.

N. Y., Mar 14, 1790.

My Dear Friend,—

I have recd the few lines you dropped me from Baltimore, and daily expect those promised from Fredg. I am made somewhat anxious on the latter point, by the indisposition under which you were travelling.

The question depending at your departure was negatived by a very large majority, though less than stated in the Newspapers. The causes of this disproportion which exceeds greatly the estimate you carried with you cannot be altogether explained. Some of them you will conjecture. Others, I reserve for conversation if the subject should ever enter into it. As far as I have heard, the prevailing sense of the people at large does not coincide with the decision, and that delay and other means might have produced a very different result.

The assumption of the State debts has of late employed most the H. of Reps. A majority of 5 agreed to the measure in Come of the Whole. But it is yet to pass many defiles, and its enemies will soon be reinforced by N. Carolina. The event is

consequently very doubtful. It could not be admissible to Virga unless subservient to final justice, or so varied as to be more consistent with intermediate justice. In neither of these respects has Va been satisfied, and the whole delegation is agst the measure except *Bland!!*<sup>1</sup>

The *substance* of the Secretary's arrangements of the Debts of the Union has been agreed to in Come of the Whole and will probably be agreed to by the House. The number of alterations have been reduced for the sake of greater simplicity, and a disposition appears at present, to shorten the duration of the Debt. According to the Report, the Debt wd subsist 40 or 50 years, which, considering intermediate probabilities, amounts to a perpetuity. Adieu

Mr. Jefferson is not arrived. He has notified his acceptance & is expected in a day or two.—*Mad. MSS.*

TO EDMUND RANDOLPH.

N. Y., Mar. 21, 1790.

Dear Sir

Your favor of the 10th came to hand yesterday. I feel much anxiety for the situation in which you found Mrs. Randolph; but it is somewhat alleviated by the hopes which you seem to indulge. The language of Richmond on the proposed discrimination does not surprise me. It is the natural language of the towns, and decides nothing. Censure I well knew would flow from those sources. Should it also flow from other sources, I shall not be the less convinced of the right of the measure, or the less satisfied with myself for having proposed it. The conduct of the Gentlemen in Amherst & Culpeper proves only that their personal animosity is unabated. Here it is a charge agst me that I sacrificed the federal to anti federal Sentiments. I am at a loss to divine the use that C [a] b [e] ll and S-t [even] can make of the circumstance.

The debates occasioned by the Quakers have not yet expired.<sup>2</sup> The stile of them has been as shamefully indecent as the matter was evidently misjudged. The true policy of the Southn members was to have let the affair proceed with as little noise as possible, and to have made use of the occasion to obtain along with an assertion of the powers of Congs. a recognition of the restraints imposed by the Constitution.

The State debts have been suspended by the preceding business more than a Week. They lose ground daily, & the assumption will I think ultimately be defeated. Besides a host of objections agst the propriety of the measure in its present form, its practicability becomes less & less evident. The case of the paper money in Georgia S. C., N. C., &c to R. Isld, is a most serious difficulty. It is a part of the debts of those States, and comes in part within the principle of the assumption.



A packet arrived a few days ago but threw little light on the affairs of Europe. Those of France do not recede but their advance does not keep pace with the wishes of liberty. Remember me to Mr. M— & his land lady.

YRs AffLy

Mr. Jefferson is not yet here. The bad roads have retarded him. We expect him today or tomorrow. I am this instant told he is come.—*Mad. MSS.*

TO EDMUND PENDLETON.

N. York April 4, 1790.

Dear Sir

You will see by the papers herewith covered that the proposed assumption of the State debts continues to employ the deliberations of the House of Reps. The question seems now to be near its decision, and unfortunately, tho' so momentous a one, is likely to turn on a very small majority, possibly on a single vote. The measure is not only liable to many objections of a general cast, but in its present form is particularly unfriendly to the interests of Virginia. In this light it is viewed by all her representatives except Col: Bland.

The American Revolution with its foreign and future consequences, is a subject of such magnitude that every circumstance connected with it, more especially every one leading to it, is already and will be more and more a matter of investigation. In this view I consider the proceedings in Virginia during the crisis of the Stamp-Act as worthy of particular remembrance, and a communication of them as a sort of debt due from her cotemporary citizens to their successors. As I know of no memory on which my curiosity could draw for more correct or more judicious information, you must forgive this resort to yours. Were I to consult nothing but my curiosity, my enquiries would not be very limited. But as I could not indulge that motive fully, without abusing the right I have assumed, my request goes no farther than that you will, as leisure & recollection may permit, *briefly* note on paper—by whom & how the subject commenced in the Assembly, where the resolutions proposed by Mr. Henry *really* originated; what was the sum of the arguments for and against them, and who were the principal speakers on each side; with any little anecdotes throwing light on the transaction, on the characters concerned in it, or on the temper of the Colony at the time.<sup>1</sup>

Begging pardon again for the tax I am laying on your benevolence, I remain Dear Sir

Your Most AffectE & Hble ServT.—*Mad. MSS.*

TO HENRY LEE.

N. York April 13th, 1790.

Dear Sir

Your favor of the 4th ult by Col Lee was received from his hands on Sunday last. I have since recd that of the 3d Instant. The antecedent one from Alexandria, though long on the way, was recd. some time before. In all these, I discover strong marks of the dissatisfaction with which you behold our public prospects. Though in several respects they do not comport with my wishes, yet I cannot feel all the despondency which you seem to give way to. I do not mean that I entertain much hope of the Potomac; that seems pretty much out of sight; but that other measures in view, however improper, will be less fatal than you imagine. <sup>2</sup>The plan of discrimination has met with the reception in Virginia on which I calculated. The towns would for obvious reasons disrelish it, and for a time they always set public opinion. The country in this region of America, in general, if I am not misinformed, has not been in unison with the cities, nor has any of the latter except this, been unanimous against the measure. Here the sentiment was in its full vigor, and produced every exertion that could influence the result.

I think with you that the Report of the Secretary of the Treasury is faulty in many respects; it departs particularly from that simplicity which ought to be preserved in finance, more than anything else. The novelty and difficulty of the Task he had to execute form no small apology for his errors, and I am in hopes that in some instances they will be diminished, if not remedied.

The proposed assumption of the State debts has undergone repeated discussions, and contradictory decisions. The last vote was taken yesterday in a Committee of the whole and passed in the negative 31 vs. 29. The minority do not abandon however their object, and tis impossible to foretell the final destiny of the measure. It has some good aspects, and under some modifications would be favorable to the pecuniary interests of Virginia, and not inconsistent with the general principle of justice. In any attainable form it would have neither of these recommendations, and is moreover liable to strong objections of a general nature. It would certainly be wrong to force an affirmative decision on so important and controvertible a point by a bare majority, yet I have little hope of forbearance from that scruple. Mass & S. Carolina with their allies of Connecticut & N. York are too zealous to be arrested in their project, unless by the force of an adverse majority.

I have recd your reflections on the subject of a public debt with pleasure; in general they are in my opinion just and important. Perhaps it is not possible to shun some of the evils you point out, without abandoning too much the re-establishment of public credit. But as far as this object will permit I go on the principle that a Public Debt is a Public curse, and in a Rep Govt a greater than in any other.

I have mentioned Mr Lee<sup>1</sup> to Mr Jefferson who tells me that he found every place preoccupied, and that he has not thought proper to make changes where no special reasons existed; various applications have been made previous to that in behalf of your friend, several had passed through my hands, some of them from Virginia.

I never heard of the report you mention of the Vice Presdt. It is but justice to say that I cannot believe it to have originated in fact.

I lament with you the inability which impedes arrangements at the Great Falls, which would be of benefit in a Public as well as private view. The prospect of aid in this quarter does not strike me as it seems to do you. Money is destined to other projects at this juncture. Besides I am on no peculiar footing, that could favor an experiment, and could never make it less auspiciously than at present. It gives me much concern that it is not more in my power to forward our object.

Present me most respectfully to Mrs Lee & believe me

AffLy Yrs.

—*Mad. MSS.*

TO JAMES MONROE.

N. Y. Apl. 17. 1790.

Dear Sir

An answer to your favor of the 5th has been delayed by my hourly expectation of hearing from Taylor. A few days ago he came to Town and I have had an interview and settlement with him. The balance with the interest at 7 per Ct. was 864 dollars. He has not however executed the conveyance for want of some chart which he could not get here, but has entered into bond to do so by August, with good security. As far as I can learn our bargain is a good one. Land in the vicinity has sold in small parcels at more than 20/. I am told. The present moment however it is said is not favorable to the market. By waiting I think it probable it may be sold to your profit or If you continue to be anxious to get rid of it immediately, I have no objection to taking the whole on myself. Before you decide I would recommend that you consult by letter some of your friends here who can judge better than I can do, and who have more leisure & opportunity for making the requisite enquiry into the prospect. Should you chuse to make me the sole proprietor, it will be most convenient that the deed be executed from Taylor to me. In that event also, I beg you to let me know the state in which the accts. between us was left, by your former advances for me, and my settlements for your furniture &c.<sup>1</sup> My papers on this subject are either not here or so concealed among others that I cannot find them.

The House of Representatives are still at the threshold of the Revenue business. The Assumption of the State debts is the great obstacle. A few days ago it was reconsidered & rejected by 31 agst 29. The measure is not however abandoned. It will be tried in every possible shape by the zeal of its patrons. The Eastern members talk a strange language on the subject. They avow, some of them at least, a determination to oppose all provision for the public debt which does not include this, and intimate danger to the Union from a refusal to Assume. We shall risk their prophetic menaces if we should continue to have a majority.—*Mad. MSS.*

## TO JAMES MADISON.

N. York May 2d. 1790.

HonD Sir

I wrote some days ago to my brother Ambrose since which little has taken place worth adding. The inclosed newspapers contain a sketch of what has been done in the House of Reps. I mentioned to my brother that I thought it better to ship or postpone the sale of Tobo than to sell at the present price in the Country. I am more & more convinced that this will be prudent. The price has risen considerably in Europe, and from causes that will be more likely to carry it still higher than let it fall lower. As long indeed as grain keeps up which the state of Europe makes it probable will be for some time, the culture of that article in America, particularly Virginia will divert labor from others, and from Tobo among the rest. This alone will prevent a low price, by circumscribing the quantity raised.

The influenza or something like it but less severe has revisited this quarter of the Union. I have had an attack which has kept me at home for several days. I am now pretty well over it, and shall resume my seat in the House tomorrow, or at least shall be able to do it. If no business of consequence should press, perhaps I may indulge myself with two or three holidays for the sake of exercise & recreation. Remind my brother A. to send me a copy of the weather &c. from your diary for the months of Feby. March & April, including the heat & cold noted by the Thermometer. When May is over he can send me that also.

Tell Mr. G. Eve that I have heard of a sett of Gill's Commentory. The Price of the Old Testament is £8. of the new £9. Pensylva curry My brother Ambr. last letter gave me great pleasure by acquainting me that my mothers health was increasing. I hope it continues to do so.—*Mad. MSS.*

## TO JAMES MONROE.

N. Y., June 1, 1790.

Dear Sir

Your favor of the 19th of May has been duly received. The information relating to your little daughter has been communicated as you desired. I hope she is by this time entirely recovered. Your friends in Broadway were well two evenings ago.

I have paid the money to Taylor, and hope you will take the time you intimate for replacing my advances on your account.

The assumption has been revived and is still depending. I do not believe it will take place, but the event may possibly be governed by circumstances not at present fully in view. The funding bill for the proper debt of the U. S. is engrossed for the last reading. It conforms in substance to the plan of the Secretary of the Treasury. You will have seen by late papers that an experiment for navigation and commercial purposes has been introduced. It has powerful friends, and from the present aspect of the H. of Reps will succeed there by a great majority. In the Senate its success is not improbable if I am rightly informed. You will see by the inclosed paper that a removal from this place has been voted by a large majority of our House. The other is pretty nearly balanced. The Senators of the 3 Southern States are disposed to couple the permanent with the temporary question. If they do I think it will end in either an abortion of both or in a decision of the former in favour of the Delaware. I have good reason to believe that there is no serious purpose in the Northern States to prefer the Potowmac, and that if supplied with a pretext for a very hasty decision, they will indulge their secret wishes for a permanent establishment on the Delaware. As R. I. is again in the Union & will probably be in the Senate in a day or two, The Potowmac has the less to hope & the more to fear from this quarter. Our friend Col: Bland was a victim this morning to the influenza united with the effects & remains of previous indisposition. His mind was not right for several days before he died. The President has been at the point of death but is recovered. Mr Jefferson has had a tedious spell of the head-ache. It has not latterly been very severe, but is still not absolutely removed. My best respects to Mrs Monroe. With sincere regard I am Dear Sir.—*Mad. MSS.*

## TO JAMES MADISON.

N. York June 13, 1790.

HonD Sir

My last was to my brother A. and acknowledged the receipt of the Diary. I inclose one for the month of April which you can compare with your own for the same month. I enclose also a few grains of *upland* rice, brought from Timor by Capt. Bligh lately distinguished by an adventure which you must have seen in the newspapers. He was

returning from a voyage of discovery in the South seas, and turned out of his ship with a few others by a mutinous crew in a long boat which continued more than 40 days at sea.<sup>1</sup> A little rice of which the enclosed is a part was all that he saved out of a fine collection. It will be best to give the grains their first vegetation in a flower pot of rich earth, and then shift the contents of the pot into the ground so as not to disturb the roots. A few of the grains may be tried at once in the garden in a strong soil. You will see by the inclosed newspapers that the seat of Govt. has been again on the carpet. After a variety of questions which the state of the votes as you will at once remark do not truly explain, a very unexpected result has happened in favor of Baltimore. It is possible that a like fortuitous one may take place in the Senate, but it does not appear probable. It is much to be apprehended that the final event will not square with the pretensions of the Potowmac, tho' in the chances to which this question is liable, it may possibly turn out otherwise.—I am anxious to hear the progress of my brothers health, and that of my sister Nelly. I hope yours continues good. Mine has been reestablished for some time.—*Mad. MSS.*

## TO JAMES MONROE.<sup>1</sup>

New York, June 17, 1790.

Dear Sir,—

You will find in the inclosed papers some account of the proceedings on the question relating to the seat of Government. The Senate have hung up the vote for Baltimore, which, as you may suppose, could not have been seriously meant by many who joined in it. It is not improbable that the permanent seat may be coupled with the temporary one. The Potowmac stands a bad chance, and yet it is not impossible that in the vicissitudes of the business it may turn up in some form or other.

The assumption still hangs over us. The negative of the measure has benumbed the whole revenue business. I suspect that it will yet be unavoidable to admit the evil in some qualified shape. The funding bill is before the Senate, who are making very free with the plan of the Secretary. A committee of that body have reported that the alternatives be struck out, the interest reduced absolutely to 4 per cent., and, as I am informed, the indents be not included in the provision for the principal.

## TO EDMUND PENDLETON.

New York, June 22, 1790.

Dear Sir,—

The pressure of business as the session approaches its term, the earlier hour at which the House of Representatives has for some time met, and the necessity of devoting a part of the interval to exercise, after so long a confinement, have obliged me to deny myself the pleasure of communicating regularly with my friends. I regret much that

this violation of my wishes has unavoidably extended itself to the correspondences on which I set the greatest value, and which, I need not add, include yours. The regret is the greater, as I fear it will not be in my power to atone for past omissions by more punctuality during the residue of the session. In your goodness alone I must consequently look for my title to indulgence.

The funding and Revenue systems are reduced by the discord of opinions into a very critical state. Out of this extremity, however, some effective provision must, I think, still emerge. The affair of the State debts has been the great source of delay and embarrassment, and, from the zeal and perseverance of its patrons, threatens a very unhappy issue to the session, unless some scheme of accommodation should be devised. The business of the seat of Government is become a labyrinth, for which the votes printed furnish no clue, and which it is impossible in a letter to explain to you. We are endeavoring to keep the pretensions of the Potowmac in view, and to give to all the circumstances that occur a turn favorable to it. If any arrangement should be made that will answer our wishes, it will be the effect of a coincidence of causes as fortuitous as it will be propitious. You will see by the papers inclosed that Great Britain is itching for war. I do not see how one can be avoided, unless Spain should be frightened into concessions. The consequences of such an event must have an important relation to the affairs of the United States. I had not the pleasure of seeing Col. Hoomes during his momentary stay in New York, but had that of hearing that he gave a very favorable account of your health.

[\[1\]](#)It was decided against him by a vote of 39 to 20.

TO EDMUND PENDLETON.

Philada, Feby 13, 1791.

Dear Sir

Since the receipt of your favor of the 15th Jany, I have had the further pleasure of seeing your valuable observations on the Bank, more at length, in your communications to Mr. White. The subject has been decided, contrary to your opinion, as well my own, by large majorities in both Houses, and is now before the President.<sup>1</sup> The power of incorporating cannot by any process of safe reasoning, be drawn within the meaning of the Constitution as an appurtenance of any express power, and it is not pretended that it is itself an express power. The arguments in favor of the measure, rather increased my dislike to it because they were founded on remote implications, which strike at the very essence of the Govt as composed of limited & enumerated powers. The Plan is moreover liable to a variety of other objections which you have so judiciously developed.

The Excise is not yet returned by the Senate. It has undergone sundry alterations in that House, but none that affect its principle or will affect its passage. In many respects it is displeasing to me, and a greater evil than a direct tax. But the latter wd. not be listened to in Congs and wd perhaps be not less offensive to the ears of the

people at large, particularly in the Eastern part of the Union. The Bill contains, as you would wish, an optional clause permitting the owners of Country stills to pay the tax on their capacity, or to keep an acct of the liquors actually distilled, and pay according to that & no more.

The Bill for admitting Kentucky has passed into a law, and another for extending the privileges to Vermont who is knocking at the door for it, has come from the Senate and will not be opposed in the House of Reps. The Bill for selling the Public lands, has made some progress & I hope will go through. The fate of the Militia & several other important Bills is problematical at the present Session which will expire on the 4th of next month.

With the sincerest affection I am Dear Sir, mo: respectfully yours.

The inclosed paper I observe has a sketch of some of the argts. agst the Bank. They are extremely mutilated, and in some instances perverted, but will give an idea of the turn which the question took.

## TO AMBROSE MADISON.[1](#)

Philada March 2d, 1791.

### Dear Brother

Tomorrow will put an end to our existence. Much of the business has been laid over to the next session which is to be held the 4th Monday in Ocr. The most important bill lately past is that for establishing a Bank. You will see in the inclosed gazetteer the ground on which it was attacked & defended. The bill remained with the President to the last moment allowed him, and was then signed by him. Since the passage of that Bill one has passed for taking Alexa into the district for the seat of Gov't if the Presidt finds it convenient. This is a confirmation of that measure & passed by a very large majority.

I enclose the report of the Secy at War on Col: Taylor's case which you will hand to him. The grounds on which the claim is objected to are stated. The Report has not been decided on by Congs; and having but very lately been made lies over to another session. I can not yet fix on the time of my setting out for Virga. I shall at least wait till the Roads are safer than at present & am not sure that I may not make a trip into New England before I return. I have often projected this gratification to my curiosity, and do not foresee a more convenient opportunity, especially if I should be able to form a party for the purpose. I shall write you again before I make any definite arrangements. Remember me affectly to all.

I have recd yours of the 20th Feby from Falmouth. The young lady you mention has I find connections of the best sort in this place.



## TO AMBROSE MADISON.<sup>1</sup>

Philada April 11, 1791.

Dear Brother

I herewith inclose by a conveyance to Fredericksburg three pamphlets as requested by my father, the other by yourself: to which is added a list of the seeds &c sent lately to Mr Maury, according to the information contained in my last. I have not heard from you in answer to my letter on the subject of Tobacco. I have informed Mr Maury of my request to you to forward a few of the Hhds to this place, and have requested him to ship the rest as usual to his broker in Liverpool. I shall set out at a pretty early day from this place, and shall in company with Mr. Jefferson go at least as far northwardly as Lake George, with which route I shall be able to make some private business partly my own, and partly that of a friend coincide. Whether I shall afterwards extend my route Eastwardly I do not yet decide. I have not yet made any purchase of sugar or coffee as desired by my father. Both articles have fallen, the former is however still high, the latter is tolerably cheap. I shall look at some from the Isle of France today or tomorrow, and shall probably before I leave this provide a supply of that article for the family to whom be so good as to remember me affectly.

## TO THOMAS JEFFERSON.

N. York May 1, 1791.

Dear Sir

Finding on my arrival at Princeton that both Doctr. Witherspoon & Smith had made excursions on the vacation, I had no motive to detain me there; and accordingly pursuing my journey I arrived here the day after I left Philada. my first object was to see Dorhman. He continues to wear the face of honesty, and to profess much anxiety to discharge the claims of Mazzei; but acknowledges that all his moveable property has been brought under such fetters by late misfortunes that no part of it can be applied to that use. His chief resource consisted of money in London which has been attached, improperly as he says, by his brother. This calamity brought on him a protest of his bills, and this a necessity of making a compromise founded on a hypothecation of his effects. His present reliance is on an arrangement which appeals to the friendship of his brother, and which he supposes his brother will not decline when recovered from the misapprehensions which led him to lay his hands on the property in London. A favorable turn of fortune may perhaps open a prospect of immediate aid to Mazzei, but as far as I can penetrate, he ought to count but little on any other resource than the ultimate security of the Western township. I expect to have further explanations however from Dorhman, and may then be better able to judge. I have seen Freneau and given him a line to you.<sup>1</sup> He sets out for Philada. today or tomorrow, though it is not improbable that he may halt in N. Jersey. He is in the habit I find of translating the *Leyden Gazette* and consequently must be fully equal

to the task you had allotted for him. He had supposed that besides this degree of skill, it might be expected that he should be able to translate with equal propriety into French; and under this idea, his delicacy had taken an insuperable objection to the undertaking. Being now set right as to this particular, and being made sensible of the advantages of Philada. over N. Jersey for his private undertaking, his mind is taking another turn, and if the scantiness of his capital should not be a bar, I think he will establish himself in the former. At all events he will give his friends then an opportunity of aiding his decision by their information & counsel. The more I learn of his character talents and principles, the more I should regret his burying himself in the obscurity he had chosen in N. Jersey. It is certain that there is not to be found in the whole catalogue of American Printers, a single name that can approach towards a rivalship.

I send you herewith a copy of Priestley's answer to Burke which has been reprinted here. You will see by a note page 56 how your idea of limiting the right to bind posterity is germinating under the extravagant doctrines of Burke on that subject. Paine's answer has not yet been recd here. The moment it can be got Freneau tells me it will be published in Childs' paper.<sup>1</sup> It is said that the pamphlet has been suppressed in England, and that the Author withdrew to France before or immediately after its appearance. This may account for his not sending copies to his friends in this Country.

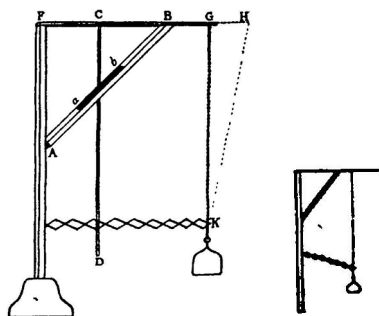
From conversations which I have casually heard, it appears that among the enormities produced by the spirit of speculation & fraud, a practice is spreading of taking out administration on the effects of deceased soldiers and other claimants leaving no representatives. By this knavery if not prevented a prodigious sum will be unsaved by the Public, and reward the worst of its Citizens. A number of adventurers are already engaged in the pursuit, and as they easily get security as Administrators and as easily get a Commission on the usual suggestion of being creditors, they desire nothing more than to ascertain the name of the party deceased or missing, trusting to the improbability of their being detected or prosecuted by the public. It cannot but have happened & is indeed a fact well understood that the unclaimed dues from the U. S. are of very great amount. What a door is here open, for collusion also if any of the Clerks in the Acct. offices are not proof against the temptation!

We understood in Philada that during the suspension of the Bank Bill in the hands of the President, its partizans here indulged themselves in reflections not very decent. I have reason to believe that the licentiousness of the tongues of speculators & Tories far exceeded anything that was conceived. The meanest motives were charged on him, and the most insolent menaces held over him, if not in the open streets, under circumstances not less marking the character of the party.

In returning a visit to Mr. King yesterday, our conversation fell on the Conduct of G. B. towards the U. S., which he evidently laments as much as he disapproves. He took occasion to let me understand, that altho' he had been averse to the appearance of precipitancy in our measures, he should readily concur in them after all probability should be over of voluntary relaxations in the measures of the other party, and that the next session of Congress would present such a crisis if nothing to prevent it should intervene. He mentioned also that a young gentleman here (a son of W. Smith now Ch

Justice of Canada) gives out, as information from his friends in England that no Minister will be sent to this Country until one shall have previously arrived there. What credit may be due to this person or his informers I do not know. It shews at least that the conversation and expectations which lately prevailed are dying away.

A thought has occurred on the subject of your mechanism for the table, which in my idle situation will supply me with another paragraph, if of no other use. <sup>1</sup> The great difficulty incident to your contrivance seemed to be that of supporting the weight of the castor without embarrassing the shortening & lengthening of the moveable radius. Might not this be avoided by suspending the castor by a chain or chord on a radius above, and requiring nothing more of yours than to move the swinging apparatus: thus, A. B. moveable on a shoulder at A would be a necessary brace, and must allow C. D. to pass thro' it and play from a. to b. as the tongs are shortened or lengthened. The use of C. D. would be to connect F. G. & the tongs, so as to make them move together on the common perpendicular axis. As the distance from C to D must vary with with [sic] the protraction of the tongs, the connecting bar ought to be long accordingly, and pass through witht being fixed to the tongs. Its office would in that state be sufficiently performed. The objections to this plan are the height of the perpendicular axis necessary to render the motion of the castor easy, and to diminish the degree in which it wd mount up at the end of the table. Perhaps the objection may be fatal. 2. The nicety of adjusting the friction of the tongs so as not to be inconvenient to the hand, and be sufficient to stop & hold the castor at any part of the table. In this point of view perhaps a slide on a spring would be better than the tongs. In that case C. D. might be fixed, and not moveable in the brace. By projecting F. G. to H. the castor might be made to swing perpendicularly not at the part of the table least distant, but at ye mean distance from the Center, and the difference between its greatest & least elevation & pressure diminished. But inconveniences of another sort might be increased by this expedient. If the tongs or slide were to be placed not horizontally, but inclining so as to lessen the effect of the pressure of the castor without being less moveable by the hand, the 2d objection might be lessened. It wd in that case be of less consequence to project the upper radius as proposed.



I am afraid you will hardly understand what I have attempted to describe, and I have not time if the thing deserved it, to write the letter over again for the present mail.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

N. York May 12, 1791.

Dear Sir

Your favor of the 9th was recd last evening. To my thanks for the several inclosures I must add a request that the letter to Boynton which came in one of them may be handed to him by one of your servants. The directory will point out his habitation.

I had seen Payne's pamphlet with the preface of the Philada Editor.<sup>2</sup> It immediately occurred that you were brought into the Frontispiece in the manner you explain. But I had not foreseen the particular use made of it by the British partizans. Mr. Adams can least of all complain. Under a mock defence of the Republican Constitutions of his Country, he attacked them with all the force he possessed, and this in a book with his name to it whilst he was the Representative of his Country at a foreign Court. Since he has been the 2d Magistrate in the new Republic, his pen has constantly been at work in the same cause, and tho' his name has not been prefixed to his anti republican discourses, the author has been as well known as if that formality had been observed. Surely if it be innocent & decent in one servant of the public thus to write attacks agst its Government, it cannot be very criminal or indecent in another to patronize a written defence of the principles on which that Govt is founded. The sensibility of H [ammond]<sup>1</sup> & B [ond]<sup>2</sup> for the indignity to the Brit. Constt is truly ridiculous. If offence cd be justly taken in that quarter, what would France have a right to say to Burke's pamphlet and the Countenance given to it & its author, particularly by the King himself? What in fact might not the U. S. say, whose revolution & democratic Governments come in for a large share of the scurrility lavished on those of France?

I do not foresee any objection to the route you propose. I had conversed with Beckley on a trip to Boston &c and still have that in view, but the time in view for starting from this place, will leave room for the previous excursion. Health recreation & curiosity being my objects, I can never be out of my way.<sup>3</sup>

Not a word of news here. My letters from Virginia say little more than those you had recd. Carrington says the returns have come in pretty thickly of late and warrant the estimate founded on the Counties named to me some time ago. As well as I recollect, these averaged upwards of 8000 souls, and were considered by him as under the general average.

Yrs AffectLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

New York June 23d 1791.

Dear Sir

I received your favor of the 21st yesterday, inclosing post notes for 235 dollars. I shall obtain the bills of Mrs Elsworth<sup>4</sup> & the Smith this afternoon and will let you know the amount of them. There is a bill from the Taylor amounting to £6,—7 which I shall pay. The articles for which it is due are in my hands and will be forwarded by the first opportunity. If a good one should fall within your notice, it may be well for you to double the chance of a conveyance by giving a commission for the purpose. I have applied to Rivington for the Book but the only copies in Town seem to be of the *8th Edition*. This however is advertised as “enlarged &c by the Author,” who I am told by Berry & Rogers is now living & a correspondent of theirs. It is not improbable therefore that your reason for preferring the 6th Ed: may be stronger in favor of this. Let me know your pleasure on the subject & it shall be obeyed.

I am at a loss what to decide as to my trip to the Eastward. My inclination has not changed, but a journey without a companion, & in the stage which besides other inconveniences travels too rapidly for my purpose, makes me consider whether the next fall may not present a better prospect. My horse is more likely to recover than at the time of your departure. By purchasing another, in case he should get well, I might avoid the Stage, but at an expence not altogether convenient.

You have no doubt seen the French Regulations on the subject of Tobo, which commence hostilities agst the British Navigation Act. Mr. King tells me an attack on Payne has appeared in a Boston paper under the name of Publicola,<sup>1</sup> and has an affinity in the stile as well as sentiments to the discourses on Davila. I observed in a late paper here an extract from a Philada pamphlet on the Bank. If the publication has attracted or deserves notice I should be glad of a copy from you. I will write again in a few days, in the mean time remaining,

YRs Mo: AffecLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

New York June 27, 1791.

Dear Sir

By a Capt: Simms who setts off this afternoon in the Stage for Philadelphia I forward the Bundle of Cloaths from the Taylor. His bill is inclosed with that of Mrs Elseworth including the payment to the Smith.

I have seen Col: Smith more than once. He would have opened his budget fully to me, but I declined giving him the trouble. He has written to the President a statement of all his conversations with ye. British Ministry, which will get into your hands of course. He mentioned to me his wish to have them put there in the first instance and your situation on his arrival as an apology for not doing it. From the complexion of the little anecdotes & observations which dropped from him in our interviews I suspect that report has as usual far overrated the importance of what has been confided to him. General professions which mean nothing, and the sending a Minister which can be suspended at pleasure, or which if executed may produce nothing, are the amount of my present guesses.

Mr. Adams seems to be getting faster & faster into difficulties. His attack on Payne, which I have not seen, will draw the public attention to his obnoxious principles, more than everything he has published. Besides this, I observe in McLean's paper here, a long extract from a sensible letter republished from Poughkeepsie, which gives a very unpopular form to his anti-republican doctrines, and presents a strong contrast of them with a quotation from his letter to Mr. Wythe in 1776.

I am still resting on my oars with respect to Boston. My Horse has had a relapse which made his recovery very improbable. Another favorable turn has taken place, and his present appearance promises tolerably well. But it will be some time before he can be used, if he should suffer no other check. Adieu —*Mad. MSS.*

Yrs

TO JAMES MADISON.

N. York July 2d. 1791.

HonD. Sir

Your favor of the 29th of May never came to hand till yesterday when it fell in with me at this place. My brother's of nearly the same date had done so a few days before.

My answer to his went by the last mail. I refer to it for the information yours requests. I had indeed long before advised you both to ship to Leiper all the good Tobacco of your crops. It is certainly the best you can do with it.

The tour I lately made with Mr. Jefferson of which I have given the outline to my brother was a very agreeable one, and carried us thro an interesting country new to us both. I postpone the details of our travels till I get home which as I mentioned to my brother will be in Augst. I cannot yet say whether it will be towards the middle or last of the month. It gives me much satisfaction to learn that my mother has so far recovered. I hope her health may continue to mend. You do not mention whether she has been or is to be at any of the Springs—I shall attend to the articles you wish for family use on my way thro' Philada unless I should meet with them on satisfactory terms here.

The Report in Georgia relating to me is as absolute a falsehood as ever was propagated. So far am I from being concerned in the Yazoo transaction, that from the nature of it, as it has been understood by me, I have invariably considered it as one of the most disgraceful events that have appeared in our public counsels, and such is the opinion which I have ever expressed of it. I do not think it necessary to write to Genl Mathews, because a report of such a nature does not seem to merit a formal contradiction. I wish him to know however that I am sensible of his friendly attention, and will thank Mr. Taylor, when an opportunity offers, to let him know as much.

The latest accounts from abroad are various & contradictory. The most authentic make it probable that there will be no war between England & Russia, and that there will be peace between the latter & the Turks at the expence of the Turks. From a concurrence of information it is probable also that a public minister from G. B. may pretty soon be expected. If He brings powers & dispositions to form proper commercial arrangements, it will be an interesting change in the councils of that nation; especially as an execution of the Treaty of peace must be a preliminary in the business.

The Crops in general thro' the Country I have passed & heard from are promising. Wheat is selling at Phila. at abt. a dollar a bushel & here in the usual proportion.

Remember me affectly to all, & accept the dutiful respects of your son.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York July 10, 1791.

Dear Sir,

Your favor of the 6th. came to hand on friday. I went yesterday to the person who advertised the Maple Sugar for the purpose of executing your commission on that subject. He tells me that the cargo is not yet arrived from Albany, but is every hour expected; that it will not be sold in parcels of less than 15 or 16 hundred lbs & only at

auction, but that the purchasers will of course deal it out in smaller quantities; that a part is grained and a part not; and that the price of the former will probably be regulated by that of good Muscavado which sells at about £5 N. Y. Currency a Ct. I shall probably be at Flushing in two or three days and have an opportunity of executing your other Com<sup>missions</sup> on the spot. In case of disappointment, I shall send the Letter & money to Prince by the best conveyance to be had. The Maple Seed is not arrived. The Birch Bark has been in my hands some days and will be forwarded as you suggested.

The Bank shares have risen as much in the Market here as at Philadelphia. It seems admitted on all hands now that the plan of the institution gives a moral certainty of gain to the Subscribers with scarce a physical possibility of loss. The subscriptions are consequently a mere scramble for so much public plunder which will be engrossed by those already loaded with the spoils of individuals. The event shews what would have been the operation of the plan, if, as *originally proposed* subscriptions had been limited to the 1st of april and to the favorite species of stock which the Bank Jobbers had monopolized. It pretty clearly appears also in what proportions the public debt lies in the Country. What sort of hands hold it, and by whom the people of the U. S. are to be governed. Of all the shameful circumstances of this business, it is among the greatest to see the members of the Legislature who were most active in pushing this Job openly grasping its emoluments. Schuyler is to be put at the Head of the Directors, if the weight of the N. Y. subscribers can effect it. Nothing new is talked of here. In fact stock-jobbing drowns every other subject. The Coffee-House is in an eternal buzz with the Gamblers.

I have just understood that Freneau is now here & has abandoned his Philada project. From what cause I am wholly unable to determine; unless those who know his talents & hate his political principles should have practiced some artifice for the purpose.

I have given up for this season my trip Eastward. My bilious situation absolutely forbade it. Several lesser considerations also conspired with that objection. I am at present free from a fever but have sufficient evidence, in other shapes that I must adhere to my defensive precautions.

The pamphlet on Weights &c, was put into my hands by Doer Kemp with a view to be forwarded after perusal to you. As I understand it is a duplicate and to be kept by you. Always & mo: affectly.

—*Mad. MSS.*



YRs

TO THOMAS JEFFERSON.

N. York July 13, 1791.

Dear Sir

I received last evening your very kind enquiries after my health. My last will have informed you of the state of it then. I continue to be incommoded by several different shapes of the bile; but not in a degree that can now be called serious. If the present excessive heat should not augment the energy of the cause, I consider myself as in a good way to get rid soon of its effects.

Beckley has just got back from his Eastern trip. He says that the partizans of Mr. Adam's heresies in that quarter are perfectly insignificant in point of number, that particularly in Boston he is become distinguished for his unpopularity, that Publicola is probably the manufacture of his son out of materials furnished by himself, and that the publication is generally as obnoxious in New England as it appears to be in Pennsylvania. If young Adams be capable of giving the dress in which Publicola presents himself, it is very probable he may have been made the Editor of his Father's doctrines. I hardly think the Printer would so directly disavow the fact if Mr. Adams was himself the writer. There is more of method also in the arguments, and much less of clumsiness & heaviness in the style, than characterize his writings. I mentioned to you some time ago an extract from a piece in the Poughkeepsie paper as a sensible comment on Mr. Adams' doctrines. The whole has since been republished here, and is evidently from a better pen than any of the Anti-publicolas I have seen. In Greenleaf's paper of to-day is a second letter from the same quarter, which confirms the character I have given of the Author.

We understand here that 800 shares in the Bank, committed by this City to Mr. Constable, have been excluded by the manner in which the business was conducted. that a considerable number from Boston met with the same fate. and that Baltimore has been kept out in toto. It is all charged on the manœuvres of Philada. which is said to have secured a majority of the whole to herself. The disappointed individuals are clamorous of course, and the language of the place marks a general indignation on the subject. If it should turn out that the cards were packed for the purpose of securing the game to Philada or even that more than half the Institution and of course the whole direction of it, have fallen into the hands of that City, some who have been loudest in their plaudits whilst they expected to share in the plunder, will be equally so in sounding the injustice of monopoly, and the danger of undue influence on the Government.

The Packet is not yet arrived. By a vessel arrived yesterday Newspapers are recd. from London which are said to be later than any yet come to hand. I do not find that any particular facts of moment are handed out. The miscellaneous articles come to me thro' Childs' paper, which you get sooner than I could rehearse to you. It has been

said here by the Anglicans that the President's message to Congs. on the subject of the commercial disposition of G. B. has been asserted openly by Mr. Pitt to be misrepresentation. and as it would naturally be traced to Govr. Morris it has been suggested that he fell into the hands of the Chevr. Luzerne who had the dexterity to play off his negotiations for French purposes. I have reason to believe that B[eckwith] has had a hand in throwing these things into circulation. I wish you success with all my heart in your efforts for Payne.<sup>1</sup> Besides the advantage to him which he deserves, an appointment for him, at this moment would do public good in various ways.

Always & Truly Yours.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug 4, 1791.

My Dear Sir

It being probable that I shall leave this place early in the ensuing week I drop you an intimation of it, that you may keep back my letters that may fall into your hands for me, or that you might intend to favor me with.

The outward bound Packet for Halifax & London sailed today. The one expected for some time past is not yet arrived, and I do not learn that any foreign news is recd. thro any other channel. Stock & scrip continue to be the sole domestic subjects of conversation. The former has mounted in the late sales above par, from which a superficial inference would be drawn that the rate of interest had fallen below 6 Per Ct. It is a fact however which explains the nature of these speculations, that they are carried on with money borrowed at from Per Ct. a month, to 1 Per Ct. a week.

Adieu YRs. Mo: AffecLy.—*Mad. MSS.*

TO THOMAS JEFFERSON.

N. York Aug: 8 1791.

My Dear Sir

I take the liberty of putting the inclosed into your hands that in case Col: Lee should have left Philada. the contents may find their way to Col: Fisher who is most interested in them. And I leave it open for the same purpose. The Attorney will be a fit channel in the event of Col: Lee's departure, for conveying the information.

You will find an allusion to some mysterious cause for a phenomenon in Stocks. It is surmised that the deferred debt is to be taken up at the next session, and some anticipated provision made for it. This may either be an invention of those who wish

to sell, or it may be a reality imparted in confidence to the purchasers or smelt out by their sagacity. I have had a hint that something is intended and has dropt from — —[1](#) which has led to this speculation. I am unwilling to credit the fact, untill I have further evidence, which I am in a train of getting if it exists. It is said that packet boats & expresses are again sent from this place to the Southern States, to buy up the paper of all sorts which has risen in the market here. These & other abuses make it a problem whether the system of the old paper under a bad Government, or of the new under a good one, be chargeable with the greater substantial injustice. The true difference seems to be that by the former the few were the victims to the many; by the latter the many to the few. It seems agreed on all hands now that the bank is a certain & gratuitous augmentation of the capitals subscribed, in a proportion of not less than 40 or 50 Per Ct. and if the deferred debt should be immediately provided for in favor of the purchasers of it in the deferred shape, & since the unanimous vote that no change shd. be made in the funding system, my imagination will not attempt to set bounds to the daring depravity of the times. The stock-jobbers will become the pretorian band of the Government, at once its tool & its tyrant; bribed by its largesses, & overawing it by clamours & combinations. Nothing new from abroad. I shall not be in Philada. till the close of the Week.

Adieu. Yrs Mo: AffY.—*Mad. MSS.*

TO JAMES MADISON.

Philada Ocr. 30, 1791.[1](#)

Hond Sir

We arrived here yesterday morning was a week, having been obliged to push through the bad weather by the discovery first made at Mount Vernon that the meeting of Congress was a week earlier than was calculated at our setting out. The President had been under the same mistake, and had but just been apprized of it. Many others had equally miscalculated.

Being obliged to attend immediately on my arrival to public business I have not been able to give the attention to yours and that of others which I wished. I have however seen Mr Leiper so far as to learn from him that your Fredericksburg Tobo. is in his hands, and that a shilling or two more may be expected for it than for the preceding shipment. As soon as the sale is made, and I can execute the other commissions you have given me, I will write you an account of the whole. The price of the best Sugars is I find £4—8 Virga currency per Ct and coffee about 1/ do per lb.

The past week has been spent rather in preparations for the business of the present Session of Congs than in the actual commencement of it. You will find what has been done in the inclosed papers.—Mr. Hammond the expected Minister from G. Britain arrived in the last packet & has been here some days. His public character has not yet been announced in form. If any communications have been made by him on the subject of his mission, they are known to the Executive Department alone. I am

extremely anxious to know the state of my mothers health which was so unsettled when I left home. I am looking out for the information by every mail. present my dutiful regards to her.—*Mad. MSS.*

## TO ROBERT PLEASANTS.

Philada. Ocr 30, 1791.

Sir

The delay in acknowledging your letter of the 6th June last proceeded from the cause you conjectured. I did not receive it till a few days ago, when it was put into my hands by Mr. James Pemberton, along with your subsequent letter of the 8th August.<sup>1</sup>

The petition relating to the Militia bill contains nothing that makes it improper for me to present it. I shall therefore readily comply with your desire on that subject. I am not satisfied that I am equally at liberty with respect to the other petition. Animadversions such as it contains, and which the authorized object of the petitioners did not require on the slavery existing in our country, are supposed by the holders of that species of property, to lessen the value by weakening the tenure of it. Those from whom I derive my public station are known by me to be greatly interested in that species of property, and to view the matter in that light. It would seem that I might be chargeable at least with want of candour, if not of fidelity, were I to make use of a situation in which their confidence has placed me to become a volunteer in giving a public wound, as they would deem it, to an interest on which they set so great a value. I am the less inclined to disregard this scruple, as I am not sensible that the event of the petition would in the least depend on the circumstance of its being laid before the House by this or that person.

Such an application as that to our own Assembly on which you ask my opinion, is a subject in various respects, of great delicacy and importance. The consequences of every sort ought to be well weighed by those who would hazard it. From the view under which they present themselves to me, I cannot but consider the application as likely to do harm rather than good. It may be worth your own consideration whether it might not produce successful attempts to withdraw the privilege now allowed to individuals, of giving freedom to slaves. It would at least be likely to clog it with a condition<sup>1</sup> that the persons freed should be removed from the Country; there being arguments of great force for such a regulation, and some would concur in it who in general disapprove of the institution of slavery.

I thank you Sir for the friendly sentiments you have expressed towards me; and am with respect and esteem.

Your Obed<sup>t</sup>. Hble Serv<sup>t</sup>.—*Mad. MSS.*

TO JAMES MADISON.

Philada. Novr. 13, 1791.

Hon<sup>d</sup>. Sir

I recd yesterday a letter from my brother Ambrose which gave me the first information I have had since I left home concerning the state of my mothers health. I am extremely glad to find she had so much mended and hope her health may continue to grow better.

My brother signified to me that Miss Boynton wished a furr instead of a chip hat to be sent her. Unluckily the latter had been bought, packed up, & sent off in a trunk with the other articles, before his letter got to hand. It was consequently too late to make the change. If she wishes the other hat to be procured & forwarded, no time in giving me notice is to be lost, as the progress of the winter will soon put an end to the intercourse with Virginia by water. I have provided all the articles desired by my brother except the shoes for himself, which owing to a variance between the shoemakers & their journeymen on the point of wages, could not be got. His linnen is packed up with the coffee sent you. His crate of ware, will go by itself addressed to the care of Mr. J. Blair. The remainder of his articles are in a Trunk which contains moreover the articles for Mrs. Mason & Fanny; except the Breast pin which has been delayed by the absence of the artist. I must take some private oppy. to send it to my brother W. in Richmond. The trunk is already gone, or will go in a day or two addressed to Mr Maury. Besides the articles abovementioned, I have put into it a parcel of cloaths which I consign to the disposal of my mother—Finding that sugar was not likely to fall, I procured you a supply of that article as well as of coffee. They have both been sent off about a week ago addressed to Mr Maury, and are probably by this time in Fredericksbrg. The quantity of Sugar is 400 lb. and of coffee 150lb, 50lb of it being of the Bourbon sort.

The Nail rods you want are not to be got in the City, and the price of the sheet bags is 2/9 Pa curry a pound, which so far exceeds your limitation, that I declined sending it.—Mr. Leiper has not yet sold your Tobo. he says two Hhds are pretty good; the others very deficient in substance. He speaks favorably of the manner in which the Tobo has been handled & put up, & thinks its value would have been much greater, if it had been tapped lower. In answer to my enquiry as to stemmed Tobo he says the difference will vary from 25 to 33 per Ct. If any should be sent him he recommends care in taking out the stem, so as to tear the leaf as little as possible—your loan-office Certificates have been funded as I learn from Messrs Wister & Ashton your letter arrived in time, and according to the office construction of the law, the defect of liquidation prior to June, did not stand in the way—The six per Cts. I am just told have got up to 24/ in the pound, giving credit till March. If you chuse to sell, you will let me know—as soon as I get in all the bills from those of whom I have purchased the different articles for yourself my brother A &c., I will forward an account of the

whole. Mr. Freneau has sent papers to Fredg. for subscribers whose names I brought with me. I must beg you to collect & send us, as soon as possible the other subscriptions in Orange—and get the same done for Culpeper.

The inclosed paper will give you a glance of what is going on in Congress who have not yet entered into the substantial parts of their business. It will also let you know all that I could add as to foreign information.

YR AffectN Son—*Mad. MSS.*

[\[1\]](#)

TO HENRY LEE.

Philada. Decr 18th 1791.

My Dear Sir

I have received your favor of the 8th & handed to Freneau the subscriptions inclosed for him. His paper in the opinion here justifies the expectations of his friends and merits the diffusive circulation they have endeavoured to procure it.

I regret that I can administer no balm to the wound given by the first report of our western disaster.<sup>2</sup> You will have seen the official account which has gone into all the Newspapers. It does not seem to contain any of the saving circumstances you are so anxious to learn. The loss of blood is not diminished, and that of impression, is as great as the most compleat triumph of the savages can render it. The measures planning for the reparation of the calamity are not yet disclosed. The suspected relation of Indian hostility to the Western Posts, became here as with you, a subject of pretty free conversation. Mr. Hammond has officially disavowed by authority from his Court the imputation of encouraging those hostilities through the Government of Canada. He has also contradicted on his personal conviction, the allegations of like countenance to the hostile proceedings of Bowles in the Southern quarter. Nothing is yet public with respect to his general communications with the Executive. Major Thomas Pinkney is to be Minister at London.

The representation bill is still on hand. The Senate after detaining it a considerable time, and trying sundry improper expedients for making out a ratio of a different aspect from the simple and obvious one proposed to them, at length agreed by the casting voice of the Chair to alter the ratio of 1 for 30,000 to 1 for 33,000. The H of Reps. disagreed tho' by a bare majority only. The Senate have insisted, and tomorrow will decide the eventual temper of the H of Reps on the subject. Should they be firm enough to adhere, the Senate will probably recede. Should a conference be proposed I auger unfavorably of the issue. The chance will be much bettered if Col. Lee who we hear is on the road, should arrive in time. Whatever the decision of the House of Reps. may be, it will turn on very few votes, possibly on that of the chair.

On the subject of Great Falls, I insist that you do not sacrifice or risk the prospect on my account. Your honor cannot forbid, whilst my poverty continues to require, that you transfer your friendly purpose from me to some other friend, whose resources will better correspond with it. Mine cannot be relied on, and I should be particularly unhappy at being accessory to the danger of one who had been so anxious to be instrumental to my advantage.

Let me beg you to reconsider your resolution, and not to let me stand in the way of your success, which I ought to wish much more on your account, than on my own being on this occasion under particular obligations to you, and on all your affectionate friend.

—*Mad. MSS.*

[1] February 6, 1792, in the debate on the bill to encourage the cod fisheries Madison repeated his constitutional views substantially as in his speech of February 8, 1791.

## TO EDMUND PENDLETON.

Philada Feby 21, 1792.

Dear Sir

Your favor of the 8th did not come to hand till this afternoon. I thank you for the very just & interesting observations contained in it. I have not yet met with an opportunity of forwarding the Report on Manufactures; nor has that subject been yet regularly taken up. The constitutional doctrine however advanced in the Report, has been anticipated on another occasion, by its zealous friends; and I was drawn into a few hasty animadversions the substance of which you will find in one of the inclosed papers. It gives me great pleasure to find my exposition of the Constitution so well supported by yours.

The Bill concerning the election of a President & Vice President and the eventual successor to both, which has long been depending, has finally got through the two Houses. It was made a question whether the number of electors ought to correspond with the new apportionment or the existing House of Reps. The text of the Constitution was not decisive, and the Northern interest was strongly in favor of the latter interpretation. The intrinsic rectitude however of the former turned the decision in both houses in favor of the Southern. On another point the Bill certainly errs. It provides that in case of a double vacancy, the Executive powers shall devolve on the Prest pro tempore of the Senate & he failing, on the Speaker of the House of Reps.<sup>2</sup> The objections to this arrangement are various, 1. it may be questioned whether these are officers in the constitutional sense. 2. if officers whether both could be introduced. 3. as they are created by the Constitution, they would probably have been there designated if contemplated for such a service, instead of being left to the Legislative selection. 4. Either they will retain their *Legislative* stations, and then incompatible functions will be blended; or the incompatibility will supersede those stations, & then

those being the substratum of the adventitious functions, these must fail also. The Constitution says, Congs. may declare *what officers &c.* which seems to make it not an appointment or a translation; but an annexation of one office or trust to another office. The House of Reps proposed to substitute the Secretary of State, but the Senate disagreed, & there being much delicacy in the matter it was not pressed by the former.

Another Representation Bill has gone to the Senate modelled on the double idea mentioned in my last. 1 for 30,000 is the ratio fixed both for the late & the proposed Census. The fate of the Bill in the Senate is problematical. The Bill immediately before the H. of Reps is a Militia Bill.

I have nothing to add to the contents of the Newspapers on other subjects foreign or domestic.

With the highest esteem & sincere affn

I Remain Dear Sir YRs

—*Mad. MSS.*

[1] From *The National Gazette*, March 5, 1792.

TO JAMES MADISON.

Philada March 15, 1792.

HonD Sir

The last letter recd. from you was that of Feby 1. Since my answer to that the state of the roads & rivers has been such as to render the conveyance of letters very tedious if not uncertain, and thence to produce the interval between that date & the present. I now inclose 5nos. of the *National Gazette*—which continue the intelligence throughout the period of my silence—You will find noticed the progress of the business in Cons and particularly the bills that have passed into laws. The representation-bill which as it went to the Senate proposed again the simple ratio of 1 for 30,000 applied to the respective members in each state, and a second census within a short time to be followed by a like ratio, has come back with the latter provision struck out, and the former so altered as to make the number of Reps amount to 120, instead of 112. This is the more extraordinary as the No. 112 was considered before as too great and a ratio of 1 for 33,000 insisted on & the bill sacrificed to it. The secret of the business is that by these different rules the relative number of Eastn & Southn members is varied. The number of 120 is made out by applying 1 for 30,000 to the aggregate population of the U. S. and allowing to *fractions* of certain amount an additional member. [1](#)



The House of Reprs have been for several days taken up with the Georgia election, which will probably consume several more, a good deal of the more important business still remains to be done; altho' there seems to be a pretty general determination to close the session early in next week.

Leiper has not yet sold your Tobo. The price continues so low that he thinks a change must be for the better & ought to be waited for. The price of sugar has rather risen of late, and seems likely to remain high for some time. The state of the public debt has fallen considerably as you will see by the inclosed papers. You had better have complied with my advice with regard to your little interest in that article, and had in my opinion still better send me a power of attorney as to the principal as well as the interest. With my dutiful regards to my mother.—*Mad. MSS.*

[\[1\]](#)

TO JAMES MADISON.

Apr 17th 1792.

HonD Sir

Col. Wadsworth<sup>2</sup> of Connecticut wishes to procure a Barrel or half Barrel of the best Peach Brandy, & I have undertaken to use my efforts for the purpose. If it can be got at all it is probably in our neighbourhood. I recollect particularly that Col. Geo. Taylor had some that we thought good & which is perhaps to be obtained. If that or any better can be had I shall be glad that one of my brothers would take the trouble of engaging it & having it forwarded. The older the better provided the quality be excellent. If age be wanting, the quality should be such as will be made excellent by age. To secure it against fraud, it is desired that the cask be cased with an outer one; the cask itself to be of wood that will give it no ill taste. The price will not be considered so much as the character of the spirits, it being for the use of the gentleman himself—If no brandy be on hand that will do, perhaps the ensuing fall if the peaches be not destroyed, may supply the defect. In that case it might be well to speak in time to some person & have a barrel distilled with special care for the purpose. The brandy is to be shipped from Fredericksburg addressed to Watson & Greenleaf at New York—for Col. Wadsworth Mr Maury or Mr. Glassell will forward it if sent to either of them. I have nothing to add to the papers enclosed having written a few days ago, & being now in haste.

YR AffeC Son.—*Mad. MSS.*

SUBSTANCE OF A CONVERSATION WITH THE  
PRESIDENT, 5TH MAY, 1792.

In consequence of a note this morning from the President, requesting me to call on

him I did so; when he opened the conversation by observing, that having some time ago communicated to me his intention of retiring from public life on the expiration of his four years, he wished to advise with me on the *mode* and *time* most proper for making known that intention. He had he said spoken with no one yet on those *particular points*, and took this opportunity of mentioning them to me, that I might consider the matter, and give him my opinion, before the adjournment of Congress, or my departure from Philadelphia. He had he said forborne to communicate his intentions to any other persons whatever, but Mr. Jefferson, Col. Hamilton, General Knox, and myself, and of late to Mr. Randolph. Col. Hamilton and Genl. Knox he observed were extremely importunate that he should relinquish his purpose, and had made pressing representations to induce him to it Mr. Jefferson had expressed his wishes to the like effect. He had not however persuaded himself that his continuance in Public life could be of so much necessity or importance as was conceived, and his disinclination to it was becoming every day more & more fixed, so that he wished to make up his mind as soon as possible on the points he had mentioned. What he desired was to prefer that mode which would be most remote from the appearance of arrogantly presuming on his re-election in case he should not withdraw himself, and such a time as would be most convenient to the Public in making the choice of his successor. It had he said at first occurred to him, that the commencement of the ensuing Session of Congress would furnish him with an apt occasion for introducing the intimation, but besides the lateness of the day, he was apprehensive that it might possibly produce some notice in the reply of Congress that might entangle him in farther explanations. I replied that I would revolve the subject as he desired and communicate the result before my leaving Philada but that I could not but yet hope there would be no necessity at this time for his decision on the two points he had stated. I told him that when he did me the honor to mention the resolution he had taken, I had forborne to do more than briefly express my apprehensions that it would give a surprize and shock to the public mind, being restrained from enlarging on the subject by an unwillingness to express sentiments sufficiently known to him; or to urge objections to a determination, which if absolute, it might look like affectation to oppose; that the aspect which things had been latterly assuming, seemed however to impose the task on all who had the opportunity of urging a continuance of his public services; and that under such an impression I held it a duty, not indeed to express my wishes which would be superfluous, but to offer my opinion that his retiring at the present juncture might have effects that ought not to be hazarded; that I was not unaware of the urgency of his inclination; or of the peculiar motives he might feel to withdraw himself from a situation into which it was so well known to myself he had entered with a scrupulous reluctance; that I well recollected the embarrassments under which his mind labored in deciding the question on which he had consulted me, whether it could be his duty to accept his present station after having taken a final leave of public life; and that it was particularly in my recollection that I then entertained & intimated a wish that his acceptance, which appeared to be indispensable, might be known hereafter to have been in no degree the effect of any motive which strangers to his character might suppose, but of the severe sacrifice which his friends knew, he made of his inclinations as a man, to his obligations as a citizen; that I owned I had at that time contemplated, & I believed, suggested as the most unequivocal tho' not the only proof of his real motive, a voluntary return to private life as soon as the state of the Government would permit, trusting that if any

premature casualty should unhappily cut off the possibility of this proof, the evidence known to his friends would in some way or other be saved from oblivion and do justice to his character; that I was not less anxious on the same point now than I was then; and if I did not conceive that reasons of a like kind to those which required him to undertake still required him to retain for some time longer, his present station, or did not presume that the purity of his motives would be sufficiently vindicated, I should be the last of his friends to press, or even to wish, such a determination.

He then entered on a more explicit disclosure of the state of his mind; observing that he could not believe or conceive himself any wise necessary to the successful administration of the Government; that, on the contrary he had from the beginning found himself deficient in many of the essential qualifications, owing to his inexperience in the forms of public business, his unfitness to judge of legal questions, and questions arising out of the Constitution; that others more conversant in such matters would be better able to execute the trust; that he found himself also in the decline of life, his health becoming sensibly more infirm, & perhaps his faculties also; that the fatigues & disagreeableness of his situation were in fact scarcely tolerable to him; that he only uttered his real sentiments when he declared that his inclination would lead him rather to go to his farm, take his spade in his hand, and work for his bread, than remain in his present situation; that it was evident moreover that a spirit of party in the Government was becoming a fresh source of difficulty, and he was afraid was dividing some (alluding to the Secretary of State and Secy of the Treasury) more particularly connected with him in the administration; that there were discontents among the people which were also shewing themselves more & more, & that altho' the various attacks against public men & measures had not in general been pointed at him, yet in some instances it had been visible that he was the indirect object, and it was probable the evidence would grow stronger and stronger that his return to private life was consistent with every public consideration, and, consequently that he was justified in giving way to his inclination for it.

I was led by this explanation to remark to him, that however novel or difficult the business might have been to him, it could not be doubted that with the aid of the official opinions & informations within his command his judgment must have been as competent in all cases, as that of any one who could have been put in his place, and in many cases certainly more so; that in the great point of conciliating and uniting all parties under a Govt which had excited such violent controversies & divisions, it was well known that his services had been in a manner essential; that with respect to the spirit of party that was taking place under the operations of the Govt. I was sensible of its existence but considered that as an argument for his remaining, rather than retiring, until the public opinion, the character of the Govt., and the course of its administration shd be better decided, which could not fail to happen in a short time, especially under his auspices; that the existing parties did not appear to be so formidable to the Govt as some had represented; that in one party there might be a few who retaining their original disaffection to the Govt might still wish to destroy it, but that they would lose their weight with their associates, by betraying any such hostile purposes; that altho' it was pretty certain that the other were in general unfriendly to republican Govt and probably aimed at a gradual approximation of ours to a mixed monarchy, yet the public sentiment was so strongly opposed to their views,

and so rapidly manifesting itself, that the party could not long be expected to retain a dangerous influence; that it might reasonably be hoped therefore that the conciliating influence of a temperate & wise administration would before another term of four years should run out, give such a tone & firmness to the Government as would secure it against danger from either of these descriptions of enemies; that altho' I would not allow myself to believe but that the Govt would be safely administered by any successor elected by the people, yet it was not to be denied that in the present unsettled condition of our young Government, it was to be feared that no successor would answer all the purposes to be expected from the continuance of the present chief magistrate, that the option evidently lay between a few characters; Mr. Adams, Mr. Jay, & Mr. Jefferson were most likely to be brought into view; that with respect to Mr. Jefferson his extreme repugnance to public life & anxiety to exchange it for his farm & his philosophy made it doubtful with his friends whether it would be possible to obtain his own consent, and if obtained, whether local prejudices in the Northern States, with the views of Pennsylvania in relation to the seat of Govt, would not be a bar to his appointment. With respect to Mr. Adams, his monarchical principles, which he had not concealed, with his late conduct on the representation bill, had produced such a settled dislike among republicans every where, & particularly in the Southern States, that he seemed to be out of the question. It would not be in the power of those who might be friendly to his private character & willing to trust him in a public one, notwithstanding his political principles to make head against the torrent. With respect to Mr. Jay his election would be extremely dissatisfactory on several accounts. By many he was believed to entertain the same obnoxious principles with Mr. Adams, & at the same time would be less open and therefore more successful in propagating them. By others (a pretty numerous class) he was disliked & distrusted, as being thought to have espoused the claims of British Creditors at the expence of the reasonable pretensions of his fellow Citizens in debt to them. Among the Western people, to whom his negotiations for ceding the Mississippi to Spain were generally known, he was considered as their most dangerous enemy & held in peculiar distrust & disesteem. In this state of our prospects which was rendered more striking by a variety of temporary circumstances, I could not forbear thinking that altho' his retirement might not be fatal to the public good, yet a postponement of it was another sacrifice exacted by his patriotism.

Without appearing to be any wise satisfied with what I had urged he turned the conversation to other subjects; & when I was withdrawing repeated his request that I would think of the points he had mentioned to me, & let him have my ideas on them before the adjournment. I told him I would do so, but still hoped his decision on the main question would supersede for the present all such incidental questions.

Wednesday Evening, May 9, 1792.

Understanding that the President was to set out the ensuing morning for Mount Vernon, I called on him to let him know that as far as I had formed an opinion on the subject he had mentioned to me, it was in favor of a direct address of notification to the public in time for its proper effect on the election, which I thought might be put into such a form as would avoid every appearance of presumption or indelicacy, and seemed to be absolutely required by his situation. I observed that no other mode

deserving consideration had occurred, except the one he had thought of & rejected, which seemed to me liable to the objections that had weighed with him. I added that if on farther reflection I shd. view the subject in any new lights, I would make it the subject of a letter tho' I retained my hopes that it would not yet be necessary for him to come to any opinion on it. He begged that I would do so, and also suggest any matters that might occur as proper to be included in what he might say to Congress at the opening of their next Session; passing over the idea of his relinquishing his purpose of retiring in a manner that did not indicate the slightest assent to it.

Friday, May 25, 1792.

I met the President on the road returning from Mount Vernon to Philada, when he handed me the letter dated at the latter place on the 20th of May, 1 the copy of the answer to which on the 21st of June is annexed.—*Mad. MSS.*

## COPY OF A LETTER TO PRESIDENT WASHINGTON.

Orange June 21, 1792.

Dear Sir

Having been left to myself for some days past, I have made use of the opportunity for bestowing on your letter of the 20th Ult, handed to me on the road, the attention which its important contents claimed. The questions which it presents for consideration are—1. at what time a notification of your purpose to retire will be most convenient? 2. what mode will be most eligible? 3. whether a valedictory address will be requisite or advisable? 4. if either, whether it would be more properly annexed to the notification or postponed to your actual retirement.

1. The answer to the first question involves two points: first the expediency of delaying the notification; secondly the propriety of making it before the choice of electors takes place, that the people may make the choice with an eye to the circumstances under which the trust is to be executed. On the first point, the reasons for as much delay as possible are too obvious to need recital. The second, depending on the times fixed in the several States which must be within 34 days preceding the first wednesday in December, requires that the notification should be in time to pervade every part of the Union, by the beginning of November. Allowing six weeks for this purpose, the middle of September, or perhaps a little earlier would seem a convenient date for the act.

2. With regard to the mode, none better occurs than a simple publication in the newspapers. If it were proper to address it through the medium of the general Legislature, there will be no opportunity. Nor does the change of situation seem to admit a recurrence to the State Govts, which were the channels used for the former valedictory address. A direct address to the people who are your only constituents can be made I think with most propriety, thro' the independent channel of the press, thro' which they are as a constituent Body usually addressed.

3. On the third question I think there can be no doubt that such an address is rendered *proper* in itself by the peculiarity & importance of the circumstances which mark your situation; and *advisable* by the salutary & operative lessons of which it may be made the vehicle. The precedent at your military exit might also subject an omission now to conjectures & interpretations which it would not be well to leave room for.

4. The remaining question is less easily decided. Advantages & objections lie on both sides of the alternative. The occasion on which you are *necessarily* addressing the people evidently introduces, most easily & most delicately, any *voluntary* observations that are meditated. In another view a farewell address before the final moment of departure is liable to the appearance of being premature & awkward. On the opposite side of the alternative however a postponement will beget a dryness & an abridgement in the first address little corresponding with the feelings which the occasion would naturally produce both in the author & the objects of it; and tho' not liable to the above objection, would require a resumption of the subject apparently more forced, and on which the impressions having been anticipated & familiarized, and the public mind diverted perhaps to other scenes, a second address would be received with less sensibility & effect than if incorporated with the impressions incident to the original one. It is possible too that previous to the close of the term, circumstances might intervene in relation to public affairs, or the succession to the Presidency which would be more embarrassing, if existing at the time of a valedictory appeal to the public, than if unknown at the time of that delicate measure.

On the whole my judgment leans to the propriety of blending the acts together; and the more so as the crisis which will terminate your public career will still afford an opportunity, if any immediate contingency shd call for a supplement to your farewell observations. But as more correct views of the subject, may produce a different result in your mind, I have endeavored to fit the draught inclosed to either determination. You will readily observe that in executing it, I have arrived at that plainness & modesty of language which you had in view, & which indeed are so peculiarly becoming the character & the occasion; & that I have had, little more to do as to the matter than to follow the very just & comprehensive outline which you had sketched. I flatter myself, however, that in every thing which has depended on me, much improvement will be made before so interesting a paper shall have taken its last form.

Having thus, Sir, complied with your wishes, by proceeding on a supposition that the idea of retiring from public life is to be carried into execution, I must now gratify my own by hoping that a reconsideration of the measure, in all its circumstances and consequences will have produced an acquiescence in one more sacrifice, severe as it may be, to the desires & interests of your country. I forbear to enter into the arguments which plead for it, in my mind, because it would be only repeating what I have already taken the liberty of fully explaining. But I could not conclude such a letter as the present without a repetition of my ardent wishes & hopes that our country may not at this important conjuncture be deprived of the inestimable advantage of having you at the head of its Counsels.

J. M. Jr

***[Draught Enclosed In The Above.]***

The period which will close the appointment with which my fellow-citizens have honored me, being not very distant, and the time actually arrived at which their thoughts must be designating the Citizen who is to administer the Executive Government of the U. S. during the ensuing term, it may be requisite to a more distinct expression of the public voice that I should apprise such of my fellow Citizens as may retain their partiality towards me, that I am not to be numbered among those out of whom a choice is to be made. I beg them to be assured that the resolution which dictates this intimation has not been taken without the strictest regard to the relation which as a dutiful citizen I bear to my country; and that in withdrawing that tender of my service which silence in my situation might imply, I am not influenced by the smallest deficiency of zeal for its future interests, or of grateful respect for its past kindness; but by the fullest persuasion, that such a step is compatible with both. The impressions under which I entered on the present arduous trust were explained on the proper occasion. In discharge of this trust, I can only say, that I have contributed towards the organization & administration of the Government the best exertions of which a very fallible judgment was capable. For any errors which may have flowed from this source, I feel all the regret which an anxiety for the public good can excite; not without the double consolation however arising from a consciousness of their being involuntary, and an experience of the candor which will interpret them. If there were any circumstances which could give value to my inferior qualifications for the trust, these circumstances must have been temporary. In this light was the undertaking viewed when I ventured upon it. Being moreover still farther advanced into the decline of life, I am every day more sensible that the increasing weight of years, renders the private walks of it in the shade of retirement as necessary as they will be acceptable to me. May I be allowed to add, that it will be among the highest as well as the purest enjoyments that can sweeten the remnant of my days, to partake in a private station in the midst of my fellow Citizens, of that benign influence of good laws under a free Government which has been the ultimate object of all our wishes, and in which I confide as the happy reward of our cares & labors. May I be allowed further to add as a consideration far more important, that an early example of rotation in an office of so high & delicate a nature may equally accord with the republican spirit of our constitution & the ideas of liberty & safety entertained by the people.

(If a farewell address is to be added at the expiration of the term, the following paragraph may conclude the present:)

Under these circumstances, a return to my private station according to the purpose with which I quitted it, is the part wch. duty as well as inclination assigns me. In executing it I shall carry with me every tender recollection which gratitude to my fellow Citizens can awaken; and a sensibility to the permanent happiness of my country that will render it the object of my unceasing vows and most fervent supplications.

(Should no further address be intended, the preceding clause may be omitted, & the present address proceed as follows:)

In contemplating the moment at which the curtain is to drop forever on the public scenes of my life, my sensations anticipate & do not permit me to suspend, the deep acknowledgments required by that debt of gratitude which I owe to my beloved country for the many honors it has conferred on me, for the distinguished confidence it has reposed in me, and for the opportunities I have thus enjoyed of testifying my inviolable attachment by the most steadfast services which my faculties could render. All the returns I have now to make will be in those vows which I shall carry with me to my retirement & to my grave, that Heaven may continue to favor the people of the U. S. with the choicest tokens of its beneficence; that their union & brotherly affection may be perpetual; that the free constitution, which is the work of their own hands, may be sacredly maintained; that its administration in every Department may be stamped with wisdom & with virtue, & that this character may be ensured to it by that watchfulness over public servants & public measures which on one hand will be necessary to prevent or correct a degeneracy, and that forbearance on the other, from unfounded or indiscriminate jealousies which would deprive the public of the best services by depriving a conscious integrity of one of the noblest incitements to perform them; that, in fine, the happiness of the people of America under the auspices of liberty may be made compleat, by so careful a preservation & so prudent a use of this blessing as will acquire them the glorious satisfaction of recommending it to the affection, the praise, & the adoption of every nation which is yet a stranger to it.

And may we not dwell with well-grounded hopes on this flattering prospect, when we reflect on the many ties by which the people of America are bound together, & the many proofs they have given of an enlightened judgment and a magnanimous patriotism.

We may all be considered as the children of one common country. We have all been embarked in one common cause. We have all had our share in common sufferings & common successes. The portion of the earth allotted for the Theatre of our fortunes fulfils our most sanguine desires. All its essential interests are the same; whilst the diversities arising from climate, from soil, & from other local & lesser peculiarities, will naturally form a mutual relation of the parts that must give to the whole a more entire independence, than has perhaps fallen to the lot of any other nation.

To confirm these motives to an affectionate & permanent Union & to secure the great objects of it, we have established a common Government, which being free in its principles, being founded in our own choice, being intended as the guardian of our common rights & the patron of our common interests, & wisely containing within itself a provision for its own amendment as experience may point out its errors, seems to promise everything that can be expected from such an institution; and if supported by wise counsels, by virtuous conduct, & by mutual & friendly allowances, must approach as near to perfection as any human work can aspire, & nearer than any which the annals of mankind have recorded.



With these wishes & hopes I shall make my exit from civil life, and I have taken the same liberty of expressing them which I formerly used in offering the sentiments which were suggested by my exit from military life. If, in either instance I have presumed more than I ought on the indulgence of my fellow citizens, they will be too generous to ascribe it to any other cause, than the extreme solicitude which I am bound to feel, & which I can never cease to feel, for their liberty their prosperity & their happiness<sup>1</sup> —*Mad. MSS.*

## TO EDMUND RANDOLPH.

Orange Sepr 13, 1792.

### My Dear Friend

Your favor of the 12 Ult having arrived during an excursion into Albemarle, I did not receive it till my return on yesterday. I lose not a moment in thanking you for it, particularly for the very friendly paragraph in the publication in Fenno's paper. As I do not get his paper here, it was by accident I first saw this extraordinary manouvre of calumny, the quarter, the motive, and the object of which speak of themselves. As it respects Mr. Jefferson I have no doubt that it will be of service both to him & the public, if it should lead to such an investigation of his political opinions and character as may be expected. With respect to myself the consequence in a public view, is of little account. In any view, there could not have been a charge founded on a grosser perversion of facts, & consequently against which I could feel myself more invulnerable.

That I wished & recommended Mr. Freneau to be appd. to his present Clerkship is certain. But the Department of State was not the only, nor as I recollect the first one to which I mentioned his name & character. I was governed in these recommendations by an acquaintance of long standing, by a respect for his talents, & by a knowledge of his merit & sufferings in the course of the revolution. Had I been less abstemious in my practice from solicitations in behalf of my friends, I should probably have been more early in thinking of Mr. F. The truth is, that my application when made did not originate with myself. It was suggested by another Gentleman<sup>1</sup> who could feel no motive but a disposition to patronize merit, & who wished me to co-operate with him. That with others of Mr. Freneau's particular acquaintances I wished & advised him to establish a press at Philada instead of one meditated by him in N Jersey, is also certain, I advised the change because I thought his interest would be advanced by it, & because as a friend I was desirous that his interest should be advanced. This was my primary & governing motive. That as a consequential one, I entertained hopes that a free paper meant for general circulation, and edited by a man of genius of republican principles, & a friend to the Constitution, would be some antidote to the doctrines & discourses circulated in favour of Monarchy and Aristocracy & would be an acceptable vehicle of public information in many places not sufficiently supplied with it, this also is a certain truth; but it is a truth which I never could be tempted to conceal, or wish to be concealed. If there be a temptation in the case, it would be to make a merit of it.

But that the establishment of Mr. F's press was wished in order to sap the Constitution, and that I forwarded the measure, or that my agency negotiated it by an illicit or improper connection between the functions of a translating Clerk in a public office, & those of an Editor of a Gazette, these are charges which ought to be as impotent as they are malicious. The first is surely incredible, if any charge could be so; & the second is I hope at least improbable, & not to be credited, until unequivocal proof shall be substituted for anonymous & virulent assertions.

When I first saw the publication I was half disposed to meet it with a note to the printer, with my name subscribed. I was thrown into suspense however by reflecting that as I was not named, & was only incidentally brought into view, such a step might be precipitate, if not improper, in case the principal should not concur in such a mode of vindication. 2. that I was not enough acquainted with the turn the thing might take, and the light in which it might be viewed on the spot. 3. that in a case the least doubtful, prudence would not rush into the newspapers. These considerations have been since sanctioned by the opinion of two or three judicious & neutral friends whom I have consulted. The part finally proper however remains to be decided and on that I shall always be thankful for the ideas of my friends most in a condition to judge.<sup>1</sup> —*Mad. MSS.*

[1] Pacificus (Alexander Hamilton) defended the proclamation of neutrality in eight articles in the Gazette of the United States, the last one appearing July 27; Jefferson was so alarmed at the effect they were producing that he wrote Madison, July 7; "Nobody answers him & his doctrines will therefore be taken for confessed. For God's sake, my dear Sir, take up your pen, select the most striking heresies and cut him to pieces in the face of the public. There is nobody else who can & will enter the lists against him." (*Writings*, vi., 338.) Madison's five articles under the name Helvidius appeared in the same paper on the following dates: No. 1, August 24; No. 2, August 28, and September 11; No. 3, September 7; No. 4, September 14; and No. 5, September 18. The interest in the articles was extraordinary because there was no doubt who the real authors were. Madison's arguments were chiefly directed against Hamilton's first paper which unfolded his idea of the powers of the Executive. He had when he began to write the articles the intention of meeting all of Hamilton's arguments, but he abandoned the task. All the letters were reprinted in 1845 by J. and G. S. Gideon (Washington) and in the *Writings of Hamilton* (Lodge), iv., 135, seven of the Pacificus papers are given.

## TO THOMAS JEFFERSON.

July 30, 1793.

As I intimated in my last I have forced myself into the task of a reply. I can truly say I find it the most grating one I ever experienced; and the more so as I feel at every step I take the want of counsel on some points of delicacy as well as of information as to sundry matters of fact. I shall be still more sensible of the latter want when I get to the attack on French proceedings, & perhaps to the last topic proposed by the writer, if I ever do get to it. As yet I have but roughly and partially gone over the first; & being obliged to proceed in scraps of time, with a distaste to the subject, and a distressing

lassitude from the excessive & continued heat of the season, I cannot say when I shall finish even that. One thing that particularly vexes me is that I foreknow from the prolixity & pertinacity of the writer, that the business will not be terminated by a single fire, and of course that I must return to the charge in order to prevent a triumph without a victory. <sup>1</sup>Do you know what is the idea of France with regard to the defensive quality of the Guaranty; and of the criterion between offensive & defensive war which I find differently defined by different jurists; also what are the ideas of the P. on these points. I could lay my course with more advantage thro' some other parts of the subject if I could also know how far he considers the Procln as expressing a neutrality in the sense given to that term, or how far he approves the vindication of it on that ground.

I am sorry to find the journey to Virga<sup>2</sup> from which useful lessons were hoped, ending in a confirmation of errors. I can only account for it by supposing the public sentiment to have been collected from tainted sources, wch ought to have suggested to a cautious & unbiassed mind the danger of confiding in them. The body of the people are unquestionably attached to the Union, and friendly to the Constitution; but that they have no dissatisfaction at the measures & spirit of the Government, I consider as notoriously untrue. I am the more surprised at the misconception of our Friend as the two latest sources consulted, the two brothers<sup>3</sup> I mean, are understood to be both of them rightly disposed as well as correctly informed.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Augst 5, 93.

Your acct of the ticklish situation with respect to Genet in the 14th is truly distressing. His folly would almost beget suspicions of the worst sort. The consequences you point out in case matters come to an extremity are so certain & obvious that it is hardly conceivable he can be blind to them. Something must be done if possible to get him into a better train. I find by the paper of the 27, that Pacificus has entered & I suppose closed his last topic. I think it a feeble defence of one important point I am striking at: viz., the making a declaration *in his sense of it*, before the arrival of Genet. I argue that the Act does not import a decision agst the cas: fed; from the manifest impropriety of doing so on the ground that France was the aggressor in *every* war, without at least waiting for evidence as to the question of fact who made the first attack admitting for the sake of argt that to be the intention. A difficulty has occurred which will retard my remarks more than I expected. They must be prepared for the *same Gazette* consequently copied into another hand I am laying a plan for havg it done here, but it cannot be done as quickly as I wish.—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Augst 11, 93.

The task on which you have put me, must be abridged so as not to go beyond that period. You will see that the first topic is not yet compleated. I hope the 2d, & 3d, to wit the meang of the Treaty & the obligations of gratitude will be less essential. The

former is particularly delicate; and tho' I think it may be put in a light that wd reflect ignominy on the author of P., yet I had rather not meddle with the subject if it cd be avoided. I cannot say when I shall be able to take up those two parts of the job. Just as I was embarking in the general subject I recd from the reputed Author of Franklyn a large pamphlet written by him agst the fiscal system, particularly the Bank; which I could not but attend to. It is put on a footing that requires me to communicate personally with Monroe, whom I ought to have seen before this, as the publication of the work is to be contrived for the Author. It really has merit, always for its ingenuity, generally for its solidity, and is enriched with many fine strokes of imagination, and a continued vein of pleasantry & keen satire, that will sting deeply. I have recd a letter from the Author, wishing to hear from me. I must therefore take a ride as far as Charlottesville as soon as I make out the next packet for you, and suspend the residue of the business till I return. I shall endeavour in my absence to fulfill a promise to Wilson Nicholas which will lengthen the suspension. I forwd. to F. a copy of the little thing of Ld Ch.; the last sentence is struck out as not necessary, and which may perhaps wound too indiscriminately certain characters not at present interested in supporting public corruptions.

The paper for J. F. could not otherwise get to him than with your aid. You must therefore take the trouble of having it handed into the post office whence the penny post will take it, unless you can do it at some shorter hand. I wish you would look over what is sd. critically, and if you think there be any thing of importance wrong, or that may do more harm than good, that you will either erase it, where that will not break the sense, or arrest the whole till I can make the correction Delay I know is bad; but vulnerable parts that wd. be seized for victories & triumphs would be worse. I beg you also to attend particularly to those passages slightly marked with a pencil the first, the declaration of the principles & sentiments of the Author—the 2d, beginning with, “Writers such as Locke & Montesquieu &c. to the pencil mark in the ¶ 3d the quotation from the Federalist. If you think the first had better be omitted it can come out without leavg the least gap—so can the 2d. my doubts as to that proceed from the danger of turning the controversy too much into the wilderness of Books. I use Montesquieu also, from memory, tho I believe witht inaccuracy—The 3d can also come out witht affecting the piece; and I wish you to erase it if you think the most scrupulous delicacy, conjecturing the author, cd disapprove it. One N<sup>o</sup> more or 2 short Nos will close the first topic and supersede the last. They will be sent as soon as finished & copied. These wd have been sent somewhat sooner, but for the delay caused by the last circumstance —*Mad. MSS.*

[\[1\]](#)

TO THOMAS JEFFERSON.

Aug 20, 93.

. . . This hurries me; And has forced me to hurry what will be inclosed herewith, particularly the last No V, which required particular care in the execution. I shall be obliged to leave that & the greater part of the other Nos to be transcrd, sealed up & forwarded in my absence. It is certain therefore that many little errors will take place

As I cannot let them be detained till I return, I must pray you to make such corrections as will not betray your hand. In pointing & erasures not breaking the sense, there will be no difficulty. I have already requested you to make free with the latter.<sup>2</sup> You will find more quotations from the Fedt. Dash them out if you think the most squeamish critic could object to them. In No 5 I suggest to your attention a long preliminary remark into which I suffered myself to be led before I was aware of the prolixity. As the piece is full long without it, it had probably better be lopped off. The propriety of the two last paragraphs claims your particular criticism. I wd not have hazarded them without the prospect of your revisal, & if proper your erasure. That which regards Spain &c may contain unsound reasoning, or be too delicate to be touched in a Newspaper. The propriety of the last, as to the President's answers to addressers depends on the truth of the fact, of which you can judge. I am not sure that I have seen all the answers. My last was of the 12th, & covered the 2 first Nos. of H[elvidiu]s. I am assured that it was put into the post office on tuesday evening. It ought therefore to have reached you on saturday last. As an oppy to Fredg may happen before more than the 3d No. may be transcribed, it is possible that this may be accompanied by that alone —*Mad. MSS.*

## TO THOMAS JEFFERSON.

At Col. M. [Aug 22d, 1793.]

Dear Sir

I left home the day before yesterday which was the date of my last, it was to be accompanied by 2 & perhaps tho' not probably 3 additional Nos of H-l-v-d-s. The last to wit No 5, contained two paragraphs the one relating to the accession of S & P to the war against F the other to the answers of the P to the addresses on his proclamation, which I particularly requested you to revise, and if improper, to erase. The whole piece was more hurried than it ought to have been, and these paragraphs penned in the instant of my setting out which had been delayed as late as would leave enough of the day for the journey I mention this as the only apology for the gross error of fact committed with respect to the term neutrality, which it is asserted the P has not used in any of his answers. I find on looking into them here, that he used it in the first of all, to the Merchts of Philada, and in one other out of three which I have examined. I must make my conditional request therefore an absolute one as to that passage. If he should forbear the use of the term in all his answers subsequent to the perversion of it by Pacificus, it will strengthen the argument used; but that must be a future & contingent consideration. . . .—*Mad. MSS.*

## TO THOMAS JEFFERSON.

Aug. 27, 1793.

Dear Sir

I wrote you a few lines by the last post from this place just to apprise you of my movement to it. I have since seen the Richmond & the Philada papers containing, the latter the certificate of Jay & King & the publications relating to the subject of it, the [former,] latter, the proceedings at Richmond dictated no doubt by the cabal at Philada. It is painful to observe the success of the management for putting Wythe at the head of them. I understand however that a considerable revolution has taken place in his political sentiments under the influence of some disgusts he has received from the State Legislature. By what has appeared I discover that a determination has been formed to drag before the public the indiscretions of Genet, and turn them & the popularity of the P to the purpose driven at Some impression will be made here of course. A plan is evidently laid in Richd to render it extensive. If an early & well-digested effort for calling out the real sense of the people be not made, there is room to apprehend they may in many places be misled. This has employed the conversation of — & myself. We shall endeavor at some means of repelling the danger, particularly by setting on foot expressions of the public mind in important Counties, and under the auspices of respectable names. I have written with this view to Caroline, and have suggested a proper train of ideas, and a wish that Mr P would patronize the measure. Such an example would have great effect. Even if it shd not be followed it would be considered as an authentic specimen of the *Country* temper; and would put other places on their guard agst the snares that may be laid for them. The want of opportunities, and our ignorance of trustworthy characters, will circumscribe our efforts in this way to a very narrow compass. The rains for several days have delayed my trip to the Gentleman named in my last. Unless to-morrow shd be a favorable day, I shall be obliged to decline it altogether. In two or three days I shall be in a situation to receive & answer your letters as usual. That by Mr D R has not yet reached me.—*Mad. MSS.*

[1] *Annals of Cong., 4th Cong., 1st Sess., 976.* Madison also made notes for another speech on the treaty as follows:

The Patrons of the Treaty power to take part of Constn

— Easy to say P. & S. have power to Treaty & treaties supreme laws.

— Equally easy to say Congs have power to legisl: & then acts laws.

— Apparent collision the most they can pretend to.

— Difference of opinion. 1. as to extent of Treaty power.

2. as to nature of the oblign on Congs

— The prevailing opinion is that the power unlimited & the obligation inviolable so as to supersede all existing laws, & to make Congs ministerial in providing laws.

— If this high & paramount operation belong to Treaties it must proceed either

- 1.—from the nature of the Treaty & Legisl powers, or
- 2.—from the terms of the Constitution, or
- 3.—from some palpable absurdity or grievous inconvenience of the contrary doctrine

1— Not from the nature of the Treaty making & law making power.

— In general law—the highest exertion of power, & the legisl: supreme over other Departs

— No instance where Treaty power is not vested in the legislature, as Sweden, Poland, Venice, France, Spain.

— except G. B. where limited to *verge* [?] of *Prerogative* See Vattel p. 210 & 211, p. 394 & 5.

In Govt of U. S.—law making power in some respects superior & directory—in no respect *less than* co-ordinate with other Depts

— Case of repealg a law

—of the same specific nature & force repeal equivalent to enactment when repealg or suspending law repealed

Besides then ye objection to [illegible] Supreme one capable of annulling the other—it is inconsonant to constl principles generally—& to the spirit of our own, that laws be repeald but by law

— Contended that Treaty power relates to a new Region of Legislation—embraces new objects & operates in new modes.

— Then can not interfere with the Region the objects or the modes of Congressl legislation.

— But if Treaties are to have the force given to them

They operate within the sphere of Congs

They operate on the same objects [illegible], on commerce

They operate in the same mode



by the same officers

under the same sanctions

with the same results.

It is true that they are distinguished by circumstances of mutuality—but this consideration or inducement only—not change in the operation itself.

Not even mutuality—as commercial laws—for money

A law in pursuance of contract, domestic or foreign law

From this view—the nature of ye case, no argument

See State Treaties & compacts. Can these repeal laws of U. S.?

2 Does not proceed from the terms of the Constitution

— if it does, obey,—but, it should be clear.

— *General & specific* grant to be otherwise expounded

— See text—Constitution, laws Treas to “land”—no superiority expressed contrary implied

— True meaning—Const. laws conformable to it—& Treaties consistant with both—genl code, supreme law [?]

This ye meaning if text stopt there —but following words preclude every other

— To express subordination of State laws—& not fedl laws—where less dbtful exempts the latter.

Maryd Va. N &° Ca. amends. See Ratifications f. 15—19—25 for sense of those States, as to fundl and inalienable rights.

See also f. 29 art 23d for sense of N. C. as explained by Mr. Holland.

3. Does it proceed from palpable absurdity, or grievous inconvenience?

— Unity in Govt remains

— inconvenience of conflicting authorities ye other meas [?]

— Foreign Gov. bound to know ours

It is said,—That Congress have no legislative agency, in case of Treaties, because of



Constn silent, not devolve on them.

— all States where legisl & Ex. separate give the power, except G. B.

— Congs can pledge faith as to money &c

— States can make compacts by *Legis'l*

— Congs not Ex. consent to them

? If Congs had power to treat cd they supersede the specified powers of the Executive.

But if Congs cant treat, can alone legislate & as when they want Treaty depend on Ex. so when laws wanted Ex. depend on Congs.

Said that Parlt extorted from Perrogve that this that no negative on Treaties but one [?] and that the worst part of that Govt. and that interferes with Treaties, only for [illegible].

— Tory doctrine & not true, K. & Coms. both extort from order ofnobles

— best part of Nat Govt —if King by treaty as with Hanovr cd. bring troops into G. B. fatal to legisl. & to liberty.

— if no interference, for same reason as no negative, Royal influence

— if to impeach & supplant—execute Treaty first, discuss it afterwards.

Old confederation

— Obscurity & irregularity, its characters

— No specific investment of powers in States

— Supremacy over State laws, now specified, now over Congs

— Unity of Govt now.—then variety of Govt.

Contemporary evidence

— heretofore demurred to as on

— Bank

— Carriage tax

— suability of States

But ready to meet it—Virga Debates

J. M. Vol. 2. f. 137—Vol. 3. f. 82—84-93 94-95.

G. W. Vol. 3. f. 83-84-86-87.

Corbin Vol. 2. 152. Vol. 3. 89-90.

E R—Vol. 3—85.

2 ideas—Treaty power limited

—reference to British model

N. Carolina Debates p. 152-153.

Pena do same illustration by Brit: Model.

Ratification &c. f. 3-5-13-16-18 & 19-21—25-27-29.

These explanatory, as well as alterative & inconsistant with idea of giving war &c to P. & S.

— Care of Small States

House of Reps less responsible &c.

— longer ye power & fewer ye hands more interest for it—more object of foreign seduction

— tendency to encroacht—to be tested by foreign experience—in *popular*—in *limited* Govt

— domestic experience

— further opportunities & prospects.

Objections

1. If war Ex. perrogve—then three powers of war
2. Treaty power extend to *all* powers of Congs.
3. Restrictions on Congs.—more on Treaties
4. Case of appropriations the stronger—as the check is reserved to the people, who can chuse new members, every two years.

Not conceivable that the people so jealous of the sword & the purse shd have intended to put both into ye hands of P. & S. & make Congress—the mere heralds to proclaim war—the agents—to recruit armies & the Cashiers, to pay out money for them.

## TO JAMES MONROE.

Philada May 14, 1796.

. . . Many of the means by which this majority was brought abt will occur to you. But it is to be ascribed principally to an appeal to petitions under the mercantile influence, & the alarm of war. A circular letter from the Merchts of Phila gave the signal to all other towns. The people were everywhere called on to chuse between peace & war, & to side with the Treaty if they preferred the former. This stratagem produced in many places a fever & in New Engd a delirium for the Treaty wh soon covered the table with petitions. The counter petitions, tho powerful from Phila, & respectable from some other quarters did not keep pace. Indeed there was not time for distant parts where the Treaty was odious to express their sentiments before the occ was over. Besides the alarm of war in the smaller States, a great excitement was produced in them by the appeal of the Pr in his message, to their particular interest in the powers of the Senate. What the effect of this whole business will be on the public mind cannot yet be traced with certainty. For the moment at least it presses hard on the republican interest. It probably would have been better if the great majority existing at one moment had been taken advantage of for a strong preface in the tone of Dearborn, and if the Treaty party had then carried their object with the consequences on their own heads. The final turn of the majority ought at least to have been sooner prepared for. This was in fact contemplated. But before some were ripe for the arrangement others were rotten. As soon as the subject was finished, an explanatory article, signed by Bond & Pickering, marked with sundry curious features, was laid before the Senate, & has, been ratified. The avowed object is to declare that the Indian Treaty which requires a special license to Traders residing at the Indian Towns shall not affect the Brith privileges, under the third article. This when known by the public, will justify an important ground of opposition to the Treaty. Adèt seems to have conducted himself with great circumspection throughout the crisis here, nor do I know what or whether anything escapes him since the conclusion of it. It will be deeply interesting to know how France will take it all. I hope no rash councils will prevail with her. You can foresee the consequences of such here. Whilst the war lasts Engld will command most attention, because she can do this country most harm. In peace, Fr will command most attention, because she can do it most good. This view of the subject, may perhaps be worth your development on fit occasions. Among the bills just passed the H. of Reps is one prohibiting the sale of prizes in our ports. It did not pass without doubts & opposition. The real object with most was to protect Spanish & Dutch vessels as much as possible, on the supposition that the British Treaty protected hers in this respect agst all nations. It is now generally understood that the President will retire. Jefferson is the object on one side Adams apparently on the other. The secondary object still unsettled. The general result is rendered doubtful by the probable complexion of the New York legislature, and by a late law of Pen for chusing Electors by a genl ticket. If the decision should result to the House of Rs it will be safe. . . .—Mad. MSS.

[1] Madison intended to make his retirement from public life permanent and was busy with his farm and building additions to his house when the crisis drew him into public activity. Jefferson, George Nicholas, and himself consulted and agreed to concerted action on the part of Kentucky and Virginia against the alien and sedition laws, but Madison never saw the Kentucky resolutions until they were published. See his defence of both the Kentucky and Virginia resolutions against the charge that they embodied the principle of nullification, *post*, 1835-'36; also Warfield's *Kentucky Resolutions of 1798*. Madison gave the Virginia resolutions to John Taylor of Caroline to introduce, and but one alteration was made in the original draft. Paragraph 4, as Madison prepared it, was “. . . as it does hereby declare, that the acts aforesaid, are unconstitutional, *null, void and of no effect*,” the words in italics being struck out as unnecessary repetition. Nevertheless, Madison was not perfectly easy in his mind over the question of whether the legislature was really the proper body for making the protest, as the following letter shows:

TO THOMAS JEFFERSON.

Decr 29, 1798.

Dear Sir,—

I inclose a draught on Genl Moylan, out of which you will be pleased to pay yourself the price of the Nails, £48-11. 3d., Va. Cy to let Barnes have as much as will discharge the balance I owe him, & to let what may remain lie till I write to you again. The P's speech corresponds pretty much with the idea of it which was preconceived. It is the old song with no other variation of the tune than the spirit of the moment was thought to exact. It is evident also that he rises in his pitch as the echoes of the S. & H. of R. embolden him, & particularly that he seizes with avidity that of the latter flattering his vigilance & firmness agst. illusory attempts on him, without noticing, as he was equally invited, the allusion to his pacific professions. The Senate as usual perform their part with alacrity in counteracting peace by dextrous provocations to the pride & irritability of the French Govt. It is pretty clear that their answer was cooked in the same shop with the speech.<sup>1</sup> The of the former calculated to impose on the public mind here, & the virulence of the latter still more calculated to draw from France the war, which cannot be safely declared on this side, taste strongly of the genius of that subtle partizan of England who has contributed so much to the public misfortunes. It is not difficult to see how A. could be made a puppet thro the instrumentality of creatures around him, nor how the Senate could be managed by similar artifice.

I have not seen the Result of the discussions at Richmond on the alien & sedition laws. It is to be feared their zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the *State* & that of the *Legislature*, on questions relating to the federal pact. On the supposition that the former is clearly the ultimate Judge of infractions, it does not follow that the latter is the legitimate organ especially as a Convention was the organ by which the compact was made. This was a reason of

great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the Genl Assembly agst the charge of Usurpation in the very act of protesting agst the usurpations of Congress.<sup>1</sup> I have not forgotten my promise of McGeehee's prices, but cd not conveniently copy them for the present mail.—*Mad. MSS.*

TO THOMAS JEFFERSON.

Feby 8, 1799.

Dear Sir

I did not receive your last favor of the 16th Ulto till the mail after it was due, with the further delay of its coming by the way of Charlottesville. The last mail brought me not a single Newspaper, tho' it was before in arrears. That there is foul play with them I have no doubt. When it really happens that the entire Mass cannot be conveyed, I suspect that the favorite papers are selected, and the others laid by; and that when there is no real difficulty the pretext makes room for the same partiality. The idea of publishing the Debates of the Convention ought to be well weighed before the expediency of it, in a public as well as personal view be decided on. Besides the intimate connection between them the whole volume ought to be examined with an eye to the use of which every part is susceptible. In the Despotism at present exercised over the rules of construction, and [illegible] reports of the proceedings that would perhaps be made out & mustered for the occasion, it is a problem what turn might be given to the impression on the public mind. But I shall be better able to form & explain my opinion by the time, which now approaches when I shall have the pleasure of seeing you. And you will have the advantage of looking into the sheets attentively before you finally make up your own. I have had a glance at Gerry's communications & P.s Report on it. It is impossible for any man of candor not to see in the former an anxious desire on the part of France for accommodation, mixed with the feelings which Gerry satisfactorily explains. The latter a narrow understanding and a most malignant heart. Taken, however, in combination with preceding transactions, it is a link that fits the chain. The P. could not do less in his speech than allow France an option of peace, nor his Minister do more than to insult & exasperate her if possible, into a refusal of it.

Inclosed is a letter to Barnes with two orders which I hope will suffice both for you & him. Should there be any deficit I can now make it up here on your return where possibly it may be more convenient for you to receive it. I inclose also a few more observations which are submitted to your discretion, under the usual reservation. They were sketched prior to the arrival of P's Report, to which they may appear to have reference; or they might have assumed still more of that aspect. The impression of your Seals have not been very distinct, but there has been no other suspicious circumstance attending them. I put into the letter to Barnes, the last of them that you may judge yourself of the appearance. If you find it not inconvenient in your strolls to buy me a cheap diamond [for cutting glass] & bring it with you, I shall be obliged to

you to take that trouble. An indifferent one which I now have lost, and wish to replace it.—*Mad. MSS.*

[1]

TO WILSON C. NICHOLAS.<sup>2</sup>

Washington, July 10, 1801.

My Dear Sir,—

I cannot at so late a day acknowledge your two favors of [blank] without an explanation, which I am sure your goodness will accept as an apology. Having brought with me to this place a very feeble state of health, and finding the mass of business in the department, at all times considerable, swelled to an unusual size by sundry temporary causes, it became absolutely necessary to devote the whole of my time & pen to my public duties, and consequently to suspend my private correspondences altogether, notwithstanding the arrears daily accumulating. To this resolution I have thus far adhered. I must now endeavor to make some atonement for the delay, and your case is among the first that is suggested both by obligation & inclination.

That one of your letters which is confidential has been imparted to no person whatever. The P. O. Genl. continues in the hands of Col. H., who, though not perhaps sufficiently in the views of the administration, is much respected personally, & is warmly espoused politically also by some of the purest and most weighty of our friends.<sup>3</sup> It will be difficult to make a satisfactory arrangement for this debt that will not involve transaltions, &c., which will prevent a real vacancy. Besides this, I am inclined to believe that the P. would be afraid to draw on Virga agst competitions which wd. abound from other States. The individual spoken of by you would, as you must be well assured, be perfectly desired as an associate in the public business, on every consideration, unless it be on that of robbing another important station of his services.

Little has occurred which you have not found in the newspapers. The task of removing and appointing officers continues to embarrass the Ex. and agitate particular parts of the Union. The degree, the mode, & the times of performing it are often rendered the more perplexing by the discord of information & counsel received from different persons whose principles & views are the same. In Connecticut the fever & murmur of discontent at the exercise of this power is the greatest. The removal of Goodrich & appt. of a respectable repuln. have produced a *remonstrance* to the President in the strongest terms that decorum would tolerate. The spirit in that State is so perverse that it must be rectified by a peculiar mixture of energy and delicacy. The Secyship of the Navy is still unfilled, Langdon havg. lately sent his final refusal. The P. has just offered it to Mr. Robt. Smith, who we hope will be prevailed on to take it.

Our news from abroad have not yet decided the fate of Egypt or furnished any sufficient data for calculating it. It is believed the Emperor Alexander will endeavor to keep at peace both with France & G. B., & at the same time not abandon the principle of the Coalition. This can only be done by mutually winking at mutual violations of their respective claims.

It is believed, or rather directly asserted by a consul just returned from St. Domingo, that Toussaint will proclaim in form the independence of that island within 2 or 3 weeks. This event presents many important aspects to the U. S., as well as to other nations, which will not escape your eye. Lear<sup>1</sup> had not arrived there when the above person came away. We are impatient for the information which may be expected from him.

You have probably heard the rumour of a cession of Louisiana to France by a late & latent treaty with Spain. The fact is not authenticated, but is extremely probable. If otherwise not probable, it is rendered so by the apparent policy of counteracting the Anglicism suspected in the Atlantic States & the alarm excited by Blount's affair of some combined project to throw that country into the hands of G. B. The subject engages our attention, and the proceedings deemed most suited to the complexity of the case, and the contrariety of interests & views involved in it, will be pursued. It may be inferred, I think, that if France becomes possessed of this object, her policy will take a shape fitted to the interests and conciliatory to the minds of the Western people. This and the preceding paragraph need not be of promiscuous use. I hope to leave this place within two weeks, or thereabouts, being admonished to hasten it by a late slight attack of bile to which my constn. is peculiarly prone.

[1] Bland who had been an opponent of the adoption of the constitution had changed his views. March 9, 1790, he wrote to Patrick Henry that having sworn to support the constitution he was voting for every measure of energy and consolidation; that government once assumed over so extensive a domain must fall into anarchy or be supported with vigor.—Henry's Henry, III., 418. He died June 1, 1790.

[2] Petitions from the Society of Friends in New York and Philadelphia against the slave trade.

[1] May 2, 1790, Madison wrote to Pendleton acknowledging the receipt of the desired information. He had asked it supposing Pendleton was present at the time, which, he added, "I find was not the case." He sent Pendleton's letter to William Wirt when Wirt was preparing his Life of Patrick Henry, but Wirt never returned it. In the Life of Henry, p. 74 et seq. it appears that Pendleton was present when Henry's resolutions were debated and spoke against them.

[2] Lee wrote April 3, 1790, from Berry Hill that all of Patrick Henry's dark predictions were coming true—that he dreaded a dissolution of the union, but had rather submit to it than to "the rule of a fixed insolent northern majority." Change of the seat of government to the territorial centre, direct taxation, and the abolition of "gambling systems of finance" might effect a change of sentiment.—Mad. MSS.



[1] Probably Charles Lee of the customs service in Alexandria.—Calendar of Applications and Recommendations for Office during the Presidency of George Washington (Hunt), 73.

[1] See Madison to Monroe, March 19, 1786, ante, II, 231.

[1] William Bligh, captain of the British ship *Bounty*. The mutiny occurred on a voyage to Jamaica. In 1805 he was governor of New South Wales and his authority was rebelled against.

[1] This and the next two letters are from the Works of Madison.

[1] The bill was passed by the House July 9th.

[1]

New York Aug. 13, 1790.

Dear Sir

The Session of Congs. was called yesterday. The list of acts inclosed will give you a general idea of what has been done. The subjects which conduced most to the length of the Session are the assumption of the State debts, and the Seat of Government. The latter has been decided in a manner more favorable to Virginia than was hoped. The former will be less acceptable to that State. It has however been purged of some of its objections and particularly of its gross injustice to Virginia, which in a pecuniary view is little affected one way or the other.

The Continental debt, as funded, is provided for by the impost alone, and a surplus of about a million of dollars, which will have accumulated prior to the first payment of interest, is allotted to the purpose of reducing, by buying up, the principal. The provision for the State debts assumed is to be the work of the next Session in December. It will be made, as far as can be inferred from the ideas now prevalent, under the influences of a strong zeal to avoid direct taxes. The Eastern States being even more averse to that mode of revenue than the Southern, and in my judgment, with much more reason

It was my purpose to have been within the district before the Election; but the length of the Session has disappointed me. By pushing directly on I might indeed now affect it. But it would be at the risk of my health, which is not at present very firm, and would be particularly exposed on a long & rapid journey at this season of the year. I shall consequently remain in this place for a few weeks presuming that the circumstance of my being present or absent will weigh little with my constituents in deciding whether they will again confide their interests to my representation—



## With Great Respect & Regard I Am Sir Your Mo. Obedt Hble St.

Js Madison Jr.

Be so good as not to let this fall into any hands from which it may find its way to the press.

A. Rose

G. Paine

T. Underwood

G. Thomson

W. C. Nicholas

G. Gilmer

of Louisa

Mann Page Esq.

Js. Pendleton Esq.—Mad. MSS.

[1] Washington debated seriously whether to sign or veto the bill, and at his request Madison prepared the following veto message for him: Feby 21. 1791. Copy of a paper made out & sent to the President at his request to be ready in case his judgment should finally decide agst the Bill for incorporating a National Bank, the bill being then before him. Gentlemen of the Senate Having carefully examined and maturely considered the Bill entitled “An Act I am compelled by the conviction of my judgment and the duty of my Station to return the Bill to the House in which it originated with the following objections: (if to the Constitutionality) I object to the Bill because it is an essential principle of the Government that powers not delegated by the Constitution cannot be rightfully exercised; because the power proposed by the Bill to be exercised is not expressly delegated; and because I cannot satisfy myself that it results from any express power by fair and safe rules of implication. (if to the merits alone or in addition) I object to the Bill because it appears to be unequal between the public and the Institution in favor of the institution; imposing no conditions on the latter equivalent to the stipulations assumed by the former. [quer. if this lie within the intimation of the President] I object to the Bill because it is in all cases the duty of the Government to dispense its benefits to individuals with as impartial a hand as the public interest will permit; and the Bill is in this respect unequal to individuals holding different denominations of public Stock and willing to become subscribers. This objection lies with particular force against the early day appointed for opening subscriptions, which if these should be filled as quickly as may happen, amounts to an exclusion of those remote from the Government, in favor of those near enough to take

advantage of the opportunity.—From the Chamberlain MSS. in the Boston Public Library. Jefferson and Edmund Randolph in the cabinet advised the vetoing of the bill, but Hamilton's advice prevailed and Washington signed it February 25, 1791.

[1] Copy kindly contributed by W. W. Scott, Esquire, of Orange Co., lately State Librarian of Virginia.

[1] Copy kindly contributed by W. W. Scott, Esquire, of Orange Co., lately State Librarian of Virginia.

[1] In the summer of 1791 Freneau announced his purpose of starting a paper in New Jersey, and Madison and Henry Lee induced him to come to Philadelphia instead. Jefferson appointed him a translator of French in the State Department at a salary of \$250 a year, and October 31, 1791, *The National Gazette* appeared. See *Life of Madison* (Hunt), 235, et seq.

[1] *The Daily Advertiser*. See Madison's next letter to Jefferson.

[1] Jefferson actually used a dining table made on this principle.

[2] *The Rights of Man* was reprinted by Samuel Harrison Smith (who afterwards founded *The National Intelligencer*) with a preface containing a commendation of the work from Jefferson. See for a full treatment of the subject Conway's *Thomas Paine*, ii., 291, et seq.

[1] British Minister.

[2] British Consul General.

[3] They set out May 20 and were gone till June 16.

[4] Dorothy Ellsworth, wife of Verdine Ellsworth. She kept a boarding house on Maiden Lane where Madison lived.

[1] The papers were really by John Quincy Adams. See post, Madison's letter of July 13 to Jefferson.

[1] Mr. Conway says Jefferson and Randolph endeavored to secure a place in the cabinet for Paine.—Conway's *Thomas Paine*, i., 299.

[1] The blanks are so in the original. Perhaps he referred to Hamilton.

[1] Congress met October 24.

[1] Pleasants was a Quaker and wrote in behalf of "The Humane or Abolition Society" of Virginia, saying in his letter of June 6,—“believing thou [Madison] art a friend to general liberty,”—he had a strong desire to have a scheme of general emancipation in the state. “Knowing the sentiments of divers slave-holders, who are favorable to the design, I wish to have thy judgment on the propriety of a Petition to

our assembly for a law declaring the children of slaves to be born after the passing such act, to be free at the usual ages of eighteen and twenty-one years; and to enjoy such privileges as may be consistent with justice and sound policy.”—Mad. MSS. The leading minds of Virginia were in favor of emancipation. See Randall’s Jefferson, i., 227. The memorial against the militia bill was presented November 23.

[2] It so happened.—Note in Madison’s handwriting.

[2] St. Clair’s defeat, November 4, 1791.

[2] The succession was deflected from the Secretary of State because Jefferson then held the office.

[1] Washington vetoed the bill April 5, 1792, because it made an uneven proportion and allowed eight states more representatives than 1 to every 30,000 of their inhabitants.—Messages and Papers of the Presidents, i., 124.

[2] Jeremiah Wadsworth, a representative.

[1] The letter said he had not been able to dispose his mind to a longer continuance in office. He looked forward to the fulfilment of his fondest and most ardent wishes to spend the remainder of his days in ease and tranquillity. Nothing short of conviction that dereliction of the chair of state by him would involve the country in serious disputes, could in any wise induce him to relinquish the determination he had formed. He wished Madison to suggest the proper time and mode of announcing his intention, and to prepare the form of the latter; and turn his thoughts to the form of a valedictory address to the public.—Ford’s Writings of Washington, xii., 123.

[1] Washington put this letter away, having concluded to serve as President for a second term, and five years later made it the basis of a part of the first draft of his Farewell Address. He sent the draft to Hamilton, who sent him another draft, upon which he built the Address finally adopted. Its first paragraph, announcing his purpose to retire, was substantially as in Madison’s draft; so was the second, promising continued zeal for the country’s welfare. The fifth and sixth were similar to the Madison draft. The expressions in the draft in favor of the Union and the government appeared in the Address in different form. Everything in the draft was in the Address, but the Address had fifty paragraphs and the draft only nine, nor can any of the striking features of the Address be attributed to Madison.—Hunt’s Life of Madison, 220.

[1] Henry Lee.

[1] The first attacks on the administration by The National Gazette began December 8, 1791, in a piece signed “Americanus,” and were continued thereafter till it ceased to appear, October, 1793, soon after Jefferson left the cabinet. Washington himself was always spared by Freneau. August 16, 1791, Freneau was appointed a translator in the State Department at a salary of \$250 per annum, which was half the amount paid the regular clerks. The Gazette did not disclose any secrets of government, and

showed no facilities for information greater than any one not in government service might have had.

[1] Hamilton did not reply.

[2] By Edmund Randolph.

[3] George and Wilson Cary Nicholas.

[2] Jefferson wrote, September 1, that he was “never more charmed with anything,” and that he had changed nothing, except a part of one sentence.—Writings (Ford), vi., 402.

[1] Italics for cypher.

[1] The following paragraph was omitted in the Congressional Edition of Madison’s Works.

[1] The Virginia plan provided for “Conventions under appointment of the people to ratify the new Constitution,” and Madison said in the debate in the convention that he thought the provision essential. (Ante, Vol. III., 94; also IV., 39, 45, 147, 164, 226, 344, 415, 418, 447.)

[2] From Mass. Hist. Collections, Seventh Series, vol. i, p. 96. (Coolidge Collection of Jefferson Papers.)

[3] Joseph Habersham was Postmaster General until the latter part of 1801, when he was succeeded by Gideon Granger of Connecticut.

[1] Tobias Lear was on his way to Santo Domingo at the time, having been appointed General Commercial Agent May 11, 1801.

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James Madison, *The Writings, vol. 7 (1803-1807)* [1908]

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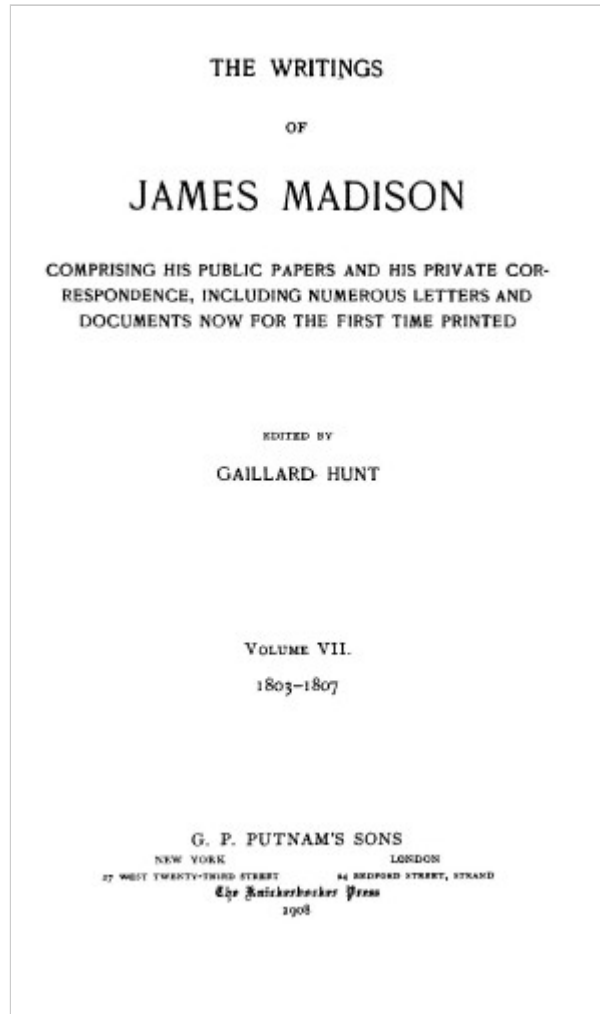
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CONTENTS FOR VOLUME VII.

---

	PAGE
Chronology . . . . .	ix
1803.	
To Charles Pinckney, January 10th. . . . .	1
Official instruction	
To Charles Pinckney, January 18th. . . . .	2
Official instruction	
To Robert R. Livingston, January 18th . . . . .	5
Official instruction.	
To Rufus King, January 29th . . . . .	7
Official instruction.	
To Robert R. Livingston and James Monroe, March 2d . . . . .	9
Official instruction.	
Plan of Treaty of Cession with France . . . . .	17
To James Monroe, March 18t . . . . .	30, n
Affairs at New Orleans—Relations with France and Spain—Gallatin's views on West Florida	
To James Monroe, March 2d . . . . .	30
Official instruction.	
To Charles Pinckney, March 8th . . . . .	34
Official instruction	
To Robert R. Livingston and James Monroe, April 18th . . . . .	37
Official instruction.	
To Robert R. Livingston and James Monroe, April 18th . . . . .	44
Official instruction.	
To Robert R. Livingston, May 25th . . . . .	44
Official instruction	

v

## Table Of Contents

[Chronology of James Madison.](#)  
[The Writings of James Madison.](#)  
[1803 - to Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. D. Of S. Mss. Instr.](#)  
[To Rufus King. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston and James Monroe. D. Of S. Mss. Instr.](#)  
[Observations On the Plan.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston and James Monroe. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston and James Monroe D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston and James Monroe. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston and James Monroe. 1 D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. 1 D. Of S. Mss. Instr.](#)  
[To Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. 1 D. Of S. Mss. Instr.](#)  
[1804 - to James Monroe. D. Of S. Mss. Instr.](#)  
[To Robert R. Livingston. 1 D. Of S. Mss. Instr.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Robert R. Livingston. D. Of S. Mss. Instr.](#)  
[To James Monroe D. Of Mss. Instr.](#)  
[To James Monroe and Charles Pinckney. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To Noah Webster. 1](#)  
[1805 - to James Monroe. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To John Armstrong. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[1806 - to John Armstrong and James Bowdoin. 1 D. Of S. Mss. Instr.](#)  
[Project of a Convention.](#)  
[To John Armstrong. D. Of S. Mss. Instr.](#)  
[An Examination of the British Doctrine, Which Subjects to Capture a Neutral Trade, Not Open In Time of Peace. 1](#)  
[Treaties. \\*](#)  
[To James Monroe and William Pinkney. D. Of S. Mss. Instr.](#)  
[1807 - to James Monroe and William Pinkney. D. Of S. Mss. Instr.](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To James Monroe and William Pinkney D. Of S. Mss. Instr.](#)



[To John Armstrong. D. Of S. Mss. Instr.](#)

[To James Monroe. D. Of S. Mss. Instr.](#)

[To James Monroe. D. Of S. Mss. Instr.](#)

[To John Armstrong and James Bowdoin. D. Of S. Mss. Instr.](#)

[To James Monroe. D. Of S. Mss. Instr.](#)

[To James Bowdoin. D. Of S. Mss. Instr.](#)

[To James Monroe. D. Of S. Mss. Instr.](#)

[To William Pinkney. D. Of S. Mss. Instr.](#)

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1803.

- January 18. Instructs extraordinary mission to treat with France and Spain.
- January 29. Makes friendly overtures to England.
- March 2. Proposes plan for territorial cession from France to the United States.
- April 18. Discusses alliance with Great Britain against France.
- July 14. Receives treaty of cession of Louisiana.
- December 20. Formally receives Louisiana territory from France.

1804.

- January 5. Sends plan of proposed convention with Great Britain.
- March 31. Claims Louisiana extends east to River Perdido.
- April 15. Proposes convention of territorial cession with Spain.
- July 20. Instructs protest against British outrages.

1805.

- April 12. Argues for rights of trade of neutrals in time of war.

1806.

- March 13. Proposes convention with Spain.
- May 17. Forms extraordinary mission to England.
- December. Publishes examination into the British Doctrine with respect to neutral trade.

1807.

- May 20. States objections to Monroe treaty.
- July 6. Orders protest for attack of the *Leopard* on the *Chesapeake*.
- July 15. Announces probability of war.
- December 23. Announces laying of an embargo on vessels.

[\[Back to Table of Contents\]](#)

***THE WRITINGS OF JAMES MADISON.***

TO CHARLES PINCKNEY.

Department of State, Jany 10 1803.

D. Of S. Mss.  
Instr.

Sir,

Since my letter of November 27th on the subject of what had taken place at New Orleans, a letter has been received from the Governor of Louisiana to Governor Claiborne, in which it is stated that the measure of the Intendant was without instructions from his Government, and admitted that his own judgment did not concur with that of the Intendant. You will find by the printed documents herewith transmitted that the subject engaged the early and earnest attention of the House of Representatives, and that all the information relating to it, possessed by the Executive, prior to the receipt of that letter, was reported in consequence of a call for it. The letter itself has been added to that report; but being confidentially communicated, it does not appear in print: a translation of it however is herewith inclosed. You will find also that the House has passed a resolution explicitly declaring that the stipulated rights of the United States on the Mississippi will be inviolably maintained. The disposition of many members was to give to the resolution a tone and complexion still stronger. To these proofs of the sensation which has been produced, it is to be added, that representations, expressing the peculiar sensibility of the Western Country, are on the way from every quarter of it, to the Government. There is in fact but one sentiment throughout the union with respect to the duty of maintaining our rights of navigation and boundary. The only existing difference relates to the degree of patience which ought to be exercised during the appeal to friendly modes of redress. In this state of things it is to be presumed that the Spanish Government will accelerate by every possible means, its interposition for that purpose; and the President charges you to urge the necessity of so doing with as much amicable decision as you can employ. We are not without hopes, that the Intendant will yield to the demands which have been made on him, and to the advice which he will have received from the Spanish Minister here. But it will be expected from the justice and good faith of the Spanish Government, that its precise orders to that effect will be forwarded by the quickest conveyance possible. The President wishes also, that the expedient suggested in the letter above referred to, for preventing similar occurrences and delays, may also be duly pressed on that ground.

The deposition of George Lee, respecting the forgery of our Mediterranean passport, with copies of my last letters are inclosed.

The short notice given of the present opportunity leaves me time to add nothing more than assurances of the esteem and respect with which I remain, etc.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State, January 18th 1803.

D. Of S. Mss.  
Instr.

Sir,

My letters of Nov. 27th and Jany 10th communicated the information which had been received at those dates, relating to the violation at New Orleans of our Treaty with Spain; together with what had then passed between the House of Representatives and the Executive on the subject. I now inclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it, as took place with open doors, will be seen in the Newspapers which it is expected will be forwarded by the Collector at New York, by the present opportunity. In these debates, as well as in indications from the press, you will perceive, as you would readily suppose, that the Cession of Louisiana to France has been associated as a ground of much solicitude, with the affair at New Orleans. Such indeed has been the impulse given to the public mind by these events, that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured. In deliberating on this subject, it has appeared to the President, that the importance of the crisis, called for the experiment of an Extraordinary Mission, carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government and the sensibility of the public, than could be otherwise conveyed. He has accordingly selected for this service, with the approbation of the Senate Mr. Monroe formerly our Minister Plenipotentiary at Paris, and lastly Governor of the State of Virginia, who will be joined with Mr. Livingston in a Commission extraordinary to treat with the French Republic, and with yourself in a like Commission, to treat, if necessary with the Spanish Government. The President has been careful on this occasion to guard effectually against any possible misconstruction in relation to yourself by expressing in his message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional mission to considerations perfectly consistent therewith.

Mr. Monroe will be the bearer of the instructions under which you are to negotiate. The object of them will be to procure a Cession of New Orleans and the Floridas to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will make part of our propositions, to which will be added, such regulations of the commerce of that river and of the others entering the Gulph of Mexico as ought to be satisfactory to France. From a letter received by the President from a respectable person, it is inferred with probability that the French Government is not averse to treat on those grounds, and such a disposition must be strengthened by the circumstances of the present moment.

Though it is probable that this Mission will be completed at Paris, if its objects are at all attainable, yet it was necessary to apprise you thus far of what is contemplated both for your own satisfaction and that you may be prepared to co-operate on the occasion as circumstances may demand. Mr. Monroe will not be able to sail for two weeks or perhaps more.

Of the letters to you on the infraction of our rights at New Orleans, several copies have already been forwarded. Another is now inclosed. It is of the deepest importance that the Spanish Government should have as early an opportunity as possible of correcting and redressing the injury. If it should refuse or delay to do so, the most serious consequences are to be apprehended. The Government and people of the United States, are friendly to Spain, and know the full value of peace; but they know their rights also, and will maintain them. The Spirit of the nation is faithfully expressed in the resolution of the House of Representatives above referred to. You will make the proper use of it with the Spanish Government in accelerating the necessary orders to its officer at New Orleans, or in ascertaining the part it means to take on the occasion.

The Convention with Spain is now before the Senate who have not come to a decision upon it. As soon as its fate is known I shall transmit you the necessary information.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.

Department of State, January 18th 1803.

D. Of S. Mss.  
Instr.

Sir,

My letters of December 23 and January 3 communicated the information which had been received of those dates, relating to the violation at New Orleans of our Treaty with Spain; together with what had then passed between the House of Representatives and the Executive on the subject. I now inclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it, as took place with open doors, will be seen in the newspapers which it is expected will be forwarded by the Collector at New York by the present opportunity. In these debates as well as in indications from the press, you will perceive, as you would readily suppose, that the Cession of Louisiana to France, has been associated as a ground of much solicitude, with the affair at New Orleans. Such indeed has been the impulse given to the public mind by these events that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured. In deliberating on this subject it has appeared to the President that the importance of the crisis, called for the experiment of an extraordinary mission carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government and the sensibility of the people, than could be otherwise conveyed. He has accordingly selected for this service, with the approbation of the Senate, Mr. Monroe formerly our Minister Plenipotentiary at Paris, and lately Governor of the State of Virginia, who will be joined with yourself in a Commission extraordinary to treat with the French Republic and with Mr. Pinckney in a like Commission, to treat, if necessary, with the Spanish Government. The President has been careful on this occasion to guard effectually against any possible misconstruction in relation to yourself, by expressing in his message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional Mission to considerations consistent therewith.

Mr. Monroe will be the bearer of the instructions under which you are jointly to negotiate. The object of them will be to procure a Cession of New Orleans and the Floridas to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will make part of our propositions, to which will be added such regulations of the commerce of that river, and of the others entering the Gulph of Mexico, as ought to be satisfactory to France. From a letter received by the President from the respectable person alluded to in my last, it is inferred with probability, that the French Government is not averse to treat on those grounds. And such a disposition must be strengthened by the circumstances of the present moment.

I have thought it proper to communicate this much to you, without waiting for the departure of Mr. Monroe, who will not be able to sail for two weeks or perhaps more. I need not suggest to you, that in disclosing this diplomatic arrangement to the French Government and preparing the way for the object of it, the utmost care is to be used, in expressing extravagant anticipations of the terms to be offered by the United States; particularly of the sum of money to be thrown into the transaction. The ultimatum on this point will be settled before the departure of Mr. Monroe, and will be communicated by him. The sum hinted at in the letter to the President above referred to is —livres. If less will not do, we are prepared to meet it: but it is hoped that less will do, and that the prospect of accommodation will concur with other motives in postponing the expedition to Louisiana. For the present I barely remark that a proposition made to Congress with shut doors is under consideration which if agreed to will authorize a payment of about ten Millions of livres under arrangements of time and place, that may be so convenient to the French Government, as to invite a prompt as well as a favorable decision in the case. The sum to which the proposition is limited, and which will probably not be effectually concealed, may at the same time assist in keeping the pecuniary expectations of the French cabinet.

Your letter of Nov. 10 with one from Mr. Sumter of — have been received. As no mention is made of the disastrous state of St. Domingo, we conclude that it was not then known at Paris; and ascribe to that ignorance the adherence to the plan of sending troops to take possession of Louisiana. If the French Government do not mean to abandon the reduction of that Island, it is certain that troops cannot be spared for the other object. The language held by Genl. Hector, as communicated to you, claims attention, and would be entitled to much more, if the imputation to the French Government, of views which would force an unnecessary war with the United States, could be reconciled with any motive whatever sufficient to account for such an infatuation.

[\[Back to Table of Contents\]](#)

## TO RUFUS KING.

Department of State, January 29th 1803.

D. Of S. Mss.  
Instr.

Sir,

My letter of the 23d Ult, with a postscript of the 3d of this month, communicated the information which had been received at those dates relating to the violation at New Orleans of our Treaty with Spain; together with what had then passed between the House of Representatives and the Executive on the subject. I now inclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it, as took place with open doors, will be seen in the newspapers. In these debates, as well as in indications from the press, you will perceive, as you would readily suppose, that the Cession of Louisiana to France, has been associated as a ground of much solicitude, with the affair at New Orleans. Such indeed has been the impulse given to the public mind by these events, that every branch of the Government has felt the obligation of taking the measures most likely not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured. In deliberating on this subject, it has appeared to the President that the importance of the crisis, called for the experiment of an extraordinary mission; carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government and of the sensibility of the public, than could be otherwise conveyed. He has accordingly selected for this service with the approbation of the Senate, Mr. Monroe, formerly our Minister Plenipotentiary at Paris, and lately Governor of the State of Virginia, who will be joined with Mr. Livingston in a Commission extraordinary to treat with the French Republic; and with the Spanish Government.

Mr. Monroe is expected here tomorrow, and he will probably sail shortly afterwards from New York.

These communications will enable you to meet the British Minister in conversation on the subject stated in your letter of May 7th 1802. The United States are disposed to live in amity with their neighbours whoever they may be, as long as their neighbours shall duly respect their rights, but it is equally their determination to maintain their rights against those who may not respect them; premising, where the occasion may require, the peaceable modes of obtaining satisfaction for wrongs, and endeavouring by friendly arrangements, and provident stipulations, to guard against the controversies most likely to occur.

Whatever may be the result of the present Mission Extraordinary, nothing certainly will be admitted into it, not consistent with our prior engagements. The United States and Great Britain have agreed each for itself to the free and common navigation by the other, of the River Mississippi; each being left at the same time to a separate adjustment with other nations, of questions between them relative to the same subject.



This being the necessary meaning of our Treaties with Great Britain, and the course pursued under them, a difference of opinion seems to be precluded. Any such difference would be matter of real regret; for it is not only our purpose to maintain the best faith with that nation, but our desire to cherish a mutual confidence and cordiality, which events may render highly important to both nations.

Your successor has not yet been named, and it is now possible that the time you may have fixed for leaving England, will arrive before any arrangements for the vacancy, can have their effect. Should this be the case the President, sensible of the inconveniency to which you might be subjected by an unexpected detention, thinks it would not be reasonable to claim it of you. It may be hoped that the endeavours to prevent an interval in the Legation will be successful; and as it cannot be more than a very short one, no great evil can well happen from it.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON AND JAMES MONROE.

Department of State, March 2d, 1803.

D. Of S. Mss.  
Instr.

Gentlemen,

You will herewith receive a Commission and letters of credence, one of you as Minister Plenipotentiary, the other as Minister Extraordinary and Plenipotentiary, to treat with the Government of the French Republic, on the subject of the Mississippi and the Territory eastward thereof, and without the limits of the United States. The object in view is to procure by just and satisfactory arrangements a cession to the United States of New Orleans, and of West and East Florida, or as much thereof as the actual proprietor can be prevailed on to part with.

The French Republic is understood to have become the proprietor by a cession from Spain in the year NA of New Orleans, as part of Louisiana, if not of the Floridas also. If the Floridas should not have been then included in the Cession, it is not improbable that they will have been since added to it.

It is foreseen that you may have considerable difficulty in overcoming the repugnance and the prejudices of the French Government against a transfer to the United States of so important a part of the acquisition. The apparent solicitude and exertions amidst many embarrassing circumstances, to carry into effect the cession made to the French Republic, the reserve so long used on this subject by the French Government in its communications with the Minister of the United States at Paris, and the declaration finally made by the French Minister of Foreign relations, that it was meant to take possession before any overtures from the United States would be discussed, shew the importance which is attached to the territories in question. On the other hand as the United States have the strongest motives of interest and of a pacific policy to seek by just means the establishment of the Mississippi, down to its mouth as their boundary, so these are considerations which urge on France a concurrence in so natural and so convenient an arrangement.

Notwithstanding the circumstances which have been thought to indicate in the French Government designs of unjust encroachment, and even direct hostility on the United States, it is scarcely possible, to reconcile a policy of that sort, with any motives which can be presumed to sway either the Government or the Nation. To say nothing of the assurances given both by the French Minister at Paris, and by the Spanish Minister at Madrid, that the cession by Spain to France was understood to carry with it all the conditions stipulated by the former to the United States, the manifest tendency of hostile measures against the United States, to connect their Councils, and their Colossal growth with the great and formidable rival of France, can never escape her discernment, nor be disregarded by her prudence, and might alone be expected to produce very different views in her Government.

On the supposition that the French Government does not mean to force, or Court war with the United States; but on the contrary that it sees the interest which France has in cultivating their neutrality and amity, the dangers to so desirable a relation between the two countries which lurk under a neighbourhood modified as is that of Spain at present, must have great weight in recommending the change which you will have to propose. These dangers have been always sufficiently evident; and have moreover been repeatedly suggested by collisions between the stipulated rights or reasonable expectations of the United States, and the Spanish jurisdiction at New Orleans. But they have been brought more strikingly into view by the late proceeding of the Intendant at that place. The sensibility and unanimity in our nation which have appeared on this occasion, must convince France that friendship and peace with us must be precarious until the Mississippi shall be made the boundary between the United States and Louisiana; and consequently render the present moment favorable to the object with which you [are] charged.

The time chosen for the experiment is pointed out also by other important considerations. The instability of the peace of Europe, the attitude taken by Great Britain, the languishing state of the French finances, and the absolute necessity of either abandoning the West India Islands or of sending thither large armaments at great expence, all contribute at the present crisis to prepare in the French Government a disposition to listen to an arrangement which will at once dry up one source of foreign controversy, and furnish some aid in struggling with internal embarrassments. It is to be added, that the overtures committed to you coincide in great measure with the ideas of the person thro' whom the letter of the President of April 30-1802 was conveyed to Mr. Livingston, and who is presumed to have gained some insight into the present sentiments of the French Cabinet.

Among the considerations which have led the French Government into the project of regaining from Spain the province of Louisiana, and which you may find it necessary to meet in your discussions, the following suggest themselves as highly probable.

1st. A jealousy of the Minister as leaning to a coalition with Great Britain and consistent with neutrality and amity towards France; and a belief that by holding the key to the commerce of the Mississippi, she will be able to command the interests and attachments of the Western portion of the United States; and thereby either controul the Atlantic porttion also, or if that cannot be done, to seduce the former with a separate Government, and a close alliance with herself.

In each of these particulars the calculation is founded in error.

It is not true that the Atlantic states lean towards any connection with Great Britain inconsistent with their amicable relations to France. Their dispositions and their interests equally prescribe to them amity and impartiality to both of those nations. If a departure from this simple and salutary line of policy should take place, the causes of it will be found in the unjust or unfriendly conduct experienced from one or other of them. In general it may be remarked, that there are as many points on which the interests and views of the United States and of Great Britain may not be thought to coincide as can be discovered in relation to France. If less harmony and confidence

should therefore prevail between France and the United States than may be maintained between Great Britain and the United States, the difference will be not in the want of motives drawn from the mutual advantage of the two nations; but in the want of favorable dispositions in the Governments of one or the other of them. That the blame in this respect will not justly fall on the Government of the United States, is sufficiently demonstrated by the Mission and the objects with which you are now charged.

The French Government is not less mistaken if it supposes that the Western part of the United States can be withdrawn from their present Union with the Atlantic part, into a separate Government closely allied with France.

Our Western fellow citizens are bound to the Union not only by the ties of kindred and affection which for a long time will derive strength from the stream of emigration peopling that region, but by two considerations which flow from clear and essential interests.

One of these considerations is the passage thro' the Atlantic ports of the foreign merchandize consumed by the Western inhabitants, and the payments thence made to a Treasury in which they would lose their participation by erecting a separate Government. The bulky productions of the Western Country may continue to pass down the Mississippi; but the difficulties of the ascending navigation of that river, however free it may be made, will cause the imports for consumption to pass thro' the Atlantic States. This is the course thro' which they are now received, nor will the impost to which they will be subject change the course even if the passage up the Mississippi should be duty free. It will not equal the difference in the freight thro' the latter channel. It is true that mechanical and other improvements in the navigation of the Mississippi may lessen the labour and expence of ascending the stream, but it is not the least probable, that savings of this sort will keep pace with the improvements in canals and roads, by which the present course of imports will be favored. Let it be added that the loss of the contributions thus made to a foreign Treasury would be accompanied with the necessity of providing by less convenient revenues for the expence of a separate Government, and of the defensive precautions required by the change of situation.

The other of these considerations results from the insecurity to which the trade from the Mississippi would be exposed, by such a revolution in the Western part of the United States. A connection of the Western people as a separate state with France, implies a connection between the Atlantic States and Great Britain. It is found from long experience that France and Great Britain are nearly half their time at War. The case would be the same with their allies. During nearly one half the time therefore, the trade of the Western Country from the Mississippi, would have no protection but that of France, and would suffer all the interruptions which nations having the command of the sea could inflict on it.

It will be the more impossible for France to draw the Western Country under her influence, by conciliatory regulations of the trade thro' the Mississippi, because regulations which would be regarded by her as liberal and claiming returns of

gratitude, would be viewed on the other side as falling short of justice. If this should not be at first the case, it soon would be so. The Western people believe, as do their Atlantic brethren, that they have a natural and indefeasible right to trade freely thro' the Mississippi. They are conscious of their power to enforce their right against any nation whatever. With these ideas in their minds, it is evident that France will not be able to excite either a sense of favor, or of fear, that would establish an ascendancy over them. On the contrary, it is more than probable, that the different views of their respective rights, would quickly lead to disappointments and disgusts on both sides, and thence to collisions and controversies fatal to the harmony of the two nations. To guard against these consequences, is a primary motive with the United States, in wishing the arrangement proposed. As France has equal reasons to guard against them, she ought to feel an equal motive to concur in the arrangement.

2d. The advancement of the commerce of France by an establishment on the Mississippi, has doubtless great weight with the Government in espousing this project.

The commerce thro' the Mississippi will consist 1st of that of the United States, 2d of that of the adjacent territories to be acquired by France.

The 1st is now and must for ages continue the principal commerce. As far as the faculties of France will enable her to share in it, the article to be proposed to her on the part of the United States on that subject promises every advantage she can desire. It is a fair calculation, that under the proposed arrangement, her commercial opportunities would be extended rather than diminished; inasmuch as our present right of deposit gives her the same competitors as she would then have, and the effect of the more rapid settlement of the Western Country consequent on that arrangement would proportionally augment the mass of commerce to be shared by her.

The other portion of commerce, with the exception of the Island of New Orleans and the contiguous ports of West Florida, depends on the Territory Westward of the Mississippi. With respect to this portion, it will be little affected by the Cession desired by the United States. The footing proposed for her commerce on the shore to be ceded, gives it every advantage she could reasonably wish, during a period within which she will be able to provide every requisite establishment on the right shore; which according to the best information, possesses the same facilities for such establishments as are found on the Island of New Orleans itself. These circumstances essentially distinguish the situation of the French commerce in the Mississippi after a Cession of New Orleans to the United States, from the situation of the commerce of the United States, without such a Cession; their right of deposit being so much more circumscribed and their territory on the Mississippi not reaching low enough for a commercial establishment on the shore, within their present limits.

There remains to be considered the commerce of the Ports in the Floridas. With respect to this branch, the advantages which will be secured to France by the proposed arrangement ought to be satisfactory. She will here also derive a greater share from the increase, which will be given by a more rapid settlement of a fertile territory, to the exports and imports thro' those ports, than she would obtain from any restrictive

use she could make of those ports as her own property. But this is not all. The United States have a just claim to the use of the rivers which pass from their territories thro' the Floridas. They found their claim on like principles with those which supported their claim to the use of the Mississippi. If the length of these rivers be not in the same proportion with that of the Mississippi, the difference is balanced by the circumstance that both Banks in the former case belong to the United States.

With a view to perfect harmony between the two nations a cession of the Floridas is particularly to be desired, as obviating serious controversies that might otherwise grow even out of the regulations however liberal in the opinion of France, which she may establish at the Mouth of those rivers. One of the rivers, the Mobile, is said to be at present navigable for 400 miles above the 31° of latitude, and the navigation may no doubt be opened still further. On all of them, the Country within the Boundary of the United States, tho' otherwise between that and the sea, is fertile. Settlements on it are beginning; and the people have already called on the Government to procure the proper outlets to foreign Markets. The President accordingly, gave some time ago, the proper instructions to the Minister of the United States at Madrid. In fact, our free communication with the sea thro' these channels is so natural, so reasonable, and so essential that eventually it must take place, and in prudence therefore ought to be amicably and effectually adjusted without delay.

A further object with France may be, to form a Colonial establishment having a convenient relation to her West India Islands, and forming an independent source of supplies for them.

This object ought to weigh but little against the Cession we wish to obtain for two reasons, 1st. Because the Country which the Cession will leave in her hands on the right side of the Mississippi is capable of employing more than all the faculties she can spare for such an object and of yielding all the supplies which she could expect, or wish from such an establishment: 2d. Because in times of general peace, she will be sure of receiving whatever supplies her Islands may want from the United States, and even thro' the Mississippi if more convenient to her; because in time of peace with the United States, tho' of War with Great Britain, the same sources will be open to her, whilst her own would be interrupted; and because in case of war with the United States, which is not likely to happen without a concurrent war with Great Britain (the only case in which she could need a distinct fund of supplies) the entire command of the sea, and of the trade thro' the Mississippi, would be against her, and would cut off the source in question. She would consequently never need the aid of her new Colony, but when she could make little or no use of it.

There may be other objects with France in the projected acquisition; but they are probably such as would be either satisfied by a reservation to herself of the Country on the right side of the Mississippi, or are of too subordinate a character to prevail against the plan of adjustment we have in view; in case other difficulties in the way of it can be overcome. The principles and outlines of this plan are as follows viz.

## Ist.

France cedes to the United States forever, the Territory East of the River Mississippi, comprehending the two Floridas, the Island of New Orleans and the Island lying to the North and East of that channel of the said River, which is commonly called the Mississippi, together with all such other Islands as appertain to either West or East Florida; France reserving to herself all her territory on the West side of the Mississippi.

## II.

The boundary between the Territories ceded and reserved by France shall be a continuation of that already defined above the 31st degree of North Latitude viz, the middle of the channel or bed of the river, thro' the said South pass to the sea. The navigation of the river Mississippi in its whole breadth from its source to the ocean, and in all its passages to and from the same shall be equally free and common to citizens of the United States and of the French Republic.

## III.

The vessels and citizens of the French Republic may exercise commerce to and at such places on their respective shores below the said thirty first degree of North Latitude as may be allowed for that use by the parties to their respective citizens and vessels. And it is agreed that no other Nation shall be allowed to exercise commerce to or at the same or any other place on either shore, below the said thirty first degree of Latitude. For the term of ten years to be computed from the exchange of the ratifications hereof, the citizens, vessels and merchandizes of the United States and of France shall be subject to no other duties on their respective shores below the said thirty first degree of latitude than are imposed on their own citizens, vessels and merchandizes. No duty whatever shall, after the expiration of ten years be laid on Articles the growth or manufacture of the United States or of the ceded Territory exported thro' the Mississippi in French vessels, so long as such articles so exported in vessels of the United States shall be exempt from duty: nor shall French vessels exporting such articles, ever afterwards be subject to pay a higher duty than vessels of the United States.

## IV.

The citizens of France may, for the term of ten years, deposit their effects at New Orleans and at such other places on the ceded shore of the Mississippi, as are allowed for the commerce of the United States, without paying any other duty than a fair price for the hire of stores.

## V.

In the ports and commerce of West and East Florida, France shall never be on a worse footing than the most favored nations; and for the term of ten years her vessels and

merchandize shall be subject therein to no higher duties than are paid by those of the United States and of the ceded Territory, exported in French vessels from any port in West or East Florida, [and] shall be exempt from duty as long as vessels of the United States shall enjoy this exemption.

## VI.

The United States, in consideration of the Cession of Territory made by this Treaty shall pay to France — millions of livres Tournois, in the manner following, viz, They shall pay — millions of livres tournois immediately on the exchange of the ratifications hereof: they shall assume in such order of priority as the Government of the United States may approve, the payment of claims, which have been or may be acknowledged by the French Republic to be due to American citizens, or so much thereof as with the payment to be made on the exchange of ratifications will not exceed the sum of — and in case a balance should remain due after such payment and assumption, the same shall be paid at the end of one year from the final liquidation of the claims hereby assumed, which shall be payable in three equal annual payments, the first of which is to take place one year after the exchange of ratifications or they shall bear interest at the rate of six p Cent p annum from the date of such intended payments; until they shall be discharged. All the above mentioned payments shall be made at the Treasury of the United States and at the rate of one dollar and ten cents for every six livres tournois.

## VII.

To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States on an equal footing, being a provision, which cannot now be made, it is to be expected, from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the meantime they shall be secure in their persons and property, and in the free enjoyment of their religion.



[\[Back to Table of Contents\]](#)

## OBSERVATIONS ON THE PLAN.

1st As the Cession to be made by France in this case must rest on the Cession made to her by Spain, it might be proper that Spain should be a party to the transaction. The objections however to delay require that nothing more be asked on our part, than either an exhibition and recital of the Treaty between France and Spain; or an engagement on the part of France, that the accession of Spain will be given. Nor will it be advisable to insist even on this much, if attended with difficulty or delay, unless there be ground to suppose that Spain will contest the validity of the transaction.

2d The plan takes for granted also that the Treaty of 1795 between the United States and Spain is to lose none of its force in behalf of the former by any transactions whatever between the latter and France. No change it is evident will be, or can be admitted to be produced in that Treaty or in the arrangements carried into effect under it, further than it may be superseded by stipulations between the United States and France, who will stand in the place of Spain. It will not be amiss to insist on an express recognition of this by France as an effectual bar against pretexts of any sort not compatible with the stipulations of Spain.

3d The first of the articles proposed, in defining the Cession refers to the South pass of the Mississippi, and to the Islands North and East of that channel. As this is the most navigable of the several channels, as well as the most direct course to the sea, it is expected that it will not be objected to. It is of the greater importance to make it the boundary, because several Islands will be thereby acquired, one of which is said to command this channel, and to be already fortified. The article expressly included also the Islands appertaining to the Floridas. To this there can be no objection. The Islands within six leagues of the shore are the subject of a British proclamation in the year 1763 subsequent to the Cession of the Floridas to Great Britain by France, which is not known to have been ever called in question by either France or Spain.

The 2d Article requires no particular observations.

Article 3d is one whose import may be expected to undergo the severest scrutiny. The modification to be desired is that, which, whilst it provides for the interest of the United States will be acceptable to France, and will give no just ground of complaint, and the least of discontent to Great Britain.

The present form of the article ought and probably will be satisfactory to France; first because it secures to her all the commercial advantages on the river which she can well desire; secondly because it leaves her free to contest the mere navigation of the River by Great Britain, without the consent of France.

The article also, in its present form violates no right of Great Britain, nor can she reasonably expect of the United States that they will contend beyond their obligations for her interest at the expense of their own. As far as Great Britain can claim the use of the river under her Treaties with us, or by virtue of, contiguous territory, the silence

of the Article on that subject, leaves the claim unaffected. As far again as she is entitled under the Treaty of 1794 to the use of our Bank of the Mississippi above the 31st degree of N. Latitude, her title will be equally entire. The article stipulates against her only in its exclusion of her commerce from the bank to be ceded below our present limits. To this she cannot, of right object, 1st because the Territory not belonging to the United States at the date of our Treaty with her is not included in its stipulations, 2dly because the privileges to be enjoyed by France are for a consideration which Great Britain has not Given and cannot give 3dly because the conclusion in this case, being a condition on which the Territory will be ceded and accepted, the right to communicate the privilege to Great Britain will never have been vested in the United States.

But altho' these reasons fully justify the article in its relation to Great Britain, it will be advisable before it be proposed, to feel the Pulse of the French Government with respect to a stipulation that each of the parties may without the consent of the other admit whomsoever it pleases to navigate the river and trade with their respective shores, on the same terms, as in other parts of France and the United States; and as far as the disposition of that Government will concur, to vary the proposition accordingly. It is not probable that this concurrence will be given; but the trial to obtain it will not only manifest a friendly regard to the wishes of Great Britain, and if successful, furnish a future price for privileges within her grant; but is a just attention to the interests of our Western fellow citizens, whose commerce will not otherwise be on an equal footing with that of the Atlantic States.

Should France not only refuse any such change in the Article; but insist on a recognition of her right to exclude all nations, other than the United States, from navigating the Mississippi, it may be observed to her, that a positive stipulation to that effect might subject us to the charge of intermeddling with and prejudging questions existing merely between her and Great Britain; that the silence of the article is sufficient; that as Great Britain never asserted a claim on this subject against Spain, it is not to be presumed that she will assert it against France on her taking the place of Spain; that if the claim should be asserted the Treaties between the United States and Great Britain will have no connection with it, the United States having in those treaties given their separate consent only to the use of the river by Great Britain, leaving her to seek whatever other consent may be necessary.

If, notwithstanding such expostulations as these, France shall inflexibly insist on an express recognition to the above effect it will be better to acquiesce in it, than to lose the opportunity of fixing an arrangement, in other respects satisfactory; taking care to put the recognition into a form not inconsistent with our treaties with Great Britain, or with an explanatory article that may not improbably be desired by her.

In truth it must be admitted, that France as holding one bank, may exclude from the use of the river any Nation not more connected with it by Territory than Great Britain is understood to be. As a river where both its banks are owned by one Nation, belongs exclusively to that Nation; it is clear that when the Territory on one side is owned by one Nation and on the other side by another nation, the river belongs equally to both, in exclusion of all others. There are two modes by which an equal right may be

exercised; the one by a negative in each on the use of the river by any other nation except the joint proprietor, the other by allowing each to grant the use of the river to other nations, without the consent of the joint proprietor. The latter mode would be preferable to the United States. But if it be found absolutely inadmissible to France, the former must in point of expediency, since it may in point of right be admitted by the United States. Great Britain will have the less reason to be dissatisfied on this account as she has never asserted against Spain, a right of entering and navigating the Mississippi, nor has she or the United States ever founded on the Treaties between them, a claim to the interposition of the other party in any respect; altho' the river has been constantly shut against Great Britain from the year 1783 to the present moment, and was not opened to the United States until 1795, the year of their Treaty with Spain.

It is possible also that France may refuse to the United States, the same commercial use of her shores, as she will require for herself on those ceded to the United States. In this case it will be better to relinquish a reciprocity, than to frustrate the negotiation. If the United States held in their own right, the shore to be ceded to them, the commercial use of it allowed to France, would render a reciprocal use of her shore by the United States, an indispensable condition. But as France may, if she chuses, reserve to herself the commercial use of the ceded shore as a condition of the cession, the claim of the United States to the like use of her shore would not be supported by the principle of reciprocity, and may therefore without violating that principle, be waved in the transaction.

The article limits to ten years the equality of French citizens, vessels and merchandizes, with those of the United States. Should a longer period be insisted on it may be yielded. The limitation may even be struck out, if made essential by France; but a limitation in this case is so desirable that it is to be particularly pressed, and the shorter the period the better.

Art IV. The right of deposit provided for in this article, will accommodate the commerce of France, to and from her own side of the river, until an emporium shall be established on that side, which it is well known will admit of a convenient one. The right is limited to ten years, because such an establishment may within that period be formed by her. Should a longer period be required, it may be allowed, especially as the use of such a deposit would probably fall within the general regulations of our commerce there. At the same time, as it will be better that it should rest on our own regulations, than on a stipulation, it will be proper to insert a limitation of time, if France can be induced to acquiesce in it.

Art. V. This article makes a reasonable provision for the commerce of France in the ports of West and East Florida. If the limitation to ten years of its being on the same footing with that of the United States, should form an insuperable objection, the term may be enlarged; but it is much to be wished that the privilege may not in this case, be made perpetual.

Art VI—The pecuniary consideration, to be offered for the territories in question, is stated in Art. VI. You will of course favor the United States as much as possible both

in the amount and the modifications of the payments. There is some reason to believe that the gross sum expressed in the Article, has occurred to the French Government, and is as much as will be finally insisted on. It is possible that less may be accepted, and the negotiation ought to be adapted to that supposition. Should a greater sum be made an ultimatum on the part of France, the President has made up his mind to go as far as fifty — million of livres tournois, rather than lose the main object. Every struggle however is to be made against such an augmentation of the price, that will consist with an ultimate acquiescence in it.

The payment to be made immediately on the exchange of ratifications is left blank; because it cannot be foreseen either what the gross sum or the assumed debts will be; or how far a reduction of the gross sum may be influenced by the anticipated payments provided for by the act of Congress herewith communicated and by the authorization of the President and Secretary of the Treasury endorsed thereon. This provision has been made with a view to enable you to take advantage of the urgency of the French Government for money, which may be such as to overcome their repugnance to part with what we want, and to induce them to part with it on lower terms, in case a payment can be made before the exchange of ratifications. The letter from the Secretary of the Treasury to the Secretary of State, of which a copy is herewith inclosed, will explain the manner in which this advance of the ten Millions of livres, or so much thereof as may be necessary, will be raised most conveniently for the United States. It only remains here to point out the condition or event on which the advance may be made. It will be essential that the Convention be ratified by the French Government before any such advance be made; and it may be further required, in addition to the stipulation to transfer possession of the ceded territory as soon as possible, that the orders for the purpose, from the competent source, be actually and immediately put into your hands. It will be proper also to provide for the payment of the advance, in the event of a refusal of the United States to ratify the Convention.

It is apprehended that the French Government will feel no repugnance to our designating the classes of claims and debts, which, embracing more equitable considerations than the rest, we may believe entitled to a priority of payment. It is probable therefore that the clause of the VI article referring it to our discretion may be safely insisted upon. We think the following classification such as ought to be adopted by ourselves.

1st. Claims under the fourth Article of the Convention of Sept. 1800.

2ndly. Forced contracts or sales imposed upon our citizens by French authorities; and

3rdly. Voluntary contracts, which have been suffered to remain unfulfilled by them.

Where our citizens have become creditors of the French Government in consequence of Agencies or Appointments derived from it, the United States are under no particular obligation to patronize their claims, and therefore no sacrifice of any sort, in their behalf ought to be made in the arrangement. As far as this class of claimants can be embraced, with [out] embarrassing the negotiation, or influencing in any respect the demands or expectations of the French Government, it will not be improper to

admit them into the provision. It is not probable however, that such a deduction from the sum ultimately to be received by the French Government will be permitted, without some equivalent accommodation to its interests, at the expence of the United States.

The claims of Mr. Beaumarchais and several other French individuals on our government, founded upon antiquated or irrelevant grounds, altho' they may be attempted to be included in this negotiation have no connection with it. The American Government is distinguished for its just regard to the rights of foreigners and does not require those of individuals to become subjects of Treaty in order to be admitted. Besides, their discussion involves a variety of minute topics, with which you may fairly declare yourselves to be unacquainted. Should it appear however, in the course of the negotiation, that so much stress is laid on this point, that without some accommodation, your success will be endangered, it will be allowable to bind the United States for the payment of one Million of livres tournois to the representatives of Beaumarchais, heretofore deducted from his account against them; the French Government declaring the same never to have been advanced to him on account of the United States.

Art. VII is suggested by the respect due to the rights of the people inhabiting the ceded territory and by the delay which may be found in constituting them a regular and integral portion of the Union. A full respect for their rights might require their consent to the Act of Cession; and if the French Government should be disposed to concur in any proper mode of obtaining it, the provision would be honorable to both nations. There is no doubt that the inhabitants would readily agree to the proposed transfer of their allegiance.

It is hoped that the idea of a guarantee of the Country reserved to France may not be brought into the negotiation. Should France propose such a stipulation it will be expedient to evade it if possible, as more likely to be a source of disagreeable questions, between the parties concerning the actual casus federis than of real advantage to France. It is not in the least probable that Louisiana in the hands of that Nation will be attacked by any other whilst it is in the relations to the United States on which the guarantee would be founded; whereas nothing is more probable than some difference of opinion as to the circumstances and the degree of danger necessary to put the stipulations in force. There will be less reason in the demand of such an Article as the United States would [put] little value on a guarantee of any part of their territory and consequently there would be no great reciprocity in it. Should France notwithstanding these considerations make a guarantee an essential point, it will be better to accede to it than to abandon the object of the negotiation, mitigating the evil as much as possible by requiring for the casus federis a great and manifest danger threatened to the Territory guaranteed, and by substituting for an indefinite succour, or even a definite succour in Military force, a fixed sum of money payable at the Treasury of the United States. It is difficult to name the proper sum which is in no posture of the business to be exceeded, but it can scarcely be presumed that more than about — dollars, to be paid annually during the existence of the danger, will be insisted on. Should it be unavoidable to stipulate troops in place of money, it will be prudent to settle the details with as much precision as possible, that there may be no

room for controversy either with France or with her money, on the fulfillment of the stipulation.

The instructions thus far given suppose that France may be willing to cede to the United States the whole of the Island of New Orleans, and both the Floridas. As she may be inclined to dispose of a part or parts, and of such only, it is proper for you to know that the Floridas together are estimated at  $\frac{1}{4}$  the value of the whole Island of New Orleans, and East Florida at  $\frac{1}{2}$  that of West Florida. In case of a partial Cession, it is expected, that the regulations of every other kind so far as they are onerous to the United States, will be more favorably modified.

Should France refuse to cede the whole of the Island, as large a portion as she can be prevailed on to part with, may be accepted; should no considerable portion of it be attainable, it will still be of vast importance to get a jurisdiction over space enough for a large commercial town and its appurtenances, on the Bank of the river, and as little remote from the mouth of the river as may be. A right to choose the place, would be better than a designation of it in the Treaty. Should it be impossible to procure a complete jurisdiction over any convenient spot whatever, it will only remain to explain and improve the present right of deposit, by adding thereto the express privilege of holding real estate for commercial purposes, of providing hospitals, of having Consuls residing there, and other Agents who may be authorized to authenticate and deliver all documents requisite for vessels belonging to and engaged in the trade of the United States to and from the place of deposit. The United States cannot remain satisfied, nor the Western people be kept patient under the restrictions which the existing Treaty with Spain authorizes.

Should a Cession of the Floridas not be attainable your attention will also be due to the establishment of suitable deposits at the mouths of the rivers passing from the United States thro' the Floridas, as well as of the Free navigation of the rivers by Citizens of the United States. What has been above suggested in relation to the Mississippi and the deposit on its Banks is applicable to the other rivers; and additional hints relative to them all may be derived from the letter of which a copy is inclosed from the Consul at New Orleans.

It has been long manifest, that whilst the injuries to the United States so frequently occurring from the Colonial offices scattered over our hemisphere and in our neighbourhood can only be repaired by a resort to their respective Governments in Europe, that it will be impossible to guard against the most serious inconveniences. The late events at New Orleans strongly manifest the necessity of placing a power somewhere nearer to us, capable of correcting and controuling the mischievous proceedings of such officers toward our citizens, without which a few individuals not always among the wisest and best of men, may at any time threaten the good understanding of the two Nations. The distance between the United States and the old continent, and the mortifying delays of explanations and negotiations across the Atlantic on emergencies in our neighborhood, render such a provision indispensable, and it cannot be long before all the Governments of Europe having American Colonies must see the necessity of making it. This object therefore will likewise claim your special attention.

It only remains to suggest that considering the possibility of some intermediate violence between citizens of the United States and the French or Spaniards in consequence of the interruption of our right of deposit, and the probability that considerable damages will have been occasioned by that measure to citizens of the United States, it will be proper that indemnification in the latter case be provided for, and that in the former, it shall not be taken on either side as a ground or pretext for hostilities.

These instructions, tho' as full as they could be conveniently made, will necessarily leave much to your discretion. For the proper exercise of it, the President relies on your information, your judgment, and your fidelity to the interests of your Country.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, March 2d, 1803.<sup>1</sup>

D. Of S. Mss.  
Instr.

Sir,

You will herewith receive two Commissions with the correspondent instructions, in which, you are associated as Minister Plenipotentiary and Extraordinary to the French Republic and to His Catholic Majesty, together with the respective letters of credence to those Governments.

The allowance for the service will be a salary at the rate of nine thousand dollars a year. The general rule which dates the commencement of the salary at the time of leaving home being inapplicable to your case, inasmuch as your appointment was notified and accepted at this place; your salary will commence on the — day of January on which it was understood you accepted the appointment; and will cease with the termination of the business of your Mission; a quarter's salary being however added, as an allowance for the expences of your return home.

The distinction between the circumstances of an extraordinary and temporary mission and those of a mission requiring a fixed establishment, is the ground on which no outfit is allowed. But you will be allowed your expences in repairing to Paris, including those of a Journey from your home to this place; and your expences in travelling between the places where you are or may be required to attend. In adopting this mode of allowance in lieu of the outfit, the President presuming your expences will not exceed a year's salary, has thought proper to make that the limit. In addition to the above, you will have a right to charge for postages and Couriers, should the latter prove necessary.

Your Mission to Madrid will depend on the event of that to Paris, and on the information there to be acquired. Should the entire Cession in view be obtained from the French Republic as the assignees of Spain, it will not be necessary to resort to the Spanish Government. Should the whole or any part of the Cession be found to depend, not on the French, but on the Spanish Government you will proceed to join Mr. Pinckney in the requisite negotiations with the latter. Altho' the United States are deeply interested in the complete success of your Mission, the Floridas, or even either of them, without the Island of New Orleans, on proportionate terms, will be a valuable acquisition.

The President will expect, that the most punctual and exact communication be made, of the progress and prospects of the negotiations; and of the apparent dispositions of the Governments of France and Spain towards the United States. Should either of them, particularly the former, not only reject our proposition but manifest a spirit from which a determined violation of our rights, and its hostile consequences, may be



justly apprehended, it will become necessary to give ulterior instructions abroad as well as to make arrangements at home, which will require the earliest possible notice.

The inclosed letters to our Bankers at Amsterdam and London, authorize them to pay your drafts for expences, as above referred to, and as you shall find it most convenient to draw upon the one or the other. Your experience will suggest to you the necessity of taking exact vouchers in all cases of expenditure, in order to the settlement of your accounts.

Should you find it necessary to appoint a private Secretary on your arrival in Europe, you are authorized to do so, allowing him for his service at the rate of 1350 dollars p annum. If he should live in your family, the expences of his maintenance and travelling will be included in your accounts; but he cannot be allowed any thing separately for expenses and his salary will cease when the three months allowed for your return commence. As he will have been found in France or Spain it will not be unjust to leave him there without an extra allowance for returning.

I Have The Honor To Be, &C.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State, March 8th—1803.

D. Of S. Mss.  
Instr.

Sir,

My last letter was of January 18. Yours since received are of 6th and 28th of November.

Our latest authentic information from New Orleans is of January 20. At that date, the Edict of the Intendant against our right of deposit had not been revoked, altho' the letters to him and the Governor from the Spanish Minister here had been previously received. And it appears that the first outrage had been followed by orders of the most rigid tenor against every hospitable intercourse between our Citizens navigating the river, and the Spanish inhabitants.

This continuation of the obstruction to our trade, and the approach of the season for carrying down the Mississippi the exports of the Western Country, have had the natural effect of increasing the Western irritation, and emboldening the advocates for an immediate redress by arms. Among the papers inclosed you will find the propositions moved in the Senate by Mr. Ross of Pennsylvania. They were debated at considerable length and with much ardour; and on the question had eleven votes in their favour against fourteen. The resolutions moved by Mr. Breckenridge, and which have passed into a law, will with the law itself be also found among the inclosed papers.

These proceedings ought more and more to convince the Spanish Government that it must not only maintain good faith with the United States, but must add to this pledge of peace, some provident and effectual arrangement, as heretofore urged, for controuling or correcting the wrongs of Spanish Officers in America, without the necessity of crossing the Atlantic for the purpose. The same proceedings will shew at the same time that with proper dispositions and arrangement on the part of Spain, she may reckon with confidence, on harmony and friendship with this Country. Notwithstanding the deep stroke made at our rights and our interests, and the opportunity given for self redress in a summary manner, a love of peace, a respect for the just usages of Nations, and a reliance on the voluntary justice of the Spanish Government, have given a preference to remonstrance, as the first appeal on the occasion, and to negotiation as a source of adequate provisions for perpetuating the good understanding between the two nations; the measures taken on the proposition of Mr. Breckenridge being merely those of ordinary precaution and precisely similar to those which accompanied the mission of Mr. Jay to Great Britain in 1794. Should the deposit however not be restored in time for the arrival of the Spring craft, a new crisis will occur, which it is presumed that the Spanish Government will have been stimulated to prevent by the very heavy claims of indemnification to which it would be otherwise fairly subjected. The Marquis de Casa Yrujo does not yet despair of

receiving from New Orleans favourable answers to his letters; but the remedy seems now to be more reasonably expected from Madrid. If the attention of the Spanish Government should not have been sufficiently quickened by the first notice of the proceeding from its own affairs; we hope that the energy of your interpositions will have overcome its tardy habits, and have produced an instant dispatch of the necessary orders.[1](#)

Mr. Monroe was to sail from New York for Havre de Grace on yesterday. He carries with him the instructions in which you are joined with him, as well as those which include Mr. Livingston. . . . .

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON AND JAMES MONROE.

Department of State, April 18th—1803.

D. Of S. Mss.  
Instr.

Gentlemen,

A month having elapsed since the departure of Mr. Monroe, it may be presumed that by the time this reaches you, communications will have passed with the French Government sufficiently explaining its views towards the United States, and preparing the way for the ulterior instructions which the President thinks proper should now be given.

In case a conventional arrangement with France should have resulted from the negotiations with which you are charged; or in case such should not have been the result, but no doubt should be left that the French Government means to respect our rights and to cultivate sincerely peace and friendship with the United States, it will be expedient for you to make such communications to the British Government as will assure it that nothing has been done inconsistent with our good faith, and as will prevent a diminution of the good understanding which subsists between the two Countries.

If the French Government instead of friendly arrangements, or views should be found to meditate hostilities or to have formed projects which will constrain the United States to resort to hostilities, such communications are then to be held with the British Government as will sound its dispositions and invite its concurrence in the War. Your own prudence will suggest that the communications be so made as on one hand, not to precipitate France into hostile operations, and on the other not to lead Great Britain from the supposition that war depends on the choice of the United States and that their choice of war will depend on her participation in it. If war is to be the result, it is manifestly desirable that it be delayed, until the certainty of this result can be known, and the Legislative and other provisions can be made here; and also of great importance that the certainty should not be known to Great Britain who might take advantage of the posture of things to press on the United States disagreeable conditions of her entering into the war.

It will probably be most convenient in exchanging ideas with the British Government, to make use of its public Minister at Paris; as less likely to alarm and stimulate the French Government, and to raise the pretensions of the British Government, than the repairing of either of you to London, which might be viewed by both as a signal of rupture. The latter course however, may possibly be rendered most eligible by the pressure of the crisis.

Notwithstanding the just repugnance of this Country to a coalition of any sort with the belligerent policies of Europe, the advantages to be derived from the co-operation of Great Britain in a war of the United States, at this period, against France and her

allies, are too obvious and too important to be renounced. And notwithstanding the apparent disinclination of the British councils to a renewal of hostilities with France, it will probably yield to the various motives which will be felt to have the United States in the scale of Britain against France, and particularly for the immediate purpose of defeating a project of the latter which has evidently created much solicitude in the British Government.

The price which she may attach to her co-operation cannot be foreseen, and therefore cannot be the subject of full and precise instructions. It may be expected that she will insist at least on a stipulation, that neither of the parties shall make peace or truce without the consent of the other, and as such an article cannot be deemed unreasonable, and will secure us against the possibility of her being detached in the course of the war, by seducing overtures from France, it will not be proper to raise difficulties on that account. It may be useful however to draw from her a definition, as far as the case will admit, of the objects contemplated by her, that whenever with ours they may be attainable by peace she may be duly pressed to listen to it. Such an explanation will be the more reasonable, as the objects of the United States will be so fair and so well known.

It is equally probable that a stipulation of commercial advantages in the Mississippi beyond those secured by existing treaties, will be required. On this point it may be answered at once that Great Britain shall enjoy a free trade with all of the ports to be acquired by the United States, on the terms allowed to the most favored nation in the ports generally of the United States. If made an essential condition, you may admit that in the ports to be acquired within the Mississippi, the trade of her subjects shall be on the same footing for a term of about ten years with that of our own citizens. But the United States are not to be bound to the exclusion of the trade of any particular nation or nations.

Should a mutual guarantee of the existing possessions, or of the conquests to be made by the parties, be proposed, it must be explicitly rejected as of no value to the United States, and as entangling them in the frequent wars of that nation with other powers, and very possibly in disputes with that nation itself.

The anxiety which Great Britain has shown to extend her domain to the Mississippi, the uncertain extent of her claims, from North to South, beyond the Western limits of the United States, and the attention she has paid to the North West coast of America, make it probable that she will connect with a war on this occasion, a pretension to the acquisition of the Country on the West side of the Mississippi, understood to be ceded by Spain to France, or at least of that portion of it lying between that River and the Missouri. The evils involved in such an extension of her possessions in our neighborhood, and in such a hold on the Mississippi, are obvious. The acquisition is the more objectionable as it would be extremely displeasing to our western citizens: and as its evident bearing on South America might be expected to arouse all the jealousies of France and Spain, and to prolong the war on which the event would depend. Should this pretension therefore be pressed, it must be resisted, as altogether repugnant to the sentiments, and the sound policy of the United States. But it may be agreed, in alleviation of any disappointment of Great Britain that France shall not be

allowed to retain or acquire any part of the territory, from which she herself would be precluded.

The moment the prospect of war shall require the precaution you will not omit to give confidential notice to our public Ministers and Consuls, and to our naval commanders in the Mediterranean, that our commerce and public ships may be as little exposed to the dangers as possible. It may under certain circumstances be proper to notify the danger immediately to the Collectors in the principal ports of the U. States.

Herewith inclosed are two blank plenipotentiary Commissions and letters of credence to the French and British Governments. Those for the British Government are to be filled with the name of Mr. Monroe, unless his Mission to France should have an issue likely to be disagreeable to Great Britain; in which case the President would wish Mr. Livingston inserted if the translation be not disagreeable to him, and the name of Mr. Monroe to be inserted in the Commission for the French Republic. To provide for the event of Mr. Livingston's translation, a letter of leave is inclosed.

A separate letter to you is also inclosed, authorizing you to enter into such communications and conferences with British Ministers as may possibly be required by the conduct of France. The letter is made a separate one that it may be used with the effect, but without the formality of a commission. It is hoped that sound calculations of interest as well as a sense of right in the French Government, will prevent the necessity of using the authority expressed in the letter. In a contrary state of things the President relies on your own information, to be gained on the spot, and on your best discretion to open with advantage the communications with the British Government, and to proportion the degree of an understanding with it, to the indications of an approaching war with France. Of these indications you will be best able to judge. It will only be observed to you that if France should avow or evince a determination to deny to the United States the free navigation of the Mississippi, your consultations with Great Britain may be held on the ground that war is inevitable. Should the navigation not be disputed, and the deposit alone be denied, it will be prudent to adapt your consultations to the possibility that Congress may distinguish between the two cases, and make a question how far the latter right may call for an instant resort to arms, or how far a procrastination of that remedy may be suggested and justified by the prospect of a more favorable conjuncture.

These instructions have thus far supposed that Great Britain and France are at peace, and that neither of them intend at present to interrupt it. Should war have actually commenced, or its approach be certain, France will no doubt be the more apt to concur in friendly accommodations with us, and Great Britain the more desirous to engaging us on her side. You will, of course, avail yourselves of this posture of things, for avoiding the necessity of recurring to Great Britain, or if the necessity cannot be avoided, for fashioning her disposition to arrangements which may be the least inconvenient to the United States. Whatever connection indeed may be eventually formed with Great Britain, in reference to war, the policy of the United States requires that it be as little entangling as the nature of the case will permit.

Our latest authentic information from New Orleans is of the 25th of February. At that date the port had been opened for provisions carried down the Mississippi, subject to a duty of 6 p Cent, if consumed in the province, and an additional duty if exported; with a restriction in the latter case to Spanish bottoms, and to the external ports permitted by Spain to her colonial trade. A second letter written by the Spanish Minister here, had been received by the Intendant, but without effect. On the 10th of March his interposition was repeated in a form, which, you will find by his translated communication to the Department of State, in one of the inclosed papers, was meant to be absolutely effectual. You will find in the same paper the translation of a letter from the French charge d'Affaires here, to the Governor of Louisiana, written with a co-operating view. A provisional letter to any French Agents, who might have arrived, had been previously written by him, in consequence of a note from this Department founded on a document published at New Orleans shewing that orders had been given by the Spanish Government for the surrender of the province to France; and he has of late addressed a third letter on the subject to the Prefect said to have arrived at New Orleans. It does not appear however, from any accounts received, that Louisiana has yet changed hands.

What the result of the several measures taken for restoring the right of deposit will be, remains to be seen. A representation on the subject was made by Mr. Graham, in the absence of Mr. Pinckney, to the Spanish Government on the 3d of February. No answer had been received on the 8th, but Mr. Graham was led by circumstances to make no particular inference from the delay. The silence of the French Government to Mr. Livingston's representation as stated in his letter of the NA day of NA is a very unfavorable indication. It might have been expected from the assurances given of an intention to observe the Treaty between Spain and the United States, and to cultivate the friendship of the latter, that the occasion would have been seized for evincing the sincerity of the French Government: and it may still be expected that no interposition that may be required by the actual state of things will be withheld, if peace and friendship with the United States be really the objects of that Government. Of this the Mission of Mr. Monroe, and the steps taken by you on his arrival, will doubtless have impressed the proper convictions.

During this suspense of the rightful commerce of our Western Citizens, their conduct has been and continues to be highly exemplary. With the just sensibility produced by the wrongs done them, they have united a patient confidence in the measures and views of their Government. The justice of this observation will be confirmed to you by manifestations contained in the Western Newspapers herewith inclosed; and if duly appreciated, will not lessen the force of prudential as well as of other motives, for correcting past, and avoiding future trespasses on American rights.

April 20th.

The letter from the Marquis D'Yrujo, of which you will find a translated copy in the inclosed newspaper of this date, was yesterday received. The letters to which it refers, as containing orders for the reestablishment of our deposit at New Orleans were immediately forwarded. They will arrive in time we hope, to mitigate considerably the losses from the misconduct of the Spanish Intendant; and they are the more acceptable

as they are an evidence of the respect in the Government of Spain for our rights and our friendship.

From the allusion in this communication from the Spanish Minister to a future agreement between the two Governments on the subject of an equivalent deposit, it would seem that the Spanish Government regards the Cession to France as either no longer in force, or not soon to be carried into execution. However this may be, it will not be allowed, any more than the result of our remonstrance to Spain on the violation of our rights, to slacken the negotiations for the greater security and the enlargement of these rights. Whether the French or the Spaniards or both are to be our neighbours, the considerations which led to the measures taken with respect to these important objects, still require that they should be pursued into all the success that may be attainable.

With Sentiments Of Great Respect, &C.



[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON AND JAMES MONROE

Department of State April 18th—1803.

D. Of S. Mss.  
Instr.

Gentlemen,

The reasonable and friendly views with which you have been instructed by the President to enter into negotiations with the French Government, justify him in expecting from them an issue favorable to the tranquility and to the useful relations between the two countries. It is not forgotten however that these views, instead of being reciprocal, may find on the part of France, a temper adverse to harmony, and schemes of ambition, requiring on the part of the United States, as well as of others, the arrangements suggested by a provident regard to events. Among these arrangements, the President conceives that a common interest may recommend a candid understanding and a closer connection with Great Britain; and he presumes that the occasion may present itself to the British Government in the same light. He accordingly authorizes you, or either of you in case the prospect of your discussions with the French Government should make it expedient, to open a confidential communication with Ministers of the British Government, and to confer freely and fully on the precautions and provisions best adapted to the crisis, and in which that Government may be disposed to concur, transmitting to your own without delay, the result of these consultations.

With Sentiments Of High Respect, &C.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON

Department of State May 25th, 1803.

D. Of S. Mss.  
Instr.

Sir,

Your several letters of March 3, 11, 18, & 24 with their inclosures have been duly received; as has been that of March 12, to the President. According to the request in this last, I now acknowledge also, or perhaps repeat the acknowledgment of the two papers inclosed, the one in your letter of Feby. 26, the other in that of August 10-1802.

The assurances given by the Chief Consul on the subject of our claims, cannot but be acceptable, altho' they amount to less than justice; because no more than justice would have been done, if the claims had been satisfied without the delay which has intervened, and according to the example of good faith and punctuality in executing the Treaty given by the United States. It is to be hoped that the sincerity of these assurances will be verified by the success of the measures you are taking for a final and favorable settlement in behalf of our Citizens, who have never doubted, as far as I know, your solicitude or your exertions to obtain justice for them.

The assurances given at the same time, by the Chief Consul of his regard for the United States, and of his personal esteem for their Chief magistrate, are entitled also to favorable attention as an indication that a juster value begins to be placed on our friendly relations to the French Republic. Whether this language of the French Government be the effect of the political crisis in which it finds itself, or of a growing conviction of the important destinies and honorable policy of the United States, or, as is probable, of both these considerations, you will in return, communicate the assurances with which you are charged by the President, of his disposition to cherish a reciprocity of these sentiments, and that sincere amity between the two nations which is prescribed to both, by such weighty advantages.

The persevering evasion of your demands on the subject of the deposit at New Orleans, and generally of the rights of the United States as fixed by their Treaty with Spain, is not a little astonishing. It is as difficult to be reconciled with the sincerity of the late professions of the French Government and with the policy which the moment dictates to it, as with any other rational motives. It is the more extraordinary too, as it appears by a late communication from the Spanish Government to Mr. Pinckney, of which he says he forwarded a copy to Paris, and of which another is herewith inclosed, that the Treaty of Cession expressly saves all rights previously stipulated to other nations. A conduct so inexplicable is little fitted to inspire confidence, or to strengthen friendship; and rendered proper the peremptory declaration contained in your note of the 16th of March. The negotiations succeeding the arrival of Mr. Monroe, cannot fail to draw out the views of France on this important subject.

You were informed in my letters of the 18th and 20th of April that orders had been transmitted by the Spanish Government for restoring the deposit. The answers from New Orleans to the Spanish and French Ministers here, shew that their successive interpositions, including the peremptory one from the Marquis D'Yrujo of the 11th of March, were all unavailing. The orders of the King of Spain will no doubt be obeyed, if they arrive before possession be given to the French authority; nor is it presumable that in the event they would be disregarded. Still it is possible that the French Agents may chuse to wait for the French construction of the Treaty, before they relinquish the ground taken by the Intendant, and the more possible as the orders to the Intendant may contain no disavowal of his construction of it. Under these circumstances it will be incumbent on the French Government to hasten the orders necessary to guard against a prolongation of the evil, and the very serious consequences incident to it. It cannot be too much pressed that the justice and friendship of France, in relation to our rights and interests on the Mississippi, will be the principal rules by which we shall measure her views respecting the United States, and by which the United States will shape the course of their future policy towards her.

Your answer to the complaint of a traffic of our Citizens with the negroes of St. Domingo, and of subscriptions in Philada. in behalf of the latter, was founded in just observations. You may now add, with respect to the subscriptions, the positive fact, that no such subscriptions have ever been instituted; and with respect to the other complaint, that no such traffic is known or believed to have taken place; or if it has taken place, that it must have been from foreign ports, and not from ports of the United States.

You will find by the memorial herewith inclosed from three citizens of the United States now imprisoned at Jackmel, that whilst we repel unfounded complaints, on the part of France, the best founded ones exist on ours. The letter written to Mr. Pichon, on this occasion, of which a copy is inclosed, will suggest the proper representation to the French Government. It is to be wished that his answer to me, may be a type of that which will be given to you. The case of Capts. Rogers and Davidson will connect itself with that now committed to your attention.

We are still ignorant of the result of the armed negotiations between Great Britain and France. Should it be war, or should the uncertainty of the result, be spun out, the crisis may be favorable to our rights and our just objects; and the President assures himself that the proper use will be made of it. Mr. Monroe's arrival has not yet been mentioned in any accounts which have not been contradicted.[1](#)

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON AND JAMES MONROE.

Department of State, May 28th 1803.

D. Of S. Mss.  
Instr.

Gentlemen,

Since my last which was of April 18th the tenor of our information from France and Great Britain renders a war between these powers in the highest degree probable. It may be inferred at the same time from the information given by Mr. Livingston and Mr. King, that the importance of the United States is rising fast in the estimation both of the French and the British Cabinets, and that Louisiana is as much a subject of solicitude with the latter, as it has been an object of acquisition with the former. The crises presented by this jealous and hostile attitude of those rival powers has doubtless been seen in its bearings on the arrangements contemplated in your Commission and instructions; is hoped, tho' we have not yet heard, that the arrival of Mr. Monroe will have taken place in time, to give full advantage to the means of turning the actual state of things to the just benefit of the United States.

The solicitude of England with respect to Louisiana is sufficiently evinced by her controuling the French expedition from Holland to that Country. But her views have been particularly unfolded to Mr. King by Mr. Addington, who frankly told him that in case a war should happen, it would perhaps be one of their first steps to occupy New Orleans, adding that it would not be to keep it, for that England would not accept the Country were all agreed to give it to her, but to prevent another power from obtaining it, which in his opinion would be best effected by its belonging to the United States; and concluding with assurances that nothing should be done injurious to their interests. If the Councils of France should be guided by half the wisdom which is here displayed on the part of her rival, your negotiations will be made easy, and the result of them very satisfactory.

Altho' the immediate object of Great Britain in occupying New Orleans may be that of excluding France, and altho' her prudence may renounce the fallacious advantage of retaining it for herself, it is not to be presumed that she will yield it to the United States without endeavouring to make it the ground of some arrangement that will directly or indirectly draw them into her war, or of some important concessions in favour of her commerce at the expence of our own. This consideration necessarily connects itself with the explanation, and friendly assurances of Mr. Addington, and so far leaves in force the inducement to accomplish our object by an immediate bargain with France.

In forming this bargain however, the prospect held out by the British Minister, with the nature of the crisis itself, authorizes us to expect better terms than your original instructions allow.

The President thinks it will be ineligible under such circumstances that any Convention whatever on the subject should be entered into, that will not secure to the United States the jurisdiction of a reasonable district on some convenient part of the Bank of the Mississippi.

He is made the more anxious also by the manner in which the British Government has opened itself to our Minister as well as by other considerations, that as little concession as possible should be made in the terms with France on points disagreeable to Great Britain, and particularly that the acknowledgment of the right of France as holding one shore of the Mississippi to shut it against British vessels, should be avoided, if not essential to the attainment of the great objects we have in view, on terms otherwise highly expedient. It is desirable that such an acknowledgement should not even be admitted into the discussion.

The guarantee of the Country beyond the Mississippi is another condition, which it will be well to avoid if possible, not only for the reasons you already possess, but because it seems not improbable from the communications of Mr. King that Great Britain is meditating plans for the emancipation and independence of the whole of the American Continent, South of the United States, and consequently that such guarantee would not only be disagreeable to her, but embarrassing to the United States. Should War indeed precede your Conventional arrangements with France, the guarantee, if admitted at all, must necessarily be suspended and limited in such a manner as to be applicable only to the state of things as it may be fixed by a peace.

The proposed occupancy of New Orleans by Great Britain, suggests a further precaution. Should possession be taken by her, and the preliminary sum of 2 Millions or any part of it be paid to France, risks and disputes might ensue, which make it advisable to postpone the payment till possession shall be given to the United States, or if this cannot be done, obtain possible security against eventual loss.

As the question may arise, how far in a state of War, one of the parties can of right convey territory to a neutral power, and thereby deprive its enemy of the chance of conquest incident to war, especially when the conquest may have been actually projected, it is thought proper to observe to you 1st That in the present case the project of peaceable acquisition by the United States originated prior to the War, and consequently before a project of conquest could have existed. 2dly That the right of a neutral to procure for itself by a bona fide, transaction property of any sort from a belligerent power ought not to be frustrated by the chance that a rightful conquest thereof might thereby be precluded. A contrary doctrine would sacrifice the just interests of peace to the unreasonable pretensions of war, and the positive rights of one nation to the possible rights of another. A restraint on the alienation of territory from a nation at War to a nation at peace is imposed only in cases where the proceeding might have a collusive reference to the existence of the War, and might be calculated to save the property from danger, by placing it in secret trust, to be reconveyed on the return of peace. No objection of this sort can be made to the acquisitions we have in view. The measures taken on this subject, were taken before the existence or the appearance of war, and they will be pursued as they were planned, with the bona fide purpose of vesting the acquisition forever in the United States.

With these observations, you will be left to do the best you can, under all circumstances, for the interest of your Country; keeping in mind that the rights we assert are clear, that the objects we pursue are just, and that you will be warranted in providing for both by taking every fair advantage of emergencies.

For the course of information relating to the deposit at New Orleans, I refer you to my letter of the 25th inst; to Mr. Livingston.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON

Department of State July 29th 1803.

D. Of S. Mss.  
Instr.

Sir,

Since the date of my last which was May 24 I have received your several letters of April 11, 13 & 17 & May 12th. As they relate almost wholly to the subject which was happily terminated on the 30th of April a particular answer is rendered unnecessary by that event, and by the answer which goes by this conveyance to the joint letter from yourself and Mr. Monroe of the 13th of May. It will only be observed first that the difference in the diplomatic titles given to Mr. Monroe from that given to you, and which you understood to have ranked him above you was the result merely of an error in the Clerk who copied the document and which escaped attention when they were signed. It was not the intention of the President that any distinction of grade should be made between you. Indeed, according to the authority of Vattel the characters of Minister Plenipotentiary and Envoy Extraordinary are precisely of the same grade, altho' it is said that the usage, in France particularly, does not correspond with this idea. Secondly, that the relation of the First Consul to the Italian Republic, received the compliment, deemed sufficient in the answer to a Note of Mr. Pichon, communicating the flag, of that Nation. A copy of the communication and of the answer are now inclosed.

The boundaries of Louisiana seem to be so imperfectly understood and are of so much importance, that the President wishes them to be investigated wherever information is likely to be obtained. You will be pleased to attend particularly to this object as it relates to the Spanish possessions both on the West and on the East side of the Mississippi. The proofs countenancing our claim to a part of West Florida may be of immediate use in the negotiations which are to take place at Madrid. Should Mr. Monroe have proceeded thither as is probable, and any such proofs should after his departure have come to your knowledge, you will of course have transmitted them to him.

You will find by our Gazettes that your memorial drawn up about a year ago on the subject of Louisiana, has found its way into public circulation. The passages in it which strike at G. Britain have undergone some comments, and will probably be conveyed to the attention of that Government. The document appears to have been sent from Paris, where you will be able no doubt to trace the indiscretion to its author.

No answer has yet been received either from you or Mr. Monroe to the diplomatic arrangement for London and Paris. The importance of shortening the interval at the former, and preventing one at the latter, makes us anxious on this point. As your late letters have not repeated your intention of returning home this fall, it is hoped that the interesting scenes which have since supervened may reconcile you to a longer stay in Europe.

## I Have The Honor, &C.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Department of State July 29, 1803.

D. Of S. Mss.  
Instr.

Sir,

The communication by Mr. Hughes including the Treaty and Convention signed with the French Government, were safely delivered on the 14 instant. Inclosed is a copy of a letter written in consequence of them to Mr. Livingston and yourself.

On the presumption, which accords with the information given by Mr. Hughes, that you will have proceeded to Madrid in pursuance of the instructions of the 17th February last, it is thought proper to observe to you, that altho' Louisiana may in some respects be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it.

You will be at no loss for the arguments most likely to have weight in prevailing on Spain to yield to our wishes. These Colonies, separated from her other territory on this Contient, by New Orleans, the Mississippi, and the whole of Western Louisiana, are now of less value to her than ever, whilst to the United States, they retain the peculiar importance derived from their position, and their relations to us thro' the navigable rivers running from the U States into the Gulph of Mexico. In the hands of Spain they must ever be a dead expence in time of war, and at all times a source of irritation and ill blood with the United States. The Spanish Government must understand in fact that the United States can never consider the amicable relations between Spain and them as definitively and permanently secured, without an arrangement on this subject, which will substitute the manifest indications of nature, for the artificial and inconvenient state of things now existing.

The advantage to be derived to your negotiations from the war which has just commenced, will certainly not escape you. Powerful, and it might be presumed, effectual use may be made of the fact, that Great Britain meant to seize New Orleans with a view to the anxiety of the United States to obtain it;—and of the inference from the fact, that the same policy will be pursued with respect to the Floridas. Should Spain be [engaged?] in the war it cannot be doubted that they will be quickly occupied by a British force, and held out on some condition or other, to the United States. Should Spain be still at peace, and wish not to lose her neutrality, she should reflect that the facility and policy of seizing the Floridas, must strengthen the temptations of G. Britain to force her into the war. In every view, it will be better for Spain, that the Floridas should be in the hands of the United States, than of Great Britain; and equally so, that they should be ceded to us on beneficial terms by herself, than that they should find their way to us thro' the hands of Great Britain.

The Spanish Government may be assured of the sincere and continued desire of the United States to live in harmony with Spain; that this motive enters deeply into the solicitude of their Government for a removal of the danger to it, which is inseparable from such a neighborhood as that of the Floridas; and that having, by a late Convention with G. Britain, adjusted every territorial question and interest with that Nation, and the Treaty with France concerning Louisiana having just done the same with her, it only remains that the example be copied into an arrangement with Spain, who is evidently not less interested in it than we are.

By the inclosed note of the Spanish Minister here, you will see the refusal of Spain to listen to our past overtures, with the reasons for the refusal. The answer to that communication is also inclosed. The reply to such reasons will be very easy. Neither the reputation nor the duty of his Catholic Majesty can suffer from any measure founded in wisdom, and the true interests of Spain. There is as little ground for supposing, that the maritime powers of Europe will complain of, or be dissatisfied with a Cession of the two Floridas to the United States, more than with the late cession of Louisiana by Spain to France, or more than with the former cessions thro' which the Floridas have passed. What the Treaties are subsequent to that of Utrecht, which are alleged to preclude Spain from the proposed alienation, have not been examined. Admitting them to exist in the sense put upon them, there is probably no maritime power who would not readily acquiesce in our acquisition of the Floridas, as more advantageous to itself, than the retention of them by Spain, shut up against all foreign commerce, and liable at every moment to be thrown into the preponderant scale of G. Britain. Great Britain herself would unquestionably have no objection to their being transferred to us; unless it should be drawn from her intention to conquer them for herself, or from the use she might expect to make of them, in a negotiation with the United States. And with respect to France, silence at least is imposed on her by the Cession to the United States, of the Province ceded to her by Spain; not to mention, that she must wish to see the Floridas, like Louisiana kept out of the hands of Great Britain, and has doubtless felt that motive in promising her good offices with Spain for obtaining these possessions for the United States. Of this promise you will of course make the proper use in your negotiations.

For the price to be given for the Floridas, you are referred generally to the original instructions on this point. Altho' the change of circumstances lessens the anxiety for acquiring immediately a territory which now more certainly than ever, must drop into our hands, and notwithstanding the pressure of the bargain with France on our Treasury; yet for the sake of a peaceable and fair completion of a great object, you are permitted by the President in case a less sum will not be accepted, to give two Millions and a quarter of dollars, the sum heretofore apportioned to this purchase. It will be expected however, that the whole of it, if necessary be made applicable to the discharge of debts and damages claimed from Spain, as well those not yet admitted by the Spanish Government, as those covered by the Convention signed with it by Mr. Pinckney on the 11th day of Augt. 1802, and which was not ratified by the Senate because it embraced no more of the just responsibilities of Spain. On the subject of these claims, you will hold a strong language. The Spanish Government may be told plainly, that they will not be abandoned any farther than an impartial Tribunal may make exceptions to them. Energy in the appeal to its feelings, will not only tend to

justice for past wrongs, but to prevent a repetition of them in case Spain should become a party to the present war.

In arranging the mode, the time, and the priority of paying the assumed debts, the ease of the Treasury is to be consulted as much as possible: less is not to be done with that view, than was enjoined in the case of the French debts to our Citizens. The stock to be engaged in the transaction is not to be made irredeemable, without a necessity not likely to arise; and the interest as well as the principal should be payable at the Treasury of the United States. The only admissible limitation on the redemption of the stock is, that the holder shall not be paid off in less than about one fifth or one fourth of the amount in one year.

Indemnifications for the violation of our deposit at New Orleans have been constantly kept in view, in our remonstrances and demands on that subject. It will be desirable to comprehend them in the arrangement. A distinction however is to be made between the positive and specific damages sustained by individuals, and the general injuries accruing from that breach of Treaty. The latter could be provided for by a gross and vague estimate only, and need not be pressed, as an indispensable condition. The claim however, may be represented as strictly just, and a forbearance to insist on it, as an item in the valuable considerations for which the Cession is made. Greater stress may be laid on the positive and specific damages capable of being formally verified by individuals; but there is a point beyond which it may be prudent not to insist even here; especially as the incalculable advantage accruing from the acquisition of New Orleans, will diffuse a joy throughout the Western Country that will drown the sense of these little sacrifices. Should no bargain be made on the subject of the Floridas, our claims of every sort are to be kept in force. If it be impossible to bring Spain to a Cession of the whole of the two Floridas, a trial is to be made for obtaining either or any important part of either. The part of West Florida adjoining the territories now ours, and including the principal rivers falling into the Gulph, will be particularly important and convenient.

It is not improbable that Spain, in Treating on a Cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary to that territory. Such an exchange is inadmissible. In intrinsic value there is no equality; besides the advantage, given us by the Western Bank, of the entire jurisdiction of the river. We are the less disposed also to make sacrifices to obtain the Floridas, because their position and the manifest course of events guarantee an early and reasonable acquisition of them. With respect to the adjustment of a boundary between Louisiana and the Spanish territories, there might be no objection to combining it with a Cession of the Floridas, if our knowledge of the extent and character of Louisiana were less imperfect. At present any arrangement, would be a step too much in the dark to be hazarded, and this will be a proper answer to the Spanish Government. Perhaps the inter-communications with the Spanish Government on this subject with other opportunities at Madrid, may enable you to collect useful information, and proofs of the fixt limits, or of the want of fixt limits to Western Louisiana. Your enquiries may also be directed to the question whether any and how much of what passes for West Florida, be fairly included in the

territory ceded to us by France. The treaties and transactions between Spain and France will claim particular attention in this enquiry.

Should no cession whatever be attainable, it will remain only, for the present, to provide for the free use of the rivers running from the United States into the Gulph. A convenient deposit is to be pressed as equally reasonable there as on the Mississippi; and the inconveniency experienced on the latter from the want of a jurisdiction over the deposit, will be an argument for such an improvement of the stipulation. The free use of those rivers for our external commerce, is to be insisted on as an important right, without which the United States can never be satisfied, and without an admission of which by Spain they can never confide either in her justice or her disposition to cultivate harmony and good neighborhood with them. It will not be advisable to commit the U States into the alternative of War or a compliance on the part of Spain; but no representation short of that, can be stronger than the case merits.

The instruction to urge on Spain some provision for preventing, or rectifying, by a delegated authority here, aggressions and abuses committed, by her Colonial officers, is to be regarded as of high importance. Nothing else may be able to save the U States from the necessity of doing themselves justice. It cannot be expected that they will long continue to wait the delays and the difficulties of negotiating, on every emergency, beyond the Atlantic. It is more easy and more just, that Spain and other European nations, should establish a remedy on this side of the Atlantic where the source of the wrongs is established, than that the complaints of the United States should be carried to the other side, and perhaps wait till the Atlantic has moreover been twice crossed, in procuring information for the other party without which a decision may be refused.

The navigation of the Bay of St. Mary's is common to Spain and the United States; but a light house and the customary water marks can be established within the Spanish jurisdiction only. Hitherto the Spanish Officers have refused every proper accommodation on this subject. The case may be stated to the Government of Spain, with our just expectation that we may be permitted either to provide the requisite establishments ourselves, or to make use of those provided by Spain.

This letter will be addressed to Madrid; but as it is possible that you may not have left Paris, or may have proceeded to London, a copy will be forwarded to Paris, to be thence, if necessary, sent on to London. In case it should find you either at Paris or London, it must be left to your own decision how far the call for you at either of those places, ought to suspend these instructions. Should you decide to go to Madrid, it may be proper first to present your credence to the French or British Government, as the case may be; and to charge a fit person with the public business during your absence. Should you even be at Paris and your Commission filled up for London, it may be best to proceed first to London, if the call to Madrid be not very urgent.

I shall write to Mr. Pinckney and inform him that this letter is intended for his use jointly with yours; tho' addressed to you alone, because in part not applicable to him. Should you suspend or have suspended your visit to Madrid, you will please write to

him also, giving him your ideas as to the expediency of prosecuting the object of the joint instructions or not, until you can be with him.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON AND JAMES MONROE. 1

Department of State July 29th—1803.

D. Of S. Mss.  
Instr.

Gentlemen,

Your dispatches, including the Treaty and two conventions signed with a French Plenipotentiary on the 30th of April, were safely delivered on the 14th by Mr. Hughes, to whose care you had committed them.

In concurring with the disposition of the French Government to treat for the whole of Louisiana, altho' the western part of it was not embraced by your powers, you were justified by the solid reasons which you give for it, and I am charged by the President to express to you his entire approbation of your so doing.

This approbation is in no respect precluded by the silence of your Commission and instructions. When these were made out, the object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not presumed that more could be sought by the United States either with a chance of success, or perhaps without being suspected of a greedy ambition, than the Island of New Orleans and the two Floridas, it being little doubted that the latter was or would be comprehended in the Cession from Spain to France. To the acquisition of New Orleans and the Floridas, the provision was therefore accommodated. Nor was it to be supposed that in case the French Government should be willing to part with more than the Territory on our side of the Mississippi, an arrangement with Spain for restoring to her the territory on the other side would not be preferred to a sale of it to the United States. It might be added, that the ample views of the subject carried with him by Mr. Monroe and the confidence felt that your judicious management would make the most of favorable occurrences, lessened the necessity of multiplying provisions for every turn which your negotiations might possibly take.

The effect of such considerations was diminished by no information or just presumptions whatever. The note of Mr. Livingston in particular stating to the French Government the idea of ceding the Western Country above the Arkansa and communicated to this Department in his letter of the 29th January, was not received here till April 5 more than a month after the Commission and instructions had been forwarded. And besides that this project not only left with France the possession and jurisdiction of one bank of the Mississippi from its mouth to the Arkansa, but a part of West Florida, the whole of East Florida, and the harbours for ships of war in the Gulph of Mexico, the letter inclosing the note intimated that it had been treated by the French Government with a decided neglect. In truth the communications in general between Mr. Livingston and the French Government, both of prior and subsequent date, manifested a repugnance to our views of purchase which left no expectation of any arrangement with France by which an extensive acquisition was to be made, unless in a favorable crisis of which advantage should be taken. Such was thought to

be the crisis which gave birth to the extraordinary commission in which you are joined. It consisted of the state of things produced by the breach of our deposit at New Orleans, the situation of the French Islands, particularly the important Island of St. Domingo; the distress of the French finances, the unsettled posture of Europe, the increasing jealousy between Great Britain and France, and the known aversion of the former to see the mouth of the Mississippi in the hands of the latter. These considerations it was hoped, might so far open the eyes of France to her real interest and her ears to the monitory truths which were conveyed to her thro' different channels, as to reconcile her to the establishment of the Mississippi as a natural boundary to the United States; or at least to some concessions which would justify our patiently waiting for a fuller accomplishment of our wishes under auspicious events. The crisis relied on has derived peculiar force from the rapidity with which the complaints and questions between France and Great Britain ripened towards a rupture, and it is just ground for mutual and general felicitation, that it has issued under your zealous exertions, in the extensive acquisition beyond the Mississippi.

With respect to the terms on which the acquisition is made, there can be no doubt that the bargain will be regarded as on the whole highly advantageous. The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed; and particularly if the two millions of dollars in cash, intended to reduce the price or hasten the delivery of possession had been so applied, and the assumed payments to American claimants on the footing specified in the instructions. The unexpected weight of the draught now to be made on the Treasury will be sensibly felt by it, and may possibly be inconvenient in relation to other important objects.

The President has issued his proclamation convening Congress on the 17th of October, in order that the exchange of the ratifications may be made within the time limited. It is obvious that the exchange, to be within the time, must be made here and not at Paris; and we infer from your letter of NA that the ratifications of the Chief Consul are to be transmitted hither with that view.

I only add the wish of the President to know from you the understanding which prevailed in the negotiation with respect to the Boundaries of Louisiana, and particularly the pretensions and proofs for carrying it to the River Perdido, or for including any lesser portion of West Florida.

With High Respect, &C.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.1

Department of State October 6th-1803.

D. Of S. Mss.  
Instr.

Sir,

My last was of July 29 written a few days before my departure for Virginia, whence I returned, as did the President, ten or twelve days ago. Your letters received since that date are May 20, June 3 and 25, July 11, 12 & 30th.

In the reply to the communication made by the French Government on the subject of the war, you are charged by the President to express the deep regret felt by the United States at an event so afflicting to humanity. Deploring all the calamities with which it is pregnant, they devoutly wish that the benevolent considerations which pleaded in vain for a continuance of the peace, may have their due effect in speedily restoring its blessings. Until this happy change shall take place the French Government may be assured that the United States will forget none of the obligations which the laws of neutrality impose on them. Faithful to their character they will pay to every belligerent right the respect which is due to it; but this duty will be performed in the confidence that the rights of the United States will be equally respected. The French Government will do justice to the frankness of this declaration, which is rendered the more proper, by the irregularities, of which too many examples have been heretofore experienced. The President does not permit himself to doubt that the French Government, consulting equally its own honor and the true interests of France, will guard by effectual regulations against every abuse under colour of its authority, whether on the high seas, or within French or foreign jurisdiction, which might disturb the commerce or endanger the friendly relations so happily subsisting, and which the United States are so much disposed to cherish, between the two nations.

Your interposition against the arrette of the 1st Messidor an 11 was due to the just interests of your fellow citizens. It is to be hoped that the strong views which you have presented of the subject, will lead the French Government to retract or remodify a measure not less unjust than injurious to the interests of France. Regulations which by their suddenness, ensnare those who could not possibly know them, and who meant to observe those naturally supposed to be in force, are to all intents retrospective, having the same effect and violating the same privileges, as laws enacted subsequent to the cases to which they are applied. The necessity of leaving between the date and the operation of commercial regulations, an interval sufficient to prevent surprize on distant adventurers, is in general too little regarded, and so far there may be room for common complaint. But when great and sudden changes are made, and above all, when legal forfeitures as well as mercantile losses are sustained, redress may fairly be claimed by the innocent sufferers. Admitting the public safety, which rarely happens, to require regulations of this sort, and the right of every Government to judge for itself, of the occasions, it is still more reasonable that the



losses should be repaired than that they should fall on the individuals innocently ensnared.

Your suggestion as to commercial arrangements of a general nature with France, at the present juncture has received the attention of the President; but he has not decided that any instructions should be given you to institute negotiations for that purpose; especially as it is not known on what particular points sufficiently advantageous to the United States, the French Government would be likely to enter into stipulations. Some obscurity still hangs on the extra duty exacted by the Batavian Government. The state of our information leaves it doubtful, whether the interests of the United States will be promoted, by the change authorized by our Treaty with that Republic.

Mr. Pinckney will doubtless have communicated to you his conversation with Mr. Cevallos, in which the latter denied the right of France to alienate Louisiana, to the United States; alleging a secret stipulation by France not to alienate. Two notes on the same subject have lately been presented here by the Marquis D'Yrujo. In the first dated Sept. 4 he enters a caveat against the right of France to alienate Louisiana, founding it on a declaration of the French Ambassador at Madrid in July 1802 that France would never part with that Territory, and affirming that on no other condition Spain would have ceded it to France. In the second note dated Sept. 27, it is urged as an additional objection to the Treaty between the United States and France, that the French Government had never completed the title of France, having failed to procure the stipulated recognition of the King of Etruria from Russia and Great Britain which was a condition on which Spain agreed to cede the Country to France. Copies of these Notes of the Spanish Minister here, with my answer, as also extracts from Mr. Pinckney's letter to me, and from a note of the Spanish Minister at Madrid to him, are also enclosed.

From this proceeding on the part of Spain, as well as by accounts from Paris, it is not doubted that whatever her views may be in opposing our acquisition of Louisiana, she is soliciting the concurrence of the French Government. The interest alone which France manifestly has in giving effect to her engagement with the United States, seems to forbid apprehensions that she will listen to any entreaties or temptations which Spain may employ. As to Spain it can hardly be conceived that she will unsupported by France, persist in her remonstrances, much less that she will resist the Cession to the United States, by force.

The objections to the Cession, advanced by Spain, are in fact too futile to weigh either with others or with herself The promise made by the French Ambassador, that no alienation should be made, formed no part of the Treaty of retrocession to France; and if it had, could have no effect on the purchase by the United States, which was made in good faith, without notice from Spain of any such condition, and even with sufficient evidence that no such condition existed. The objection drawn from the failure of the French Government to procure from other powers an acknowledgment of the King of Etruria, is equally groundless. This stipulation was never communicated either to the public, or to the United States, and could therefore be no bar to the contract made by them. It might be added that as the acknowledgment stipulated was, according to the words of the Article, to precede possession by the

King of Etruria the overt possession by him was notice to the world that the conditions on which it depended had either been fulfilled or been waved. Finally, no particular powers, whose acknowledgment was to be procured, are named in the article; and the existence of war between Great Britain and France at the time of the stipulation, is a proof that the British acknowledgment, the want of which is now alleged as a breach of the Treaty, could never have been in its contemplation.

But the conduct of the Spanish Government, both towards the United States and France, is a complete answer to every possible objection to the Treaty between them. That Government well knew the wish of the United States to acquire certain territories which it had ceded to France, and that they were in negotiation with France on the subject; yet the slightest hint was never given that France had no right to alienate, or even that an alienation to the United States would be disagreeable to Spain. On the contrary the Minister of his Catholic Majesty, in an official note bearing date May 4 last, gave information to the Minister of the United States at Madrid, that the “entire province of Louisiana, with the limits it had when held by France, was retroceded to that power, and that the United States might address themselves to the French Government in order to negotiate the acquisition of the territories which would suit their interest.” Here is at once a formal and irrevocable recognition of the right as well of France to convey as of the United States to receive the Territory, which is the subject of the Treaty between them. More than this cannot be required to silence forever the cavils of Spain at the titles of France now vested in the United States; yet for more than this, she may be referred to her own measures at New Orleans preparatory to the delivery of possession to France; to the promulgation under Spanish authority at that place, that Louisiana was retroceded and to be delivered to France; and to the orders signed by His Catholic Majesty’s own hand, now ready to be presented to the Government of Louisiana for the delivery of the Province to the person duly authorized by France to receive it.

In a word, the Spanish Government has interposed two objections only to the title conveyed to the United States by France. It is said first, that the title in the United States, is not good, because France was bound not to alienate. To this it is answered, that the Spanish Government itself referred the United States to France, as the power capable and the only power capable, of conveying the territory in question. It is said next that the title in France herself was not good. To this, if the same answer were less decisive the orders of the King of Spain for putting France into possession, are an answer which admits of no reply.

The President has thought proper that this view of the case should be transmitted to you, not doubting that you will make the proper use of it with the French Government, nor that that Government will feel the full force of its stipulated obligations to remove whatever difficulties Spain may interpose towards embarrassing a transaction, the complete fulfilment of which is as essential to the honor of France, as it is important to the interests of both Nations. In the mean time we shall proceed in the arrangements for taking possession of the Country ceded, as soon as possession shall be authorized; and it may be presumed that the provisions depending on Congress, will be sufficient to meet the discontents of Spain in whatever form they may assume.

The United States have obtained, by just and honorable means, a clear title to a territory too valuable in itself and too important to their tranquility and security not to be effectually maintained, and they count on every positive concurrence on the part of the French Government which the occasion may demand from their friendship and their good faith.

The rightful limits of Louisiana are under investigation. It seems undeniable from the resent state of the evidence that it extends Eastwardly as far as the river Perdido, and there is little doubt that we shall make good both a western and northern extent highly satisfactory to us.

The considerations which led Mr. Monroe to decline his trip to Madrid, having the same weight with the President, the mission is suspended until other instructions shall be given, or until circumstances shall strongly invite negotiations at Madrid for completing the acquisition desired by the United States.

The American citizens detained at Jacmel have been restored to their liberty and returned to the United States as you will find by a letter from one of them, of which a copy is inclosed.

Permit me to request your particular attention to the inclosed communication from the Secretary of the Treasury, respecting a balance due from Mr. Joseph Miller to the United States. Should there be danger of his assigning the award, so as to require the Bills to be issued by you in the name of another person it will deserve your consideration how far it is practicable to have recourse to the authority competent to give the award, that they may modify the terms of it in such manner as to secure the public claim. If no such danger exists and Mr. Miller is yet unwilling to enter into a proper arrangement, it seems best that the sett off claimed by the United States should be endorsed by you upon the Bills previously to their delivery, in order to prevent a transfer without notice.

With great respect & consideration &c. &c.,

P. S. October 14. Since the above was written, I have received a third Note from the Marquis D'Yrujo, in reply to my answer to his two preceding. A copy of it is herewith added. It requires no comment beyond what may be applicable in the above observations on his two first notes; being probably intended for little more than a proof of fidelity to his trust, and of a zeal recommending him to the favor of his Sovereign.

Be pleased to cause the books referred to in the inclosed slip from the Moniteur of the 29th of July last to be purchased and transmitted to this office. They may doubtless be had at Paris or Amsterdam. You may add to them any other reputable and valuable treatise and also collection of modern treaties you think proper.

It having been thought proper to communicate to Mr. Pichon the French charge D'Affairs here, the tenor of the Notes from the Marquis D'Yrujo, he has presented in a note just received, a vindication of his Government and its treaty with the United

States against the objections proceeding from the Spanish Government. A copy of this note is herewith inclosed.

[\[Back to Table of Contents\]](#)

## TO CHARLES PINCKNEY.

Department of State October 12th—1803.

D. Of S. Mss.  
Instr.

Sir,

Since my last of July 29, I have received your several letters of April 12 & 20 May 2d & 4th June 12 and July 18th.

Mr. Monroe has already informed you of his having proceeded to London, and of his intention not to repair to Madrid, for the present. He will have since received instructions given on a contrary supposition; but it is probable he will wait where he is for the determination of the President on the reasons which kept him from proceeding to Madrid. I have just informed him that the President approves the course he has taken, so that he is not to be expected to join you at Madrid, until he shall be so instructed, or until a change of circumstances, shall in his view clearly invite him to do so. My last letter to you having provided for the case of Mr. Monroe's postponing this trip, I need not repeat the instructions and observations then made to you. I shall only add, that it is more proper now than ever that you should not be in haste without the concurrence of your colleague, to revive the negotiation jointly committed to you.

Among the reasons which weighed with the President as well as with Mr. Monroe, against attempting at present, to procure from the Spanish Government the residuum of territory desired by the United States, is the ill humour shewn by that Government at the acquisition already made by them from France; and of which the language held to you by M. Cevallos as communicated in your letter of NA is a sufficient proof. A still fuller proof of the same fact, is contained in three letters lately received from the Spanish Minister here, copies of which with my answer to the two first, are herewith inclosed. I inclose also a copy of a letter written on the occasion to Mr. Livingston, which was rendered more proper, by the probability as well as by information from Paris, that efforts would be used with Spain to draw the French Government into her views of frustrating the Cession of Louisiana to the United States.

In these documents you will find the remarks by which the objections made by the Spanish Government to the Treaty of Cession between the U. S. and France are to be combated. The President thinks it proper that they should without delay be conveyed to the Spanish Government, either by a note from you, or in conversation, as you may deem most expedient; and in a form and stile best uniting the advantages of making that Government sensible of the absolute determination of the United States to maintain their right, with the propriety of avoiding undignified menace, and unnecessary irritation.

The conduct of Spain on this occasion is such as was in several views little to be expected, and as is not readily explained. If her object be to extort Louisiana from France as well as to prevent its transfer to the U States it would seem that she must be

emboldened by an understanding with some other very powerful quarter of Europe. If she hopes to prevail on France to break her engagement to the United States, and voluntarily restore Louisiana to herself, why has she so absurdly blended with the project the offensive communication of the perfidy which she charges on the First Consul? If it be her aim to prevent the execution of the Treaty between the United States and France, in order to have for her neighbor the latter instead of the United States, it is not difficult to shew that she mistakes the lesser for the greater danger, against which she wishes to provide. Admitting as she may possibly suppose, that Louisiana as a French Colony, would be less able as well as less disposed than the United States, to encroach on her Southern possessions, and that it would be too much occupied with its own safety against the United States, to turn its force on the other side against her possessions, still it is obvious, in the first place, that in proportion to [as] the want of power in the French Colony would be safe for Spain, compared with the power of the United States, the Colony would be insufficient as a barrier against the United States; and in the next place, that the very security which she provides would itself be a source of the greatest of all dangers she has to apprehend. The Collisions between the United States and the French would lead to a contest in which Great Britain would naturally join the former, and in which Spain would of course be on the side of the latter; and what becomes of Louisiana and the Spanish possessions beyond it, in a contest between powers so marshalled? An easy and certain victim to the fleets of Great Britain and the land armies of this Country. A combination of these forces was always and justly dreaded by both Spain and France. It was the danger which led both into our revolutionary war, and [as] much inconsistency as weakness is chargeable on the projects of either, which tend to reunite for the purposes of war, the power which has been divided. France returning to her original policy, has wisely by her late Treaty with the United States, obviated a danger which could not have been very remote. Spain will be equally wise in following the example and by acquiescing in an arrangement which guards against an early danger of controversy between the United States, first with France then with herself, and removes to a distant day the approximation of the American and Spanish settlements, provide in the best possible manner for the security of the latter and for a lasting harmony with the United States. What is it that Spain dreads? She dreads, it is presumed, the growing power of this country, and the direction of it against her possessions within its reach. Can she annihilate this power? No.—Can she sensibly retard its growth? No.—Does not common prudence then advise her, to conciliate by every proof of friendship and confidence the good will of a nation whose power is formidable to her; instead of yielding to the impulses of jealousy, and adopting obnoxious precautions, which can have no other effect than to bring on prematurely the whole weight of the Calamity which she fears. Reflections, such as these may perhaps enter with some advantage into your communications with the Spanish Government, and as far as they may be invited by favorable occasions, you will make that use of them.

Perhaps after all this interposition of Spain it may be intended merely to embarrass a measure which she does not hope to defeat, in order to obtain from France or the United States or both, concessions of some sort or other as the price of her acquiescence. As yet no indication is given, that a resistance by force to the execution of the Treaty is prepared or meditated. And if it should, the provisions depending on

Congress, whose Session will commence in two days, will, it may be presumed, be effectually adapted to such an event.

With sentiments of great esteem and consideration &c &c.

P. S. Mr. Graham has signified his wish to resign the place he holds at Madrid. The President leaves it to himself to fix the time when it may be most convenient that the resignation should take effect. Whenever this shall arrive, you have the permission of the president to name a private Secretary.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.1

Department of State, November 9th 1803.

D. Of S. Mss.  
Instr.

Sir,

In my letter of the 22 ult. I mentioned to you that the exchange of the ratifications of the Treaty and Conventions with France had taken place here, unclogged with any condition or reserve. Congress have since passed an act to enable the President to take possession of the ceded territory and to establish a temporary Government therein. Other Acts have been passed for complying with the pecuniary stipulations of those instruments. The Newspapers inclosed will inform you of these proceedings.

By the post which left this City for Nachez on Monday last, a joint and several Commission was forwarded to Governor Claiborne and Genl Wilkinson authorizing them to receive possession and occupy those territories, and a separate Commission to the former as temporary Governor. The possibility suggested by recent circumstances that delivery may be refused at New Orleans, on the part of Spain, required that provision should be made as well for taking as receiving possession. Should force be necessary, Governor Claiborne and Genl Wilkinson will have to decide on the practicability of a Coup de Main, without waiting for the reinforcements which will require time on our part and admit of preparations on the other. The force provided for this object is to consist of the regular troops near at hand, as many of the Militia as may be requisite and can be drawn from the Mississippi Territory, and as many volunteers from any Quarter as can be picked up. To them will be added 500 mounted Militia, from Tennessee, who it is expected will proceed to Nachez with the least possible delay.

Mr. Pichon has in the strongest manner pressed on Mr. Laussat the French Commissary appointed to deliver possession, the necessity of co-operating in these measures of compulsion should they prove necessary by the refusal of the Spanish Officers to comply without them.

On the 8th of October it was not known, and no indications had been exhibited at New Orleans, of a design on the part of Spain to refuse or oppose the surrender of the Province to France, and thereby to us.1

With High Respect & Consideration &C.



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, January 5, 1804.<sup>1</sup>

D. Of S. Mss.  
Instr.

Sir,

The information and observations which you have as yet, received from me since your arrival in London, on the impressment of our seamen, and other violations of our rights, have been in private letters only. The delay in making these injuries the subject of official communications, proceeded, first, from an expectation that the British Government would have notified formally to the United States as a neutral power, the state of War between Great Britain and France; which would have been an apt occasion, for combining with assurances of the fairness with which our neutral obligations would be fulfilled, our just claims on a correspondent respect for our neutral rights, and particularly of those which had been least respected during the last war: secondly, from the expected arrival of Mr. Merry, which, if he should not be charged with such a notification, might be a favorable opportunity for commencing the explanations and discussions which must precede a thorough correction of the wrongs which we experience.

Since the arrival of Mr. Merry, accordingly, no time has been lost in calling his attention to the subject; and in preparing both it and him, for the negotiation which is now to be committed to you. If appearances are to be trusted, his impressions and representations will be friendly to it. In my conversations with him, which have been free and full, he has expressed the best dispositions, has listened with candor to the appeals made as well to the considerations of justice, as of the solid interest of his nation; and altho' he suggests serious difficulties on certain points, he will, I believe, sincerely co-operate in lessening them, and in bringing about an arrangement which will be acceptable to this country. The only topic on which any thing has passed in writing between the Department of State and him, is that of the pretended blockade of St. Domingo. Copies of my letter to him and of his answer, are herewith inclosed; as also of the letter written to Mr. Thornton some time before, and referred to in that to Mr. Merry, in relation to a like blockade of Martinique and Guadaloupe.

Altho' there are many important objects which may be thought to invite conventional regulations between the United States and Great Britain, it is evidently proper to leave for subsequent consideration, such as are less urgent in their nature or more difficult in their adjustment; and thereby to render the way plainer and shorter to an agreement with respect to objects which cannot be much longer delayed without danger to the good understanding of the two nations. With this view the plan of a Convention contemplated by the President, is limited to the cases of impressments of our seamen, of blockades, of visiting and searching our vessels, of contraband of War, and of the trade of hostile Colonies, with a few other cases affecting our maritime rights; embracing however, as inducements to Great Britain to do us justice therein, a

provision for the surrender of deserting seamen and soldiers, and for the prevention of contraband supplies to her enemies.

The plan digested for your use is subjoined. The first column contains the articles which are to be proposed in the first instance, and which are considered as within our just expectations: The second modifies the articles into the concessions which the British Government may possibly require, and which it may be expedient for us ultimately to admit.

A Convention between the United States and Great Britain.

## First Proposal.

## Second And Ultimatum.

### Article I.

No person whatever shall, upon the high seas and without the jurisdiction of either party be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the other parties, by the public or private armed ships belonging to or in the service of the other, unless such person be at the time in the Military service of an enemy of such other party.

### Article I.

No seaman, seafaring or other person shall upon the high seas and without the jurisdiction of either party be demanded or taken out of any ship or vessel belonging to the citizens or subjects of one of the parties by the public or private armed ships belonging to or in the service of the other party and strict and effectual orders shall be given for the due observance of this engagement: but it is to be understood that this article shall not exempt any person on board the ships of either of the parties from being taken therefrom by the other party in cases where they may be liable to be so taken according to the laws of nations, which liability however shall not be construed to extend in any case to seamen or seafaring persons, being actually part of the crew of the vessel in which they may be, nor to persons of any description passing from one port to another port of either of the parties.

### Article II.

The same.

### Article II.

No person being a subject or citizen of one of the parties and resorting to or residing in the dominions of the other, shall in any case be compelled to serve on board any

vessel whether public or private belonging to such other party: and all citizens or subjects whatever of the respective parties at this time compulsively serving on board the vessels of the other shall be forthwith liberated, and enabled by an adequate recompence to return to their own country.

### Article III.

The same.

### Article III.

If the ships of either of the parties shall be met with sailing either along the coasts or on the high seas by any ship of war or other public or private armed ships of the other party, such ships of war or other armed vessels shall for avoiding all disorder in visiting and examining the same, remain out of cannon shot, unless the state of the sea or the place of meeting render a nearer approach necessary, and shall in no case compel or require such vessel to send her boat, her papers or any person from on board to the belligerent vessel, but the belligerent vessel may send her own boat to the other and may enter her to the number of two or three men only who may in an orderly manner make the necessary inquiries concerning the vessel and her cargo; and it is agreed that effectual provision shall be made for punishing violations of any part of this article.

### Article IV.

The same.

### Article IV.

Contraband of war shall consist of the following articles only: Salt petre, sulphur, cuirasses, pikes, swords, sword belts, knapsacks, saddles and bridles, cannons, mortars, fire arms, pistols, bombs, grenades, bullets, fire locks, flints, matches and gun powder; excepting however the quantity of the said articles which may be necessary for the defence or use of the ship and those who compose the crew, and no other articles whatever not here enumerated shall be reputed contraband or liable to confiscation, but shall pass freely without being subjected to the smallest difficulty unless they be enemy's property, and it is to be particularly understood that under the denomination of enemy's property, is not to be comprized the merchandise of the growth, produce or manufactures of the countries or dominions at war which shall have been acquired by the citizens or subjects of the neutral power, and shall be transported for their account, which merchandise cannot in any case or on any pretext be excepted from the freedom of the neutral flag.

## Article V.

The same.

## Article V.

In all cases where the prize courts of either party shall pronounce judgment against any vessel or property claimed by citizens or subjects of the other, the sentence or decree shall mention the reasons or motives in which the same shall have been founded and an authenticated copy of the sentence or decree and of all the proceedings in the case, shall, if demanded be delivered to the commander or Agent of the said vessel, without any delay, he paying the legal fees for the same.

## Article VI.

The same.

## Article VI.

In order to determine what characterizes a blockaded port, that denomination is given only to a port where there is by the disposition of the power which attacks it with ships stationary or sufficiently near an evident danger of entering.

## Article VII.

Omit the preamble.

## Article VII.

(In consideration of the distance of the ports likely to be blockaded by either party from the ports of the other party and of other circumstances incident to their relative situations), it is agreed that no vessel sailing from the ports of either shall, altho' cleared or bound to a blockaded port be considered as violating in any manner the blockade, unless on her approach towards such port she shall have been previously warned against entering the same.

## Article VIII.

Omit, "captains, officers."

## Article VIII.

It is agreed that no refuge or protection shall be afforded by either party to the "captains, officers," mariners, sailors or other persons not found to be its own citizens

or subjects who shall desert from a vessel of the other party, of the crew whereof the deserter made a part, but on the contrary all such deserters shall be delivered up on demand to the commanders of the vessels from which they shall have deserted, or to the commanding officers of the ships of war of the respective nations, or to such other persons as may be duly authorized to make requisition in that behalf; provided that proof be made within two years from the time of desertion by an exhibition of the ships papers or authenticated copies thereof, and by satisfactory evidence of the identity of the person, that the deserters so demanded were actually part of the crew of the vessels in question.

And for the more effectual execution of this article adequate provision shall be made for causing to be arrested on the application of the respective consuls or vice consuls to the competent authorities all deserters as aforesaid, duly proved to be such in order that they may be sent back to the commanders of the vessels to which they belonged or removed out of the country and all due aid and assistance shall be given in searching for as well as in seizing and arresting the said deserters who shall even be detained and kept in the prisons of the country at the request and expence of the said consuls or vice consuls until they shall have found an opportunity of sending them back or removing them as aforesaid. But if they be not so sent back or removed within three months from the day of their arrest they shall be set at liberty and shall not again be arrested for the same cause.

## Article IX.

Omit "officers or."

## Article IX.

It is further agreed that no refuge or protection shall be afforded by either of the parties to any officers or soldiers not found to be its own citizens or subjects who shall desert from the military service of the other; but that on the contrary effectual measures shall be taken in like manner and under like regulations and conditions as with respect to sailors, for apprehending any such deserting soldiers and delivering them to the commanding officers of the military posts, forts or garrisons from which they shall have deserted, or to the consuls or vice consuls on either side or to such persons as may be duly authorized to demand their restitution.

## Article X.

Omitted.

## Article X.

It is however understood that no stipulation herein made shall be construed to empower the civil or military officers of either of the parties to enter forcibly into any of the forts, garrisons posts or other places or to use violence of any sort within the

jurisdiction of the other party or be construed in any manner to contravene or derogate from the stipulation contained in the first of the above articles against demanding or taking any persons out of vessels on the high seas and without the jurisdiction of either of the parties.

### Article XI.

The same.

### Article XI.

Each party will prohibit its citizens or subjects from clandestinely carrying away from the territories or dominions of the other, any seamen or soldiers belonging to such other party.

### Article XII.

The same.

### Article XII.

Neither party shall permit any of the articles above enumerated as contraband of War to be cleared out from its ports to any place within the jurisdiction of an enemy of the other party and in order to enforce this regulation due proof and security shall be given that all such articles of contraband as may be exported from the ports of either of the parties have been actually destined elsewhere than within the jurisdiction of an enemy of the other party.

### Article XIII.

The same.

### Article XIII.

This Convention shall be in force for the term of five years from the date of the exchange of ratifications. It shall be ratified on both sides within NA months from the day of its signature or sooner if possible, and the ratifications exchanged without delay in the United States at the City of Washington.

### ***Observations On The Preceding Plan.***

The first article relates to impressments from American vessels on the high seas. The Commanders of British armed vessels, have as is well known, been long in this practice. They have indeed not only continued it, under the sanction of their superiors,

on the high seas; but have, with impunity, extended it to our own coasts, to neutral ports, and to neutral territory; and, in some instances to our own harbours. The article does not comprehend these latter cases, because it would not be very honorable in Great Britain to stipulate against the practice of such enormities, nor in the United States to recur to stipulations as a security against it; and because it may be presumed that such particular enormities will not be repeated or unpunished after a general stop shall have been put to impressments.

The article in its first form renounces the claim to take from the vessels of the neutral party, on the high seas any person whatever not in the military service of an enemy; an exception which we admit to come within the law of nations, on the subject of contraband of war.

With this exception, we consider a neutral flag on the high seas as a safeguard to those sailing under it. Great Britain on the contrary asserts a right to search for and seize her own subjects; and under that cover, as cannot but happen, are often seized and taken off, citizens of the United States and citizens or subjects of other neutral countries, navigating the high seas, under the protection of the American flag.

Were the right of Great Britain in this case not denied the abuses flowing from it, would justify the United States in claiming and expecting a discontinuance of its exercise. But the right is denied and on the best grounds.

Altho' Great Britain has not yet adopted in the same latitude with most other nations, the immunities of a neutral flag, she will not deny the general freedom of the high seas, and of neutral vessels navigating them, with such exceptions only as are annexed to it by the law of nations. She must produce then such an exception in the law of nations in favor of the right she contends for. But in what written and received authority will she find it? In what usage except her own will it be found? She will find in both, that a neutral vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port, nor as she has maintained, and as we have not contested, enemy's property of any kind. But no where will she find an exception to this freedom of the seas, and of neutral flags which justifies the taking away of any person not an enemy in military service, found on board a neutral vessel.

If treaties, British as well as others, are to be consulted on this subject, it will equally appear, that no countenance to the practice can be found in them. Whilst they admit a contraband of war, by enumerating its articles, and the effect of a real blockade by defining it, in no instance do they affirm or imply a right in any sovereign to enforce his claims to the allegiance of his subjects, on board neutral vessels on the high seas. On the contrary, whenever a belligerent claim against persons on board a neutral vessel, is referred to in treaties, enemies in military service alone are excepted from the general immunity of persons in that situation; and this exception confirms the immunity of those who are not included in it.

It is not then from the law or the usage of nations, nor from the tenor of treaties, that any sanction can be derived for the practice in question. And surely it will not be

pretended that the sovereignty of any nation extends in any case whatever, beyond its own dominions, and its own vessels on the high seas. Such a doctrine would give just alarm to all nations, and more than any thing would countenance the imputation of aspiring to an universal empire of the seas. It would be the less admissible too, as it would be applicable to times of peace as well as to times of war, and to property as well as to persons. If the law of allegiance, which is a municipal law, be in force at all on the high seas, on board foreign vessels, it must be so at all times there, as it is within its acknowledged sphere. If the reason alleged for it be good in time of war, namely that the sovereign has then a right to the service of all his subjects, it must be good at all times, because at all times he has the same right to their service. War is not the only occasion for which he may want their services, nor is external danger the only danger against which their services may be required for his security. Again;—if the authority of a municipal law can operate on persons in foreign vessels on the high seas, because within the dominion of their sovereign they would be subject to that law, and are violating that law by being in that situation, how reject the inference that the authority of a municipal law may equally be enforced on board foreign vessels on the high seas, against articles of property exported in violation of such a law, or belonging to the country from which it was exported? And thus every commercial regulation in time of peace too, as well as of war, would be made obligatory on foreigners and their vessels, not only whilst within the dominion of the sovereign making the regulation, but in every sea, and at every distance where an armed vessel might meet with them. Another inference deserves attention. If the subjects of one sovereign may be taken by force from the vessels of another, on the high seas, the right of taking them when found implies the right of searching for them, a vexation of commerce, especially in time of peace, which has not yet been attempted, and which for that as well as other reasons, may be regarded as contradicting the principle from which it would flow.

Taking reason and justice for the tests of this practice, it is peculiarly indefensible; because it deprives the dearest rights of persons, of a regular trial, to which the most inconsiderable article of property captured on the high seas, is entitled; and leaves their destiny to the will of an officer, sometimes cruel, often ignorant, and generally interested by his want of mariners, in his own decisions. Whenever property found in a neutral vessel is supposed to be liable on any grounds to capture and condemnation, the rule in all cases is that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages, for an abuse of his power. Can it be reasonable then or just, that a belligerent commander who is thus restricted and thus responsible in a case of mere property of trivial amount, should be permitted without recurring to any tribunal whatever to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into instant execution, by forcing every individual he may chuse, into a service abhorrent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice and humanity unite in protesting against so extravagant a proceeding. And what is the pretext for it? It is that the similarity of language and of features between American citizens and British subjects are such as not easily to be distinguished; and that without this arbitrary and summary authority to make the



distinction British subjects would escape, under the name of American citizens from the duty which they owe to their sovereign. Is then the difficulty of distinguishing a mariner of one country from the mariner of the other, and the importance of his services a good plea for referring the question whether he belongs to the one or to the other to an arbitrary decision on the spot, by an interested and irresponsible officer? In all other cases, the difficulty and the importance of questions, are considered as reasons for requiring greater care and formality in investigating them, and greater security for a right decision on them. To say that precautions of this sort are incompatible with the object, is to admit that the object is unjustifiable; since the only means by which it can be pursued are such as cannot be justified. The evil takes a deeper die when viewed in its practice as well as its principles. Were it allowable that British subjects should be taken out of American vessels on the high seas, it might at least be required that the proof of their allegiance should lie on the British side. This obvious and just rule is however reversed; and every seaman on board, tho' going from an American port, and sailing under the American flag, and sometimes even speaking an idiom proving him not to be a British subject, is presumed to be such, unless shewn to be an American citizen. It may safely be affirmed that this is an outrage and an indignity which has no precedent, and which Great Britain would be among the last nations in the world to suffer if offered to her own subjects, and her own flag. Nor is it always against the right presumption alone, which is in favor of the citizenship corresponding with the flag, that the violence is committed. Not unfrequently it takes place in defiance of the most positive proof, certified in due form by an American officer. Let it not be said that in granting to American seamen this protection for their rights as such, the point is yielded, that the proof lies on the American side, and that the want of it in the prescribed form justifies the inference that the seaman is not of American allegiance. It is distinctly to be understood, that the certificate usually called a protection to American seamen, is not meant to protect them under their own or even any other neutral flag on the high seas. We maintain, and can never admit, that in such a situation any other protection is required for them, than the neutral flag itself, on the high seas. The document is given to prove their real character, in situations to which neither the law of nations nor the law of their own country are applicable; in other words to protect them within the jurisdiction of the British laws, and to secure to them, within every other jurisdiction, the rights and immunities due to them. If in the course of their navigation even on the high seas, the document should have the effect of repelling wrongs of any sort, it is an incidental advantage only of which they avail themselves, and is by no means to be misconstrued into a right to exact such a proof, or to make any disadvantageous inference from the want of it.

Were it even admitted that certificates for protection might be justly required in time of war, from American seamen, they could only be required in cases, where the lapse of time from its commencement had given an opportunity for the American seamen to provide themselves with such a document. Yet it is certain that in a variety of instances seamen have been impressed from American vessels, on the plea that they had not this proof of citizenship when the dates and places of the impressments, demonstrated the impossibility of their knowing, in time to provide the proof, that a state of war had rendered it necessary.

Whether therefore, we consult the law of nations, the tenor of treaties, or the dictates of reason and justice, no warrant, no pretext can be found for the British practice of making impressments from American vessels on the high seas.

Great Britain has the less to say in excuse for this practice as it is in direct contradiction to the principles on which she proceeds in other cases. Whilst she claims and seizes on the high seas, her own subjects voluntarily serving in American vessels, she has constantly given, when she could give as a reason for not discharging from her service American citizens, that they had voluntarily engaged in it. Nay, more. Whilst she impresses her own subjects from the American service, altho' they may have been settled and married and even naturalized in the United States, she constantly refuses to release from hers, American citizens impressed into it, whenever she can give for a reason that they were either settled or married within her dominions. Thus, when the voluntary consent of the individual favors her pretensions, she pleads the validity of that consent. When the voluntary consent of the individual stands in the way of her pretensions it goes for nothing! When marriage or residence can be pleaded in her favor, she avails herself of the plea. When marriage & residence and even naturalization are against her, no respect whatever is paid to either! She takes by force her own subjects voluntarily serving in our vessels. She keeps by force American citizens involuntarily serving in hers. More flagrant inconsistencies cannot be imagined.

Notwithstanding the powerful motives which ought to be felt by the British Government to relinquish a practice which exposes it to so many reproaches; it is foreseen that objections of different sorts will be pressed on you. You will be told first, of the great number of British seamen in the American trade and of the necessity for their services in time of war and danger. Secondly—Of the right and the prejudice of the British nation with respect to what are called the British or narrow seas, where its domain would be abandoned by the general stipulation required. Thirdly—Of the use which would be made of such a sanctuary as that of American vessels, for desertions and traitorous communications to her enemies, especially across the channel to France.

1st. With respect to the British seamen serving in our trade it may be remarked, first, that the number tho' considerable, is probably less than may be supposed; secondly, that what is wrong in itself cannot be made right by considerations of expediency or advantage; thirdly, that it is proved by the fact that the number of real British subjects gained by the practice in question, is of inconsiderable importance even in the scale of advantage. The annexed report to Congress on the subject of impressments, with the addition of such cases as may be in the hands of Mr. Erving, will verify the remark in its application to the present war. The statement made by his predecessor during the last war, and which is also annexed, is in the same view still more conclusive. The statement comprehends not only all the applications made by him in the first instance, for the liberation of impressed seamen, between the month of June 1797 and September 1801, but many also which had been made previous to this Agency, by Mr. Pinckney and Mr. King and which it was necessary for him to renew. These applications therefore may fairly be considered as embracing the greater part of the period of the war; and as applications are known to be pretty indiscriminately made,

they may further be considered as embracing if not the whole the far greater part of the impressments, those of British subjects as well as others. Yet the result exhibits 2,059 cases only, and of this number, 102 seamen only detained as being British subjects, which is less than 1/20 of the number impressed; and 1142 discharged or ordered to be so, as not being British subjects, which is more than half of the whole number, leaving 805 for further proof, with the strongest presumption that the greater part, if not the whole were American or other aliens, whose proof of citizenship had been lost or destroyed, or whose situation would account for the difficulties and delays in producing it. So that it is certain, that for all the British seamen gained by this violent proceeding, more than an equal number who were not so were the victims; it is highly probable that for every British seaman so gained, a number of others not less than 10 for one must have been the victims, and it is even possible that this number may have exceeded the proportion of twenty to one.

It cannot therefore be doubted that the acquisition of British seamen, by these impressments, whatever may be its advantage, is lost in the wrong done to Americans ignorantly or wilfully mistaken for British subjects; in the jealousy and ill will excited among all maritime nations by an adherence to such a practice; and in the particular provocation to measures of redress on the part of the United States not less disagreeable to them, than embarrassing to Great Britain, and which may threaten the good understanding which ought to be faithfully cultivated by both. The copy of a Bill brought into Congress under the influence of violations committed on our flag, gives force to this latter consideration. Whether it will pass into a law, and at the present session, is more than can yet be said. As there is every reason to believe that it has been proposed with reluctance, it will probably not be pursued into effect, if any hope can be supported of a remedy by an amicable arrangement between the two nations. But such is the feeling thro' this country, produced by the reiterated and atrocious cases of impressments and other insults on our flag, that a remedy of some kind will ere long be called for in a tone not to be disregarded. A copy of the Bill referred to is herewith inclosed.

There is a further consideration which ought to have weight in this question. Altho' the British seamen employed in carrying on American commerce, be in some respects lost to their own nation, yet such is the intimate and extensive connection of this commerce, direct and circuitous, with the commerce, the manufactures, the revenue and the general resources of the British nation, that in other respects its mariners, on board American vessels, may truly be said to be rendering it the most valuable services. It would not be extravagant to make it a question, whether Great Britain would not suffer more by withdrawing her seamen from the merchant vessels of the United States, than her enemies would suffer from the addition of them to the crews of her ships of war and cruisers.

Should any difficulty be started concerning seamen born within the British dominions, and naturalized by the United States since the Treaty of 1783, you may remove it by observing; first that very few if any such naturalizations can take place, the law here requiring a preparatory residence of five years with notice of the intention to become a citizen entered of record two years before the last necessary formality; besides a regular proof of good moral character; conditions little likely to be complied with by

ordinary seafaring persons: secondly, that a discontinuance of impressments on the high seas will preclude an actual collision between the interfering claims. Within the jurisdiction of each nation and in their respective vessels on the high seas, each will enforce the allegiance which it claims. In other situations the individuals doubly claimed will be within a jurisdiction independent of both nations.

2d. The British pretensions to domain over the narrow seas are so obsolete, and so indefensible, that they never would have occurred as a probable objection in this case, if they had not actually frustrated an arrangement settled by Mr. King with the British Ministry on the subject of impressments from American vessels on the high seas. At the moment when the articles were expected to be signed an exception of the "narrow seas" was urged and insisted on by Lord St. Vincent; and being utterly inadmissible on our part, the negotiation was abandoned. Mr. King seems to be of opinion however, that with more time than was left him for the experiment, the objection might have been overcome. This is not improbable if the objection was not merely an expedient for evading a relinquishment of a favorite practice.

The objection in itself has certainly not the slightest foundation. The time has been indeed when England not only claimed but exercised pretensions scarcely inferior to full sovereignty over the seas surrounding the British Isles, and even as far as Cape Finisterre to the south and Nanstaden in Norway to the north. It was a time however, when reason had little share in determining the law and the intercourse of nations, when power alone decided questions of right and when the ignorance and want of concert among other maritime countries facilitated such an usurpation. The progress of civilization and information has produced a change in all those respects; and no principle in the code of public law is at present better established than the common freedom of the seas beyond a very limited distance from the territories washed by them. This distance is not indeed fixed with absolute precision. It is varied in a small degree by written authorities, and perhaps it may be reasonably varied in some degree by local peculiarities. But the greatest distance which would now be listened to any where, would make a small proportion of the narrowest part of the narrowest seas in question.

What are in fact the prerogatives claimed and exercised by Great Britain over these seas? If they were really a part of her domain, her authority would be the same there as within her other domain. Foreign vessels would be subject to all the laws and regulations framed for them, as much as if they were within the harbours or rivers of the country. Nothing of this sort is pretended. Nothing of this sort would be tolerated. The only instances in which these seas are distinguished from other seas, or in which Great Britain enjoys within them, any distinction over other nations, are first, the compliment paid by other flags to hers; secondly the extension of her territorial jurisdiction in certain cases to the distance of four leagues from the coast. The first is a relic of ancient usurpation, which has thus long escaped the correction which modern and more enlightened times have applied to other usurpations. The prerogative has been often contested however, even at the expence of bloody wars, and is still borne with ill will and impatience by her neighbors. At the last treaty of peace at Amiens, the abolition of it was repeatedly and strongly pressed by France; and it is not improbable that at no remote day it will follow the fate of the title of

“King of France” so long worn by the British monarchs and at length so properly sacrificed to the lessons of a magnanimous wisdom. As far as this homage to the British flag has any foundation at present, it rests merely on long usage and long acquiescence, which are construed, as in a few other cases of maritime claims, into the effect of a general tho’ tacit convention. The second instance is the extension of the territorial jurisdiction to four leagues from the shore. This too, as far as the distance may exceed that which is generally allowed, rests on a like foundation, strengthened perhaps, by the local facility of smuggling, and the peculiar interest which Great Britain has in preventing a practice affecting so deeply her whole system of revenue, commerce and manufactures: whilst the limitation itself to four leagues necessarily implies that beyond that distance no territorial jurisdiction is assumed.

But whatever may be the origin or the value of these prerogatives over foreign flags in one case, and within a limited portion of these seas in another, it is obvious that neither of them will be violated by the exemption of American vessels from impressments which are nowise connected with either; having never been made on the pretext either of withholding the wonted homage to the British flag, or of smuggling in defiance of British laws.

This extension of the British law to four leagues from the shore is inferred from an Act of Parliament passed in the year 1736 (9 G. 2. C. 35) the terms of which comprehend all vessels, foreign as well as British. It is possible however, that the former are constructively excepted. Should your enquiries ascertain this to be the case, you will find yourself on better ground, than the concession here made.

With respect to the compliment paid to the British flag, it is also possible that more is here conceded than you may find to be necessary. After the peace of 1783, this compliment was peremptorily withheld by France, in spite of the remonstrances of Great Britain; and it remains for your enquiry, whether it did not continue to be refused, notwithstanding the failure at Amiens to obtain from Great Britain a formal renunciation of the claim.

From every view of the subject, it is reasonable to expect that the exception of the narrow seas, from the stipulation against impressments, will not be inflexibly maintained. Should it be so, your negotiation will be at an end. The truth is, that so great a proportion of our trade direct and circuitous passes thro’ those channels, and such is its peculiar exposure in them to the wrong practised, that with such an exception, any remedy would be very partial. And we can never consent to purchase a partial remedy, by confirming a general evil, and by subjecting ourselves to our own reproaches, as well as to those of other nations.

3d. It appears, as well by a letter from Mr. Thornton, in answer to one from me, of both which copies are inclosed, as from conversations with Mr. Merry that the facility, which would be given, particularly in the British channel, by the immunity claimed for American vessels, to the escape of traitors, and the desertion of others whose services in time of war may be particularly important to an enemy, forms one of the pleas for the British practice of examining American crews, and will be one of the objections to a formal relinquishment of it.

This plea, like all others, admits a solid and satisfactory reply. In the first place, if it could prevail at all against the neutral claim, it would authorize the seizure of the persons described only, and in vessels bound to a hostile country only; whereas the practice of impressing is applied to persons few or any of whom are alleged to be of either description, and to vessels whithersoever bound, even to Great Britain herself. In the next place, it is not only a preference of a smaller object on one side to a greater object on the other; but a sacrifice of right on one side to expediency on the other side.

Considering nevertheless, the possible adherence of the British Government to this last objection, and the extreme importance to our seafaring citizens and commerce, of a stipulation suppressing a practice flagrant in its nature, and still more so in the abuses inseparable from it, you are left at liberty to concur, if necessary in the modification as it stands in the second column. You will observe that this guards in all cases the crews of our vessels from being meddled with, and in referring, for an exception to the immunity on board our vessels, to the law of nations, yields no principle maintained by the United States; inasmuch as the reference will be satisfied by the acknowledged exception of enemies in military service. Should persons, therefore, other than such, be taken, under pretext of the law of nations, the United States will be free to contest the proceeding; and there is the less difficulty in leaving the stipulation on this footing, as the case may never happen, and will be pretty sure to happen but rarely. You will observe also, that in the passage from one port to another of the respective countries, the vessels of the neutral parties are to protect all persons without exception. Independently of the general principle asserted by the United States, this respect is due to the peculiar character of the coasting trade, and the utter improbability that it will at any time be a vehicle to persons of any obnoxious description.

## On Article II.

The reasonableness of this article is manifest. Citizens or subjects of one country residing in another, tho' bound by their temporary allegiance to many common duties, can never be rightfully forced into military service, particularly external service, nor be restrained from leaving their residence when they please. The law of nations protects them against both; and the violation of this law, by the avowed impressment of American citizens residing in Great Britain, may be pressed with the greater force on the British Government as it is in direct inconsistency with her impressment of her own subjects bound by much stronger ties to the United States, as above explained, as well as with the spirit of her commercial laws and policy, by which foreigners are invited to a residence. The liberation of the persons comprehended by this article therefore, cannot be justly or honorably refused, and the provision for their recompence and their return home, is equally due to the service rendered by, and the wrong done to them.

## On Article III.

This regulation is conformable to the law of nations, and to the tenor of all treaties which define the belligerent claim of visiting and searching neutral vessels. No treaty

can be cited in which the practice of compelling the neutral vessel to send its boat, its officers, its people or its papers to the belligerent vessel, is authorized. British treaties, as well as those to which she is not a party, in every instance where a regulation of the claim is undertaken, coincide with the article here proposed. The article is in fact almost a transcript of the NA article of the Treaty of 1786 between Great Britain and France.

The regulation is founded in the best reasons—1st. It is sufficient for the neutral, that he acquiesces in the interruption of his voyage, and the trouble of the examination, imposed by the belligerent Commander. To require a positive and active co-operation on his part in behalf of the latter, is more than can be justified on any principle. 2d. The belligerent party can always send more conveniently to the neutral vessel, than this can send to the belligerent vessel; having neither such fit boats for the purpose, especially in a rough sea, nor being so abundantly manned. 3d. This last consideration is enforced by the numerous and cruel abuses committed in the practice of requiring the neutral vessel to send to the belligerent. As an example you will find in the documents now transmitted a case where neither the smallness and leakiness of the boat, nor the boisterous state of the weather, nor the pathetic remonstrances of the neutral commander had any effect on the imperious injunctions of the belligerent, and where the task was performed at the manifest peril of the boat, the papers, and the lives of the people. The limitation of the number to be sent on board the neutral vessel is a reasonable and usual precaution against the danger of insults and pillage.

## On Article IV.

This enumeration of contraband articles is copied from the Treaty of 1781 between Great Britain and Russia. It is sufficiently limited, and that treaty is an authority more likely than any other, to be respected by the British Government. The sequel of the article, which protects the productions of an hostile colony converted into neutral property, is taken from the same model, with the addition of the terms “in any case or on any pretext.” This addition is meant to embrace more explicitly, our right to trade freely with the colonies at war with Great Britain, and between them and all parts of the world in colonial productions, being at the time not enemy’s but neutral property; a trade equally legitimate in itself with that between neutral countries directly and in their respective vessels, and such colonies, which their regulations do not contest.

In support of this right, in opposition to the British doctrine, that a trade not allowed by a nation in time of peace, cannot be opened to neutrals in time of war, it may be urged, that all nations are in the practice of varying more or less in time of war their commercial laws, from the state of these laws in time of peace, a practice agreeable to reason as well as favorable to neutral nations; that the change may be made in time of war, on considerations not incident to a state of war, but on such as are known to have the same effect in time of peace; that Great Britain herself is in the regular practice of changing her navigation and commercial laws, in time of war, particularly in relation to a neutral intercourse with her colonies; that at this time she admits a trade between neutral countries and the colonies of her enemies, when carried on directly between, or between the former and herself, interrupting only a direct trade between such colonies and their parent state, and between them and countries in Europe, other than

those to which the neutral trade may respectively belong; that as she does not contest the right of neutrals to trade with hostile colonies, within these limitations the trade can be and actually is carried on indirectly between such colonies and all countries, even those to which the colonies belong; and consequently that the effect of her doctrine and her practice, is not to deprive her enemy of their colonial trade but merely to lessen the value of it in proportion to the charges incident to the circuitous course into which it is forced; an advantage to her which if just in itself, would not be sufficiently so to balance the impolitic vexations accruing to neutral and friendly nations.

These views of the subject have entered into my conversations with Mr. Merry. He expresses, notwithstanding, a belief that Great Britain will turn an unfavorable ear to any proposition calculated to give her enemies the resources of their colonial trade, beyond the degree in which her present regulations permit. This is doubtless to be apprehended; but considering the proposition as an article which may find a balance in the general bargain, it may not be inadmissible; or if inadmissible in the extent proposed, a middle ground may perhaps be accepted. The colonial trade in question consists of four branches; first between the colonies and Great Britain herself; secondly, between the colonies and the neutral countries carrying on the trade; thirdly between the colonies and neutral countries not themselves carrying on the trade; fourthly, between the colonies and the countries to which they belong or which are parties to the war with Great Britain.

The first and second branches are those with which her own regulations accord. The last is that to which her aversion will of course be the strongest. Should this aversion be unconquerable, let it be tried then, and then only, whether on our yielding or rather omitting that point, she will not yield to us in return the direct trade between hostile colonies and neutral colonies generally. You will be careful, however, so to modify the compromise as will mark as little as may be, a positive relinquishment of the direct trade between the belligerent nations and their colonies.

Should such a compromise be altogether rejected, you will limit the article to the simple enumeration of contraband, it being desirable that without a very valuable consideration, no precedent should be given by the United States of a stipulated acknowledgment that free ships do not make free goods. And you will omit the article altogether, if a proper list of contraband cannot be agreed on, particularly one that excludes money, provisions and naval stores.

## On Article V.

This article taken from the Convention of 1800 between the United States and France, is conformable to the general practice of the prize Courts in the latter, and is the more worthy of adoption every where as it would contribute so much to the consistency and stability of the rules of Admiralty proceedings. Without a single objection justly lying against it, it will have the important advantages, of being a check on the inferior tribunals, of enabling the superior tribunal where a faulty reason appears on the face of the sentence, to correct the wrong without delay or expense, and of being a check moreover on the decision of the superior tribunal itself. As prize causes also are tried



by courts not of a third party, but of one of the parties interested, it is but reasonable that the ground should be known to the other on which judgment has passed against its citizens or subjects; in order, if deemed proper, that negotiations may be employed for redressing past or guarding against future injustice.

## On Article VI.

The fictitious blockade proclaimed by Great Britain and made the pretext for violating the commerce of neutral nations, has been one of the greatest abuses ever committed on the high seas. During the late war they were carried to an extravagance which would have been ridiculous, if in their effects they had not inflicted such serious and extensive injuries on neutral nations. Ports were proclaimed in a state of blockade, previous to the arrival of any force at them, were considered in that state without regard to intermissions in the presence of the blockading force, and the proclamations left in operation after its final departure; the British cruizers during the whole time seizing every vessel bound to such ports, at whatever distance from them, and the British prize courts pronouncing condemnations wherever a knowledge of the proclamation at the time of sailing could be presumed, altho' it might afterwards be known that no real blockade existed. The whole scene was a perfect mockery, in which fact was sacrificed to form, and right to power and plunder. The United States were among the greatest sufferers; and would have been still more so, if redress for some of the spoliations proceeding from this source, had not fallen within the provisions of an article in the Treaty of 1794.

From the effect of this and other arbitrary practices of Great Britain, on the temper and policy of neutral nations towards her; from the spirit of her Treaty made near the close of the late war with Russia; from the general disposition manifested at the beginning of the present, towards the United States, and the comparative moderation observed in Europe with respect to blockades (if indeed the two cases of the Weser and Elbe are not to be excepted) it was hoped that the mockeries and mischiefs practised under the name of blockades, would no where be repeated. It is found however that the West Indies are again the Theatre of them. The three entire and extensive Islands of Martinique, Guadaloupe and St. Domingo have been published as in a state of blockade, altho' the whole naval force applied to the purpose is inconsiderable, altho' it appears that a part of this inconsiderable force is occasionally seen at the distance of many leagues at sea; altho' it does not appear that more than one or two ports at most, have at any time been actually blockaded; and although complaints are heard that the British ships of war do not protect their own trade, against the numerous cruizers from the Islands under this pretended blockade.

Inclosed herewith are three letters on this subject, two from me, the first to Mr. Thornton, the second to Mr. Merry, and the third from Mr. Merry to me. You will observe that he does not pretend to justify the measures pursued in the West Indies; but on the contrary wishes them to be regarded as proceeding from an officer who does not pursue the intentions of his Government. Still such measures prove that no general regulations or orders have been yet issued by that Government against the evil, as might reasonably have been expected; and that a stipulated security against it, is an object as important as it is just.

In the two letters to Mr. Thornton and Mr. Merry, the ground is marked out on which you will be able to combat the false blockades, and to maintain the definition of a real one, contained in the proposed article which is a literal copy from the 4th article of the Russian Treaty above cited. In addition to these letters, you will find enclosed a letter of the NA of NA to Mr. Pinckney, in which some views are taken of the subject, which may also be of use in your discussions with the British Government.

## On Article VII.

This article is due, if not to all neutrals, at least to the United States, who are distinguished by the distance of their situation. Decisions of the British Court of Admiralty, have so far respected this peculiarity as to admit a want of information as a plea for going to a blockaded port, where such a plea would be refused to less remote countries. But more than this may fairly be claimed. A vessel, knowing that a particular blockade existed two months before, may well conjecture that before her arrival at the port, which will require two months more, the blockade will have ceased; and may accordingly clear and steer for such a port with an honest intention, in case of finding on her approach, the fact otherwise, not to attempt an unlawful entrance. To condemn vessels under such circumstances would be manifestly unjust; and to restrain them from a distant voyage to a port once in a state of blockade until information of a change shall have travelled a like distance, must produce a delay and uncertainty little short of an absolute prohibition of the commerce. To require them even to go out of their course, to seek at other ports information on the subject would be an unreasonable imposition. The British Government can have little objection to this article, after defining blockades as is agreed with Russia and as is here proposed; since our distance is of itself, a security against any concert with the blockaded, for surreptitious entries, which might be attempted by nearer adventurers; and since in the case of blockades by a force actually present, a preliminary notice may be required without impairing their efficacy as might be the case with blockades, such as the preceding article guards against.

The only difference between the articles as standing in the different columns, consists in the preamble to that which is to be admitted, if the proposition of the other should not succeed. The article is preferable without the recital of any reason particular to the United States, because as a naked stipulation, it strengthens instead of weakening a general principle friendly to neutral and pacific nations.

## On Article VIII, IX, And X.

These are articles which are known to have been long wished and contemplated on the part of Great Britain, and together with the justice and in many views the expediency to Great Britain herself of the articles desired on our part, may induce her to accede to the whole. The articles are in substance the same with a project offered to the American administration in the year 1800 by Mr. Liston, who appears to have borrowed it from corresponding stipulations in the Convention between the United States and France in the year —. The project was at that time dropped, owing perhaps in part to the change in the head of the Department of State, between whom and Mr.

Liston it had been discussed, and principally, to the difficulty of combining with it proper stipulations against British impressments on the high seas. Without such an equivalent, the project had little to recommend it to the United States. Considered by itself it was too the less admissible as one of its articles, under some obscurity of expression, was thought to favor the British pretension to impress British seamen from American vessels on the high seas.

A copy of this document is inclosed, as it may be not without use in shewing the ideas of the British Government at that time; so far at least as its Minister here was an organ of them.

The terms in which these articles are to be proposed, differ but slightly from those in which they may be admitted. In the former the delivery of deserters is confined to soldiers and seamen, without requiring a delivery of officers, whose desertion will not be from the service of their country; but on account of offences for which it might sometimes be more agreeable to the United States to be unbound to give them up for trial and punishment. At the same time this consideration ought not to be a bar to an arrangement, which in its general character will be so important to the interests of the United States.

## On Article XI.

This is a stipulation which is not to be yielded but in the event of its being made an indispensable condition. It cannot be essential for the object of it, whilst the British Government is left free to take the precautions allowable within its own jurisdiction for preventing the clandestine departure of its seamen or its soldiers in neutral vessels. And it is very ineligible to the United States, inasmuch as it will be difficult to enforce the prohibition, whether we regard the embarkation of such persons in British ports, or their landing on the American shores; and inasmuch as the inefficacy of regulations for such purposes tho' made with due sincerity and care, may become a source of secret jealousy and dissatisfaction, if not of controversy and reproach.

The article is copied from that in the arrangement (of which you have a copy) discussed and brought near to a conclusion between Mr. King and the British Ministry and you are authorized to accede to it, on the supposition, that it may again be insisted on. It is to be recollected however that the article was then understood to be the only price given for relinquishing the impressment of American seamen. The other offers now substituted will justify you in pressing the omission of the original one.

## On Article XII.

The law of nations does not exact of neutral powers the prohibition specified in this article. On the other hand it does not restrain them from prohibiting a trade which appears on the face of the official papers proceeding from the custom house to be intended to violate the law of nations, and from which legitimate considerations of prudence may also dissuade a Government. All that can be reasonably expected by belligerent from neutral powers, is that their regulations on this subject be impartial,

and that their stipulations relative to it, when made in time of war at least, should not preclude an impartiality.

It is not certain what degree of value Great Britain may put on this article, connected as it essentially is with the NA article which limits the list of contraband. It will at least mitigate her objection to such a limitation. With the range given to contraband by her construction of the law of nations, even as acquiesced in by the United States, a stipulation of this sort would be utterly inadmissible.

The last article, in making this City, the place for exchanging the ratifications, consults expedition in putting the Treaty into operation, since the British ratification can be forwarded at the same time with the instrument itself. And it is otherwise reasonable that as the negotiation and formation of the Treaty will have taken place at the seat of the British Government, the concluding formality should be at that of the Government of the United States.

In addition to these articles, which with the observations thereon, I am charged by the President to communicate to you as his instructions, he leaves you at liberty to insert any others which may do no more than place British armed vessels with their prizes on an equality within our ports and jurisdiction, with those of France. This would only stipulate what would probably be done by gratuitous regulations here, and as it would no doubt be acceptable to Great Britain, it may not only aid in reconciling her to the principal objects desired by the United States, but may induce her to concur in the further insertion of articles, corresponding with those in the Convention of 1800 with France, which regulate more precisely and more effectually the treatment of vessels of the neutral party on the high seas.

The occasion will be proper also, for calling the attention of the British Government to the reasonableness of permitting American Consuls to reside in every part of her dominions, where, and so long as, she permits our citizens to trade. It is not denied that she has a natural right to refuse such a residence, and that she is free by her treaty with us, to refuse it in other than her European dominions. But the exception authorized with respect to the residence of Consuls elsewhere, having reference to the refusal of our trade elsewhere, the refusal of the one ought manifestly to cease with the refusal of the other. When our vessels and citizens are allowed to trade to ports in the West Indies, there is the same reason for a contemporary admission of Consuls to take care of it, as there is for their admission in ports where the trade is permanently allowed. There is the juster expectation of your success on this point, as some official patronage is due to the rights of our citizens in the prize courts established in the West India Islands. Should the British Government be unwilling to enter into a stipulated provision, you may perhaps obtain an order to the Governors for the purpose: or if consuls be objected to altogether, it is desirable that agents may be admitted, if no where else, at least in the Islands where the Vice Admiralty Courts are established.

It has been intimated that the articles as standing in the different columns, are to be considered, the one as the offer to be made, the other as the ultimatum to be required. This is however not to be taken too strictly, it being impossible to foresee the turns and the combinations, which may present themselves in the course of the negotiation. The

essential objects for the United States are the suppression of impressments and the definition of blockades. Next to these in importance, are the reduction of the list of contraband, and the enlargement of our neutral trade with hostile colonies. Whilst you keep in view therefore those objects, the two last as highly important, and the two first as absolutely indispensable, your discretion, in which the President places great confidence, must guide you in all that relates to the inferior ones.

With sentiments of great respect and esteem,

I Remain Sir, Your Most Ob Sert.

[\[Back to Table of Contents\]](#)

## TO ROBERT R. LIVINGSTON.1

Department of State, January 31, 1804.

D. Of S. Mss.  
Instr.

Sir,

The two last letters received from you bear date on the NA and 30th of September, so that we have been now four months without hearing from you. The last from me to you was dated on the 16th day of January, giving you information of the transfer of Louisiana on the 20th of December by the French Commissioner Mr. Laussat to Governor Claiborne and General Wilkinson, the Commissioners appointed on the part of the United States to receive it. The letters subsequent to that date from Governor Claiborne who is charged with the present administration of the ceded territory shew that the occupancy by our troops of the military posts on the Island of New Orleans and on the Western side of the Mississippi was in progression, and that the state of things in other respects was such as was to be expected from the predisposition of the bulk of the inhabitants and the manifest advantages to which they have become entitled as citizens of the United States. A bill providing for the Government of the territory has been some time under the deliberation of the Senate, but has not yet passed to the other branch of the Legislature. The enclosed copy shews the form in which it was introduced. Some alterations have already been made and others may be presumed. The precise form in which it will pass cannot therefore be foreknown; and the less so as the peculiarities and difficulties of the case give rise to more than the ordinary differences of opinion. It is pretty certain that the provisions generally contemplated will leave the people of that District for a while without the organization of power dictated by the Republican theory; but it is evident that a sudden transition to a condition so much in contrast with that in which their ideas and habits have been formed, would be as unacceptable and as little beneficial to them as it would be difficult for the Government of the United States. It may fairly be expected that every blessing of liberty will be extended to them as fast as they shall be prepared and disposed to receive it. In the mean time the mild spirit in which the powers derived from the Government of the United States will under its superintendence be administered, the parental interest which it takes in the happiness of those adopted into the general family, and a scrupulous regard to the spirit and tenor of the Treaty of Cession, promise a continuance of that satisfaction among the people of Louisiana which has thus far shewn itself. These observations are made that you may be the better enabled to give to the French Government the explanations and assurances due to its solicitude in behalf of a people whose destiny it has committed to the justice, the honor and the policy of the United States.

It does not appear that in the delivery of the Province by the Spanish authorities to Mr. Laussat any thing passed denoting its limits either to the East, the West or the North; nor was any step taken by Mr. Laussat, either whilst the province was in his hands or at the time of his transferring it to ours, calculated to dispossess Spain of any part of the territory East of the Mississippi. On the contrary in a private conference he

stated positively that no part of the Floridas was included in the Eastern boundary; France having strenuously insisted to have it extended to the Mobbille, which was peremptorily refused by Spain.

We learn from Mr. Pinckney that the Spanish Government holds the same language to him. To the declaration of Mr. Laussat however we can oppose that of the French Minister made to you, that Louisiana extended to the River Perdido; and to the Spanish Government as well as to that of France we can oppose the Treaties of St. Ildefonso, and of September 30, 1803, interpreted by facts and fair inferences. The question with Spain, will enter into the proceedings of Mr. Monroe, on his arrival at Madrid, whither he will be instructed to repair, as soon as he shall have executed at London, the instructions lately transmitted to him in relation to the impressment of seamen from American vessels, and several other points which call for just and stipulated arrangements between the two countries. As the question relates to the French Government, the President relies on your prudence and attention for availing yourself of the admission by Mr. Marbois, that Louisiana extended to the River Perdido, and for keeping the weight of that Government in our scale, against that of Spain. With respect to the Western extent of Louisiana, Mr. Laussat held a language more satisfactory. He considered the Rio Bravo or Del Norde as far as the 30° of North latitude, as its true boundary on that side. The Northern boundary we have reason to believe was settled between France and Great Britain by Commissioners appointed under the Treaty of Utrecht, who separated the British and French territories west of the Lake of the Woods by the 49° of Latitude. In support of our just claims in all these cases, it is proper that no time should be lost in collecting the best proofs which can be obtained. This important object, has already been recommended generally to your attention. It is particularly desirable that you should procure an authenticated copy of the commercial charter granted by Louis XIV. to Crozat in 1712, which gives an outline to Louisiana favorable to our claims, at the same time that it is an evidence of the highest and most unexceptionable authority. A copy of this charter is annexed to the English translation of Joutel's Journal of La Salle's last voyage, the French original not containing it. A record of the charter doubtless exists in the archives of the French Government, and it may be expected that an attested copy will not be refused to you. It is not improbable that the charter or other documents relating to the Mississippi project a few years after, may afford some light and be attainable from the same source. The proceedings of the Commissioners under the treaty of Utrecht, will merit particular research; as they promise not only a favorable Northern boundary, but as they will decide an important question involved in a convention of limits now depending between the United States and Great Britain. To those may be added whatever other documents may occur to your recollection or research, including maps &c. If the secret Treaty of Paris in 1762-3 between France and Spain, and an entire copy of that of St. Ildefonso in 1800 can be obtained, they may also be useful. An authentication of the precise date at least of the former, is very important. You will be sensible of the propriety of putting Mr. Monroe in possession of all the proofs and information which you may obtain. Should he take Paris in his way to Madrid, you will have the best of opportunities for the purpose. . . . [1](#)

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Washington, Feb<sup>y</sup> 16, 1804.

Mad. Mss.

Dear Sir

In a private letter by Mr. Baring I gave you a detail of what had passed here on the subject of *etiquette*.<sup>1</sup> I had hoped that no farther *jars would have ensued* as I still *hope that the good sense of the British government respecting the right of the government here to fix its routes of intercourse and the sentiments and manners of the country to which they ought to be adapted will give the proper instructions for preventing like incidents in future.* In the mean time a fresh *circumstance has taken place which calls for explanation.*<sup>2</sup>

The President desirous of *keeping open for cordial civilities whatever channels the scruples of M<sup>r</sup>.* My might not have *closed asked me what these were understood to be and particularly whether he would come and take friendly and familiar dinners with him I undertook to feel his pulse thro' some hand that would do it with the least impropriety.* From the information *obtained I inferred that an invitation would be readily accepted and with the less doubt as he had dined with me (his lady declining) after the offence originally taken. The invitation was accordingly sent and terminated in the note from him to me & my answer herewith inclosed. I need not comment on this display of diplomatic superstition, truly extraordinary in this age and in this country. We are willing to refer it to the personal character of a man accustomed to see importance in such trifles and over cautious against displeasing his government by surrendering the minutest of his or its pretensions* What we *apprehend is, that with these causes may be mingled a jealousy of our disposition towards England and that the mortifications which he has inflicted on himself are to be set down to that account.* In fact it is known that this *jealousy particularly since the final adjustment with France exists or is affected in a high degree and will doubtless give its colour to the correspondence of the legation with its government. To apply an antidote to this poison will require your vigilant and prudent attention.* It can scarcely be believed that the British Gov<sup>t</sup> will not at once see the *folly committed by its representative especially in the last scene of the farce and that it will set him right in that respect.* But it may *listen with a different ear to suggestions that the U. S. having now less need of the friendship of Britain may be yielding to a latent enmity towards her.* The best of all proofs to the *contrary would be the confidential communications you possess, if it were not an improper condescension to disclose them for such a purpose.* Next to that is the tenor of our measures, and the dictates of our obvious policy; on an appeal to both of which you may found the strongest assurances that the Gov<sup>t</sup> of the U. S. is sincerely and anxiously disposed to cultivate harmony between the two Nations. The President wishes you to *lose no oppor<sup>y</sup> and spare no pains that may be necessary to satisfy the British Administration on this head and to prevent or efface any different impressions which may be transmitted from hence.*



I collect that the *cavil at the pele mele here established* turns much on the alledged *degradation of ministers and envoies to a level with chargés d'affaires*. The truth is, and I have so *told M<sup>r</sup>. Merry* that this is not the idea; that the President did not mean to decide anything as to their comparative grades or importance; that these would be *estimated as heretofore*; that among themselves they might fix their own ceremonies, and that even at the *President's table they might seat themselves in any subordination they pleased*. All he meant was that no seats were to be designated for them, nor the order in which they might happen to sit to be any criterion of the respect paid to their respective commissions or Countries. On public occasions, such as an Inaugural speech &c. the Heads of Depts, with foreign Ministers, and others invited on the part of the Gov<sup>t</sup>. would be in the same *pêle mêle* within the space assigned them. It may not be amiss to recollect that under the old Congress, as I understand, and even in the ceremonies attending the introduction of the new Gov<sup>t</sup> the foreign ministers were placed according to the order in which their Gov<sup>t</sup> acknowledged by Treaties the Independence of the U. States. In this point of view the *pêle mêle* is favorable both to G. B. and to Spain.

I have, I believe already told you that the President has discountenanced the *handing first to the table the wife of a head of department* applying the general *rule of pele mele to that as to other cases*.

The Marquis d'Yrujo joined with *Merry in refusing an invitation from the Pres<sup>t</sup> & has throughout made a common cause with him* not however approving all the grounds taken by the latter. His case is indeed different and not a little awkward; having acquiesced for nearly three years in the practice ag<sup>st</sup> which he now revolts. *Pichon being a chargé only, was not invited into the pretensions of the two Plent*. He blames their *contumacy* but I find *he has reported the affair to his government* which is not likely to *patronize the cause of Merry & Yrujo*.

*Thornton* has also declined an invitation from the *Pres<sup>t</sup>*. This shews that *he unites without necessity with Merry*. He has latterly expressed much *jealousy of our views* founded on *little and unmeaning circumstances*.

The manners of M<sup>r</sup>. M. disgust both sexes and all parties. I have time to add only my affec<sup>te</sup>. respects.

*M<sup>r</sup>. Merry has the honor to present his respects to M<sup>r</sup>. Madison.*

*He has just had that of receiving a note from the Presid<sup>t</sup> of the U S* of which the following is a copy.

*Thomas Jefferson asks the favor of M<sup>r</sup>. Merry to dinner with a small party of friends on monday the 13th at half past three Feb: 9, 04.*

It so happens that *M<sup>r</sup>. Merry has engaged some company to dine with him on that day*. Under other circumstances however he would have informed himself whether it is *the usage as is the case in most countries for private engagements of every kind to give way to invitations from the chief magistrate of the U. S.* and if such were the *usage he*

would not have failed to have alleged it as a *just apology for not receiving the company he has invited*. But after the communication which *M<sup>r</sup> Merry had the honor to receive from M<sup>r</sup>. Madison* on the 12<sup>th</sup> of last month respecting the *alteration which the Presid<sup>t</sup>. of the United States had thought proper should take place in regard to the treatment to be observed by the Executive government towards foreign ministers from those usages which had been established by his predecessors and after the reply which M<sup>r</sup> Merry had the honor to make to that notice* stating that notwithstanding all his anxiety to *cultivate the most intimate and cordial intercourse with every of the government he could not take upon himself to acquiesce in that alteration* on account of its serious nature, which he would therefore *report to his own government and wait for their instructions upon it*, it is necessary that he should have the honor of observing to *M<sup>r</sup>. Madison* that combining the terms of the *invitation* above mentioned with the circumstances which have *preceded it M<sup>r</sup>. Merry can only understand it to be addressed to him in his private capacity and not as his Britannic Majestys minister* to the United States. Now, however anxious he may be, as he certainly is, to give effect to the *claim* 1424. 1293<sup>1</sup> above expressed of *conciliating personally and privately the good opinion and esteem of M<sup>r</sup> Jefferson* he hopes that the latter will feel how *improper it would be on his part to sacrifice to that desire the duty which he owes to his Sovereign* and consequently how impossible it is for him to *lay aside the consideration of his public character*.

*If M<sup>r</sup>. Merry should be mistaken as to the meaning of M<sup>r</sup>. Jefferson's note and it should prove that the invitation is designed for him in his public capacity* he trusts that *M<sup>r</sup>. Jefferson* will feel equally, that it must be *out of his power to accept it* without receiving previously, through the channel of the *Secretary of State* the necessary formal assurances of the *President's determination to observe towards him those usages of distinction* which have heretofore been shewn by the *executive government of the U. S. to the persons who have been accredited to them as his majesty's ministers*.

*M<sup>r</sup>. Merry has the honor to request of M<sup>r</sup>. Madison to lay this explanation before the President and to accompany it with the strongest assurances of his highest respect and consideration.*

Washington, February 9, 1804.

*M<sup>r</sup> Madison presents his compliments to M<sup>r</sup>. Merry. He has communicated to the President M<sup>r</sup>. Merry's note of this morning and has the honor to remark to him that the President's invitation being in the style used by him in like cases had no reference to the points of form which will deprive him of the pleasure of M<sup>r</sup> Merry's company at dinner on Monday next.*

*M<sup>r</sup>. Madison tenders to M<sup>r</sup> Merry his distinguished consideration.*

Washington, Feb<sup>v</sup> 9, 1804.

[\[Back to Table of Contents\]](#)

TO ROBERT R. LIVINGSTON.

Department of State March 31st 1804.

D. Of S. Mss.  
Instr.

Sir,

Since my acknowledgment of yours of Oct. 20 & 31, I have received those of 2<sup>d</sup>, 15 & 23<sup>d</sup> November and 11th December.

In mine of January 31 I informed you that Louisiana had been transferred by the French Commissioner to our Commissioners on the 20th of December—that nothing had officially passed on the occasion concerning the boundaries of the ceded territory 1; but that *Mr. Laussat had confidentially signified that it did not comprehend any part of West Florida; adding at the same time that it extended westwardly to the Rio Bravo otherwise called Rio del Norde.* Orders were accordingly obtained from the Spanish authorities for the delivery of all the posts on the West side of the Mississippi as well as on the Island of New Orleans. With respect to the posts in West Florida, orders for the delivery were neither offered to, nor demanded by our Commissioners. No instructions have in fact been ever given them to make the demand. This silence on the part of the Executive was deemed *eligible first because it was foreseen that the demand would not only be rejected by the Spanish authority at New Orleans which had in an official publication limited the Cession Westwardly by the Mississippi and the Island of New Orleans, but was apprehended as has turned out, that the French Commissioner might not be ready to support the demand, and might even be disposed to second the Spanish opposition to it; secondly because in the latter of these cases a serious check would be given to our title, and in either of them a premature dilemma would result between an overt submission to the refusal and a resort to force; thirdly because mere silence would be no bar to a plea at any time that a delivery of a part, particularly of the Seat of Government, was a virtual delivery of the whole; whilst in the mean time, we could ascertain the views and claim the interposition of the French Government, and avail ourselves of that and any other favorable circumstances for effecting an amicable adjustment of the question with the Government of Spain.* In this state of things it was deemed proper by Congress in making the regulations necessary for the collection of Revenue in the Ceded territory and guarding against the new danger of smuggling into the United States thro' the channels opened by it, to include a provision for the case of West Florida by vesting in the President a power which his discretion might accommodate to events. This provision is contained in the 11th taken in connection with the 4th Section of the Act herewith inclosed. The Act had been many weeks depending in Congress with these Sections word for word in it; the Bill had been printed as soon as reported by the Committee for the use of the members, and as two copies are by a usage of politeness always allotted for each foreign Minister here it must in all probability have been known to the Marquis D'Yrujo in an early stage of its progress. If it was not, it marks much less *of that zealous vigilance over the concerns of his Sovereign than he now makes the plea for his intemperate conduct.* For some days even after the Act was published in the

Gazette of this City, he was silent. At length however he called at the Office of State, with the Gazette *in his hand, and entered into a very angry comment* on the 11th Section, which was answered by remarks (some of which it would seem from this written allusion to them were not well understood) calculated to assuage his dissatisfaction with the law, as far as was consistent with a candid declaration to him that we considered all of West Florida Westward of the Perdido as clearly ours by the Treaty of April 30, 1803, and that of S'Ildefonso.<sup>1</sup> The conversation ended as might be inferred from his letters which followed it on the 7th and 17th inst., of which copies are herewith enclosed, as are also copies of my answer of NA and of his reply of NA. You will see by this correspondence, the footing on which, *a rudeness which no Government can tolerate has placed him with this Government, and the view of it which must be unavoidably conveyed to our Minister at Madrid.* It may be of some importance also that it be not misconceived where you are. But the correspondence is chiefly of importance *as it suggests the earnestness with which Spain is likely to contest our construction of the Treaties of Cession, and the Spanish reasoning which will be employed against it; and consequently as it urges the expediency of cultivating the disposition of the French Government to take our side of the question.* To this she is bound no less by sound policy, than by a regard to right.

She is bound by the former; because the interest she has in our friendship interests her in the friendship between us and Spain, which cannot be maintained with full effect, if at all, without removing the sources of collision lurking under a neighbourhood marked by such circumstances and which, considering the relation between France and Spain cannot be interrupted without endangering the friendly relations between the United States and France. A transfer from Spain to the United States of the territory claimed by the latter, or rather of the whole of both the Floridas on reasonable conditions, is in fact, nothing more than a sequel and completion of the policy which led France into her own treaty of Cession; and her discernment and her consistency are both pledges that she will view the subject in this light. Another pledge lies in the manifest interest which France has in the peaceable transfer of these Spanish possessions to the United States as the only effectual security against their falling into the hands of Great Britain. Such an event would be certain in case of a rupture between Great Britain and Spain, and would be particularly disagreeable to France, whether Great Britain should retain the acquisition for the sake of the important harbours and other advantages belonging to it, or should make it the basis of some transaction with the United States, which notwithstanding the good faith and fairness towards France (which would doubtless be observed on our part) might involve conditions too desirable to her enemy, not to be disagreeable to herself. It even deserves consideration that the use which Great Britain could make of the Territory in question, and the facility in seizing it, may become a casting motive with her to force Spain into War, contrary to the wishes and the policy of France.

The territory ceded to the United States is described in the words following “the Colony or province of Louisiana with the same extent that it now has in the hands of Spain, that it had when France possessed it, and such as it ought to be according to the Treaties subsequently passed between Spain and other States.”

In expounding this three-fold description, the different forms used must be so understood as to give a meaning to each description, and to make the meaning of each coincide with that of the others.

The first form of description is a reference to the extent which Louisiana *now* has in the hands of Spain. What is that extent as determined by its Eastern limits? It is not denied that the Perdido was once the Eastern limit of Louisiana. It is not denied that the Territory now possessed by Spain extends to the river Perdido. The river Perdido we say then is the limits to the Eastern extent of the Louisiana ceded to the United States.

This construction gives an obvious and pertinent meaning to the term “now” and to the expression “in the hands of Spain” which can be found in no other construction. For a considerable time previous to the treaty of peace in 1783 between Great Britain and Spain, Louisiana as in the hands of Spain was limited Eastwardly by the Mississippi, the Iberville &c. The term “now” fixes its extent as enlarged by that Treaty in contradistinction to the more limited extent in which Spain held it prior to that Treaty. Again the expression “in the hands or in the possession of Spain” fixes the same extent, because the expression cannot relate to the extent which Spain by her internal regulations may have given to a particular district under the name of Louisiana, but evidently to the extent in which it was known to other nations, particularly to the nation in Treaty with her, and in which it was relatively to other nations in her hands and not in the hands of any other nation. It would be absurd to consider the expression “in the hands of Spain” as relating not to others but to herself and to her own regulations; for the territory of Louisiana in her hands must be equally so and be the same, whether formed into one or twenty districts or by whatever name or names it may be called by herself.

What may now be the extent of a provincial district under the name of Louisiana according to the municipal arrangements of the Spanish Government is not perfectly known. It is at least questionable whether even these arrangements had not incorporated the portion of Louisiana acquired from Great Britain with the Western portion before belonging to Spain under the same Provincial Government. But whether such be the fact or not, the construction of the Treaty will be the same.

The next form of description refers to the extent which Louisiana had when possessed by France. What is this extent? It will be admitted that for the whole period prior to the division of Louisiana between Spain and Great Britain in 1762-3 or at least from the adjustment of boundary between France and Spain in 1719 to that event, Louisiana extended in the possession of France to the river Perdido. Had the meaning then of the first description been less determinate and had France been in possession of Louisiana at any time with less extent than to the Perdido, a reference to this primitive and long continued extent would be more natural and probable than to any other. But it happens that France never possessed Louisiana with less extent than to the Perdido; because on the same day that she ceded a part to Spain, the residue was ceded to Great Britain, and consequently as long as she possessed Louisiana at all, she possessed it entire that is in its extent to the Perdido. It is true that after the cession of Western Louisiana to Spain in the year 1762-3, the actual delivery of the Territory by

France was delayed for several years, but it never can be supposed that a reference could be intended to this short period of delay during which France held that portion of Louisiana, without the Eastern portion, in the right of Spain only, not in her own right, when in other words she held it merely as the Trustee of Spain; and that a reference to such a possession for such a period should be intended rather than a reference to the long possession of the whole territory in her own acknowledged right prior to that period.

In the order of the French King in 1764 to Monsieur D'Abbadie for the delivery of Western Louisiana to Spain, it is stated that the Cession by France was on the 3d of November and the acceptance by Spain on the 13th of that month, leaving an interval of ten days. An anxiety to find a period during which Louisiana as limited by the Mississippi and the Iberville was held by France in her own right may possibly lead the Spanish Government to seize the pretext into which this momentary interval may be converted. But it will be a mere pretext. In the first place it is probable that the Treaty of Cession to Spain which is dated on the same day with that to Great Britain was like the latter a preliminary treaty, consummated and confirmed by a definitive treaty bearing the same date with the definitive treaty including the Cession to Great Britain, in which case the time and effect of each Cession would be the same whether recurrence be had to the date of the preliminary or definitive treaty. In the next place, the Cession by France to Spain was essentially made on the 3d of November 1762 on which day the same with that of the cession to Great Britain the right passed from France. The acceptance by Spain ten days after, if necessary at all to perfect the deed, had relation to the dates of the Cession by France and must have the same effect and no other, as if Spain had signed the deed on the same day with France. This explanation which rests on the soundest principles nullifies this interval of ten days so as to make the Cession to Great Britain and Spain simultaneous on the supposition that recurrence be had to the preliminary Treaty and not to the definitive treaty; and consequently establishes the fact that France at no time possessed Louisiana with less extent than to the Perdido; the alienation and partition of the Territory admitting no distinction of time. In the last place conceding even that during an interval of ten days the right of Spain was incompleat, and was in transitu only from France, or in another form of expression that the right remained in France, subject to the eventual acceptance of Spain, is it possible to believe that a description which must be presumed to aim at clearness and certainty, should refer for its purposes to so fugitive and equivocal a state of things, in preference to a state of things where the right and the possession of France were of long continuance and susceptible of neither doubt nor controversy. It is impossible. And consequently the only possible construction which can be put on the second form of description coincides with the only rational construction that can be put on the first; making Louisiana of the same extent that is to the River Perdido, both "as in the hands of Spain" and "as France possessed it."

The third and last description of Louisiana is in these words "such as it ought to be according to the Treaties subsequently passed between Spain and other States."

This description may be considered as an auxiliary to the two other and is conclusive as an argument for comprehending within the cession of Spain territory Eastward of the Mississippi and the Iberville, and for extending the cession to the river Perdido.

The only treaties between Spain and other nations that affect the extent of Louisiana as being subsequent to the possession of it by France are first the Treaty in 1783 between Spain and Great Britain and secondly the Treaty of 1795 between Spain and the United States.

The last of these Treaties affects the extent of Louisiana as in the hands of Spain, by defining the northern boundary of that part of it which lies East of the Mississippi and the Iberville. And the first affects the extent of Louisiana by including in the Cession from Great Britain to Spain, the Territory between that River and the Perdido; and by giving to Louisiana in consequence of that reunion of the Eastern and Western part, the same extent eastwardly in the hands of Spain as it had when France possessed it. Louisiana then as it ought to be according to treaties of Spain subsequent to the possession by France is limited by the line of demarkation settled with the United States and forming a Northern boundary; and is extended to the River Perdido as its Eastern boundary.

This is not only the plain and necessary construction of the words; but is the only construction that can give a meaning to them. For they are without meaning on the supposition that Louisiana as in the hands of Spain is limited by the Mississippi and the Iberville; since neither the one nor the other of those treaties have any relation to Louisiana that can affect its extent, but thro' their relation to the limits of that part of it which lies Eastward of the Mississippi and the Iberville. Including this part therefore, as we contend within the extent of Louisiana and a meaning is given to both as pertinent as it is important. Exclude this part, as Spain contends from Louisiana and no treaties exist to which the reference is applicable.

This deduction cannot be evaded by pretending that the reference to subsequent treaties of Spain was meant to save the right of deposit and other rights stipulated to the commerce of the United States by the Treaty of 1795; first because, altho' that may be an incidental object of the reference to that Treaty, as was signified by His Catholic Majesty to the Government of the United States, yet the principal object of the reference is evidently the territorial *extent* of Louisiana: secondly, because the reference is to more than one treaty, to the Treaty of 1783 as well as to that of 1795, and the Treaty of 1783 can have no modifying effect whatever rendering it applicable, but on the supposition that Louisiana was considered as extending Eastward of the Mississippi and the Iberville into the Territory ceded by that Treaty to Spain.

In fine the construction which we maintain gives to every part of the Description of the Territory ceded to the United States, a meaning clear in itself and in harmony with every other part, and is no less conformable to facts, than it is founded in the ordinary use and analogy of the expressions. The construction urged by Spain gives, on the contrary, a meaning to the first description which is inconsistent with the very terms of it; it prefers in the second a meaning that is impossible or absurd; and it takes from the last all meaning whatever.

In confirmation of the meaning which extends Louisiana to the River Perdido, it may be regarded as most consistent with the object of the First Consul in the Cession obtained by him from Spain. Every appearance, every circumstance pronounces this

to have been, to give lustre to his administration and to gratify natural pride in his nation, by reannexing to its domain possessions which had without any sufficient considerations, been severed from it; and which being in the hands of Spain, it was in the power of Spain to restore. Spain on the other side might be the less reluctant against the Cession in this extent as she would be only replaced by it, within the original limits of her possessions, the Territory East of the Perdido having been regained by her from Great Britain in the peace of 1783 and not included in the late cession.

It only remains to take notice of the argument derived from a criticism on the term “retrocede” by which the Cession from Spain to France is expressed. The literal meaning of this term is said to be that Spain gives back to France what she received from France; and that as she received from France no more than the territory West of the Mississippi and the Iberville that no more could be given back by Spain.

Without denying that such a meaning, if uncontroled by other terms would have been properly expressed by the term “retrocede” it is sufficient and more than sufficient to observe 1st that with respect to France the literal meaning is satisfied; France receiving back what she had before alienated. Secondly that with respect to Spain, not only the greater part of Louisiana had been confessedly received by her from France, and consequently was literally ceded back by Spain as well as ceded back to France; but with respect to the part in question Spain might not unfairly be considered as ceding back to France what France had ceded to her; inasmuch as this Cession of it to Great Britain was made for the benefit of Spain, to whom on that account Cuba was restored. The effect was precisely the same as if France had in form made the Cession to Spain and Spain had assigned it over to Great Britain; and the Cession may the more aptly be considered as passing thro’ Spain, as Spain herself was a party to the Treaty by which it was conveyed to Great Britain. In this point of view, not only France received back what she had ceded, but Spain ceded back what she had received, and the etymology even of the term “retrocede” is satisfied. This view of the case is the more substantially just as the territory in question passed from France to Great Britain for the account of Spain but passed from Great Britain into the hands of Spain in 1783, in consequence of a War to which Spain had contributed but little compared with France, and in terminating which so favorably in this article for Spain, France had doubtless a preponderating influence. Thirdly, that if a course of proceeding might have existed to which the term “retrocede” would be more literally applicable, it may be equally said that there is no particular term which would be more applicable to the whole proceeding as it did exist. Fourthly, Lastly, that if this were not the case, a new criticism on the etymology of a single term can be allowed no weight against a conclusion drawn from the clear meaning of every other term and from the whole context.

In aid of these observations, I enclose herewith two papers which have been drawn up with a view to trace and support our title to Louisiana in its extent to the Perdido. You will find in them also the grounds on which its Western extent is maintainable against Spain, and its northern in relation to Great Britain.



On the whole we reckon with much confidence on the obligations & disposition of the French Government to favor our object with Spain, and on your prudent exertions to strengthen our hold on both, not only in relation to the true construction of the Treaty, but to our acquisition of the Spanish Territory Eastward of the Perdido on convenient and equitable conditions.

You will find herewith inclosed, copies of another correspondence sufficiently explaining itself, with the Marquis D'Yrujo on the commerce from our ports to S' Domingo, to which is added a letter on that subject from Mr. Pichon. The ideas of the President, as well to the part which the true interest of France recommends to her, as to the part prescribed both to her and to the United States by the law of Nations were communicated in my letter of the 31st of January last. It is much to be desired that the French Government may enter into proper views on this subject. With respect to the trade in articles not for War there cannot be a doubt that the interest of France concurs with that of the United States. With respect to articles for War it is probably the interest of all nations that they should be kept out of hands likely to make so bad a use of them. It is clear at the same time that the United States are bound by the law of Nations to nothing further than to leave their offending citizens to the consequence of an illicit trade; and it deserves serious consideration how far their undertaking at the instance of one power to enforce the law of nations by prohibitory regulations to which they are not bound, may become an embarrassing precedent and stimulate pretensions and complaints of other powers. The French Government must be sensible also that prohibitions by one nation would have little effect, if others including Great Britain, should not follow the example. It may be added that the most which the United States could do in the case, short of prohibiting the export of contraband articles altogether, a measure doubtless beyond the expectations of France, would be to annex to the shipment of these articles a condition that they should be delivered elsewhere than in S' Domingo and that a regulation of this kind would readily be frustrated by a reshipment of the articles after delivery elsewhere, in the same or other vessels in order to accomplish the forbidden destination. If indeed the prohibitory regulation on the part of the United States were the result of a stipulation and recommended by an equivalent concession, the objection to it as an inconvenient precedent would be avoided. If, for example, France would agree to permit the trade with S'. Domingo in all other articles, on condition that we would agree to prohibit contraband articles, no objection of that sort would lie against the arrangement; and the arrangement would in itself be so reasonable on both sides and so favorable even to the people of S' Domingo, that the President authorizes you not only to make it, if you find it not improper, the subject of a frank conference with the French Government, but to put it into the form of a conventional regulation. Or, should this be objectionable, the object may be attained perhaps by a tacit understanding between the two Governments, which may lead to the regulations on each side respectively necessary. Altho' a legal regulation on our part cannot be absolutely promised, otherwise than by a positive and mutual stipulation, yet with a candid explanation of this constitutional circumstance, there can be little risk in inspiring the requisite confidence that the Legislative authority here would interpose its sanction.

It is more important that something should be done in this, and done soon, as the pretext founded upon the supposed illegality of any trade whatever with the negroes

in S' Domingo, is multiplying depredations on our commerce not only with that Island but with the West Indies generally, to a degree highly irritating, and which is laying the foundation for extensive claims and complaints on our part. You will not fail to state this fact to the French Government in its just importance; as an argument for some such arrangement as is above suggested, or if that be disliked as requiring such other interposition of that Government as will put an end to the evil.

It is represented that a part of the depredations are committed by French armed vessels without Commissions, or with Commissions from incompetent authorities. It appears also that these lawless proceedings are much connected with Spanish ports and subjects, probably Spanish Officers also, in the West Indies, particularly in the Island of Cuba. So far as the responsibility of Spain may be involved, we shall not lose sight of it. An appeal at the same time to that of France is as pressing as it is just, and you will please to make it in the manner best calculated to make it effectual.

In one of your letters you apprehended that the interest accruing from the delay of the Commissioners at Paris may be disallowed by the French Government, and wish for instructions on the subject. I am glad to find by late communications from Mr. Skipwith that the apparent discontent at the delay had subsided. But whatever solicitude that Government might feel for dispatch in liquidating the claims, it would be a palpable wrong to make a disappointment in that particular, a pretext for refusing any stipulated part of the claims. In a legal point of view, the Treaty could not be in force until mutually ratified; and every preparatory step taken for carrying it into effect however apposite or useful, must be connected with legal questions arising under the Treaty.

In other parts of your correspondence you seem to have inferred from some passage in mine that I thought the ten millions of livres in cash over which a discretion was given, ought to have been paid rather to France than to our creditor citizens. If the inference be just, my expressions must have been the more unfortunate as they so little accord with the original plan communicated in the Instructions to yourself and Mr. Monroe; the more unfortunate still as they not only decide a question wrong, but a question which could never occur. The cash fund of 10 millions was provided on the supposition that in a critical moment and in a balance of considerations the immediate payment of that sum as a part of the bargain might either tempt the French Government to enter into it or to reduce the terms of it. If wanted for either of these purposes, it was to be paid to the French Government: if not wanted for either it was made applicable to no other. The provision contemplated for the creditors had no reference to the fund of ten millions of livres; nor was it even contemplated that any other cash fund would be made applicable to their claims. It was supposed not unreasonable that the ease of our Treasury and the chance and means of purchasing the territory remaining to Spain Eastward of the Mississippi, might be so far justly consulted, as to put the indemnification of the claims against France on a like footing with that on which the indemnification of like claims against Great Britain had been put. And it was inferred that such a modification of the payments would not only have fully satisfied the expectations of the creditors; but would have encountered no objections on the part of the French Government, who had no interest in the question,

and who were precluded by all that happened from urging objections of any other sort.

Mr. Merry has formally complained of the expressions in your printed memorial which were construed into ill will towards Great Britain, and an undue partiality to the French Government. He said that he was expressly instructed by his Government to make this complaint; that the memorial was viewed by it in a very serious light, and that it was expected from the candor of the American Government and the relations subsisting between the two nations, that the unfriendly sentiments expressed in the memorial, if not authorized by instructions, as was doubtless the case, would be disavowed. He admitted that the memorial might not be an official paper, or an authenticated publication, but dwelt on the notoriety of its author, and on its tendency as an ostensible evidence of the spirit and views of so important and maritime a power as the United States, to excite animosity in other nations against Great Britain, and to wound her essential interests. He mentioned several circumstances known to himself whilst at Paris, among others conversations with you on the subject of the memorial which established the fact that it was written by you. If I did not mistake him he said that the fact was informally acknowledged to him by yourself, altho' you disowned it in an official point of view.

In reply it was, on the day following, observed to him, by the direction of the President, that the sentiments of the United States and of their Government towards Great Britain were sincerely friendly, according to the assurances which had been given to him, and otherwise communicated, that we wished to cultivate the friendship between the two countries, as important to our as well as to his; that altho' we wished to maintain friendship at the same time with France and with all other Nations, we entertained no sentiments towards her or any other Nation, that could lessen the confidence of Great Britain in the equal sincerity of our friendship for her or in our strict impartiality in discharging every duty which belonged to us as a neutral nation; that no instruction could therefore have been given to any functionary of the United States to say or do anything unfriendly or disrespectful to Great Britain; that the memorial in question if written by you was a private and not official document, that the reasoning employed in it could have been intended merely to reconcile the French Government to the objects of the writer, not to injure or offend Great Britain; that as far as the memorial could be supposed to have a tendency to either, it resulted solely from its publication, a circumstance which there was every reason to believe had been without your sanction, and must have been followed by your disapprobation and regret. Mr. Merry, after repeating the sensibility of his Government to the incident of which he complained, and the importance attached to it, expressed much satisfaction at the explicit and friendly explanation he had heard, and his confidence that the favorable report which he should make of it, would be equally satisfactory to his Government.

From this view of the matter you will be sensible of the regret excited by your permission to the French Government mentioned in your letter of Dec<sup>r</sup> 11 to publish the memorial as attributed to you. A publication of it by the French Government with a reference to you as the author, and without any denial on your part will doubtless be represented by the British Government as having all the authenticity and effect of a

direct publication by yourself, as well as the appearance moreover of some sort of collusion with the French Government against the British Government; and it may be fairly suspected that one object at least of the former in endeavoring to connect your name with the publication has been to engender or foster in the latter a distrust and ill humour towards the United States.

You will infer from these observations the wish of the President, that if no irrevocable step should have been taken in the case, the French Government may be induced, in the manner you may find most delicate to withdraw its request, and thereby relieve the Government of the United States from the necessity of further explanations to the British Government which will be more disagreeable as it may be the more difficult to make them satisfactory.

Congress adjourned on tuesday the 27th of March to the first monday in November next. Copies of their laws will be forwarded to you as soon as they issue from the press. For the present, I inclose herewith a list of all their acts, and copies of a few of them; particularly of the acts providing for the Government of Louisiana and for the war in the Mediterranean. The former it is hoped will satisfy the French Government of the prudent and faithful regard of the Government of the United States to the interest and happiness of the people transferred into the American family. The latter was thought a proper antidote to the unfortunate accident to the ship and men under Capt. Bainbridge before the harbour of Tripoli. The addition which it will enable the President to make to our force in the Mediterranean, will more than regain the ground lost with that regency, at the same time that it will impress on the others respect for our resources, and in a more general view be advantageous at the present crisis. It is probable that three or four frigates will soon proceed to join Commodore Preble.

I Have The Honor To Be, &C.,

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE

Department of State, April 15, 1804.

D. Of Mss.  
Instr.

Sir,

It being presumed that by the time of your receiving this communication, the negotiation with which you were charged by my letter of 5th January last, will no longer require your presence in London, the President thinks it proper that you should now proceed to Madrid, and in conjunction with Mr. Pinckney open a negotiation on the important subjects remaining to be adjusted with the Spanish Government. You will understand however that besides the consideration how far your immediate departure may be permitted by the state of our affairs with the British Government or by events unknown at this distance, you are at liberty to make it depend in a due degree on the prospect of active co-operation or favorable dispositions from quarters most likely to influence the Counsels of Spain. It will be of peculiar importance to ascertain the views of the French Government. From the interest which France has in the removal of all sources of discord between Spain and the United States, and the indications given by her present Government of a disposition to favor arrangements for that purpose, particularly in relation to the Territory remaining to Spain on the Eastern side of the Mississippi, and from the ascendancy which the French Government has over that of Spain, of which a recent and striking proof has lately been given in the prompt accession of the latter, on the summons of the former to the transfer of Louisiana to the United States, notwithstanding the orders which had been transmitted to the Spanish Envoy here, to protest against the right to make the transfer; much will depend on and much is expected from the interposition of that Government in aid of your negotiations. Mr. Livingston has been instructed to cherish the motives to such an interposition, as you will find by the extract from my letter to him herewith inclosed; and if you should take Paris on your way to Madrid, as is probable, you will not only be able to avail yourself of all his information, but will have an opportunity of renewing the personal communications which took place during your joint negotiations.

The objects to be pursued are 1st an acknowledgment by Spain that Louisiana as ceded to the United States extends to the River Perdido; 2d A cession of all her remaining territory Eastward of that River including East Florida. 3d. A provision for Arbitrating and paying all the claims of citizens of the United States not provided for by the late Convention, consisting of those for wrongs done prior to the last peace by other than Spanish subjects within Spanish responsibility; for wrongs done in Spanish Colonies by Spanish subjects or officers; and for wrongs of every kind for which Spain is justly responsible, committed since the last peace. On the part of the United States it may be stipulated that the territory on the Western side of the Mississippi shall not be settled for a given term of years, beyond a limit not very distant from that river, leaving a spacious interval between our settlements and those of Spain, and that a sum of — dollars shall be paid by the United States in discharge of so much of the

awards to their citizens. It may also be stipulated or rather may be understood that no charge shall be brought by the United States against Spain for losses sustained from the interruption of the deposit at New Orleans.

The subjoined draught puts into form and into detail the arrangement to which the President authorizes you to accede, relying on your best efforts to obtain better terms, and leaving to your discretion such modifications as may be found necessary, and as will not materially affect the proportion between the gains and the concessions by the United States.

## ARTICLE I.

Sec. 1. Spain acknowledging and confirming to the United States the cession of Louisiana in an extent eastwardly to the River Perdido, cedes to them forever all the Territory remaining to her between the Mississippi the Atlantic and the Gulph of Mexico; together with all the Islands annexed thereto, either whilst the Floridas belonged to G. Britain or after they became provinces of Spain.

Or, if the article be unattainable in that form, Spain cedes to the United States forever all the Territory with the Islands belonging thereto, which remain to her between the Mississippi, the Atlantic and the Gulph of Mexico.

Sec. 2. Possession of the said territory shall be delivered to a person or persons authorized by the United States to receive the same within NA days or less if practicable, after the exchange of the ratifications of this convention. With the said Territory shall be delivered all public property excepting ships and military stores as also all public archives belonging to the provinces comprehending the said Territory.

Sec. 3. Within ninety days after delivery of possession or sooner if possible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any port of the Territory ceded by France to the United States, all such troops shall without delay be withdrawn.

Sec. 4. Spanish subjects within the ceded territory who do not choose to become citizens of the United States shall be allowed 18 months to dispose of their real property and to remove or dispose of their other property.

Sec. 5. The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States and to the same protection in their religion, their liberties and their property as were stipulated to the inhabitants of the Territory ceded to the United States by the Treaty of the 30 April 1803 with the French Republic.

## ARTICLE II.

Sec. 1. It is agreed that for the term of NA years no lands shall be granted, nor shall persons who may have settled since October 1—1800 on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit, by a limit consisting on one side of the River Sabine or Mexicano from the sea to

its source, thence a straight line to the confluence of the Rivers Osages and Missouri; and from the said confluence a line running parallel with the Mississippi to the latitude of its northernmost source, and thence a meridian to the Northern boundary of Louisiana and by a limit on the other side consisting of the River Colorado (or some other river emptying into the Bay of S<sup>t</sup> Bernard) from its mouth to its source, thence a straight line to the most Southwestwardly source of the red River with such deflections however as will head all the waters of that river, thence along the ridge of the highlands which divide the waters belonging to the Missouri and Mississippi from those belonging to the Rio Bravo to the latitude of the northernmost source of that river, and thence a meridian to the Northern boundary of Louisiana.

Sec. 2. Such of the settlements within the foregoing limits not prohibited by Article II Sec. 1 as were not under the authority of the Government of Louisiana shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will respectively offer reasonable inducements, without being obliged to use force, to all such settlers to retire from the space above limited and establish themselves elsewhere.

Sec. 3. The Indian tribes within the said limits shall not be considered as subject to or exclusively connected with either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them as far as may be necessary for that purpose; and each of the parties agrees to restrain by all proper and requisite means its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions of any sort on the subjects or citizens of the other party. The parties agree moreover, each of them, in all public transactions and communications with Indians to promote in them a disposition to live in peace and friendship with the other party.

Sec. 4. It shall be free for Indians now within the territories of either of the parties to remove to and settle within the said limits without restraint from the other party; and either party may promote such a change of settlement by Indians within its territories; taking due care not to make it an occasion of war among the Indians, or of animosities in any of them against the other party.

Sec. 5. The United States may establish Garrisons sufficient as security against the Indians and also trading Houses at any places within the said limits where Garrisons existed at any time under the Spanish Government of Louisiana. And Spain may continue Garrisons for the like purpose at any places where she now has them, and establish trading Houses thereat. Either party may also cause or permit any part of the Country within the said limits to be explored and surveyed, with a view to commerce or science.

Sec. 6. It shall be free for either of the parties to march troops within the said limits against Indians at War with them for the purpose of driving or keeping out invaders or intruders.

### ARTICLE III.

It is agreed that within NA years previous to the expiration of the aforesaid term of NA years due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States Westward of the Mississippi and the territories of his Catholic Majesty, which boundary shall then be established according to the true and just extent of Louisiana as ceded by Spain to France and by France to the United States; uninfluenced in the smallest degree or in any manner whatever by the delay, or by any arrangement or circumstance contained in or resulting from this Convention.

### ARTICLE IV.

Whereas by the 6th article of the Convention signed at Madrid on the 11th day of August 1802 it is provided, that as it had not been possible for the Plenipotentiaries of the two powers to agree upon a mode by which the Board of Commissioners to be organized in virtue of the same should arbitrate the claims originating from the excesses of foreign cruizers, agents, Consuls or tribunals in their respective territories, which might be imputable to their two Governments, &c; and whereas such explanations have been had upon the subject of the Article aforesaid as have led to an accord: It is therefore agreed that the Board of Commissioners to be organized as aforesaid shall have power for the space of eighteen months from the exchange of the ratifications hereof to hear and determine in the manner provided as to other claims in the said Convention all manner of claims of the Citizens and subjects of either party for excesses committed or to be committed by foreign cruizers, Agents, Consuls or tribunals in their respective territories which may be imputable to either Government according to the principles of justice, the law of the nations or the treaties between the powers, and also all other excesses committed or to be committed by officers or individuals of either nation, contrary to justice, equity, the law of nations or the existing treaties and for which the claimants may have a right to demand compensation.

### ARTICLE V.

It is further agreed that the respective Governments will pay the sums awarded by the said Commissioners under this Convention and also those which have been or may be awarded under that of the 11th of Aug<sup>t</sup>. 1802, in manner following.

The Government of the United States will pay all such sums not exceeding in all NA dollars, which may be awarded as compensation to citizens of the United States from his Catholic Majesty, in three equal annual instalments at the City of Washington, the first instalment to be paid in eighteen months after the exchange of the ratifications hereof, or in case they shall not be so paid, they shall bear an interest of six pCent p annum from the time when they become due until they are actually discharged, and in case the aggregate of the said sums should not amount to the said sum of NA dollars the United States will pay to his Catholic Majesty within one year after the final liquidation of the claims cognizable by the said Board, at the City of Washington so



much as the said aggregate may fall short of the sum above mentioned; but on the other hand, if the whole amount of the sums awarded to Citizens of the United States should exceed the said sum of NA dollars, His Catholic Majesty shall pay the surplus without deduction, to such of the claimants and at such times and places as the said Commissioners shall appoint.

The Government of the United States will also pay without deduction, at the City of Washington, all such sums as may be awarded against them by the said Commissioners for compensation due to Spanish subjects at such times as shall be appointed in the awards respectively.

This Convention shall be ratified within NA days after the signing thereof, and the ratifications shall be exchanged within NA days after the ratification by the United States, at the City of Washington.

## Observations.

The first form of the first Article (paragraph 1) is preferred because it explicitly recognizes the right of the United States under the Treaty of S<sup>t</sup> Ildefonso and of April 30, 1803, to the river Perdido, which is constructively provided for only, in the second form. It is indispensable that the United States be not precluded from such a construction; first because they consider the right as well founded; secondly and principally, because it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish Officers since the cession was made by Spain. These illicit speculations cannot otherwise be frustrated than by considering the Territory as included in the cession made by Spain, and thereby making void all Spanish grants of subsequent date. It is represented that these grants have been extended not only to citizens of the United States but to others, whose interest now lies in supporting the claim of Spain to that part of Louisiana in opposition to that of the United States. It is conjectured that Mr. Laussat himself has entered into the speculations, and that he felt their influence in the declaration made confidentially to our Commissioners at New Orleans, that no part of West Florida was included in Louisiana.

In supporting the extent of Louisiana to the Perdido, you will find materials for your use in the extract above referred to and the other documents annexed; to which you will add the result of your own reflections and researches. The secret Treaty between France and Spain ceding Louisiana West of the Mississippi to Spain and which has never been printed may doubtless be obtained at Paris if not at Madrid, and may be of use in the discussion. From the references in the French orders of 1764 for the delivery of the Province, it is presumed to be among the archives of New Orleans and Governor Claiborne has been requested to send a copy of it; but it may not be received in time to be forwarded for your use. In an English work "The Life of Chatham" printed in 1793 for I. S. Gordon, London No. 166 Fleet street, I find a memorial referred to but not there printed with the other negotiations preceding the peace of 1762-3 expressly on the subject of the limits of Louisiana; and as sufficiently appears, with a view to give the province its extent to the Perdido. You will perhaps be able to procure in London or Paris a sight of this document. It probably contains

most of the proofs applicable to the question; and will be the more important; as proceeding from France it will strengthen our lien on her seconding our construction of the Treaty. The memorial will be the more important still if it should be found to trace the Western limits also of Louisiana, and to give it a corresponding extent on that side. In page 416 & seq of Vol 1 you will see that fact established that the Floridas including the French part were ceded to Great Britain as the price for the restoration of Cuba, and that consequently the French part now claimed by the United States was a cession purely for the benefit of Spain.

The reasons, beyond the advantages held out in the arrangement itself, which may be addressed to Spain, as prompting a cession of her remaining territory Eastward of the Perdido, will be found in the remarks on the extract aforesaid in the instructions to Mr. Pinckney and yourself of the 17th day of February last, and in those which have from time to time been given to Mr. Pinckney. The Spanish Government cannot but be sensible that the expence of retaining any part of that Territory must now more than ever exceed any returns of profit; that being now more than ever indefensible, it must the more invite hostile expeditions against it from European enemies, and that whilst in her hands, it must be a constant menace to harmony with the United States.

The arrangement proposed in Art. II supposes that Louisiana has a very great extent Westwardly and that the policy of Spain will set much value on an interval of Desert between her settlements and those of the United States.

In one of the papers now transmitted you will see the grounds on which our claim may be extended even to Rio Bravo. By whatever river emptying into the gulph Eastward of that, Spain may with any plausibility commence the Western boundary of Louisiana, or however continue it thence to its Northern limit, she cannot view the arrangement in any other light than that of a concession on the part of the United States to be balanced by an equivalent concession on her part. The limit to the interval on our side is to be considered as the ultimatum, and consequently not to be yielded without due efforts to fix a limit more distant from the Mississippi. It is highly important also, or rather indispensable, that the limit on the Spanish side should not be varied in any manner that will open for Spanish occupancy any part of the waters connected with the Missouri or Mississippi. The range of high lands separating these waters from those of the Rio Bravo and other waters running Westward presents itself so naturally for the occasion, that you will be able to press it with peculiar force.

To enable you the better to understand the delineations contained in this Article and any others which may be brought into discussion, I forward herewith copies of two Maps and refer you to others, viz- that of Danville which you will find either in London or Paris and if no where else in Postlewaits Dictionary, and a Map by Mr. NA in 1768 referred to in one of those forwarded. The latter you will doubtless be able to procure at Madrid. The blank for the term of years is not to be filled with more than NA years nor with that number if a shorter term can be substituted

The IV and V Articles relate to claims against Spain not provided for by the Convention already entered into and the payment to be assumed by the United States. For the reasoning in support of the claims founded on wrongs proceeding from other

than Spanish subjects, I refer you to the letters and instructions of Mr. Pinckney. Your communications with him will also furnish the grounds on which the claims resulting from injuries done to our citizens in the Spanish Colonies are to be maintained. The reasonableness of a residuary provision for all just claims, is implied by the concurrence of Spain in establishing a Board of Commissioners for the cases already submitted to it.

You will not fail to urge on the Spanish Government the VI Article of the Treaty of 1795 as particularly applicable to cases where other than Spanish subjects have committed spoliations on our vessels and effects within the extent of Spanish jurisdiction by sea or by land. To justice and the law of nations, this adds the force of a positive stipulation which cannot be repelled without proving what cannot be proved, that the Spanish Government used all *the means in its power* to protect and defend the rights of our citizens; and which cannot be resisted without pleading what self respect ought not to permit to be pleaded, that the sovereignty of His Catholic Majesty was under duress from a foreign power within his own dominions.

The sum of money to be paid by the United States is in no event to exceed NA dollars in cash at the Treasury of the United States not in public stock; and is to be applied towards the discharge of awards to our citizens and it is hoped that a much smaller sum will be found sufficient.

If Spain should inflexibly refuse to cede the territory Eastward of the Perdido, no money is to be stipulated. If she should refuse also to relinquish the territory Westward of that river no arrangement is to be made with respect to the Territory Westward of the Mississippi, and you will limit your negotiations to the claim of redress for the cases of spoliation above described.

If Spain should yield on the subject of the Territory Westward of the Perdido and particularly if a comprehensive provision for the claims should be combined therewith, you may admit an arrangement Westward of the Mississippi on the principle of that proposed, with modifications however if attainable varying the degree of concession on the part of the United States according to the degree in which Spain may concur in a satisfactory provision for the cases of the territory westwards of the Perdido, and of the claims of indemnification.

The United States having sustained a very extensive tho' indefinite loss by the unlawful suspension of their right of deposit at New Orleans, and the Spanish Government having admitted the injury, by restoring the deposit it will be fair to avail yourself of this claim in your negotiations, and to let Spain understand that if no accommodation should result from them it will remain in force against her.

The term of years during which the interval between the settlements of the United States and of Spain, are to be prohibited, is a consideration of great importance. A term which may appear a moment to a nation stationary or slowly advancing in its population will appear an age to a people doubling its population in little more than 20 years, and consequently capable in that time of covering with an equal settlement double the territory actually settled. This reflection will suggest the expediency of

abridging the continuance of the prohibition as much as the main objects in view will permit. NA years are a limit not to be exceeded. Fifteen or even ten, if the space between the Mississippi and the interval territory be not enlarged, seem to be as much as Spain can reasonably expect. She cannot but be sensible, and you will make use of the idea, if you find it prudent so to do, that before a very long term will elapse, the pressure of our growing population with events which time does not fail to produce, but are not foreseen will supersede any arrangements which may now be stipulated, and consequently that it will be most prudent to limit them to a period susceptible of some certain calculations.

No final cession is to be made to Spain of any part of the Territory on this side of the Rio Bravo; but in the event of a cession to the United States of the Territory East of the Perdido and in that event in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or Mississippi, or of the other waters emptying into the Gulph of Mexico between the Mississippi and the river Colorado emptying into the Bay of S<sup>t</sup> Bernard.

No guarantee of the Spanish possessions is to be admissible. This letter is intended for Mr. Pinckney as well as yourself, and as containing the instructions by which the execution of your joint commission is to be guided.

April 18—The President being absent, and it being most proper to wait his return which may be shortly expected, before any final instructions be given as to your immediate destination, after closing your mission to Spain, I recommend that you do not actually leave London until you hear again from me. The moment the President arrives I will communicate to you his views by multiplied conveyances, that you may receive them with as little delay as possible. In the meantime you will make such preparations as will enable you to come directly from Spain to the United States, in case a call for your services on this side of the Atlantic should lead him to that decision, instead of your return to London.

I Have The Honor To Be, &C

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE AND CHARLES PINCKNEY.

Department of State July 8th—1804.

D. Of S. Mss.  
Instr.

Gentlemen:

Since the instructions given you on the 15th of April last, further views have been obtained with respect to the interior of Louisiana, and the value which Spain will probably put on such a limitation of our settlements beyond the Mississippi as will keep them for some time at a distance from hers. The President has accordingly become the more anxious that in the adjustment authorized by those instructions the terms may be made favorable to the United States. He does not indeed absolutely restrain you from yielding to the Ultimatum therein fixt, in case it be required by the inflexibility of the Spanish Government and particularly by the posture and prospect of affairs in Europe. But he is not a little averse to the occlusion for a very long period of a very wide space of territory westward of the Mississippi; & equally so to a perpetual relinquishment of any territory whatever Eastward of the Rio Bravo. If this river could be made the limit to the Spanish settlements and the river Colorado the limit to which those of the United States may be extended; and if a line North West or West from the source of whatever river may be taken for the limit of our settlements, could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri and thence Northward parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner peculiarly satisfactory. The degree however in which you are to insist on these meliorations of the arrangement must be regulated by your discretion and by the effect which the probable course of events will have on the temper and policy of Spain. Should she be engaged in the War, or manifestly threatened with that situation, she cannot fail to be the more anxious for a solid accommodation on all points with the United States; and the more willing to yield for that purpose to terms, which, however, proper in themselves might otherwise be rejected by her pride and misapplied jealousy. According to the latest accounts from Great Britain a revolution in the Ministry if not a change on the throne was daily expected, and from either of those events, an extension of the war to Spain, if not precluded by the less probable event of a speedy peace with France would be a very natural consequence. It is to be understood that a perpetual relinquishment of the Territory between the Rio Bravo and Colorado is not to be made nor the sum of NA dollars paid without the entire cession of the Floridas; nor any money paid in consideration of the acknowledgment by Spain of our title to the Territory between the Iberville and the Perdido. But a proportional sum out of the NA dollars may be stipulated for a partial cession of territory Eastward of the Perdido. If neither the whole nor part of East Florida can be obtained, it is of importance that the United States should own the Territory as far as the Apalachicola, and have a common, if not exclusive right to navigate that stream. I must repeat that great care is to be taken that the relinquishment by Spain of the Territory Westward of the Perdido be so expressed as to give to the relinquishment of the Spanish title, the date of the Treaty of St. Ildefonso. The reason for this was before

explained, and is strengthened by recent information as you will find by the annexed extract of a letter from Governor Claiborne. Other proofs might be added. In any further cession of Territory, it may be well so to define it, as to guard as much as possible against grants irregular or incomplete, or made by Spanish Officers in contemplation of such a cession.

On entering into conferences with the Spanish Ministry, you will propose and press in the strongest manner an agreement that neither Spain nor the United States shall during the negotiation strengthen their situation in the Territory between the Iberville and the Perdido, and that the navigation of the Mobbille shall not be interrupted. An immediate order from the Spanish Government to this effect, may be represented as of the greatest importance to the good understanding between the two countries, and that the forbearance of the United States this long is a striking proof of their sincere desire to maintain it. If such an order should be declined you will not fail to transmit the earliest information of it; as well as to keep up such representations to that Government on the subject as will impress it with the tendency of so unreasonable and unfriendly a proceeding, to drive the United States into arrangements for balancing the military force of Spain in that quarter and for exerting their right of navigation thro' the Mobbille. This navigation is become important or rather essential, and a refusal of Spain to acquiesce in it must commit the peace of the two nations to the greatest hazard. The posture of things there is already extremely delicate and calls for the most exemplary moderation and liberality in both the Governments. As a proof of it, I enclose a correspondence between Governor Claiborne and the Spanish Government, at Pensacola, on the same subject with that of mine with the Marquis D'Yrujo already transmitted to you.<sup>1</sup>

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Department of State July 20th 1804.

D. Of S. Mss.  
Instr.

Sir,

Since my last acknowledgment of your letters I have received those of

I enclose herewith several correspondences with Mr. Merry, Mr. Pichon and the Mayor and Marshal of New York, on certain proceedings of the British frigates Cambrian and Boston, and the sloop of war Driver within and without the harbour of New York. Copies of the documents attached to these correspondences are also enclosed, and therewith a protest stating a subsequent irregularity of a strong complexion committed by the Cambrian on several passengers in an American vessel just before her arrival within the harbour of New York.

No answer having been yet received from Mr. Merry to the two last letters from the Department, I cannot pronounce with certainty on the degree of interposition, which he will employ on the occasion. It cannot be doubted, that he will transmit the case to this Government and it is to be hoped that he will place it in a light favorable to a proper result. It is not the less proper, however, that the sentiments and expectations of this Government should be spoken thro' the Organ of the United States at London, and the President accordingly charges you to make the case, as you will collect it in all its features and colours from the papers above referred to, the subject of a strong tho' temperate representation. It is but justice to the British Government to suppose that it will be struck with the series of enormities which have been committed by its officers against the unquestionable and essential rights of a friendly nation; and will be not only ready to disavow them, but to render all the satisfaction which is due to the United States. In this view it is particularly proper that the appeal to its justice should be in a spirit, temperate, respectful and friendly. On the other hand it is not less due to the United States and to the universal sensibility, which has been excited by the complicated and violent insults received, that the complaint should be presented in its true character, and the claim of ample satisfaction be expressed in terms of becoming dignity and energy. It is the more necessary that this tone should be given to the representation as in several preceding instances of great offence to the national rights and honor, the result of the best founded representations has so little corresponded with our just expectations. The documents of which copies are also inclosed will explain two instances, in one of which one of the frigates in question, the Boston, was the aggressor. The least that can be required in the present instance is that those who have so grossly violated our laws, and eluded the punishment of their guilt, should either be given up to the authority of the United States, or receive from their own Government a punishment which will have the same salutary effect: and the least punishment that can be relied on for the purpose, is that of a bona fide and permanent degradation of the offenders from every public honor or authority. It must be understood that a dismissal from their particular offices, accompanied with a

translation to any others, as, it is said, has sometimes been done, will not be considered as either just or candid; and the British Government must also understand, as indeed has been sufficiently intimated to Mr. Merry, that a refusal or failure to make on this occasion, so reasonable an amends to the United States for the outrages offered to them, must be followed by precautions, which, however disagreeable or inconvenient cannot be either blamed or wondered at by those on whom the necessity of them is chargeable.

With these observations the whole subject is committed to your prudent attention; on which the President relies with full confidence for an effectual pursuit of the object of your Government, and a dignified vindication of the rights of your country.

Your answer to the circular communication of Lord Hawksbury was a very proper one. If the lapse of time or other circumstances should render unnecessary any thing further on the part of this Government, it may be best to let the subject remain in silence. Should the omission of a formal reply, be likely to be received as disrespectful, or to be in any degree injurious to subsisting relations, the President authorizes you to assure the British Government that the communication has been received with that sincere and just interest which the United States takes in whatever concerns the British nation, and that the communication, considered as the effect of an honourable solicitude in the British Government to maintain the esteem and confidence of neutral and friendly nations, affords an occasion, of which this Government avails itself with satisfaction, for expressing the unremitted disposition of the United States to cherish all the relations which happily subsist between the two nations; sincerely regretting at the same time every indication of new sources of animosity in addition to the spirit of hostility so unhappily prevailing between Great Britain and France.

I enclose an extract of the instructions to Genl. Armstrong who goes as Successor to Mr. Livingston, containing the reply authorized to be given to the French Communication. He expects to embark in a few days.

I Remain Sir &C



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Department of State September 12th, 1804.

D. Of S. Mss.  
Instr.

Sir,

My letter of 20th July made you acquainted with the irregularities committed by British ships of War in and adjoining the harbour of New York, and with the correspondence which had ensued between Mr Merry and myself. I now add copies of the letters which have since passed between us on that subject, with copies of documents since received relating to the same or to subsequent violations of our national rights.<sup>1</sup>

From the letter of Mr Merry and its inclosures, you will discover that instead of promoting a redress of the injuries represented to him, he makes himself an advocate of the authors; and from my reply, that finding such to be the case, it is not proposed to protract the discussion with him. It rests consequently altogether with you to place the subject in the proper light before the British Government, and to press in a proper manner the satisfaction due to the United States from its justice and its friendly policy. In doing this, it need not be repeated that regard is to be had equally to a manly tone in stating the complaints, and to a conciliatory respect, in appealing to the motives from which a satisfactory interposition is expected. Mr. Merry has endeavored to construe a candid and friendly intimation of the dilemma to which the United States will be exposed by a continuance of such outrages, into an offensive threat, and will no doubt so present it to his Government. Should the language to which he refers not sufficiently otherwise explain itself, you are authorized to disclaim any intention on our part inconsistent with the respect which the United States owe and profess for the British Government, and which in this case best coincides with the respect which they owe to themselves. It must be recollected at the same time, that the expediency of some provisions against aggressions on our commerce and our harbours was a subject of very interesting deliberation with Congress at their last Session; that it was postponed under a hope that such provisions would be rendered unnecessary by the just and amicable regulations of the belligerent powers; and that it is more than probable that a disappointment in this particular can scarcely fail to revive the subject at the next Session. These considerations are too important not to be brought into view in your communications with the British Government; and you will know how and when to do it with the least risk of irritation, and consequently with the greatest probability of useful effect.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Department of State October 11th 1804.

D. Of S. Mss.  
Instr.

Sir,

I have the honor to transmit to you a copy of a letter from Thomas Manning with the document it inclosed, respecting the capture of the Brig Camillus and what appears to be a most unprovoked outrage committed on the person of Thomas Carpenter, a native of the United States, then a seaman on board, by order of Lieutenant Sutton, commanding the British armed schooner L'Eclair or Leclerc. Mr. Manning has been informed that recompence for the loss he has sustained must be attempted by his pursuing the judicial remedy against Mr. Sutton, if he thinks it advisable. But the reparation demanded by the honor of our flag whose immunities have been so grossly violated in the person of Carpenter by an officer of the King of Great Britain is the serious concern of the Government, and you will therefore apply for satisfaction in that decided yet friendly manner which is warranted by the highly aggravated conduct of the British officer. The circumstances of the occurrence, though almost incredible from their nature, are as fully supported as can be done by *ex parte* evidence, which nevertheless Mr. Manning assures me is free from colouring and exaggeration. It will therefore not be a satisfactory answer to the complaint to be presented with the bare denial of Mr. Sutton if he should hazard one; for if the British Government think the harmony of the United States worth preserving they ought to scrutinize with care and punish with rigor misconduct which has such an irritating tendency.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

## TO NOAH WEBSTER. 1

Washington, Oct. 12, 1804.

Sir—

I received, during a visit to my farm, your letter of Aug. 20, and hoped that I should, in that situation, find leisure to give it as full an answer as my memory and my papers would warrant. An unforeseen pressure of public business, with a particular one of private business interesting to others as well as to myself, having disappointed me, I find myself under the necessity of substituting the few brief remarks which return to the occupations of this place, and the absence of my papers, will admit.

I had observed, as you have done, that a great number of loose assertions have at different times been made with respect to the origin of the reform in our system of federal government, and that this has particularly happened on the late occasion which so strongly excited the effusions of party and personal zeal for the fame of Gen. Hamilton.

The change in our government like most other important improvements ought to be ascribed rather to a series of causes than to any particular and sudden one, and to the participation of many, rather than to the efforts of a single agent. It is certain that the general idea of revising and enlarging the scope of the federal authority, so as to answer the necessary purposes of the Union, grew up in many minds, and by natural degrees, during the experienced inefficacy of the old confederation. The discernment of Gen. Hamilton must have rendered him an early patron of the idea. That the public attention was called to it by yourself at an early period is well known.

In common with others, I derived from my service in the old Congress during the latter stages of the Revolutionary war, a deep impression of the necessity of invigorating the federal authority. I carried this impression with me into the legislature of Virginia; where, in the year 1784, if my recollection does not fail me, Mr. Henry co-operated with me and others in certain resolutions calculated to strengthen the hands of Congress.

In 1785, I made a proposition with success in the legislature of the same state, for the appointment of commissioners to meet at Annapolis such commissioners as might be appointed by other states, in order to form some plan for investing Congress with the regulation and taxation of commerce. 1 This I presume to be the proceeding which gave you the impression that the first proposal of the present constitution was then made. It is possible that something more might have been the subject of conversation, or may have been suggested in debate, but I am induced to believe that the meeting at Annapolis was all that was regularly proposed at that session. I would have consulted the journals of it, but they were either lost or mislaid.

Although the step taken by Virginia was followed by the greater number of the states, the attendance at Annapolis was both so tardy and so deficient, that nothing was done on the subject immediately committed to the meeting. The consultations took another turn. The expediency of a more radical reform than the commissioners had been authorized to undertake being felt by almost all of them, and each being fortified in his sentiments and expectations by those of others, and by the information gained as to the general preparation of the public mind, it was concluded to recommend to the states a meeting at Philadelphia, the ensuing year, of commissioners with authority to digest and propose a new and effectual system of government for the Union. The manner in which this idea rose into effect, makes it impossible to say with whom it more particularly originated. I do not even recollect the member who first proposed it to the body. I have an indistinct impression that it received its first formal suggestion from Mr. Abraham Clark of New Jersey. Mr. Hamilton was certainly the member who drafted the address.

The legislature of Virginia was the first I believe, that had an opportunity of taking up the recommendation, and the first that concurred in it. It was thought proper to express its concurrence in terms that would give the example as much weight and effect as possible; and with the same view to include in the deputation, the highest characters in the state, such as the governor and chancellor. The same policy led to the appointment of Gen. Washington, who was put at the head of it. It was not known at the time how far he would lend himself to the occasion. When the appointment was made known to him, he manifested a readiness to yield to the wishes of the legislature, but felt a scruple from his having signified to the Cincinnati, that he could not meet them at Philadelphia, near about the same time, for reasons equally applicable to the other occasion. Being in correspondence with him at the time and on the occasion, I pressed him to step over the difficulty. It is very probable that he might consult with others, particularly with Mr. Hamilton, and that their or his exhortations and arguments may have contributed more than mine to his final determination.

When the convention as recommended at Annapolis took place at Philadelphia, the deputies from Virginia supposed, that as that state had been first in the successive steps leading to a revision of the federal system, some introductory propositions might be expected from them. They accordingly entered into consultation on the subject, immediately on their arrival in Philadelphia, and having agreed among themselves on the outline of a plan, it was laid before the convention by Mr. Randolph, at that time governor of the state, as well as member of the convention. This project was the basis of its deliberations; and after passing through a variety of changes in its important as well as its lesser features, was developed and amended into the form finally agreed to.

I am afraid that this sketch will fall much short of the object of your letter. Under more favorable circumstances, I might have made it more particular. I have often had it in idea to make out from the materials in my hands, and within my reach, as minute a chronicle as I could, of the origin and progress of the last revolution in our government. I went through such a task with respect to the declaration of independence, and the old confederation, whilst a member of Congress in 1783; availing myself of all the circumstances to be gleaned from the public archives, and from some auxilliary sources. To trace in like manner a chronicle or rather a history of

our present constitution, would in several points of view be still more curious and interesting; and fortunately the materials for it are far more extensive, Whether I shall ever be able to make such a contribution to the annals of our country, is rendered every day more and more uncertain.

I will only add that on the slight view which I have taken of the subject to which you have been pleased to invite my recollections, it is to be understood, that in confining myself so much to the proceedings of Virginia, and to the agency of a few individuals, no exclusion of other states or persons is to be implied, whose share in the transactions of the period may be unknown to me.

With Great Respect And Esteem, I Remain, Sir,  
Your Most Obedient Servant,

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State March 6th 1805.

D. Of S. Mss.  
Instr.

Sir,

My last general letter was dated the 26th of October, and sent in sundry copies both to London and Madrid, it not being then certain at which of those places it would find you. The letters since received from you are of October 15th & December 20th. From Mr. Purviance a letter has also been received of October 19th.

The procrastinations of the British Ministry in meeting you effectively, on the subjects proposed in your project for a Convention, betray a repugnance to some of them, and a spirit of evasion, inauspicious to a satisfactory result. Still your conduct was prudent, in winking at this dilatory policy, and keeping the way open for a fair and friendly experiment on your return from Madrid, which it is presumed will have taken place before this will reach London. The experience of every day, shows more and more the obligation on both sides, to enter seriously on the means of guarding the harmony of the two countries against the dangers with which it is threatened by a perseverance of Great Britain in her irregularities on the high seas, and particularly in the impressments from American vessels. The extent in which these have taken place since the commencement of the War, will be seen by the inclosed report required from this Department by a vote of the House of Representatives, and the call for it whilst negotiations on the subject were understood to be in train, is itself a proof of the public sensibility to those aggressions on the security of our citizens and the rights of our flag. A further proof will be seen in the motion also inclosed, which was made by Mr. Crowninshield, and which will probably be revived at the next Session. This motion with his remarks on it, appear very generally in the newspapers, with comments proceeding from a coincidence of the sensibility out of doors with that within. A still stronger proof of impatience under this evil, will be found in the proceedings authorized by an Act of Congress just passed and which is likewise inclosed, against British Officers committing on the high seas trespasses or torts on board American vessels; offences manifestly including cases of impressment.

In communicating these circumstances it will occur to you that whilst they may be allowed to proclaim the growing sensibility of the United States on the subject of impressments, they ought, by proper explanations and assurances to be guarded against a misconstruction into marks of illiberal or hostile sentiments towards Great Britain. The truth is, and it may be so stated by you, that this practice of impressments, aggravated by so many provoking incidents has been so long continued, and so often, in vain remonstrated against, that without more encouragement than yet appears, to expect speedy redress from the British Government, the United States are in a manner driven to the necessity of seeking for some remedy dependent on themselves alone. But it is no less true that they are warmly disposed to cherish all the friendly relations subsisting with Great Britain; that

they wish to see that necessity banished by just and prudent arrangements between the two Governments; and that with this view you were instructed to open the negotiations which are now depending. It is impossible for the British Government to doubt the sincerity of these sentiments. The forbearance of the United States year after year, and war after war, to avail themselves of those obvious means which without violating their national obligations of any sort, would appeal in the strongest manner, to the interest of Great Britain, is of itself a sufficient demonstration of the amicable spirit which has directed their public councils. This spirit is sufficiently manifested also, by the propositions which have been lately made thro' you, and by the patience and cordiality with which you have conducted the negotiation. I might add, as a further proof to the same effect, that notwithstanding the refusal of which we have official information, from Glasgow and Liverpool particularly, to restore American seamen deserting their ships in British ports, the laws of many of the States have been left, without interruption, to restore British deserters. One of the States, Virginia, has even at the last Session of its Legislature, passed an Act for the express purpose of restoring such deserters; which deserves the more attention, as it was done in the midst of irritations resulting from the multiplied irregularities committed by British ships in the American seas.

Mr. Merry has expressed some inquietude with respect to the clause in the Act above referred to, which animadverts on British trespasses on board American vessels; and his language on several late occasions has strongly opposed the expectation that Great Britain will ever relinquish her practice of taking her own subjects out of neutral vessels. I did not conceal from him my opinion that the terms "trespass &c" would be applicable to the impressment of British subjects as well as others, or that the United States would never accede to that practice. I observed to him that every preceding administration had maintained the same doctrine with the present on that point; and that such were the ideas and feelings of the Nation on it, that no administration would dare so far surrender the rights of the American flag. He expressed dissatisfaction also at the section which requires certain compliances on the part of British ships of War entering our harbours, with arrangements to be prescribed by the Collectors. He did not deny the right of the Nation to make what rules it might please in such cases; but apprehended that some of them were such as the Commanders might deem incompatible with their just pretensions, especially when subjecting them to the discretion of so subaltern an authority as that of the Collectors; and consequently, that the law would have the unfriendly effect of excluding British ships of War altogether from American ports. He was reminded, in reply, that the Collectors were, according to the terms of the section, to be guided in the exercise of their power by the directions of the President; and it was not only to be presumed, but he might be particularly assured, that the directions given would be consistent with the usages due to public ships, and with the respect entertained for nations in amity with the United States. He asked whether in transmitting the Act to his government, as his duty would require, he might add the explanation and assurances he had heard from me. I answered, that without having received any particular authority for that purpose from the President, I could safely undertake that what I had stated was conformable to his sentiments.

Inclosed is another Act of Congress restraining and regulating the arming of private vessels by American citizens. This Act was occasioned by the abuse made of such armaments in forcing a trade, even in contraband of war, with the Island of St. Domingo; and by the representations made on the subject of that trade by the French Chargé des Affaires and Minister here, and by the British Minister with respect to abuses which had resulted or might result from such armaments in cases injurious to Great Britain. A report of these representations as made to the President is herewith inclosed. The Act, in substituting a security against the unlawful use of the armaments in place of an absolute prohibition of them; is not only consistent with the obligations of a neutral nation, but conformable to the laws and ordinances of Great Britain and France themselves, and is consequently free from objections by either. The interposition of the Government tho' claimed in behalf both of Great Britain and of France, was most pressed in behalf of the latter. Yet the measure, particularly as it relates to the shipment of contraband Articles for the West Indies, is likely to operate much more conveniently for Great Britain than for France, who cannot like Great Britain otherwise ensure a supply of these Articles for the defence of her Colonies.

(In the project which you have offered to the British Government I observe you have subjoined a clause for securing respect to certificates of citizenship. The effect of this clause taken as it ought to be & as was doubtless intended, in context with the preceding clause, is limited to the case provided for in that clause. Still it may be well in order to guard against the possibility of its being turned into a pretext for requiring such certificates in other cases, that a proviso for the purpose be added, or that words of equivalent restriction be inserted.

I find also that you have considered it as expedient to drop altogether the 4th Article contained in the project transmitted to you. It would certainly be better to do this than to listen to such an Article concerning provisions as Sweden was induced by the little interest she has in that branch of trade, to admit into her late Treaty with Great Britain. It is certainly, in a general view, ineligible also to strengthen by positive stipulations the doctrine which subjects to confiscation, enemies property in neutral vessels. It appears to the President nevertheless, that this consideration is outweighed by the great advantages which would be gained by the Article, and by the sanction which the United States have already given to that doctrine. It can scarcely be presumed that France would complain of such an Article when seen in its real shape. The immunity given to naval stores, and the security given to the trade of her Colonies, including the supplies essential to them, would seem to render such an Article particularly desirable to her. For this reason among others it is not probable that the British Government would have ever acceded to the Article even as making a part of the general arrangement; and more so that it will be rejected on its intrinsic merits. I have thought it proper, however, to make you acquainted with the view which the President has of the subject, that you may pursue it as far as any opportunity may present itself.)

Another subject requiring your attention is pointed at by the Resolutions of the Senate moved by General Smith on the subject of a British Tax on exports under the name of a Convoy duty. A copy of the Resolution is inclosed. A duty under that name was first laid in the year 1798. It then amounted to p. of one P. Cent on exports to Europe; and



one P Cent on exports to other places, and consequently to the United States. The discrimination being evidently contrary to the Treaty then in force, became a subject of discussion between Mr. King and the British Ministry. His letters to the Secretary of State and to Lord Grenville explain the objections urged by him and the pretexts in support of the measure alleged by them. The subject was resumed in my letter of 5th March 1804 to Mr. King with a copy of which you have been already furnished. It was received by Mr. Gore during the absence of Mr. King on the Continent; and if any occasion was found proper by either for repeating the remonstrance against the duty, it appears to have been without effect. Whilst the Treaty was in force the discrimination was unquestionably a violation of its faith. When the War ceased, it lost the pretext that it was the price of the Convoy, which giving a larger protection to the American than to the European trade, justified a higher price for the former than for the latter. Even during war the exports are generally made as American property and in American vessels, and therefore with a few exceptions only, a convoy which would subject them to condemnation, from which they would otherwise be free, would be not a benefit but an injury. Since the expiration of the Treaty, the discrimination as well as the duty itself can be combated by no other arguments than those, which in the document referred to are drawn from justice, friendship and sound policy; including the tendency of the measure to produce a discontinuance of the liberal but unavailing example given to Great Britain by the regulations of commerce on our side, and a recurrence to such counteracting measures as are probably contemplated by the mover of the Resolutions of the Senate. All these arguments gain strength in proportion to the augmentations which the evil has latterly received; it being now stated that the duty amounts to 4 P Cent on the exports to the United States. These, according to Cockes answer to Sheffield amounted in the year 1801 to about 7 Millions sterling and therefore levy a tax on the United States of about 1,300,000 dollars. From this is indeed to be deducted a sum proportional to the amount of re-exportations from the United States. But on the other hand, is to be added, the increase of the exports since the year 1801 which probably exceed the re-exportations.

With the aid of these communications and remarks, you will be at no loss for the views of the subject most proper to be presented to the British Government, in order to promote the object of the Resolutions; and the resolutions themselves ought powerfully to second your efforts, if the British Government feels the same desire as actuates the United States to confirm the friendship and Confidence on both sides, by a greater conformity on that side to the spirit of the Commercial regulations on this.

I have referred above to the inclosed copy of the motion made by Mr. Crowninshield in the House of Representatives. The part of it which has relation to the trade with the West Indies, was suggested as appears in his introductory observations by the late proclamations of the British West India Governors, excluding from that trade vessels of the United States, and certain Articles of our exportations particularly fish, even in British vessels. These regulations are to be ascribed partly to the attachment of the present administration in Great Britain to the Colonial and Navigation system, partly to the interested representations of certain merchants and others residing in the British Provinces on the Continent. Without entering at large into the policy on which the Colonial restrictions are founded, it may be observed that no crisis could be more

ineligible for enforcing them, than the present, because at none more than the present, have the West Indies been absolutely dependent on the United States for the supplies essential to their existence. It is evident in fact that the United States by asserting the principle of a reasonable reciprocity, such as is admitted in the trade with the European ports of Great Britain, and as is admitted even in the Colonial trade of other European Nations, so far at least as respects the vessels employed in the trade, might reduce the British Government at once to the dilemma of relaxing her regulations or of sacrificing her Colonies: and with respect to the interdict of supplies from the United States of Articles necessary to the subsistence and prosperity of the West Indies, in order to force the growth and prosperity of the Continental provinces of Nova Scotia &c; what can be more unjust than they to impoverish one part of the foreign dominions which is considered as a source of wealth and power to the parent country, not with a view to favor the parent country but to favor another part of its foreign dominions, which is rather expensive than profitable to it? What can be more preposterous than thus at the expence of Islands which not only contribute to the Revenue, commerce and navigation of the parent state, but can be secured in their dependence by that Naval ascendancy which they aid, to foster unproductive establishments which from local causes must eventually detach themselves from the parent state and the sooner in proportion as their growth may be stimulated.

Considerations, such as these ought to have weight with the British Government, and may very properly enter into frank conversations with its Ministry on favorable occasions. However repugnant that Government may be to a departure from its system in the extent contemplated by Mr. Crowninshield's motion, it may at least be expected that the trade as opened in former wars, will not be refused under circumstances which in the present, particularly demand it: it may be hoped that the way will be prepared for some permanent arrangement on this subject between the two Nations, which will be conformable to equity, to reciprocity and to their mutual advantage.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State April 12th 1805.

D: Of S. Mss.  
Instr.

Sir,

The papers herewith inclosed explain particularly the case of the Brig Aurora.

The sum of the case is, that whilst Spain was at War with Great Britain, this vessel, owned by a citizen of the United States, brought a cargo of Spanish produce purchased at the Havana, from that place to Charleston, where the cargo was landed, except an insignificant portion of it, and the duties paid or secured, on a like cargo from whatever port, meant for home consumption; that the cargo remained on land about three weeks when it was reshipped for Barcelona in old Spain, and the duties drawn back, with a deduction of three and a half p cent as is permitted to imported articles in all cases, at any time within one year under certain regulations which were pursued in this case; that the vessel was taken on her voyage by a British cruizer and sent for trial to Newfoundland where the cargo was condemned by the Court of Vice Admiralty; and that the cause was carried thence by appeal to Great Britain where it was apprehended that the sentence below would not be reversed.

The ground of this sentence was, and that of its confirmation if such be the result, must be, that the trade in which the vessel was engaged was unlawful; and this unlawfulness must rest, first on the general principle assumed by Great Britain, that a trade from a Colony to its parent Country, being a trade not permitted to other Nations in time of peace, cannot be made lawful to them in time of war; secondly, on the allegation that the continuity of the voyage from the Havana to Barcelona was not broken by landing the cargo in the United States paying the duties thereon and thus fulfilling the legal pre-requisites to a home consumption; and therefore that the cargo was subject to condemnation, even under the British regulation of Jany 1798 which so far relaxes the general principle as to allow a direct trade between a belligerent Colony and a neutral Country carrying on such a trade.

With respect to the general principle which disallows to neutral Nations in time of War, a trade not allowed to them in time of peace, it may be observed;

First, that the principle is of modern date, that it is maintained, as is believed by no other nation but Great Britain; and that it was assumed by her under the auspices of a maritime ascendancy, which rendered such a principle subservient to her particular interest. The History of her regulations on this subject shows that they have been constantly modified under the influence of that consideration. The course of these modifications will be seen in an appendix to the 4th Vol of Robinsons Admiralty Reports.

Secondly, that the principle is manifestly contrary to the general interest of commercial Nations, as well as to the law of Nations, settled by the most approved authorities, which recognizes no restraints on the trade of nations not at war, with nations at war, other than that it shall be impartial between the latter, that it shall not extend to certain military articles, nor to the transportation of persons in military service, nor to places actually blockaded or besieged.

Thirdly, that the principle is the more contrary to reason and to right, inasmuch as the admission of neutrals into a Colonial Trade shut against them in times of peace, may, and often does result from considerations which open to neutrals direct channels of trade with the parent state shut to them, in times of peace, the legality of which latter relaxation is not known to have been contested; and inasmuch as a commerce may be, and frequently is opened in time of war, between a Colony and other Countries, from considerations which are not incident to the war, and which would produce the same effect in a time of peace; such, for example as a failure or diminution of the ordinary sources of necessary supplies, or new turns in the course of profitable interchanges.

Fourthly, That it is not only contrary to the principles and practice of other Nations; but to the practice of Great Britain herself. It is well known to be her invariable practice in time of war, by relaxations in her navigation laws, to admit neutrals to trade in channels forbidden to them in times of peace; and particularly to open her Colonial trade both to Neutral vessels and supplies, to which it is shut in times of peace; and that one at least of her objects, in these relaxations is to give to her trade an immunity from capture, to which in her own lands it would be subjected by the war.

Fifthly, the practice, which has prevailed in the British dominions, sanctioned by orders of Council and an Act of Parliament (39 G. 3 C. 98) authorizing for British subjects a direct trade with the enemy, still further diminishes the force of her pretensions for depriving us of the Colonial trade. Thus we see in Robinson's Admiralty reports passim, that during the last war a licenced Commercial intercourse prevailed between Great Britain and her enemies, France, Spain & Holland, because it comprehended articles necessary for her manufactures and agriculture, notwithstanding the effect it had in opening a vent to the surplus productions of the others. In this manner she assumes to suspend the war itself as to particular objects of trade beneficial to herself whilst she denies the right of the other belligerents to suspend their accustomed commercial restrictions in favour of Neutrals. But the injustice and inconsistency of her attempt to press a strict rule on neutrals is more forcibly displayed by the nature of the trade which is openly carried on between the Colonies of Great Britain and Spain in the West Indies. The mode of it is detailed in the inclosed copy of a letter from a Mr. Billings, wherein it will be seen that American vessels and cargoes, after being condemned in British Courts under pretence of illicit commerce, are sent on British account to the enemies of Great Britain, if not to the very port of the destination interrupted when they were American property. What respect can be claimed from others to a doctrine not only of so recent an origin and enforced with so little uniformity, but which is so conspicuously disregarded in practice by the Nation itself, which stands alone in contending for it?

Sixthly—It is particularly worthy of attention that the Board of Commissioners jointly constituted by the British and American Governments under the 7th Article of the Treaty of 1794, by reversing condemnations of the British Courts founded on the British instructions of Novem. 1793, condemned the principles that a trade forbidden to neutrals in time of peace, could not be opened to them in time of war; on which precise principle these instructions were founded. And as the reversal could be justified by no other authority than the law of nations, by which they were to be guided, the law of Nations according to that joint Tribunal, condemns the principle here combatted. Whether the British Commissioners concurred in these reversals, does not appear; but whether they did, or did not, the decision was equally binding, and affords a precedent which could not be disrespected by a like succeeding tribunal, and ought not to be without great weight with both Nations in like questions recurring between them.

On these grounds the United States may justly regard the British captures and condemnations of neutral trade with Colonies of the enemies of Great Britain as violations of right; and if reason, consistency or that sound policy which cannot be at variance with either, be allowed the weight which they ought to have, the British Government will feel sufficient motives to repair the wrongs done in such cases by its cruizers and Courts.

But, apart from this general view of the subject, a refusal to indemnify the sufferers, in the particular case of the *Aurora*, is destitute of every pretext; because in the second place, the continuity of her voyage was clearly and palpably broken, and the trade converted into a new character.

It has been already noted that the British regulation of 1798, admits a direct trade in time of War, between a belligerent Colony and a neutral Country carrying on the trade; and admits consequently the legality of the importation by the *Aurora* from the Havana to Charleston. Nor has it ever been pretended that a neutral Nation has not a right to re-export to any belligerent Country whatever foreign productions, not contraband of war, which may have been duly incorporated and naturalized, as a part of the Commercial stock of the Country re-exporting it.

The question then to be decided under the British regulation itself, is whether in landing the cargo, paying the duties, and thus as effectually qualifying the articles for the legal consumption of the Country, as if they had been its native production, they were not at the same time equally qualified with native productions, for exportation to a foreign market. That such ought to be the decision results irresistably from the following considerations:

1st. From the respect which is due to the internal regulations of every Country, where they cannot be charged with a temporizing partiality towards particular belligerent parties, or with fraudulent views towards all of them. The regulations of the United States on this subject, must be free from every possible imputation; being not only fair in their appearance, but just in their principles, and having continued the same during the periods of war, as they were in those of peace. It may be added that they probably correspond, in every essential feature relating to re-exportations, with the laws of

other Commercial Countries, and particularly with those of Great Britain. The annexed outline of them by the Secretary of the Treasury, will at once explain their character, and shew that, in the case of the Aurora, every legal requisite was duly complied with.

2d From the impossibility of substituting any other admissible criterion, than that of landing the Articles, and otherwise qualifying them for the use of the Country. If this regular and customary proceeding, be not a barrier against further enquiries, where it may be asked are the enquiries to stop? By what evidence are particular articles to be identified on the high seas, or before a foreign Tribunal? If identified, how is it to be ascertained, whether they were imported with a view to the market whether to one forbidden or permitted by the British regulations; for it is to be recollected, that among the modifications which her policy has given to the general principle assented by her, a direct trade is permitted to a neutral carrier, from a belligerent Colony to her ports, as well as to those of his own Country. If, again, the landing of the goods, and the payment of the duties be not sufficient to break the continuity of the voyage, what it may be asked, is the degree of internal change or alienation, which will have that effect? May not a claim be set up to trace the articles from hand to hand, from ship to ship in the same port, and even from one port to another port, as long as they remain in the Country? In a word in departing from the simple criterion provided by the Country itself, for its own legitimate and permanent objects, it is obvious, that besides the defalcations which might be committed on our carrying trade, pretexts will be given to cruizers for endless vexations on our commerce at large, and that a latitude and delays will accrue in the distant proceedings of Admiralty Courts, still more ruinous and intolerable.

3d From the decision in the British high Court of Admiralty itself, given in the case of the Polly, Lasky, Master, by a Judge deservedly celebrated for a profound judgment, which cannot be suspected of leaning towards doctrines unjust or injurious to the rights of his own Country. On that occasion he expressly declares "It is not my business to say what is universally the test of a bona fide importation: it is argued, that it would not be sufficient that the duties should be paid and that the cargo should be landed. If these criterias are not to be resorted to, I should be at a loss to know what should be the test; and I am strongly disposed to hold, that it would be sufficient, that the goods should be landed and the duties paid." 2 Rob. Reports P. 368-9.

The President has thought it proper that you should be furnished with such a view of the subject, as is here sketched; that you may make the use of it best suited to the occasion. If the trial of the Aurora should not be over it is questionable whether the Government will interfere with its Courts. Should the trial be over and the sentence of the Vice Admiralty Court at St. John's have been confirmed, you are to lose no time in presenting to the British Government a representation corresponding with the scope of these observations; and in urging that redress in the case, which is equally due to private justice, to the reasonable expectation of the United States, and to that confidence and harmony which ought to be cherished between the two Nations.

The effect of the doctrine involved in the sentence of the Court in Newfoundland, on our carrying trade, will at once be seen by you. The average amount of our re-

exportations for three years ending 30th Sept. 1803, has been 32,003,921 dollars. Besides the mercantile and Navigation profits, the average revenue from drawbacks on goods re-exported for three years ending 31st Dec. 1803 is 184,271 dollars; to which is to be added an uncertain but considerable sum consisting of duties paid on articles re-exported after having lost thro' neglect or lapse of time, the privilege of drawback. A very considerable portion of this branch of trade with all its advantages, will be cut off, if the formalities heretofore respected are not to protect our re-exportations. Indeed it is difficult to see the extent to which the apprehended innovation may be carried in theory; or to estimate the mischief which it may produce in practice. If Great Britain disregarding the precepts of Justice, suffers herself to calculate the interest she has in spoliating or abridging our commerce, by the value of it to the United States, she ought, certainly not to forget that the United States must in that case, calculate by the same standard, the measures which the stake will afford, for counteracting her unjust and unfriendly policy.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State June 6th 1805.

D. Of S. Mss.  
Instr.

Sir,

On reviewing the letters from you not yet acknowledged, I find them under the following dates viz 12th November, 24, 25 & 30th Decem. 14th Feby. and 18th March last.

I have the pleasure to observe to you that the President entirely approves the just and dignified answer given to the venal suggestions emanating from the French functionaries as explained in your letter of the 24th December. The United States owe it to the world as well as to themselves to let the example of one Government at least, protest against the corruption which prevails. If the merit of this honest policy were questionable, interest alone ought to be a sufficient recommendation of it. It is impossible that the destinies of any Nation, more than of an individual, can be injured by an adherence to the maxims of virtue. To suppose it, would be to arraign the justice of Heaven, and the order of nature. Whilst we proceed therefore in the plain path which those maxims prescribe, we have the best of securities that we shall, in the end, be found wiser than those crooked politicians, who regarding the scruples of morality as a weakness in the management of public affairs, place their wisdom in making the vices of others, the instruments of their own.

Previous to the receipt of your last letters inclosing copies of your two to Mr. Monroe, the communications from Madrid had given us a view of the unfavorable posture which the negotiations with Spain was taking. The extract now inclosed, of the answer which is gone to Madrid, will shew the turn which it is thought most expedient to give to the negotiation, in case its general object should fail, and will enable you to manage your communications with the French Government with a more distinct reference to the course of things at Madrid. This is the more necessary, as it is evident that the Spanish Government must derive its boldness and its obstinacy, from the French Cabinet. The part which France takes in our controversies with Spain, is not a little extraordinary. That she should wish well to her ally, and even lean towards her, in the terms of an adjustment with the United States, was perhaps to be expected. But that she should take side wholly with Spain, and stimulate pretensions, which threatening the peace of the two countries might end in placing the United States on the side of Great Britain, with resentments turned against France as the real source of their disappointment, this is more than was to be expected, and more than can easily be explained. If the Imperial cabinet be regardless of the weight which this Country could add to the British scale, it is a proof that the prospects in Europe are extremely flattering to its views. If the object be, as you finally conjecture, and as on the whole seems least improbable, merely to convert the negotiations with Spain into a pecuniary job for France and her Agents, the speculation altho' pushed with a singular temerity, may finally be abandoned under a despair of success, and yield to the



obvious policy of promoting equitable arrangements between Spain and the United States.

Whatever the views of France may be, there is little ground to rely on the effect of an appeal to right or to reasoning in behalf of our claims on Spain. Were it otherwise it would seem impossible for her to withhold her acquiescence in them. Not to repeat what has been sufficiently urged in the communications you already possess, it may be observed that nothing can be more preposterous than the joint attempt now made by the French and Spanish Governments in discussing the boundaries of Louisiana, to appeal from the text of the Convention which describes them, to a secret understanding or explanations on that subject between those Governments. France sold us Louisiana as described in the Deed of conveyance, which copies the description from the Deed of Spain to France. If France sold more than she had a right to sell, she would at least be bound to supply the deficiency by a further purchase from Spain, or to remit protanto, the price stipulated by us. But the case rests on a still better footing. France assigned to us Louisiana as described in the Conveyance to her from Spain. Our title to the written description is therefore good against both, notwithstanding any separate explanation or covenant between them, unless it be shewn that notice thereof was given to the United States before their bona fide purchase was made. This is a principle of universal justice, no less than of municipal law. With respect to France it will scarcely be pretended that any such notice was given. On the contrary she corroborated our title according to the text of the bargain by the language of Mr. Tallyrand to Mr. Livingston; she corroborated our particular construction of the Text, in relation to the Eastern boundary of Louisiana by the language of Mr. Marbois; and she corroborated our construction in relation to both Eastern and Western boundaries by her silence under the known extent to which that construction carried them. And with respect to Spain, who is equally bound by the assignment of the ostensible title of France, unless she can prove a notice to the United States that the real title was different from the ostensible one, it is to be observed, first, that no such proof has ever been attempted; and next, that Spain cannot even pretend an ignorance of the necessity of such notice. This is evinced by her conduct in another instance where a secret stipulation with France, contrary to the tenor of her Treaty with France, was alledged in opposition to the Treaty of the United States with France. France it appears had promised to Spain, thro' her Minister at Madrid, that she would in no event alienate the Territory ceded to her by Spain. The Spanish Government sensible that this promise could not invalidate the meaning of the instrument, which exhibited the title of France as absolute and therefore alienable, no sooner heard of the purchase concluded at Paris by the Ministers of the United States, than she instructed her Minister at Washington to communicate without delay to the Government of the United States the alledged engagement of France not to alienate. This communication was made on the 9th of Sept. 1803; and so convinced was Spain of the necessity of the most formal notice on such occasions, that the Spanish Minister here repeated the same notice on the 27th of the same month, with the addition of some other pretended defects in the title of France, and urged on the Government here an obligation to forbear under such circumstances to ratify the Convention with France. Now if it was necessary for Spain, in order to protect herself by a secret engagement of France not to alienate, against the overt transaction giving France a right to alienate, that she should give notice of that engagement to third

parties; and if Spain knew this to be necessary the same course was equally necessary and equally obvious, when the effect of the overt stipulation as to the limits of the Territory sold was to be arrested or restricted by any separate agreement between the original parties. Yet this course has not been pursued. So far from it, Spain, in finally notifying thro' her Minister here, a relinquishment of her opposition to the assignment of Louisiana to the United States, and consequently to the title of France as derived from the Treaty itself never gave the least intimation of any other secret articles or engagements whatever, which were to qualify the exposition of the overt description of boundaries contained in the text of the Treaty; fully acquiescing thereby in the meaning of the text according to the ordinary rules of expounding it. [1](#)

In your letter of Feby. 14th, it is intimated that a disposition appeared in the French Government to open the Colonial Trade to the U. States, in consideration of a pecuniary equivalent. The objections to such an arrangement are considered by the President as insuperable. If made in time of War, it would beget discontents in Great Britain who would suspect or pretend that the arrangement was a cover for a subsidy; and with the more plausibility, as during war, nearly the same privileges are allowed without purchase. The precedent, in the next place, would be a novel and a noxious one. Add that our trade with the French Colonies, in time of war, being more important to France than to the United States, there is as much reason why she should buy it of us in time of war, as that we should buy it of her in time of peace. Finally, the reciprocity of advantages in the Trade at all times, makes it the Trade at all times, makes it the real interest of France as of other nations, to lay it open to us at all times. Of this truth, the enlightened Statesmen of Europe are becoming every day more sensible; and the time is not distant when the United States with a reduced debt, and a surplus of revenue, will be able, without risking the public credit, to say with effect, to whatever nation they please, that they will shut their trade with its Colonies in time of war, if it be not opened to them equally at all times.

Still the peculiar situation of St. Domingo makes it desirable that some such arrangement should take place as is suggested in my letters to Mr. Livingston of 31st Jany & 31 March 1804, extracts from which are inclosed. And the late Acts of Congress, having done what ought to be followed by proofs of a corresponding disposition on the part of France, the President thinks it proper that you should not lose sight of that object. It is thought proper also, that you should continue to press on favorable occasions the reasonableness of permitting Commercial Agents of the United States to reside wherever a commerce is permitted.

You have already been apprized of the depredations committed by the lawless cruizers of France in the West Indies; sometimes in connection with French ports; sometimes in connection with Spanish ports. This subject claims the serious attention of the French Government; as laying the foundation for just claims of indemnity, as well as producing irritations unfriendly to the relations prescribed by the interest and it is hoped by the dispositions of both Countries. In some instances great irregularities are committed, beyond those of mere depredation. Inclosed is a statement of a peculiar outrage, and of the letter written to Turreau on the subject with his answer. France cannot give a more acceptable proof of her justice, nor a more seasonable one

of her sound policy, than by provisions that will effectually remove such grounds of complaint.

I inclose also a copy of a very extraordinary decree issued by the French Commandant at Santo Domingo. The letter written by Genl. Turreau, of which a copy, with one of his in answer, is inclosed, will explain the sentiments of the President thereon, and be a guide to the representations which you will make to the French Government. I add a copy of a letter to the President from Mr. Walton residing at Santo Domingo, which, having, relation to our affairs with that Island may assist your view of them. There is no reason to believe that under the decree of Genl. Ferrand any of our Citizens have been put to death; but it seems certain that they have suffered the indignity and the outrage of corporal punishment, and consequently that an exemplary satisfaction is due from the French Government, at least, in cases which fall not under municipal law but that of Nations. Genl. Turreau, you will observe, undertakes to vindicate the justice of the bloody decree, at the same time that he promises to interpose against its effects. It was thought unnecessary to reply to his answer, which would have brought on a fruitless and endless discussion, and the more unnecessary as the principles maintained by the United States, with respect to the trade with St. Domingo, were sufficiently understood.

In the course of last month sailed for the Mediterranean, a reinforcement consisting of the frigate John Adams of 32 Guns and 600 men, 9 Gun boats carrying each about 20 men and most of them two thirty two pounders, and two bomb vessels with 13 inch Mortars. The boats are of a size and structure supposed to be much superior to any yet known in that sea, and to be peculiarly fitted for the service in which they are to be employed.

Mr. Bowdoin sailed from Boston about the 10th of last Month, in the Baltic, Cap Blount for St. Andero.

The laws of the last Session of Congress being just edited, a copy is transmitted by this opportunity.

I Have The Honor To Be &C.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

(*Private*).

D. Of S. Mss.  
Instr.

Philadelphia September 24th 1805.

Dear Sir:

The decision of the Admiralty Courts of Great Britain disallowing the sufficiency of landing and paying duties on Colonial produce of belligerent Colonies, re-exported from ports of the United States to protect the produce against the British Cruizers and Courts, has spread great alarm among the merchants, and has had a grievous effect on the rate of insurance. From the great amount of property afloat subject to this new and shameful depredation, a dreadful scene of distress may ensue to our commerce. The subject was brought to attention by the case of the *Aurora*, which gave rise to the observations and instructions contained in my letter of the 12th of April last. I omitted in that letter to refer you to a case in Blackstone's reports, where Lord Mansfield says "that it was a rule settled by the Lords of appeal, that a transhipment off a neutral port, was equivalent to the landing of goods from an enemy's Colony, and that in the case of a landing there could be *no color* for seizure." As Mr. King's correspondence may not be in London, I think it not amiss to remind you of what passed with the British Government in 1801 in consequence of such seizures as are now sanctioned. A copy of the doctrine transmitted by the Government to the Vice Admiralty Courts as the law for their guidance is enclosed. If such a condemnation out of their own mouths has no effect, all reasonings will be lost; and absolute submission, or some other resort in vindication of our neutral rights, will be the only alternative left.

I hope you will have received the instructions above referred to, and that your interposition will have had a good effect. I am engaged in a pretty thorough investigation of the original principle, to which so many shapes are given, namely, "that a trade not open in peace is not lawful in War"; and shall furnish you with the result as soon as my researches are digested. If I am not greatly deceived, it will appear that the principle is not only against the law of nations, but one which Great Britain is precluded from assuming by the most conclusive facts and arguments derived from herself. It is wonderful that so much silence has prevailed among the neutral authors on this subject. I find scarcely one that has touched on it; even since the predatory effects have been known to all the world. If you can collect any publications, which can aid in detecting and exposing the imposture, be so good as to send them.

I have been here eight weeks with Mrs. Madison, who was brought hither in order to have the assistance of Dr. Physic, in curing a complaint near her knee; which from a very slight tumor had ulcerated into a very obstinate sore. I believe the cure is at length effected, and that I shall be able to set out in a few days for Washington. The President is to be there on the 2nd of October. I postpone all reflections of a public

nature until I can communicate the result of his cabinet consultations. Mrs. Madison presents her affectionate respects to Mrs. Monroe.

I Have The Honor &C. &C.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG AND JAMES BOWDOIN.1

Department of State March 13th 1806.

D. Of S. Mss.  
Instr.

Gentlemen,

I have duly received from time to time your several letters bearing dates 3 July 10 & 15 Aug<sup>t</sup>. 10 Sep<sup>t</sup>. 3 & 25 Oct & 26 Nov.

Previous to the arrival of Mr. Skipwith with your dispatches of Sept. 10th our affairs with Spain had undergone the particular consideration of the President; with a reference as well to the change in the state of things in Europe, as to the approaching Session of Congress; and it had been determined that the manner in which the negotiations at Madrid had been closed by Spain, forbade any application whatever to her for a renewal of them; 2d that the case should be presented to Congress for such provisions as it might be thought to require on their part; 3d That in the mean time you should be charged to place before the French Government, the necessity to which Spain by refusing to concur in a diplomatic adjustment of her controversies with the United States, had reduced the latter of seeking justice by those ulterior measures which the occasion called for. It had also been determined by the President, that with a view to enable the French Government, if it should be so disposed, to hasten by its mediating influence on Spain the change in her Councils necessary to an amicable adjustment with the United States, and to bring Spain forward for the purpose, that you should be furnished with the terms which Spain might obtain from the U. States.

On the receipt of your communications by Mr. Skipwith the ideas disclosed by the French Government were considered as forming a sufficient basis for an anticipating provision by Congress, such as was made in reference to the Convention of the 30 April 1803, and it was accordingly determined in pursuance of that example to await the meeting of Congress and lay the subject before them. This was done, and the Act and Resolutions of which copies are inclosed were the result of their discussions; a result which has been delayed by the forms of proceeding, and some variances of opinion on the occasion longer than might have been wished.

I now inclose the outline and substance of a Conventional arrangement adapted to the views expressed by Congress, and such as the President authorizes you to conclude. You will lose no time in imparting it to the French Government in the manner you may deem most expedient; letting it know, at the same time that no direct communication on the subject has been made to the Spanish Government; that after the reception given by Spain to the overtures made thro' an Extraordinary Mission to Madrid, followed by her Military and menacing indications within and near the controverted territories as explained in the annexed extracts, the United States tho' ready to meet Spain in negotiation under the auspices of a common friend do not consider it belonging to them to Court a further negotiation in any form; that

consequently the steps necessary on the part of Spain must be the result either of her own reflections or of the prudent counsel which France may undertake to give her.

The President leaves to your own management the expression of those sentiments, which without any improper condescensions on the part of the United States will best conciliate the French Government to our objects. The ascendancy which it will have over that of Spain, if no change of circumstances intervene, and the preference of an Amicable termination of our differences with Spain, to an appeal to force, require that every honorable use should be made of the occasion which seems to offer itself.

Should the Emperor still be absent, without authority in any hands at Paris to take measures in concert with you for instituting the business, it must remain with you to decide according to the probable course of his movements on the most expedient and expeditious mode of holding the necessary communications with his Cabinet. Rather than risque a delay which may lose a favorable crisis, it may be even desirable to repair to his military quarters. This is a step, however, to which there may be so many objections, that it will require very strong considerations to recommend it.

As soon as any authority at Paris shall be ready on the part of Spain, you will enter on the subject and press it to a conclusion with as much celerity and decision as circumstances will justify. The terms stated as your guide require little explanation more than accompanies the several articles. The object with the United States is to secure West Florida which is essential to their interests and to obtain East Florida which is important to them; procuring at the same time equitable indemnities from Spain for the injuries for which she is answerable; to all which the proposed exchange of territory and arrangement of the Western boundary may be made subservient. The desire manifested by the House of Representatives in the Resolution herewith inclosed that such an exchange and arrangement may be found sufficient, without any price in money, will engage all your attention and exertions. If the exchange stated in the Resolution, with the Sabine River for our Western boundary below the ridge dividing the Waters running into the Mississippi from those running into the gulph Westward of the mouth of that river can be obtained, the exchange will be satisfactory, especially if accompanied with a reasonable provision for the indemnities due from Spain to Citizens of the United States. If the exchange can be obtained even without this last provision or without, including the territory Eastward of the Perdido, or any pecuniary payment for the territory Westward thereof, it is not to be rejected; but in that case it will be extremely desirable to make the authorized establishment of an interval of territory not to be settled for a given period, subservient to a provision for indemnities.

In order to determine the price and the payments to Spain for the Cession of Territory, and to provide indemnities for the Spoliations and other injuries for which Spain is responsible, you will add to the preceding articles, others proper on those subjects. For the several modifications which will best comport with the conveniency of our Treasury and the sentiments of the Secretary of that Department, I refer to copies of a letter and paper from him herewith inclosed; stating to you generally for your guide 1st. That the sum to be made payable to Spain for the Cession is not to exceed NA millions of dollars. 2d That as little as possible, and in no event more than two

millions are to be paid prior to the delivery of possession or the ratification. 3d That as ample a provision as possible be made for indemnities either by constituting a Board of Commissioners for settling them or by a sum in gross sufficient to cover their probable amount which is not less than four millions of dollars, and distributable by the United States to such claimants and in such proportions as may be decided under their authority. This last mode of providing for the object will be much the best, if the sum in gross be equal to the amount of claims likely to be allowed by a Board of Commissioners. 4th It is particularly desirable that in defining the cases to be indemnified the terms should be such as will embrace those where French subjects or Citizens, as well as those where Spanish subjects were the wrong doers. If a sum in gross be stipulated, it may be expected that Spain will not object to a definition which will authorize the U. States to apply it to both cases, especially if terms be chosen which will not expressly designate the contested French cases. 5 In defining the cases it will be proper to have in view those of any description which exist, more particularly depredations on the high seas, and unjust or unlawful injuries within the Spanish jurisdiction whether in old Spain or her Colonies; in a word all injurious Acts either to the United States or to their Citizens, for which the Spanish nation is responsible according to the principles of justice, equity, treaty or the law of nations.

## I Have The Honor To Be &C.

P. S. Particular care must be taken in case a Convention shall be made which does not provide for the Spoliations or for the portion of them subsequent to the Convention of Augt. 1802, to guard against an abandonment either express or constructive of the just claims of our Citizens on that account.



[\[Back to Table of Contents\]](#)

## PROJECT OF A CONVENTION.

The United States and His Catholic Majesty being desirous of terminating amicably all controversies now subsisting between them, and of providing more effectually for the maintainance of their future harmony, have appointed, &c.

### Art. I.

Spain acknowledging and confirming to the United States West Florida, cedes to them forever the same and East Florida with the Islands and Waters thereon respectively depending. (Or if unattainable in that form) Spain cedes and confirms forever to the United States East & West Florida with the Islands and waters thereon respectively depending.

### Observations On Art. I.

The object in these forms of expressing the Cession is to date that of West Florida, as far at least as to the perdido from the date of the Cession of Louisiana by France and thereby invalidate the intervening sales of land, which it is understood have taken place corruptly or unfairly to a very great extent. If Spain should appear to acquiesce in a more explicit acknowledgment of our right under the French Convention as far as to the Perdido, it may be well to divide the territory Eastward of the Mississippi by a reference to that river instead of referring to it as divided into East and West Florida.

### Art. II.

Possession of the said Territory shall be delivered to a person or persons authorized by the United States to receive the same within NA days or less, if practicable, after the exchange of the ratifications of this Convention. With the said Territory shall be delivered all public property excepting ships and military stores, as also all public archives belonging to the same.

Sec. 2. Within 90 days after delivering possession, or sooner if possible, the Spanish troops shall evacuate the territory hereby ceded.

Sec. 3. The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the Treaty of the 30th April 1803 with the French Republic.

Sec. 4. With the same motives in view which led to the VII & VIII Articles of the Treaty above mentioned, it has been agreed between the contracting parties, that the ships of France and Spain shall enjoy in the ports of the hereby ceded territory, until the term of the twelve years therein mentioned shall be expired, the same privileges as to trade and duties as are therein stipulated; and during the same space of time no

other nation shall have a right to the same privileges in the ports of the hereby ceded territory.

Sec. 5. In future and forever after the expiration of the said term of 12 years the vessels of Spain shall be treated upon the footing of the most favored nations in the ports of the hereby ceded territory.

### Art. III.

The boundary between the territory of the United States on the Western side of the Mississippi and the possessions of Spain shall be the Colorado (or the Guadaloupe if attainable) from its mouth to its most northerly source, thence a right line to the nearest high-lands, inclosing all the Waters running directly or indirectly into the Mississippi or Missouri, and along the said high lands as far as they border on the Spanish dominions.

### Observations.

Altho' it may not be amiss to urge the claim of the U States to the Rio-bravo, and to propose that for the boundary, it is not expected that one more Westwardly than the boundary delineated in this Article will be favored by France or admitted by Spain.

### Art. IV.

It is agreed that a space extending thirty leagues on each side of the said boundary shall be kept by the parties respectively unsettled for the term of NA years NA

Or

That a space of 30 leagues on the side of the U. States shall be unsettled for the term of NA

Or

A space between the said boundary and some boundary beginning with a river Eastward of the Colorado & Westward of the Sabine

Or

A space between the said boundary and the boundary beginning with the Sabine and running thence from the source of the Sabine a straight line to the confluence of the Rivers Osages and Missouri, and from the said confluence a line running parallel with the Mississippi to the latitude of its northernmost source and thence a meridian to the Northern boundary of Louisiana.

## Observations.

These descriptions of a barrier interval are to be successively yielded, according as Spain may be willing to cede therefor her territory Eastward of the Mississippi, or to abate in the sum of money to be paid for East Florida, or to be liberal in her engagements and provisions for indemnifying our Citizens. It being impossible to foresee the various modifications and combinations which the subject may take in the course of negotiation, much must necessarily be left to your own judgment. It is to be understood that in no event the Country Eastward of the Sabine and the line from its source as above referred to is to be included in the unsettled interval.

## Art. V.

(Here was inserted a copy of the provisions contained in the project of 1804 as to the interval not to be settled.)

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State, March 15th, 1806.

D. Of S. Mss.  
Instr.

Sir,

I herewith inclose an Act of Congress just passed on the subject of the Commerce with St. Domingo. In prohibiting the commerce in unarmed as well as armed vessels, the Act goes beyond the obligation of the United States under the law of nations; but the measure was deemed expedient for the present and the eventual welfare of the United States. And altho' it must be understood to have proceeded from that consideration, and not from any rightful requisition on the part of France, and still less from a manner of pressing it, which might have justly had a contrary tendency, yet as it cannot fail to be in itself grateful to the French Government, it may perhaps furnish you with an auspicious occasion for presenting anew the view of the subject committed to your predecessor in a letter of the 31 Jany 1804, from which an extract is inclosed. According to the information received from Mr. Livingston, there was a time when that view of the subject would have prevailed, but for the exasperating effect produced by the armed and forced trade carried on by American Citizens. A trade under certain regulations in articles of subsistence on our side, and in the productions of the Island on the other, seems to be so obviously favorable to the true interests of France, that a dispassionate reconsideration of such an arrangement may be reasonably expected to recommend it to an enlightened Government.

The improper conduct of the Marquis D'Yrujo, the Spanish Minister, in writing and publishing the papers herewith inclosed, is communicated to you with a view that you may correct any misstatements which may find their way to the French Government. It is the more fit that you should be acquainted with the case, as there is ground to believe that pains will be taken by him to convey to that Government an impression that the dislike to him here proceeds from his vigilance and fidelity in counterworking objects of the United States disagreeable to France as well as to Spain. Nothing more can be necessary any where to excite the strongest disapprobation of his proceedings than a fair statement of them. The rudeness of his letters to the Department of State, and his repeated appeals to the people against their Government, with his attempt to seduce a punter<sup>1</sup> into a confederacy with him in the project, would have justified, and with most other Governments have produced a more rigorous treatment than the moderation of this Government has inflicted. That you may have the fuller view of his demerits, I add to the other papers relating to him, an extract from the letter to our Ministers at Madrid on the subject of his recall.

About three months ago Genl Miranda arrived in the United States, coming last from England. Soon after his arrival he made a visit to this City, where he was treated with the civilities refused to no stranger having an ostensible title to them. Whilst here he disclosed in very general terms his purpose of instituting a revolution in a portion of Spanish America, without adding any disclosure from which it could be inferred that

his project had the patronage or support of any foreign power. His communication was merely listened to, with an avowal at first on his part that nothing more was expected. It became evident, however, that he had taken into view the possibility of a rupture between the United States and Spain, and that some positive encouragement would have been peculiarly welcome to him. He was expressly told that altho' the Government of the United States were free to hear whatever he might chuse to impart to it, yet that as they were in amity with Spain and neutral in the war, nothing would be done in the least inconsistent with that sincere and honorable regard to the rules imposed by their situation, which they had uniformly preferred and observed; and that if a hostile conduct towards Spain should at any time be required by her conduct towards the United States, it would take place not in an underhand and illicit way, but in a way consistent with the laws of war, and becoming our national character. He was reminded that it would be incumbent on the United States to punish any transactions within their jurisdiction which might according to the law of nations involve an hostility against Spain, and that a statute of Congress had made express provision for such a case. This particular admonition was suggested by an apprehension that he might endeavor to draw into his enterprize individuals adapted for it, by their military experience and personal circumstances. It was never suspected that the enlistment of a military corps of any size would be thought of. As to the exportation of arms on the occasion, the Act of Congress of the last Session, was considered as both effectual and going beyond the injunctions of the law of nations. It was at the same time also suspected that a bill before Congress prohibiting altogether the exportation of arms from the United States, would have passed and been put in force, before any shipment could have been made of those articles.

Under the effect of this explanation which he professed to understand, and promised strictly to keep in view, he left Washington for New York, the port at which he had arrived, and lately intimations were received by the Executive from private sources that an Armed ship belonging to an American Citizen had been engaged by Genl Miranda for a secret expedition, that cannon and other military stores, and even a company of military recruits were on board with a presumed destination to some part of Spanish America. Without waiting for either evidence of the facts, which has not to this day been received from any quarter, or even a representation of them from Officers of the United States, and before a complaint was received from any foreign Agent whatever, the President gave immediate directions for instituting the legal proceedings applicable to the case. A few days after this step was taken, the occurrence became the subject of a diplomatic correspondence, of which copies are inclosed, and which carried with it, its own explanation. It is proposed to make the last letter from Genl Turreau the subject of a friendly conversation, in which he will be led to understand that without denying his right to interpose as far as France may have a common interest with Spain, it is deemed not only most proper that he should not be a mere organ of d'Yrujo with whom all direct communication has been closed, but that in other respects it would be more agreeable to the United States to view him in the relation of a common friendship to them and to Spain, than as apparently taking side with the latter.

Having thus put you in full possession of an incident which may possibly have consequences interesting to France as well as to Spain, you will be able to guard the

reputation and responsibility of the United States against any perverted views of what has passed, into which attempts may be made to mislead the French Government.

To the documents inclosed on the preceding subjects, I add others which will make you acquainted with the recent occurrences and present state of things at New Orleans. Your own judgment will suggest any use which it may become proper to make of the information.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

## AN EXAMINATION OF THE BRITISH DOCTRINE, WHICH SUBJECTS TO CAPTURE A NEUTRAL TRADE, NOT OPEN IN TIME OF PEACE. 1

In times of peace among all nations, their commercial intercourse is under no other restrictions than what may be imposed by their respective laws, or their mutual compacts. No one or more nations can justly control the commerce between any two or more of the others.

When war happens between any two or more nations, a question arises, in what respect it can affect the commerce of nations not engaged in the war?

Between the nations not engaged in the war, it is evident that the commerce cannot be affected at all by a war between others.

As a nation not engaged in the war remains in the same relations of amity and of commercial pursuits, with each of the belligerent nations, as existed prior to the war, it would seem that the war could not affect the intercourse between the neutral and either of the belligerent nations; and that the neutral nation might treat and trade with either, or both the belligerent nations, with the same freedom as if no war had arisen between them. This, as the general rule, is sufficiently established.

But inasmuch as the trade of a neutral nation with a belligerent nation might, in certain special cases, affect the safety of its antagonist, usage, founded on the principal of necessity, has admitted a few exceptions to the general rule.

Thus, all instruments of war, going into the hands of one belligerent nation, may be intercepted, on the high seas, by its adversary.

In like manner, a neutral trade with a place actually besieged is liable to be interrupted by the besiegers.

It is maintained also on one side, though strongly contested on the other, that the property of a nation at war, in a neutral ship, may be seized and condemned by the enemy of that nation.

To these exceptions, Great Britain has undertaken to add another, as important as it is new. She asserts a right to intercept the trade of neutrals with her enemies, in all cases, where the trade, as it respects the ship, the cargo, or even the individual port of destination, was not as free before the war, as it is made during the war.

In applying this doctrine, the British government and courts have not, as yet, extended it beyond the trade of neutrals on the coasts, and with the colonies of enemies. But it is manifest, that this limitation is founded in considerations of expediency only; and

that the doctrine is necessarily applicable to every other branch of neutral commerce with a belligerent nation, which was not open to the same nation in time of peace. It might indeed with equal reason be extended farther. It might be applied to the case of a trade legally permitted to foreign nations in time of peace, but not *actually* carried on by them in time of peace; because in time of peace actually carried on by the nation itself; and which is taken up by foreign nations in time of war only, in consequence of the war, which, by increasing the risk or by finding other employment for the vessels and seamen of the nation itself, invites neutral traders into the deserted channels. In both cases, the neutral intervention may be said to result from the pressure of the war; and in both cases, the effect is the same to the belligerent; since in both, neutrals carry on for him, a trade auxiliary to his prosperity and his revenue, which he could no longer carry on for himself; and which at the same time, by liberating his naval faculties for the purposes of war, enables him to carry on the war, with more vigor and effect. These inferences cannot be impaired by any sound distinction, between a trade of foreigners with colonies, and a trade of foreigners with the ports of the mother country. Colonies, more especially when they are altogether subject to the same authority which governs the parent state, are integral parts of the same dominion or empire. A trade, therefore, between a colonial port and a port of the parent or principal State, is precisely of the same nature with a trade between one and another port of the latter: and a trade between a colony and a foreign port is, in like manner, precisely the same with the trade between a foreign port and the parent country; which is only a more considerable, as a colony may be a less considerable, part of the same country or empire. Previous to the late political union of Ireland with Great Britain, the relation between those two islands was strictly analogous to the relation between Great Britain and the West Indies. Was any difference ever entertained between a coasting trade from a British to a British port, and a trade from a British to an Irish port? or between a trade from a foreign port to an Irish port, and a trade from a foreign to a British port? In the nature of things, and in the eye of foreign nations, the cases were the same. If any difference existed, it was merely circumstantial, such as may be incident to all cases essentially the same; or merely municipal, such as may result from those regulations of trade, which all sovereigns have an acknowledged right to make. It would not be unfair, therefore, in examining the doctrine asserted by Great Britain, to view it in the whole extent of which it is susceptible. But the latitude in which it is avowed, and carried into operation, sufficiently demands the serious attention of all nations; but more than any, that of the United States, whose commerce more than any is the victim to this belligerent pretension. To prepare the way for this examination, several remarks are to be premised.

First. The general rule being, that the trade between a neutral and belligerent nation is as free as if the latter were at peace with all nations, and the cases in which it is not as free being exceptions to the general rule, the exceptions, according to a received maxim of interpretation, are to be taken strictly, against those claiming the benefit of the exceptions, and favorably for those claiming the benefit of the general rule.

Secondly. The exceptions being founded on a principle of necessity, in opposition to ordinary right, the necessity ought to be evident and urgent. In proportion as the



necessity may be doubtful, and still more, in proportion as the sacrifice of neutral interests would exceed the advantage to the belligerent, the exception fails.

Thirdly. The progress of the law of nations, under the influence of science and humanity, is mitigating the evils of war, and diminishing the motives to it, by favoring the rights of those remaining at peace, rather than of those who enter into war. Not only are the laws of war tempered between the parties at war, but much also in relation to those at peace.

Repeating then, that every belligerent right to controul neutral commerce must, as an exception to the general freedom of commerce, be positively and strictly proved, and the more strictly, as the exceptions are in a course of restriction rather than extension, the question is ready for examination, whether it be a part of the law of nations, that a trade ordinarily shut in time of peace, and opened to neutrals in time of war, on account of the war, is liable, as much as a trade in contraband of war or with a blockaded port, to capture and condemnation.

It will not be overlooked, that the principle, as thus laid down, does not extend to any of the cases, where a new trade, though opened during a war, is not opened *on account* of the war, but on considerations which would produce the same measure, if no war existed: from which follows another important observation, that taking into view the probable occurrence of such considerations, the still greater probability of a mixture of such with considerations derived from the war, the impossibility of distinguishing the proportion of these different ingredients in the mixture, with the evident disadvantage of rendering more complicated, instead of simplifying, a rule of conduct between independent nations, to be expounded and enforced by one of the parties themselves, it would seem to require no great effort of candor, to acknowledge the powerful objection in practice, to such a principle, were it really embraced by the most specious theory.

But without dwelling on this view of the subject, however just in itself, the principle in question will be tried:

First—by the writings most generally received as the depositaries and oracles of the law of nations;

Secondly—by the evidence of treaties;

Thirdly—by the judgment of nations, other than Great Britain;

Fourthly—by the conduct of Great Britain herself;

Fifthly—by the reasoning employed in favor of the principle.

First. The written authorities on this subject.

It cannot be necessary to examine the historical fragments which have been gleaned by modern authors, as evidence of the usage and tenets of the civilized nations of antiquity. The great change which has taken place in the state of manners, in the

maxims of war, and in the course of commerce, make it pretty certain, that either nothing would be found relating to the question, or nothing sufficiently applicable, to deserve attention in deciding it. There is but little hazard in saying, that in none of the learned collections, is a single fact presented, which countenances the British pretension; or even shews, that a single ancient nation asserted or acted on it.

On a cursory review of the naval laws of Rhodes, of Oleron, of Wisbuy, and of the Hanse Towns, they appear to be perfectly barren of information. They are confined to subjects within the law-merchant, taking no notice of questions between nations; and are no further binding on particular nations, than [as] they may be respectively adopted into their municipal codes.

The ancient compilation under the title of *Consolato del Mare*, a work of great authority with British jurists, has two chapters which treat particularly of captures and recaptures. They do not, however, touch any cases but those where either the ship or the cargo, in whole or in part, might be enemy's property; and consequently are inapplicable to the case under examination.\*

Descending to more modern times, the first authority which offers itself, is the work of Albericus Gentilis.

He was the immediate precursor of Grotius, and has the merit of preparing the way for the great work supplied by the genius and erudition of the latter. Gentilis being so soon eclipsed by a superior authority, is but little known beyond a few occasional citations, which, as far as they may not coincide with the doctrines of Grotius, are, for the most part, superseded by them.

Grotius is not unjustly considered, as in some respects, the father of the modern code of nations. Great, however, as his authority deservedly may be, it yields, in a variety of instances, to that of later jurists; who, to all the lights furnished by this luminary, have added those derived from their own sources, and from the improvements made in the intercourse and happiness of nations.

On the relations between belligerent and neutral nations, Grotius has but a single, and that a short chapter, (B. III, Ch. 17,) with three short sections, Ch. 1, sec. 5, of the same book with a note, and B. II, Ch. 2, sec. 10, and B. III, Ch. 6, sec. 6, with a note.\* The chapter begins with following paragraph:

“It may seem needless for us to treat of those that are not engaged in war, when *it is manifest that the right of war cannot affect them*: but because upon occasion of war, many things are done against them *on pretence of necessity*; it may be proper here briefly to repeat what we have already mentioned† before, that the necessity must be *really extreme*, to give any right to another's goods: that it is requisite that the proprietor be not himself in the like necessity. When real necessity urges us to take, we should then take no more than what it requires; that is, if the bare keeping of it be enough, we ought to leave the use of it to the proprietor; and if the use be necessary, we ought not to consume it; and if we cannot help consuming it, we ought to return the full value of it.”

Having illustrated this exemption of neutral property from the effect of war between others, with the sole exception of cases of extreme necessity, by a train of examples, he proceeds to lay down the duty of neutrals towards the belligerent parties, as follows:

“On the other side it is the duty of those who are not engaged in the war, to sit still and do nothing that may strengthen him that prosecutes *an ill cause* or to hinder the motions of him that *hath justice* on his side, as we have said before. [Ch. 1, of this B., sec. 5.] But in a *dubious cause* to behave themselves alike to both parties; as in suffering them to pass through their country, in supplying them with provisions, and in not relieving the besieged.” In illustration of the impartiality here enjoined, a number of instances are specified in the sequel of the chapter and the notes.

The 5th section of chapter 1, above referred to, makes up the whole of what Grotius teaches on this branch of the subject. As it is more definite and particular than the other extracts, the insertion of it, though of greater length, will be proper.

\* “Here also there uses to arise another question, what we may lawfully do to those who are not our enemies, nor are willing to be thought so, and yet supply our enemies with certain things. There have been formerly, and still are great disputes about this matter, some contending for the rigors [\* of the laws] of war, and others for a freedom of commerce.

“But first we must distinguish between the things themselves. For there are some things which are of use only in war, as arms, &c. Some that are of no use in war, as those that serve only for pleasure; and lastly, there are some things that are useful both in peace and war, as money, provisions, ships, and naval stores. Concerning the first (things useful only in war) it is true what Amalasuintha said to the Emperor Justinian, he is to be reputed as siding with the enemy, who supplies him with things necessary for war. As to the second sort of things [for pleasure only, of which sort he gives examples from Seneca] there is no just cause of complaint.

“As to the third sort of things, that are useful at all times, we must distinguish the present state of the war. For if I cannot *defend myself* without interrupting those things that are sent to my enemy, *necessity*† (as I said before) will give me a good right to them, but upon condition of restitution, unless I have just cause to the contrary. But if the supply sent hinder the execution of my designs, and the sender might have known as much; as if I have besieged a town or blocked up a port, and thereupon I quickly expect a surrender, or a peace, that sender is obliged to make me satisfaction for the damage that I suffer upon his account, as much as he that shall take a prisoner out of custody that was committed for a just debt, or helps him to make his escape, in order to cheat me; and proportionably to my loss I may seize on his goods and take them as my own, for recovering what he owes me. If he did not actually do me any damage, but only designed it, then have, a right by detaining those supplies, to oblige him to give me security for the future, by pledges, hostages, or the like. But further, if the wrongs, done to me by the enemy, be openly unjust, and he, by those supplies, puts him in a condition to maintain his unjust war, then shall he not only be obliged to repair my loss, but also be treated as a criminal, as one that rescues a notorious

convict out of the hands of justice; and in this case it shall be lawful for me to deal with him agreeably to his offence, according to those rules which we have set down for punishments; and for that purpose I may deprive him even of his goods.”

The following extracts explain the principles of Grotius on the cases, where the property of an enemy is found in a neutral ship, or neutral property in a belligerent ship.

In a note to B. III, Ch. 1, sec. 5, Grotius cites the *Consolato del Mare* for the doctrine that enemy’s property might be taken in neutral ships, but that the ship of an enemy did not affect the neutral cargo, nor the cargo of an enemy, the neutral ship. The residue of this long note recites and disapproves the attempts of Great Britain, France and other nations, to prohibit altogether the trade of neutrals with their enemies.

\* B. III, Ch. 6, sec. 6: “Wherefore the common saying that goods found in our enemies’ ships are reputed theirs, is not so to be understood, as if it were a constant and invariable law of the right of nations; but a maxim, the sense of which amounts only to this, that it is commonly presumed, in such a case, the whole belongs to one and the same master; a presumption, however, which, by evident proofs to the contrary, may be taken off. And so it was formerly adjudged in Holland, in a full assembly of the sovereign court during the war with the Hanse Towns in 1338, and from thence hath passed into a law.”

In a note to this section, Grotius adds:† “Neither do the ships of friends become lawful prize on the account of the enemies’ goods; unless it is done by the consent of the owner of the ship;” referring in this case to the authority of several writers, and the practice of several nations.

The spirit of these passages, taken altogether, can leave no doubt, as to the side on which the authority of Grotius is to be placed.

In the first place he expressly limits the general right of war against the property of neutrals, to cases of that evident and *extreme necessity*, which must always make a law for itself whenever it exists, but which can never be applied to the cases falling within the belligerent claim asserted by Great Britain.

In the next place he particularly limits to the case of a necessity of self-defence, the right of intercepting neutral supplies, even to a blockaded or besieged place; and makes it a condition, moreover, that a surrender of the place, or a peace, be quickly expected as the effect of the blockade.

In the third place it is to be observed, that as in these passages, Grotius has taken express notice of the several questions of contraband, of blockades, and of the carriage of enemy’s property, which formed all his exceptions to the freedom of neutral commerce; his silence with respect to the British exception is an abundant proof, that this last had either never been then asserted, or that he considered it so manifestly groundless as not to merit notice.

This is, in fact, the material inference to be drawn from the review here taken of this celebrated jurist: and for the sake of this inference principally, the review has been made thus full and minute; for it must be admitted, that in general his ideas are much less precise and satisfactory than those which are to be found in succeeding authorities. In distinguishing wars, by their justice or injustice, on which neutrals have no right to decide; in not distinguishing supplies, as they may be sold only or sent; or as they may be sent by a government, or by private persons; nor sufficiently distinguishing between the right of a belligerent to prevent supplies by intercepting them, and the right to do so, by punishing the offenders; he gives a proof that his work is more to be admired for the novelty and magnitude of the undertaking, than for the accuracy of its doctrines and definitions.

Pufendorf, who may next be consulted, contents himself with a simple reference to Grotius on the question—“How they are to be dealt with, who supply the enemy with what he wants.”

In a note by Barbeyrac on this reference to Grotius, he himself refers to a letter from Pufendorf to Groningius, as conveying the judgment of Pufendorf with respect to the question “whether we may hinder neutral nations from trading during the war with the enemy.” Groningius, it seems, having consulted Pufendorf on a treatise he had planned upon “free navigation,” received the following answer; which, having undergone much discussion, and as found in the English translation, seeming to glance at the British principle of intercepting a commerce opened to neutrals in time of war, is copied at full length, and receives an attention which would not otherwise be bestowed on it:

“The work, sir, that you have in view, relating to the *liberty of navigation*, excites my curiosity. It is a curious subject, and what no person as yet, that I know of, has particularly handled. I very much however fear, if I may judge from your letter, that you will find people who will dispute your notions. The question is, certainly, one of those which have not yet been settled upon any clear or undeniable principles; so far as to afford a general rule to mankind. In all the examples brought upon this subject, there is a mixture of *right* and *fact*. Each nation usually allows or forbids the maritime commerce of neutral people with its enemy, either according as it is its interest to preserve the friendship of those people, or it finds itself strong enough to obtain from them what it requires. For example, the English and Dutch may say, without absurdity, that it is lawful for them to do all the ill they can to the French, with whom they are at war; and consequently to employ the method the most proper to weaken them, which is to traverse and ruin their trade. They say it is not reasonable that neutral nations should enrich themselves at their expence; and by engrossing to themselves a commerce which the English and Dutch want, furnish the French with money to continue the war. This seems the rather just, because England and Holland commonly favor the trade of neutral nations, by suffering them to transport and sell in foreign markets merchandizes of their own growth and manufacture. In short, they say that they are willing *to leave them the trade they usually carry on in time of peace; but they cannot see them take advantage of the war, to extend their commerce to the prejudice of England and Holland.* But as this matter of trade and navigation does not so much depend upon rules founded on a general law, as upon conventions made

between particular nations; so in order to form a solid judgment of the point in question, we ought previously to examine what treaties subsist between the northern crowns and England and Holland; and whether these last powers have offered the former just and reasonable conditions. On the other hand, nevertheless, if the northern princes can *maintain their trade* with France, *by sending strong convoys* with their fleets, *I see nothing to blame* in it, provided their vessels do not carry contraband goods. The laws of humanity and equity between nations do not extend so far as to require, *without any apparent necessity*, that one people should give up its profit in favour of another. But as the avarice of merchants is so great that for the smallest gain they make no scruple of exceeding the just bounds of commerce; so nations that are at war may certainly visit neutral ships, and, if they find prohibited goods on board, have a full right to confiscate them. Besides I am no way surprised that the northern crowns have a greater regard to the general interest of Europe, than to the complaints of some greedy merchants who care not how matters go, provided they can satisfy their thirst of gain. These princes wisely judge that it is not at all convenient for them to take precipitate measures, while other nations unite all their forces to reduce within bounds an insolent and exorbitant power, which threatens Europe with slavery, and the Protestant religion with destruction. This being the interest of the northern crowns, it is neither just nor necessary, that for a present advantage, they should interrupt so salutary a design, especially as they are at no expence in the affair and run no hazard,” &c.

Without knowing more of the plan of “free navigation” espoused by Groningius, it is not easy to understand precisely the sentiments of Pufendorf on the subject. It deserves to be remarked, however, that, in the argument on the belligerent side, he states not what *he thought*, but what *they said*. On the neutral side he expresses his own opinion: “On the other hand, nevertheless, if the northern princes can maintain their trade by sending strong convoys with their fleets, *I see nothing to blame* in it, provided their vessels do not carry *contraband goods*.”

But what is most material to be observed is, that the expression, “that they (the belligerent nations) *are willing to leave them* (the neutrals) *the trade they usually carry on in time of peace: but that they cannot see them take advantage of the war to extend their commerce to the prejudice of England and Holland*,” cannot possibly refer to the British distinction between a trade usually permitted in peace, and a trade permitted only in war. Such a construction, by no means countenanced either by the general tenor of the letter, or the commercial history of the period, is absolutely precluded by the preceding sentence. “They say, qu’il n’est pas just que les peuples neutres s’enrichissent à leurs depens, et en attirant à eux un commerce *interrompu pour l’Angleterre et la Holland*, fournissent à la France des secours, &c.” The *English translation* of this sentence is equivocal, if not false. The true meaning of it is, that it was not deemed just that neutrals should enrich themselves by entering into a commerce interrupted, for England and Holland, by the war. The commerce in question, therefore, was not a commerce opened to neutrals during the war; but a commerce which England and Holland had carried on with France previous to the war, which the war had shut against them, and which they did not like to see transferred to commercial competitors remaining at peace.\*

Pufendorf, then, not derogating in this explanation of his sentiments, from his reference to Grotius for the law of nations concerning neutral rights and duties, but rather strengthening the neutral rights asserted by Grotius, must be placed in the same scale in which Grotius has been placed.

Bynkershoeck is the authority next in order of time. He treats the subject of belligerent and neutral relations with more attention, and explains his ideas with more precision, than any of his predecessors.

His 9th chapter is professedly on the question, † “what neutrals may or may not do, during a war between other nations.” After stating, hypothetically, an unlimited claim, on the neutral side, to trade with belligerents, in every thing, as if there was no war; rejecting the distinction made by Grotius between a just and unjust war; and urging the duty of impartiality towards those engaged in it, he proceeds to observe, ‡ “that the enemies of our friends are to be viewed in a two-fold character; either as our friends, or the enemies of our friends. If you consider them as friends, it would be lawful to aid them with our counsel, and to succor them with military forces, with arms, and with all other things whatsoever useful in war. But, inasmuch as they are the enemies of our friends, that cannot lawfully be done by us; because we should in so doing, prefer one to another in the war, contrary to the equality of friendship, which is of primary obligation. It is better to preserve friendship with both, than, by favoring one in the war, to renounce tacitly the friendship of the other.

“And, indeed, what I have just said is taught not only by reason, but also by the usage received among almost all nations. For although the commerce with the enemy of our friends be free, it is agreeable to usage, as in the next chapter I shall shew more at large, that we should assist neither one nor another, with those things which may furnish and foment the war against our friends. It is not lawful, therefore, to carry to either, those things which are needful in making war; as are cannon, arms, and what are of principal use in war, soldiers; who are also excepted by various treaties between nations: materials for ships are also sometimes excepted, where an enemy is in absolute want of them for building ships to be employed against our friends. Provisions even, are often excepted, when an enemy is pressed by the siege of our friends, or is otherwise labouring under the want of food. On the best ground, therefore, are we interdicted to supply any of these things to belligerents; because by these things we should, in a manner, appear to make war ourselves on our friends. If, therefore, we consider belligerents, simply, in the light of friends, we may rightfully carry on commerce with them, and send them merchandises of whatever kind; if we consider them as the enemies of our friends, merchandises are to be excepted, which, in war, might annoy our friends; and this consideration prevails over the former one; for in whatever manner we succour one against the other, we take part in the war, which would be incompatible with the preservation of friendship.”

Thus far the doctrine of this jurist cannot be mistaken. He lays it down as a general rule, that the trade of neutrals with the nations at war, provided it be impartial, is as if there were no war; but that certain articles, as instruments of war, form an exception to this general rule; to which he suggests as a further exception, the case of a siege, or of a similar pressure of famine. It cannot be pretended that there is either a single



general expression, or particular allusion, that can be tortured into an exception of any trade, merely for the British reason, that it was not open to neutrals before, as well as during, the war.

The residue of the chapter is chiefly employed in discussing the legality and construction of treaties of succour and subsidy, between a nation at peace and nations at war; after which he proceeds to the tenth chapter, in which he treats of the list of contraband, with several questions incident to it. His doctrine here, the same precisely as in the preceding chapter, is laid down in the following words: \* “The rule, confirmed almost invariably by treaties is, that neutrals are not to carry contraband articles to our enemies. If they carry them and are intercepted, they incur a forfeiture. But with the exception of these articles, *they trade freely* both backward and forward; and carry with impunity, *all other articles* whatever to the enemy.”

That under the term contraband, he could mean to class so vague and novel a description of trade, as that which distinguishes between commercial regulations, as existing before the war, and as made in the course of the war, is rendered the more impossible, by the definition given of contraband: † “Hence by contraband, are to be understood, things which in *their actual state* are *adapted to war*; without considering whether apart from war, they may also be of use; there being few instruments of war, which may not be used for other purposes.” For this he gives as a just reason, that ‡ “if you prohibit every material out of which anything may be formed for warlike use, great would be the catalogue of prohibited articles; since there is scarcely any material, out of which something at least, adapted to war may not be fabricated.”

In the ensuing chapter, he treats of the case of sieges and blockades, as an exception to the freedom of neutral character.

In the 11th chapter, he examines the question, “whether the contraband character of a part of the cargo, can affect the residue of the cargo or the ship;” with several other questions incident to such mixed cases.

Chapter 13th relates to neutral property in the ships of an enemy; which he exempts from confiscation. His position on this subject shew how much the turn of his judgment must have been adverse to any such restrictions on neutral commerce, as that instituted by Great Britain. \* “According to reason, a right of that sort [to confiscate neutral property in a belligerent vessel] cannot be defended; for why may I not be allowed to use the ship of my friend, though your enemy, in transporting my merchandize? When treaties do not prohibit, I have a right, as I said above, to carry on commerce with your enemy; and if this be lawful, it is also lawful to enter into any contracts whatever with him; to buy, to sell, to let, to hire, &c. Wherefore, if I shall have engaged his ship and his service to transport my effects by sea, it was a transaction on every principle lawful. You, as his enemy, may take his ship; but with what right can you take what belongs to me, that is, to your friend? If, indeed, I prove them to be mine; otherwise I agree with Grotius, that there is some room for presuming things found in the ship of an enemy, to be enemy’s property.”



Finally, in his 14th chapter, he treats the case of enemy's effects in neutral vessels; deciding with Grotius and others, that the neutrality of the ship does not protect the cargo from capture and condemnation. He consequently makes this case also an exception to the general freedom of neutral commerce, in favor of belligerent privileges.

From this distinct and full view of the sentiments of Bynkershoeck, it is clear, that the whole weight of his authority is opposed to the principle advanced by Great Britain. He is the first writer who seems to have entered into a critical and systematic exposition of the law of nations, on the subject of maritime commerce between neutral and belligerent nations; and the plan which he adopted was well calculated to do justice to the subject. Instead of undertaking, after the example of Grotius and Pufendorf, an entire code of public law, he selected for a more thorough discussion, the particular questions which were deemed most important, and most frequent in the transactions and intercourse of modern nations. Among these, he very properly classed the question of neutral commerce, and bestowed on it, the formal investigation which we have seen. He begins with the general question, how far a war between two nations can affect the rights, particularly the commercial rights, of a nation at peace with both, deciding in favor of neutral nations, that their commerce remains free as a general rule; and in favor of belligerent nations, that in certain cases, exceptions to that general freedom are prescribed by the principle of self-defence. He goes on then to examine the several cases which had been allowed or claimed, as exceptions. He establishes the belligerent right to intercept articles on the list of contraband. He establishes also the right to controul supplies to places besieged or blockaded. He concurs in the doctrine, that the flag of a friend does not protect the property of an enemy. He discusses the claim, maintained by some, to confiscate the property of a friend under the flag of an enemy, which he disproves. He discusses, moreover, several other minor questions, which were incident to the main subject. He appears, in short, to have taken a comprehensive view of the commercial relations between neutral and belligerent nations; and to have omitted no question, belonging to those relations, which was of sufficient importance to deserve his attention. And yet, it appears, that he has not even glanced at the question, "whether a neutral commerce, in articles not contraband, nor going to a besieged or blockaded place, was unlawful, for the reason that the belligerent party had been induced by the war, to new-model its commercial regulations." Does it not necessarily and undeniably follow, either that no such pretension had, at that period, ever been started, or that it had received no countenance, which could entitle it to notice? It is impossible to conceive that a question of such magnitude could be otherwise passed over, by a pen which dwelt with such minute attention on questions less nearly allied to the main subject.

The authority of Bynkershoeck, in this case, ought to have the greater weight with Great Britain, because, in other cases, so much weight is claimed for it, by the champions of her favorite doctrines.

The reputation which Vattel enjoys in Great Britain, greater perhaps than he enjoys any where else, requires that he should be particularly consulted on this subject. The work of Vattel unquestionably possesses great merit; not so much, indeed, for the originality of his plan, or his matter, which he admits to have been derived from Wolf;

as for the agreeable dress which he has given to the dry treatise of his prototype, and for the liberal spirit which has, in many instances, improved the doctrines of all his predecessors. Vattel is, however, justly charged with failing too much in the merit of a careful discrimination; and sometimes with delivering maxims, which he either could not reconcile, or does not take pains to explain. In the chapter on neutrality (B. III, Ch. 7,) he might perhaps have been more exact in his definitions, and more lucid in the order of his ideas. His meaning, nevertheless, is, on the whole, sufficiently clear, and arranges him beyond all controversy, with Grotius, Pufendorf, and Bynkershoek, in opposition to the doctrine under consideration.

As the basis of the true doctrine, on the subject of neutral commerce, he lays down these principles:

That a neutral nation is bound to an exact impartiality;

That this impartiality relates solely to the war;

That it includes two obligations: the first forbidding succours in troops, not stipulated before the war, arms, ammunition, or any thing of *direct use* in the war; the second, requiring that in whatever does not relate to the war, one of the parties must not be refused, *on account of its present quarrel*, what is granted to the other. He observes “that this does not trespass on the liberty of the neutral nation, in negotiations, connexions of friendship, or its trade, to govern itself by what is most advantageous to the State. When this consideration induces it to *preferences in things* of which every one has the free disposal, it only makes use of its right, and is *not chargeable* with partiality. But to refuse any one of these things, to one of the parties, purely as being at war with the other, and for favoring the latter, would be departing from an exact neutrality.”

Having laid this foundation, and recommended to nations, intending, as they have a right, to remain neutral, that they should secure their neutrality by treaties for the purpose, he proceeds to state more particularly—

1st. “That whatever a nation does in use of its own rights, and *solely with a view to its own good*, without partiality, without *a design of favoring one power to the prejudice of another*, cannot, in general, be considered as contrary to neutrality; and *becomes such*, only upon *particular occasions*, when it cannot take place without injury to one of the parties, who has then a particular right to oppose it. *Thus*, the besieger has a right to prohibit access to the place besieged. *Exclusively of this kind of cases*, the quarrels of another cannot deprive me of the free disposal of my rights in the pursuit of measures which I judge advantageous to my country.” Hence he infers a right to permit, in certain cases, levies of troops to one of the parties, and to deny it to the other, where there may be good reason for the distinction; and where it is the custom, as among the Swiss, to grant levies; and, consequently, where the custom would of itself be a proof that the grant was not the effect of partiality in relation to the war. He asserts, in like manner, for the sovereign, as well as private citizens, in the habit of lending money at interest, the right to lend it to one of the parties at war, “who may possess their confidence, without lending it to the other;” observing, that “whilst it

appears that this nation lends out its money purposely for improving it by interest, it is at liberty to dispose of it according to its own discretion, and I have no reason to complain. But if the loan be manifestly for enabling the enemy to attack me, this would be concurring in the war against me.” He applies the same remark to the case of troops furnished to an enemy, by the State itself, at its own expence; and of money lent without interest: adding, at the same time, as a further instance of neutral rights, that if a nation trades in arms, timber, ships, military stores, &c., I cannot take it amiss that it sells such things to my enemy, provided it does not refuse to sell them to me also. It carries on its trade without any design of injuring me, and in continuing it, the same as if I was not engaged in war, that nation gives me no just cause of complaint.

Making, thus, impartiality the test of lawfulness in the conduct of neutrals, and the mere pursuit of their own interest, without a design to injure any of the belligerents, the test of impartiality, he enters more particularly on the discussion of the active trade which neutral nations carry on with those at war.

“It is certain,” he says, “that, as they [neutrals] have no part in my quarrel, they are under no obligation to abandon their trade that they may avoid furnishing my enemy with the means of making war. Should they make it a point\* not to sell to me any of these articles, whilst they take measures for transporting great quantities of them to my enemy, with *a manifest intention of favouring him*, such a *partiality* would exclude them from the neutrality they enjoyed. But if they simply pursue their commerce\* [suivre tout uniment leur commerce] they do not *thereby declare themselves* against my interest; they only exercise a right, which they are under no obligation of sacrificing to me.”

The *general* freedom of neutral commerce, being thus asserted, the writer goes on to lay down the exceptions which war makes to it.

“On the other hand, whenever I am at war with a nation, both my safety and welfare prompt me to deprive it as much as possible of every thing which may enable it to resist or hurt me. *Here the law of necessity shews its force*. If this law warrants me on occasion to seize what belongs to another, shall it not likewise warrant me to stop *every thing relative to war*, which neutral nations are carrying to my enemy? Even if I should, by taking such measures, render all these neutral nations my enemies, I had better run the hazard than suffer him who is actually at war to be thus freely supplied to the great increase of his power. It is therefore very proper and very suitable to the law of nations which disapproves of multiplying the causes of war, not to consider those seizures of the goods of neutral nations as acts of hostility. When I have notified to them my declaration of war against such or such a people, if they will afterwards run the risk of supplying them *with things relative to war*, let them not complain if their goods fall into my hands, for I do not declare war against them, because they attempted to carry *such* goods. They suffer indeed by a war in which they have no concern, but it is accidentally. I do not oppose their right, I only make use of my own, and if our rights clash, and reciprocally injure each other, it flows from the effect of inevitable necessity,” &c.

“But that *limits* may be set to these inconveniences; that the commerce of neutral nations may subsist in all the freedom which the laws of war will admit, there are rules to be observed, and on which *Europe seems to be generally agreed.*”

What are the rules which fix these limits?

“The first is carefully to distinguish common goods which have *no relation to war*, from those *peculiarly subservient to it*. In the trade of the former neutral nations are to enjoy *an entire liberty*, the parties at war cannot with any reason deny it, or hinder the importation of such goods into the enemy’s country,” &c. He observes that the goods he referred to, as having relation to war, are those called contraband, of which he gives a description; proceeding thence to shew how far they are subject to confiscation, and to infer from the right of confiscation the right of search on the high seas.

He next mentions, as a limit to the freedom of neutral commerce, that the effects of an enemy found in a neutral ship are subject to capture; deciding otherwise as to neutral effects on board an enemy’s ship, which some nations had been in the practice of capturing.

He specifies, as his last limit or exception to the general freedom of neutral commerce, the belligerent right to prohibit all commerce with a place besieged or blockaded; closing the discussion of this particular subject with an emphatic deduction in these words—“A neutral nation continues with the two parties at war, in the *several relations* which *nature* has placed between nations. It is ready to perform towards them both all the duties of humanity reciprocally due from nation to nation. It is *in every thing* not *directly relating to war* to give them *all the assistance in its power*, and of which they may stand in need. But this assistance is to be given with impartiality, that is, in not refusing to one of the parties any thing on account of his being at war with the other. This does not hinder a neutral State having particular connections of friendship and good neighborhood with one of the parties at war, from granting him *in whatever does not relate to military transactions* the preference due to friends: much more may he without giving offence continue to him, for instance in commerce, such indulgencies as have been stipulated in their treaties, &c.”

We see then that the authority of Vattel coincides perfectly with the preceding authorities, more especially that of Bynkershoek, in establishing the general freedom of neutral commerce, with the exception of things relating to the war, and in limiting this exception to the several cases of supplying the enemy with military contraband, of trading with places besieged or blockaded, and of carrying enemy’s property.

Perhaps this author, not remarkable as already intimated for well-defined ideas, has in no particular branch of his work left less room for mistaking or perverting his meaning.

It would be improper not to add Martens to the authorities, who ought to be heard on this question. Martens was a professor of law in a Hanoverian University, with a salary from the King of Great Britain as Elector of Hanover, and has distinguished

himself by several publications, which demonstrate his critical judgment of the law of nations, and the extent of his researches in order to verify and elucidate it. His summary of this law is a work which was received by the public with a due portion of that respect which constituted his predecessors authentic depositaries and expositors of the code, by which the society of nations ought to be governed. We find him accordingly on the same shelf already with Grotius, Pufendorf, Bynkershoek, and Vattel. In Great Britain indeed, notwithstanding his being a subject of her sovereign, and a professor under his patronage, the doctrine he teaches on the question whether free ships make free cargoes, has drawn on him the censure of the zealous advocates for the side taken by Great Britain on that question. In opposing, however, a favorite doctrine of that nation, under the relation in which he stood to it, he gave a proof of integrity and independence, which justly inspire the greater esteem for his character, at the same time that they give the greater weight to his opinions. Even there, however, his censors have done justice to his eminent talents, and been ready to avail themselves of his authority, in cases where it supported British principles and interests.

On the present subject the authority of Martens is clear and full.

He first speaks of neutral commerce according to the universal law of nations, and next of the modern law of nations with respect to neutral commerce, and its freedom, as acknowledged by the powers of Europe.

The first he lays down as follows: "The right that a nation enjoys in time of peace of selling and carrying all sorts of merchandize to every nation *who chooses to trade* with it, it enjoys also in time of war, provided that it remains neuter." He admits at the same time that *necessity* may authorize a power at war to hinder the conveyance of *warlike stores* to its enemies, so far as to sequester them till the end of the war, or to take them at their full value for his own use.\* He admits again that the power at war may prohibit all commerce with such places "as he is able to keep so blocked up as to prevent any foreigner from entering." But he maintains that "since a belligerent power cannot exercise hostilities in a neutral place, nor confiscate property belonging to neutral subjects, such power ought not to confiscate the goods of an enemy found in a neutral vessel navigating on a free or neutral sea, nor neutral goods found in the vessel of an enemy: provided, however, in both cases that these goods are not warlike stores."

In explaining what he styles the modern law of nations with respect to neutral commerce, and its liberty as *acknowledged* by the powers of Europe, he states it "as generally acknowledged that a neutral power ought not to transport to either of the belligerent powers merchandizes *unequivocally intended* for warlike purposes, that treaties have at some times swelled out this list with articles not evidently and unequivocally intended for such purposes; at others have expressly declared these not to be contraband, and that this last ought to be presumed to be the case between powers having no treaties on the subject."

"With respect to merchandizes which are not contraband" he says, "it is generally acknowledged by the powers of Europe, that neutral powers have a right to transport

them to the enemy, *\*except* it be to places blockaded, with which all commerce is prohibited.”

These two exceptions, namely contraband of war, and the case of blockaded or besieged places, are the only ones which he allows against the freedom of neutral commerce. For with respect to enemy's property in neutral ships, he considers the new principle which identifies the cargo with the vessel, and thereby avoids the disputes and embarrassments arising from the old principle, as having been sufficiently established to take the place of the old one in the law of nations.

The authority of Martens, then, unequivocally and undeniably concurs with that of his great predecessors, in deciding that the commerce between neutral and belligerent nations, with a very few exceptions, is *entirely free*, and that these exceptions do not include any such pretension as that of Great Britain, to prohibit a trade otherwise lawful, merely because it might have been laid open to neutrals in consequence of the war.

It would have been easy to add to the authorities here selected, other respectable jurists within the same period; as well as a phalanx of authorities of later date, both in the South and the North of Europe; but the testimony of Grotius, of Pufendorf, of Bynkershoeck, of Vattel, and of Martens, is more than sufficient for the occasion. They are the luminaries and oracles, to whom the appeal is generally made by nations, who prefer an appeal to law, rather than to power; an appeal which is made by no nation more readily than by Great Britain, when she has sufficient confidence in the justice of her cause.

Two feeble objections may be thought to claim attention, on this branch of the investigation.

First. In describing the general freedom of neutral commerce with a nation at war, the writers who have been reviewed, being strangers to the distinction now introduced between the legal regulations of the latter in time of war, and those in time of peace, have sometimes used expressions, which, though they do not favor, do not necessarily exclude, such a distinction. Thus Bynkershoeck, speaking of the neutral trade of the Belgians with the French, who were at war with the Spaniards, says that it was of right, as free as before the war. *\* The freedom of neutral commerce is laid down, in similar phrases, by other jurists, both before and after Bynkershoeck. Many of the more modern writers, not apprized of the misconstruction which might be attempted on their phraseology, have also described the general freedom of neutral commerce in time of war, by a reference to the freedom which it enjoyed in time of peace.*

The obvious and decisive answer to these criticisms is, that the freedom of commerce between two nations in time of peace does not refer to the actual footing on which it happened to be placed by the mutual regulations of the parties, a continuance of which would, on a subject so fluctuating as that of commerce be often inconvenient, sometimes absurd; but to the right which the parties have to regulate their commerce, from time to time, as their mutual interest may suggest, or, to adopt the language of Vattel, to the relations in which *nature* has placed independent nations.

This construction is not only the most obvious and rational in itself, but is enforced by several additional reflections.

It is most consistent, and sometimes alone consistent, with other passages in the same authors. An example may be seen in Bynkershoek, Lib. I, Ch. 9, where the expressions “ut ante bellum constabat,” and “ut cum pax esset inter eos, &c.,” are evidently meant to comprehend every right, as well as the existing state of commerce between the neutral *and belligerent* parties, previous to the war.

As there is no evidence that the distinction was known in the dates of the elder writers, it would be absurd to suppose them alluding to a state of things which had never existed; rather than to a state of things which was familiar in practice. And with respect to the more modern writers, to most of whom the distinction appears to have been equally unknown, the absurdity of the supposition is doubled by its inconsistency with the whole tenor and complexion of their doctrines and reasonings in behalf of neutral rights. Many of them are, in fact, champions for the principles of the armed neutrality; one of which is, that neutrals may trade freely with, and between any of, the ports of an enemy not blockaded.

Finally—As all the writers on the general subject of neutral commerce, discuss the several other exceptions to its rights, which have, at any time, been claimed by belligerent nations, it would be absurd to suppose that an exception, more extensive than any of them, should be pretermitted. Their silence alone, therefore, is an unanswerable proof, that the exception now contended for, could not be known, or could not be recognized by those writers.

A second objection may be that the practice of opening colonies to neutral trade, had not been introduced, at the dates of these publications, particularly the more early of them.

The fact on which this objection relies, might be disproved by a mass of historical testimony. Two authorities will be sufficient: the first shewing that Spain, represented as the most rigid in her colonial monopoly, began to relax it as early as 1669, even during peace: the second, that France had adopted the same policy, in time of war, as early as the year 1705.

The first is from Long’s History of Jamaica, vol. 1, p. 598.

“In 1669, Spain, for *want of ships and sailors* of her own, began openly to hire Dutch shipping to sail *to the Indies*, though formerly so careful to exclude all foreigners from thence. And so great was the supply of Dutch manufactures to Spain, &c., that all the merchandize brought from the Spanish West Indies was not sufficient to make returns for them; so that the Dutch carried home the balance in money.” The date of this Spanish relaxation of the colonial monopoly was prior to the work of Pufendorf, which was published in 1672; and two-thirds of the century prior to that of Bynkershoek, which was published in 1737; and which entered so systematically into the question of neutral rights of commerce.

The other will be found in a Note of Robinson, in his Appendix to Vol. 4, page 17, of his Admiralty Reports. It is there stated, with his authority for the fact, that about the year 1705, it being then a time of war, friendly nations were admitted into the trade of the French colonies, as a better mode of supplying their wants, and getting away their productions, than that of convoys. It is added, that the first vessels thus introduced having been captured, the French minister returned to the old, as the only efficacious, expedient.

The reporter would conclude, from the capture of the neutral vessels, that a neutral trade with colonies was then held to be illegal. But it would be manifestly wrong to resort to an explanation not warranted by any ideas otherwise known to exist at that period; especially when it is so easy to suppose that the capture was directed against the *French property* on board the neutral vessels. That the property was French is the more to be presumed, as the Dutch, the only nation whose capital might have neutralized the property, were parties to the war. Had they indeed been neutral, their treaties with Great Britain would have protected the trade in their vessels, on the two-fold ground that it was lawful to trade, without restriction, with and between the ports of an enemy; and that the freedom of the ship protected the cargo. The true inference on the subject is, that the neutral carriers were Danes, or of some other nation who had no such treaties with Great Britain, and whose capitals did not neutralize the cargoes of French produce.



[\[Back to Table of Contents\]](#)

## TREATIES.\*

All writers on the law of nations, as well didactic as polemic, avail themselves, whenever they can, of the authority of Treaties.

Treaties may be considered under several relations to the law of nations, according to the several questions to be decided by them.

They may be considered as simply repeating or affirming the general law: they may be considered as making exceptions to the general law, which are to be a particular law between the parties themselves: they may be considered as explanatory of the law of nations, on points where its meaning is otherwise obscure or unsettled; in which case they are, first, a law between the parties themselves, and next, a sanction to the general law, according to the reasonableness of the explanation and the number and character of the parties to it: lastly, Treaties may be considered as constituting a voluntary or positive law of nations.

Whether the stipulations in a treaty are to be considered as an affirmance, or an exception, or an explanation, may sometimes appear on the face of the treaty: sometimes being naked stipulations, their character must be determined by resorting to other evidences of the law of nations. In other words, the question concerning the treaty must be decided by the law, not the question concerning the law by the treaty.\*

In the present case, it has been shewn, from the sources generally allowed to be the most authentic, that the law of nations is violated by the principle asserted by Great Britain. It is a just inference, therefore, that every article in treaties contradicting that principle, is an affirmance and direct proof of the general law; and that any stipulation of the principle would, as an exception to the general law, be an indirect proof of it.

But supposing, for a moment, the present case to belong to that class, in which the great oracles of the law of nations are obscure, or at variance among themselves; and in which, moreover, the practice of nations, not being uniform, is an unsatisfactory guide; and consequently, that the evidence of treaties were necessary in order to ascertain the law; still, it will be found that the result of an appeal to that evidence is conclusive against the British pretension. It may be confidently affirmed, that on no point ever drawn into question, the evidence of Treaties was more uniform, more extensive, or more satisfactory.

Nay more; it may be affirmed that the treaties applicable to this case may fairly be considered in their relation to the law of nations last noticed; that is, as *constituting* a law of themselves. If, in any case, Treaties can be sufficiently general, sufficiently uniform, and of sufficient duration, to attest that general and settled concurrence of nations in a principle or rule of conduct among themselves, which amounts to the establishment of a general law; such an effect cannot reasonably be refused to the number and character of the treaties which are applicable to the present case.

That Treaties may amount to a law of nations, follows from the very definition of that law; which consists of those rules of conduct which reason deduces, as consonant to justice and common good, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent.

One evidence of general consent is general usage, which *implies* general consent.

Can treaties which *express* consent be an inferior evidence, where nothing on the face of the treaties, nor in any collateral authority on the law of nations is found to impair the evidence?

Treaties may indeed in one point of view be considered as a higher authority than usage, when they have a generality and continuance, equal to the generality and continuance which give to usage the authority of law; because all treaties involve a usage commensurate with the sphere in which they are obligatory. Whilst usage, therefore, implies consent; treaties imply the usage, at the same time that they express the consent of the parties to them.\*

But there is another point of view in which the influence of treaties, those at least of peace and of commerce, in modifying and defining the rules of public law applicable to periods of war, ought, in preference to the influence of mere practice, to be promoted by all governments which respect justice and humanity, and by all jurists who aspire to the authority of commentators on that subject.

The law of nations, as derived from mere usage or practice during those periods, is evidence for the most part by *ex parte* ordinances, issued by belligerent governments, in the midst of the passions or policy of war; and by judicial decisions, also *ex parte*, and biassed more or less by the same causes, if not by the interest also, which weighty individuals, or perhaps bodies of individuals have, in widening the field of predatory wealth.

Treaties are formed under very different circumstances. Those of peace imply that the hostile passions and pursuits have spent their force, and that a neutral spirit of liberality and accommodation have taken their place: treaties of commerce again are necessarily founded in principles of reciprocal justice and interest, wholly at variance with the violent spirit of war: whilst in the negotiation of treaties of both kinds the respective efforts and interests of the parties form those mutual checks, require those mutual concessions, and involve those mutual appeals to a moral standard of right, which are most likely to make both parties converge to a just and reasonable conclusion. Nor is a sense of character without its effect on such occasions. Nations would not stipulate in the face of the world things, which each of them would separately do, in pursuit of its selfish objects.

It will accordingly be found, as might be expected, that the violent and cruel maxims of war, those still remaining, as well as those from time to time exploded, have had their origin and their continuance in the *separate* usages of belligerent nations, not in treaties; whilst on the other hand, it will be found that the reformation of those abuses

has been the gradual work of treaties; that the spirit of treaties is, with few, if any exceptions, at all times more just, more rational, and more benevolent, than the spirit of the law derived from practice only; and consequently, that all further meliorations of the code of public law, are to be expected from the former, not the latter source; and consequently, again, that all enlightened friends to the happiness of nations ought to favor the influence of treaties on the great code by which their intercourse is to be regulated.

The authority of every treaty is to be considered as opposed to the principle asserted by Great Britain, where it either stipulates a general freedom of neutral commerce with a specification of exceptions to it, and an omission of this British exception; or where it stipulates not only a neutral right generally to a *free trade* with belligerent nations, but particularly a right to trade freely *to and between the ports* of such nations. These stipulations, by the force of the terms, necessarily comprehend the coasting and colonial trades, as well as other branches of commerce.

It would be a waste of time to bestow it on the treaties of a remote period, partaking too little of the civilization and spirit of more modern times, to edify them by its examples. It will be sufficient to commence this review with the treaty of Westphalia in 1648, which forms an important epoch in the commercial and political history of Europe, and to remark as the result of some enquiry into antecedent treaties, that they contain nothing which can give the least countenance to the principle under examination.

It will be sufficient also to limit the review of treaties, where Great Britain is not a party, to those of most importance, either for the tenor of the stipulations, or for the particular parties to them, with marginal references to others of analogous import; remarking again generally, that these others are all, either negatively or positively, authorities against Great Britain.

As a more convenient distribution also, the first review will stop with the epoch of the armed neutrality. The relation, which the treaties subsequent to that event have to the subject, will be noticed by itself.

### ***Examples To Which Great Britain Is Not A Party.***

By a treaty concerning navigation and commerce in 1650, preceded by a particular article on the same subject concluded in 1648, it is stipulated between the United Provinces and Spain “that the subjects and inhabitants of the United Provinces (and those of Spain reciprocally), may sail and trade with *all freedom* and safety *in all* the kingdoms, States, and countries which are or shall be in peace, amity, or neutrality, with the State of the said United Provinces; and that they shall not be disquieted or molested in this liberty by the ships or subjects of the King of Spain, upon *the account of hostilities* which may exist, or may happen afterwards, between the said King of Spain and the aforesaid kingdoms, countries, and States, or any of them that may be in amity or neutrality with the said lords the States as above.”\*

This liberty, in relation to France, was to extend to all sorts of merchandize which might be carried thither before she was at war with Spain; *even contraband of war*, † not proceeding from the States of Spain herself, and capable of being used against the Spanish dominions.

With respect to other countries at peace with the United Provinces, and at war with Spain, the enumerated articles of contraband were not to be carried to them by the United Provinces, but all articles not contraband were to be freely carried, with the exception only of cities and places invested or blockaded.

The Pyrenean treaty, between France and Spain in 1659, established so close a friendship between the two nations, that they were mutually restrained from giving either of them to those attacking the other, any assistance in men, money, or victuals, or with passage through his dominions. Yet it is stipulated in Arts. X—XVI, which are reciprocal, that the French shall have liberty to trade *to all parts whatsoever*, though they should be in war with his Catholic Majesty, excepting Portugal,\* whilst it continued in the condition it then was in; all merchandize may be transported to other countries in war with Spain, as was allowed *before the said war*, excepting † such as proceed from the Spanish dominions, and as may be serviceable against Catholic King or his dominions, and contraband goods. By contraband goods are understood all sorts of arms and warlike stores; but corn and all manner of provision and goods, not being arms and warlike stores, are not reputed contraband, and they may be carried to places in war with Spain, excepting to Portugal and blockaded places. The French vessels, passing from the ports of Spain to any port in enmity with that crown, shall not be in any way retarded or molested, after producing their passes, specifying their lading.\*

It here appears, that the parties were at liberty, when neutral, to trade to all parts of a belligerent country, not blockaded, and in all merchandizes not contraband.

The expression “as was allowed before the said war,” in this and in the preceding examples, clearly falls within the observations made on the like expressions, used by the writers on the law of nations. They are merely a mode of describing the indefinite right to trade, as if no war had arisen, and consequently to enter into any new channels of trade which might be opened to them.

In a treaty in 1662, between France and the United Provinces, it is stipulated, Arts. XXVI, XXVII, &c., that the parties reciprocally are to trade and navigate with all freedom and safety to countries respectively at war with one and at peace with the other, without any exceptions made by the treaty, other than a trade in contraband, or to a place blockaded. †

The treaty between France and the United Provinces Arts, XXVII—XXIX, as incorporated with the treaty of Breda in 1667, between the latter power and England, declares that the subjects of either party may sail and traffic in *all countries at any time*, in peace with one and at war with the other, and this transportation and traffic shall extend to *all articles* not contraband, and to *all places* not blockaded. †

In a treaty in 1672, between France and Sweden, Arts. XXIII—XXIX, are of corresponding import. §

A treaty in 1675, between Sweden and the United Provinces, contains like stipulations in the three first and following articles. ?

A declaration made in 1676, by Spain and the United Provinces, confirming the treaty of 1650, stipulates the right of either party to trade with the enemy of the other, as well directly as between enemy's ports, whether the ports belong to the same or different enemies, contraband goods and places blockaded being excepted. \*

In Art. XIII, &c., of another treaty in 1678, between France and the United Provinces, the same points are again stipulated. †

The 13th Art. of another treaty in 1679, between Sweden and the United Provinces, contains a like stipulation. †

So again the like stipulation is contained in Art. XIII of another treaty in 1679, between France and the United Provinces. §

In a treaty in 1701, between Denmark and the United Provinces, the stipulations import an uninterrupted commerce of the neutral with an enemy of the other party, with the usual exception of contraband. ?

The like stipulation is found in a treaty of 1716, Art. VIII, between France and the Hanse Towns. ¶

A treaty, Art. VI, between the Emperor Charles VI, and Philip V, of Spain, May 1, 1725, is of like import. \*\*

The same is the language of a treaty in 1752, between Naples and Holland. ††

A treaty, Art. XVI, in 1767, between France and Hamburg, and another between France and the Duke of Mecklenburg in 1779, maintain the same doctrine. ††

To these authorities derived from the conventional law of Europe, against the British principle under investigation. §§ might be added, if it were necessary, references to other treaties of the like tenor.

### ***Treaties To Which England First, And Then Great Britain, Was A Party.***

By a treaty with Sweden, in 1654, and another in 1656, confirming and explaining the former, it is stipulated, Art. II—IV, that it shall be lawful for the subjects of either of the confederates to trade with the enemies of the other; and, without impediment, to carry to them, except to places blockaded or besieged, any goods whatsoever not contraband, of which a specification is inserted. Provision is also made for the

efficacy of passports in certain cases, and against the abuse of them for covering enemies' property.\*

The weight of these examples is not diminished by the name of Cromwell, under whose authority the treaties were concluded in behalf of England. In foreign transactions, as well as at home, his character was distinguished by a vigor not likely to relinquish or impair rights, in which his country, as a warlike and maritime power, was interested.

On the other hand, it adds weight to the examples, that they are treaties of *alliance*, containing mutual engagements of friendship and assistance; and, consequently, the less apt to indulge the parties in an intercourse with the enemies of each other, beyond the degree required by the law of nations. This observation is applicable to all the succeeding examples, where the treaties are of the same kind.

On the restoration of Charles II, a treaty of *alliance* was concluded with Sweden in 1661, the 11th Article of which, in pursuance of those above copied from the treaties of 1654 and 1656, stipulates anew, that neither party shall be impeded in carrying to the enemies of the other, any merchandize whatever, with the exceptions only of articles of contraband, and of ports or places besieged.\*

In a treaty with Spain, May 13, 1667, the Articles XXI—XXVI import, that the subjects of each shall trade freely in all kingdoms, estates, and countries at war with the other, in all merchandizes not contraband; with no other exception of places but those besieged or blockaded.†

In July, 1667, a treaty was concluded with the United Provinces, of which Art. III provisionally adopts certain articles from the treaty of Breda, between the United Provinces and France, on the subject of maritime commerce; until a fuller treaty could be perfected between the parties. The articles adopted, in relation to the trade between the subjects of one of the parties and the enemies of the other, declare that the trade shall extend, without impediment, to all articles not contraband, and to all places not besieged or blockaded.‡

In February, 1667-8, the same parties, then under a perpetual defensive alliance by virtue of a treaty of 21st July, 1667, and in a league moreover with Sweden by the triple league of 1668, resumed the subject of maritime and commercial affairs, and repeated, in the first article of their treaty, the precise stipulations adopted provisionally from the treaty between France and the United Provinces.§

A treaty with Denmark, in 1669, stipulates, that they may trade each with the enemies of the other, in all articles not contraband, and to all places not blockaded, without any other exceptions.?

On the 11th July, 1670, another treaty of *alliance* was concluded with Denmark, the 16th Art. of which declares that “neither of the parties shall be impeded in furnishing to the enemies of the other any merchandizes whatever; excepting only articles of contraband, as described in the treaty, and ports and places besieged by the other.”¶



It is worthy of notice in this treaty, and the remark is applicable to others, that the 5th Art. having stipulated a right mutually to trade in the kingdoms, provinces, marts, towns, ports, and rivers of each other, it was immediately provided in the next article, that *prohibited ports and colonies* should be excepted. If it had been conceived that such ports or colonies of enemies were not to be traded with, under the general right to trade with enemies acknowledged in the 16th Article, it is manifest that they would have been as carefully excepted in this, as in the other case, out of the meaning of general terms equally comprehending them. This treaty proves also, that as early as 1670, colonies began to fall under attention in making treaties.

In a maritime treaty of December 1, 1674, with the United Provinces, stating in the title that it was “to be observed throughout *all and every the countries and ports of the world* by sea and land,” it is stipulated again, in Art. I, to be “lawful for all and every the subjects of the most serene and mighty prince, the King of Great Britain, with *all freedom* and safety to sail, trade, and exercise any manner of traffic *in all those kingdoms, countries, and estates*, which are, or any time hereafter shall be in peace, amity, or neutrality with his said majesty; so that they shall not be any ways hindered or molested in their navigation or trade, by the military forces, nor by the ships of war or any kind of vessels whatsoever, belonging either to the High and Mighty States General of the United Netherlands, or to their subjects, upon occasion or pretence of any hostility or difference which now is, or shall hereafter happen between the said Lords the States General, and any princes, or people whatsoever, in peace, amity, or neutrality with his said majesty;” and so reciprocally.

Art. II. “Nor shall this freedom of navigation and commerce be infringed by occasion or cause of any war, in any kind of merchandizes, but shall extend to all commodities which may be carried in time of peace, those only excepted which follow in the next article, and are comprehended under the name of contraband.”

Art. III enumerates the articles of contraband.

Art. IV contains a negative list, which, with *all* other articles not expressly included in the list of contraband, may be *freely* transported and carried to *places under the obedience of enemies*,\* except only towns or places besieged, environed, or invested.†

This recital has been made the more minute, because it is necessary, in order to understand the whole force of the explanatory declaration between the parties bearing the same date; a document so peculiarly important in the present discussion, that its contents will be recited with equal exactness,

This document, after stating “that some difficulty had arisen concerning the interpretation of certain articles, as well in the treaty marine concluded this first day of December, 1674, as in that which was concluded the 17th February, 1667—8, between his majesty of Great Britain on the one part, and the States General, &c., on the other part,” proceeds to state “that Sir William Temple, &c., on one part with eight commissioners on the other, have declared, and do by these presents declare, that the true meaning and intention of the said articles is, and ought to be, that ships and vessels belonging to the subjects of either of the parties, can and might, from the

time that the said articles were concluded, not only pass, traffic and trade, from a neutral port or place, to a place in enmity with the other party, or from a place in enmity to a neutral place, but also from a port or place in enmity to a port or place in enmity with the other party, whether the said places belong to one and the same prince or State, or to several princes or States, with whom the other party is in war. And we declare that this is the true and genuine sense and meaning of the said articles; pursuant whereunto we understand that the said articles are to be observed and executed on all occasions, on the part of his said majesty, and the said States General, and their respective subjects; yet so that this declaration shall not be alleged by either party for matters which happened before the conclusion of the late peace in the month of February, 1673-4.\*

Prior to the peace, neither of them could claim the rights of neutrality against the other.

This declaratory stipulation has been said to be peculiarly important. It is so for several reasons:

1st. Because it determines the right of the neutral party, so far as may depend on the belligerent party, to trade not only between its own ports and those of the enemies of the belligerent party, without any exception of colonies, but between any other neutral port and enemies' ports, without exception of colonial ports of the enemy; and moreover, not only between the ports colonial as well as others, of one enemy and another enemy, but between the different ports of the same enemy; and consequently between one port and another of the principal country; between these and the ports of its colonies; between the ports of one colony and another; and even to carry on the coasting trade of any particular colony.

2d. Because it fixes the meaning not only of the articles in the two specified treaties; but has the same effect on all other stipulations by Great Britain, expressed in the same or equivalent terms; one or other of which are used in most, if not all her treaties on this subject.

3d. Because it made a part of the treaties explained, that free ships should make free goods; and consequently, the coasting and colonial trade, when combined with that neutral advantage, was the less likely to be acknowledged, if not considered as clearly belonging to the neutral party.

4th. Because the explanatory article was the result of the *solicitation* of England *herself*, and she actually claimed and enjoyed the benefit of the article, she being at the time in peace, and the Dutch in war with France.†

In the treaty with France, February 24, 1677, Articles I, II, and III, import that each party may trade freely with the enemies of the other, with the same merchandize as in time of peace, contraband goods only excepted, and that all merchandizes not contraband "are free to be carried from any port in neutrality, to the port of an enemy, and from one port of an enemy to another; towns besieged, blocked up or invested, only excepted."‡



In 1689, England entered into the convention with Holland, prohibiting *all* neutral commerce with France, then the enemy of both. § In consequence of the counter treaty of Sweden and Denmark, for defending their neutral rights against this violent measure, satisfaction was made, according to Vattel, for the ships taken from them; without the slightest evidence, as far as can be traced, that any attempt was made by either of the belligerent parties, to introduce the distinction between such part of the trade interrupted, as might not have been allowed before the war, and as was therefore unlawful, and such part as having been allowed before the war, might not lawfully be subject to capture.

We are now arrived at the treaties of Utrecht, an epoch so important in the history of Europe, and so essentially influencing the conventional law of nations, on the subject of neutral commerce.

The treaty of navigation and commerce, March 31, 1713, between Great Britain and France, Article XVII, imports, that all the subjects of each party shall sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon, from *any port*, to the places of those who now are, or shall hereafter be, at enmity with the queen of Great Britain and the Christian king, and “to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or of either party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also *from one place* belonging to an enemy, *to another place* belonging to an enemy, whether they be under the jurisdiction of the same prince or under several.”

Art. XVIII. “This liberty of navigation and commerce, shall extend to all kind of merchandizes, excepting those only which follow in the next article, and which are specified by the name of contraband.”

Art. XIX gives a list of contraband, which is limited to warlike instruments.

Art. XX specifies others, many of which are in other treaties on the list of contraband, declaring that these with all other goods, not in the list of contraband in the preceding article, “may be carried and transported in the freest manner by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted as are at that time, besieged, blocked up round about, or invested.”\*

Could the principle maintained against Great Britain be more clearly laid down, or more strongly fortified by her sanction?

To give to this example the complete effect which it ought to have, several remarks are proper.

In the first place, on comparing the description given of the free trade, which might be carried on between the neutral party and an enemy of the other party, with the description of the free trade allowed between the parties themselves, by the 1st article of the treaty, it appears that in order to except the colonial trade in the latter case, the

freedom stipulated in Article I, is expressly limited to *Europe*. The terms are, “that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between the subjects on each part, through all and every the kingdoms, States, dominions of their royal majesties *in Europe*.” In the stipulation relating to the neutral commerce of either with the enemy of the other (who, if a maritime enemy, could not fail to possess colonies out of Europe), the terms are, “that all merchandizes, not contraband, may be carried in the freest manner to places belonging to an enemy, such towns or places only being excepted, as are at that time besieged, or blockaded, &c.,” without any limitation to Europe, or exception of colonies any where. It is obvious, that the terms here used comprehend all colonies, as much as the terms in the first article would have done, if colonies had not been excepted by limiting the freedom of trade to places “*in Europe*,” and consequently that if any distinction between the colonial and other places of an enemy, had been contemplated in the neutral trade of either party with him, as it was contemplated between the colonies and European possessions of the parties in their commerce to be carried on between themselves, the distinction would have been expressed in the latter case, as it was in the former; and not being so expressed, the trade in the latter case was to be as free to the colonies as it would have been in the former, if the colonies had not been excepted by the limitation of the trade to Europe.\*

Secondly. But the treaty not content with this necessary construction, in favor of a neutral commerce with the colonies of an enemy, proceeds, in conformity to the example in the declaratory convention between England and Holland in 1674, explicitly to declare the freedom of the neutral party, to trade not only from *any port*, to the places of an enemy, and from the places of an enemy to neutral places, but also from *one place to another place* belonging to an enemy, whether the places be under the same or different sovereigns. Here both the coasting trade and the colonial trade, which, in relation to the parent country, is in the nature of a coasting trade, are both placed on the same footing with every other branch of commerce between neutral and belligerent parties, although it must have been well known, that both those branches are generally shut to foreigners in time of peace, and if opened at all, would be opened in time of war, and for the most part, on account of the war.

Thirdly. It is well known, that this particular treaty underwent great opposition and discussion, both without and within the British Parliament; and that it was for some time, under a legislative negative. Yet it does not appear, either from the public debates, or from the discussions of the press, as far as there has been an opportunity of consulting them, that the difficulty arose in the least from this part of the treaty. The contest seems to have turned wholly on other parts, and principally on the regulations of the immediate commerce between the two nations. This part of the treaty may be considered, therefore, as having received the complete sanction of Great Britain. Had it indeed been otherwise, the repeated sanctions given to it on subsequent occasions, would preclude her from making the least use of any repugnance shewn to it on this.

On the 28th November, 1713, a treaty of peace and another of commerce and navigation, were concluded at Utrecht with Spain, renewing and inserting the treaty of May 13th, 1667, the 21st and 26th Articles of which have been seen to coincide with

the rules of neutral commerce, established by the treaty at Utrecht, between Great Britain and France.\*

Genoa and Venice were comprehended in the treaty of Utrecht, between Great Britain and Spain.†

The above treaty of 1713, was confirmed by Article XII, of a treaty of December 3, 1715, between Great Britain and Spain.‡

From the above date to the treaty of 1748, at Aix la Chapelle, the following treaties between England and other powers took place; in each of which, the principles established by her treaties at Utrecht, are reiterated.

With Sweden, January 21, 1720, Article XVIII.§

With Spain, June 13, 1721, Article II.—Confirming the treaty of 1667 and 1713.¶

With France and Spain, November, 9, 1729, Article, I.—Renewing all treaties of peace, of friendship, and of commerce, and consequently those of Utrecht.¶

With the Emperor of Germany and the United Netherlands, March 16, 1731, Article I.—Renewing all former treaties of peace, friendship, and alliance.\*\*

With Russia, December 2, 1734.—Stipulating in Article II, a free trade between either party and the enemy of the other, in all articles except munitions of war; and consequently articles permitted after, though not permitted before, the war.‡‡

With Spain, (a convention,) January 14, 1739, Article I.—Reiterating among former treaties, those of 1667 and 1713, above cited.‡‡

The treaty of Aix la Chapelle concluded in 1748, forms another memorable epoch in the political system of Europe. The immediate parties to it were Great Britain, France, and the United Provinces.

The 3d\* Art. of this treaty renews and confirms, among others, *the treaties of Utrecht*.†

This treaty was acceded to by Spain, Austria, Sardinia, Genoa, and Modena.

In 1763,‡ in the treaty between Great Britain, France, and Spain, to which Portugal acceded, the 1st Art. expressly renews and confirms, among other treaties, the treaties of peace and *commerce* at Utrecht.§

The treaty with Russia in 1766, Art. X, stipulates a free trade between either party, being neutral, and an enemy of the other, with the sole exception of military stores, and places actually blockaded.¶

In a convention with Denmark, July 4, 1780, explanatory of a list of contraband settled in a former treaty, it is expressly determined that merchandize not contraband,

may be transported to *places* in possession of enemies, without any other exception than those besieged or blockaded.¶

The treaty of peace in 1783 with France, by Art. II, renews and confirms, among others, the treaties of Westphalia in 1648, of Utrecht in 1713, of Aix la Chapelle in 1748, and of Paris, 1763; in all of which the neutral right, now denied by Great Britain, was formally sanctioned by her stipulations.\*\*

In her treaty of the same date, with Spain, the same confirmation is repeated.\*

In the treaty of commerce again with France in 1786, deliberately undertaken in pursuance of Art. XVIII, of the treaty of 1783, the articles above recited from the treaty of Utrecht are inserted word for word; and thus received anew the most deliberate and formal sanction.—*Chalm.*, vol. 1, p. 350.

It may be here again remarked, that although this treaty underwent the most violent opposition in Great Britain, it does not appear that the opposition was at all directed against the articles on the subject of neutral commerce.

The treaty of 1786 was explained and altered in several particulars, by a convention bearing date August 31, 1787; without any appearance of dissatisfaction, on either side, with the articles on neutral commerce.

In the negotiations at Lisle, in 1797, it was proposed on the part of Great Britain, by her ambassador, Lord Malmesbury, to insert, as heretofore usual in the articles of peace, a confirmation of the treaties of Utrecht, Aix la Chapelle, &c., which was opposed by the French negotiators, for reasons foreign to the articles of those treaties in question.

On this occasion, Lord Malmesbury, in urging the proposed insertion, observed, “that those treaties had become the law of nations, and that if they were omitted‡ it might produce confusion.” This fact is attested by the negotiations, as published by the British Government.‡

If the treaties had become, or were founded in, the law of nations, such an omission, although it might be made a pretext for cavil between the parties, could certainly have no effect on the law of nations; and if the treaties expressed the law of nations on any subject at all, on what subject, it might be asked, have they been more explicit than on that of the maritime rights of neutrals?

This series of treaties, to which Great Britain is an immediate party, lengthy and strong as it is, has not exhausted the examples by which she stands self-condemned. One, in particular, remains for consideration; which, if it stood alone, ought forever to silence her pretensions. It is the treaty with Russia on the 5-17 of June, 1801.

A very important part of the treaty is the preamble:

“The mutual desire of his majesty the King of the United Kingdoms, &c., and his majesty the Emperor of all the Russias, being not only to come to an understanding

between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which subsist between the two States; but also to prevent, by frank and precise *explanations* upon the navigation of their respective subjects, the renewal of similar altercations and troubles which might be the consequence of them; and the *common object* of the solicitude of their said majesties being to *settle*, as soon as can be done, an equitable arrangement of those differences, and an *invariable determination of their principles* upon the *rights of neutrality*, in their application to their respective monarchies, in order to unite more closely the ties of friendship and good intercourse, &c., have named for their plenipotentiaries, &c., who have agreed,” &c.

With this declaratory preamble in view, attend to the following sections in Article III:

“His Britannic majesty and his Imperial majesty of all the Russias having resolved to place under a sufficient safeguard the freedom of commerce and navigation of their subjects, in case one of them shall be at war while the other shall be neuter, have agreed;

“1st. That the ships of the *neutral power* may *navigate freely to the ports and upon the coasts* of the nations *at war*.

“2d. That the effects embarked *on board neutral ships* shall be *free*, with the exception of *contraband of war* and of *enemy’s property*; and it is agreed not to comprize under the *denomination of the latter*, the merchandize of the produce, growth, or manufactures of *the countries at war* which should have been *acquired* by the subjects of the neutral power, and should be *transported on their account*; which merchandize cannot be excepted *in any case* from the freedom granted to the flag of the said power,” &c., &c.

These extracts will receive additional weight from the following considerations:

*First.* This treaty, made with Russia, the power that took the lead in asserting the principles of the armed neutrality, was, with exceptions not affecting the point in question, acceded to by Sweden and Denmark, the two other European powers most deeply interested in, and attached to, those principles. It is a treaty, therefore, of Great Britain, as to this particular point, as well as to most of the others, with Russia, Sweden, and Denmark.

*Secondly.* The treaty had for its great object, as appears by its adoption of so many of the definitions of the armed neutrality, to fix the law of nations on the several points therein, which had been so much contested; the three northern powers yielding the point of free ships, free goods; and Great Britain yielding to all of them, those relating to the coasting, as well as every other branch of neutral trade; to blockades, and to the mode of search; and yielding to Russia, moreover, the point relating to the limitation of contraband. With respect to the case of convoys, a case not comprehended in the armed neutrality of 1780, but of much subsequent litigation, and inserted in that of 1800; a modification, satisfactory to the northern Powers, was yielded by Great Britain; with a joint agreement that the subjects on both sides should be prohibited

from carrying contraband or prohibited goods, according to an article in the armed neutrality of both dates.

*Thirdly.* The treaty is expressly declared to be an *invariable* determination [fixation], of their *principles* upon the *rights of neutrality*, in their application to their respective monarchies.

It cannot be pretended that this *stipulated* application of the rights of neutrality to the contracting parties, limits the *declaratory* effect, which is equally applicable to all neutral nations. *Principles* and *rights* must be the same in all cases, and in relation to all nations; and it would not be less absurd than it would be dishonorable, to profess one set of principles or rights in the law of nations towards one nation, and another set towards another nation.

If there be any parts of the treaty, to which this declaratory character is regarded as not applicable, it cannot be pretended that they are the parts relating to the rights of neutrals to trade *freely* to the *ports* and on *the coasts* of nations at war; because, as already observed, the main object of the treaty was to settle the questions involved in the armed neutrality; of which this was a primary one, and is here placed by the structure of the article under the same precise stipulation, with the liability to confiscation, of enemy's property in neutral ships; a point above all others which Great Britain must have wished to consecrate as the law of nations, by declaratory acts for that purpose.

It cannot be pretended that the neutral rights here declared, do not extend to the colonial as well as coasting trade of belligerent nations, because the colonial trade is not only included in a "free trade to the ports and on the coasts" of such nations, but because it is expressly declared that the effects belonging to neutrals, and transported on their account from countries at war, cannot be excepted from the freedom of the neutral flag *in any case*, and consequently not *in the case of colonies*, more than any other portion of such countries. It is not improper to remark that this declaratory stipulation is not only included in the same article, which recognised the principle that enemy's property is excepted from the freedom of the neutral flag, but is associated with that recognition in the same section of the article, and even in the same sentence.\*

If it were possible to controvert the construction here given to the treaty, a reference might be made to a very able speech delivered by Lord Grenville in the British House of Lords in November 1801, in which this very construction is fully demonstrated. The demonstration is rendered the more striking by the embarrassed and feeble opposition made to it by the ingenuity of the very able speakers who entered the list against him.\*

Such is the accumulated and irresistible testimony borne by Great Britain, in her own treaties, against the doctrine asserted by her.

It will be in order now to resume the notice of treaties to which she was not a party, but which authorize some inferences and observations contributing still further, if possible, to invalidate her novel pretensions.

The review heretofore taken of this class of treaties was limited to such as preceded the armed neutrality. Those now to be added, are principally the treaties and conventions entered into in the years 1780 and 1800.

The treaties of 1780 declare the right of neutrals in the case under discussion, in the following terms: "that all vessels shall be permitted to navigate from port to port, and on the coasts of the belligerent powers." Those of 1800 are in terms too little varied to require recital.

It has never been questioned, that these definitions of the neutral right were as applicable to colonies as to any other of the territories belonging to a belligerent nation. All the British writers have so understood the text, and in that sense, have employed their pens against it.

It need scarcely be remarked that the treaties in question were framed with a view, not of making a new law of nations, but of declaring and asserting the law as it actually stood. The preamble to the convention of 1800, for the re-establishment of an armed neutrality between Russia and Sweden, explains the object in the terms following: "In order that the freedom of navigation and the security of merchandize of the neutral powers may be established, and *the principles* of the law of nations be fully *ascertained, &c.*"

The preamble to the convention of 1780, states the principles avowed by the parties to be the principles derived from the primitive rights of nations."

The treaty of 1780 was originally concluded between Russia and Denmark. But it was acceded to by Sweden, Prussia, the United Provinces, Austria, Portugal and Naples; and in effect, by France and Spain. The principles of the treaty had the sanction also of the United States of America in their cruising ordinances. Thus it is seen, that with the exception of Great Britain alone, all the powers of Europe, materially interested in the maritime law of nations, have given a recent and repeated sanction to the right of neutrals to trade freely with every part of the countries at war. And although several of those nations have, on some of the points contained in these treaties, as on the points of contraband and enemy's property under neutral flags, entered since into adverse stipulations; not one of them has by treaty or otherwise relinquished the particular right under consideration,\* whilst Great Britain, as we have seen in her treaty with Russia, has herself, expressly acceded to the right.

The importance of treaties in deciding the law of nations, or that portion of it, which is founded in the consent of nations, will justify the extent which has been given to this review of them, and the conclusion which this review justifies is, that the tenor of treaties, throughout the whole period deserving attention, confirms the neutral right contended for; that for more than one and a half centuries, Great Britain has, without any other interruptions than those produced by her wars with particular nations, been



at all times bound by her treaties with the principal maritime nations of the world, to respect this right; and what is truly remarkable, that throughout the long period of time, and the voluminous collection of treaties, through which the research has been carried, a single treaty only (putting aside the explanatory article between Great Britain and Russia, noted above) has occurred, which forms an exception to the general mass.

The exception will be found in an article of a Danish treaty of June, 1691,\* with England and Holland. In that article (the 3d) though somewhat obscure, either from inaccuracy in the original text, or in the printed copy, it seems that Denmark relinquished her neutral right of commerce between the ports of France, then at war with the other parties. But this exception, instead of availing in any respect the belligerent claim in question, corroborates the testimony furnished by treaties against it; as will appear from the following observations:

1st. In other parts of the treaty, there are stipulations favorable to Denmark, which may have been regarded as some compensation for the restriction imposed on herself.

2d. Admitting, however, the restriction to have been made without any compensating advantages; the sacrifice might fairly be ascribed to the dreadful oppressions on the Danish commerce, practised by England and Holland, and to the desire of Denmark, as a weaker power, to effect some mitigation of her sufferings. These sufferings cannot be better explained, than by an extract from the preamble to a treaty concluded in 1693, between Denmark and Sweden, for the purpose of putting in force a preconcerted plan of reprisals. "Although their majesties, the kings of Sweden and Denmark had hoped, that after they had concluded their treaty of March, 1691, for maintaining their navigation and commerce, the many unjust piracies exercised on their subjects, would at length have ceased; they have nevertheless been grieved to find that, notwithstanding the reclamations and remonstrances which they have from time to time made to the parties engaged in the war, in order that an end might be put to them, they have rather increased and augmented, even to a point that it is in a manner impossible to express, the pretexts, the artifices, the inventions, the violences, the chicaneries, the processes which have been practised, not only against the vessels and goods of the subjects of their majesties, but also against their public convoys, to the prejudice of the customs and tolls of their majesties, to the considerable diminution of their duties and imports, and to the irreparable injury of their kingdoms and provinces, the subjects of which have suffered and lost infinitely, in their persons, their crews, their vessels, goods and merchandizes. Hence it is that their majesties have been obliged, &c."

Distresses, such as are here painted, might sufficiently account for concessions on the part of a sufferer, without supposing them to flow from a deliberate or voluntary acquiescence in the principle on which they were founded.

3. But admitting the stipulation to have been both gratuitous and deliberate, and to form a fair exception to the general rule of treaties, still being but a single exception to stipulations as numerous and as uniform as have been brought into view, the



exception must be considered as having all the effect in confirming the general rule, which can be ascribed, in any case, to a confirmation of that sort.

4. The exception is limited to a trade between one French port and another. It implies, therefore, and recognizes a freedom of trade between foreign and French ports, as well colonial as others.

To this ample sanction, drawn from the conventional monuments of Europe, it will be allowable to add the testimony of the only nation at once civilized and independent, in the American hemisphere. The United States have, or have had, treaties with France, Holland, Sweden, Russia, Spain, and Great Britain.\* In all of these, except the treaty with Great Britain, they have positively maintained the principle that neutrals may trade freely between neutral and belligerent ports, and between one belligerent port and another, whether under the same or different jurisdictions; and the treaty with Great Britain contained not even an implication against the principle. It merely omitted a stipulation on the subject, as it did on many others, contained in other treaties.\*

### ***The Conduct Of Other Nations.***

The evidence from this source is merely negative; but is not on that account without a convincing effect. If the doctrine advanced by Great Britain had been entertained by other nations, it would have been seen in the documents, corresponding with those which contain the British doctrine. Yet, with all the research which could be employed, no indication has been met with, that a single nation, besides herself, has founded on the distinction between a trade permitted and a trade not permitted in time of peace, a belligerent right to interrupt the trade in time of war. The distinction can be traced neither in their diplomatic discussions, nor their manifestoes, nor their prize ordinances, nor their instructions to their cruizers, nor in the decisions of their maritime courts. If the distinction had been asserted or recognized, it could not fail to have exhibited itself, in some or other of those documents. Having done so in none of them, the inference cannot be contested, that Great Britain is the only nation that has ever attempted this momentous innovation on the law of nations.

### ***Conduct Of Great Britain.***

If it be not enough to have shewn, that the belligerent claim asserted by Great Britain is condemned by all the highest authorities on the law of nations, by the clearest testimony of treaties among all the principal maritime nations of the world, herself included, and by the practice of all other nations; she cannot surely demur to the example of her own proceedings. And it is here, perhaps, more than any where else, that the claim ought to shrink from examination. It will be seen, in the course of the following observations, that Great Britain is compelled, under every appeal that can be made to herself, to pronounce her own condemnation; and what is much worse, that the innovation, which she endeavors to enforce as a right of war, is under that name a mere project for extending the field of maritime capture, and multiplying the sources of commercial aggrandizement; a warfare, in fact, against the commerce of her friends, and a monopolizing grasp at that of her enemies.

1st. Whilst Great Britain denies to her enemies a right to relax their laws in favor of neutral commerce, she relaxes her own, those relating as well to her colonial trade, as to other branches.

2d. Whilst she denies to neutrals the right to trade with the colonies of her enemies, she trades herself with her enemies, and invites them to trade with her colonies.

1st. That Great Britain relaxes in time of war her trade laws, both with respect to her colonies and to herself, is a fact which need not be proved, because it is not denied. A review of the progress and modifications of these relaxations will be found in Reeves' \* Law of Shipping and Navigation; and in the successive orders of the British council, admitting in time of war neutral vessels, as well as neutral supplies, into her West India colonies. It will not be improper, however, to shew, that in these relaxations of her peace system, she has been governed by the same policy of eluding the pressures of war, and of transferring her merchant ships and mariners from the pursuits of commerce to the operations of war, which she represents as rendering unlawful the like relaxations of her enemies.

The object of dispensing, in time of war, with the navigation act, was avowed by the legislature itself, in the preamble to one of its acts, which was passed not long after the navigation act was adopted. The preamble recites, "And whereas by the laws now in force, the navigating of ships or vessels in divers cases, is required to be, the master and three-fourth parts of the mariners being English, under divers penalties and forfeitures therein contained: And whereas great numbers of seamen are employed in her majesty's service for the *manning of the Royal Navy*, so that it is become *necessary*, during *the present war*, to dispense with the said laws, and to allow *a greater number of foreign mariners* for the *carrying on of trade and commerce*: Be it enacted, &c., that during the present war," &c.

Without pursuing the series of similar recitals during successive wars, one other example of later date will be given, in which the same object is avowed. The preamble of 13 G. 2, Ch. 3, is in the following words: "For the better supply of mariners and seamen to serve in his majesty's ships of war, and on board merchant ships and other trading vessels and privateers, and for the better carrying on the present or any future war, and the trade of Great Britain during the continuance thereof," &c.

The British orders of council, and proclamations of governors, issued from time to time during war, and opening, on account of war, the colonial trade to neutrals, in cases where it was shut to them in times of peace, are too well known to require particular recital or reference. Orders to that effect are now in operation; and fully justify the position, that, as well in the case of the colonial trade as of the trade with the parent country, the same thing is done by Great Britain herself, which she denies the right of doing to her enemies.

2d. That she trades with her enemies, and invites them to trade with herself, during war, are facts equally certain and notorious.

The efforts of Great Britain to maintain a trade at all times with the colonies of other nations, particularly of Spain, both in peace and in war, and both by force, and clandestinely, are abundantly attested by her own, as well as other historians. The two historians of Jamaica, Long and Edwards, are alone sufficient authorities on the subject.

It has been already noticed, that, in the infancy of her belilgerent pretension against the trade of neutrals with the colonies of her enemies, she favored, by special licences, a trade of her own subjects with the same colonies.

The like inconsistency might be verified by a train of examples since the pretension was, during the war of 1793, brought again into action. But it would be a waste of time to multiply proofs of what is avowed and proclaimed to all the world by her acts of parliament; particularly by the act of June 27, 1805, “to consolidate and extend the provisions respecting the free ports in the West Indies.”

This act establishes certain free ports in Jamaica, Grenada, Dominica, Antigua, Trinidad, Tobago, Tortola, New Providence, Crooked Island, St. Vincent’s, and Bermuda. These ports, distributed throughout the West Indies, with a view to the most convenient intercourse with the colonies, and settlements of her enemies in that quarter, are laid open to all the valuable productions thereof, and to small vessels with single decks, belonging to, and navigated by, inhabitants of such colonies and settlements. In like manner, the enemies of Great Britain are allowed to export from the enumerated ports, rum, negroes, and all goods, *wares*, and *merchandizes*, excepting naval stores, which shall have been imported thither in British vessels. Provision is, at the same time, made for the re-exportation, in British vessels, of the enumerated productions imported from the colonies and settlements of her enemies, to Great Britain and her possessions, according to the regulations prescribed by her navigation act.

In pursuance of the same principle exercised in her laws, we find her entering into a treaty in time of war, which, in one of its articles, opened a branch of colonial trade to neutrals not open to them in time of peace, and which being to continue in force only two years after the end of the war, may be considered as made in effect for the war.

The 12th Article of the treaty with the United States in 1794, stipulated that American vessels not exceeding a given size, may trade between the ports of the United States and the British West Indies, in cases prohibited to them by the colonial system in times of peace. This article, it is true, was frustrated by the refusal of the United States to ratify it; but the refusal did not proceed from any supposed illegality of the stipulation. On the part of Great Britain the article had a deliberate and regular sanction; and as it would not have been a lawful stipulation, but on the supposition that a trade not open in peace may be opened in war, the conduct of Great Britain, in this case also, is at variance with the rule she lays down for others.

But a most interesting view of the conduct of Great Britain will be presented by a history of the novel principle which she is endeavoring to interpolate into the code of

public law, and by an examination of the fallacies and inconsistencies to which her Government and her courts have resorted, in maintaining the principle.

It is a material fact that the principle was never asserted or enforced by her against other nations, before the war of 1756.

That at the commencement of the preceding war of 1739, it did not occur, even to the ingenuity of British statesmen labouring for parliamentary topics of argument, is proven by the debate which, on that occasion, took place in the House of Lords.

In the course of the debate on the expediency of the war, this particular point having fallen under consideration, the following observations were made by Lord Hervey against the war:

“Some people may perhaps imagine that great advantages might be made by our intercepting the Spanish plate fleets, or the ships that are employed in the trade with their settlements in America, because no Spanish ships can be employed in that trade; but even this would be precarious, and might in several shapes be entirely prevented; for if they should open that trade to the French and Dutch, it is what those two nations would be glad to accept of, and *we could not pretend to make prize of a French or Dutch ship on account of her being bound to or from the Spanish settlements in America, no more than we could make prize of her on account of her being bound to or from any port in Spain. We could not so much as pretend to seize any treasure or goods (except contraband she had on board) unless we could prove that those goods or treasure actually belonged to the King or subjects of Spain. Thus the Spanish treasure and effects might safely be brought, &c.*”

Lord Bathurst in answer:

“We may do the Spaniards much damage by privateering, &c. If they bring their treasure home in flotas, we intercept them by our squadrons; if in single ships our privateers take them. They cannot bring it home either in French or Dutch ships,\* because by the 6th Article of the treaty of Utrecht, the King of France is expressly obliged not to accept of any other usage of navigation to Spain and the Spanish Indies, than what was practised in the reign of Charles II, of Spain, or than what shall likewise be fully given and granted at the same time to other nations and people concerned in trade. *Therefore*, the Spaniards could not lay the trade in America open to the French, or at least the French could not accept of it; and if the Dutch should, they would be *opposed by France as well as by us*; an opposition they would not, I believe, chuse to struggle with.”\*

Through the whole of the debate the subject is taken up, not on the ground of a belligerent right, or of a neutral duty, but merely on that of commercial jealousy and policy. Had the distinction between a trade allowed in peace as well as war, and a trade allowed in war only, been maintained by British statesmen then, as it is maintained by them now, the same ready answer would have been given then, as in a like discussion, would be given now, viz: that neither France nor Holland could enter

into a trade with the Spanish colonies, because, being a trade not open in time of peace, it could not be laid open in time of war.

In the debates also, which took place in the House of Lords, concerning the Spanish captures in America, and the war which followed, several of the Lords in their speeches lay down in detail, the cases in which belligerent nations may search, capture, and confiscate neutral vessels in time of war; yet, although colonial trade was the immediate subject of discussion, the distinction now employed, seems never to have entered into the thoughts of the speakers.

Again, in the course of this war to which France became a party on the side of Spain in 1744, it appears that the tribunals of Great Britain proceeded on the same principle, that the trade of neutrals with the colonies of her enemies, though not open in time of peace, might be a lawful trade in time of war. For this there is the testimony of Robinson's reports, in which it is stated, that ships taken on a voyage from the French colonies, were released before the Lords of Appeal.\*

We find then, that prior to the war of 1756, this belligerent claim of attacking all neutral commerce not permitted in time of peace, a claim so broad in its principle and so baneful in its operation, never had a place among the multiplied pretensions enforced by power, or suggested by avarice. At some times nations have been seen engaged in attempts to prevent all commerce whatever with their enemies; at others to extend the list of contraband to the most innocent and necessary articles of common interchange; at others to subject to condemnation both vessel and cargo, where either the one or the other was the property of an enemy; at others to make the hostility of the country producing the cargo, a cause of its confiscation. But at no time, as seems to be admitted by Sir William Scott himself,† was this encroachment on the rights of neutrality devised by any nation until the war of 1756. Then it was that the naval resources of Great Britain augmented by her prosperous commerce, more especially that of her then colonies, now the United States of America, gave her an ascendancy over all her rivals and enemies, and prompted those abuses which raised the voice of all Europe against her.

The first effect of this overgrown power was seen in the bold enterprise of seizing on the whole trade of France within her grasp, in contempt of all forms of commencing hostilities, required by the usage of nations. It was next seen in the extensive depredations on the trade of neutrals, particularly of the Dutch, in defiance not only of the law of nations, but of the most explicit stipulations of treaty. The losses of that single nation, within the first two years of the war, amounted to several millions sterling.‡ The Dutch, by their ambassador at London, remonstrated. The British ambassador at the Hague was instructed to enter into explanations. Among these it came out,\* for the first time, that Great Britain meant, notwithstanding the admonitions of prudence as well as of justice, to deny the right of neutrals to carry on with her enemies any trade beyond the precise trade usually carried on in time of peace.

The origin of this novel principle deserves a more particular development. The English Government had no sooner made war on the French commerce, than the

Dutch began to avail themselves of their neutral and stipulated rights to enter into it; particularly the commerce of the colonies, both to their own ports, and to French ports. The English immediately made war on this commerce, as indeed they did on the commerce to Spain, Portugal, and other countries. The Dutch vessels were even pillaged on the high seas, and their seamen very badly treated. In the years 1757 and 1758 alone, the number of vessels captured and pillaged amounted to no less than three hundred; and the damages were estimated at eleven millions of florins, between five and six millions of dollars. The Dutch appealed to their treaties with England [those in 1674 and 1675] which made enemy's goods free in their ships, contraband only excepted, and the Dutch trade free from and to the enemy's ports, and from one enemy's port to another. The English were driven to the pretext, that the treaty of 1674 said only that the liberty of trade should extend to all merchandizes which were transported in *time of peace*, those of contraband excepted; and was, therefore, not applicable to the colonial trade in time of war. Besides that *the time of peace*, if it had been any thing more than a mode of expressing the entire freedom of commerce, could refer only to the *kind of merchandizes*, not to the *ports* or *channels* of trade, the Dutch were able to appeal to the declaratory treaty of 1675, which stipulated an unlimited freedom of trade *from* and *to* ports of enemies, without saying any thing as to times of peace. This admitting no reply, the English found no refuge but in the pretext, that the Dutch vessels, being engaged in the colonial trade, were to be *considered as French vessels*. This lucky thought eluded the stipulation that free ships make free goods, as well as that which embraced the right of trade on the coasts and with the colonies of enemies. It was alledged also, but with little seeming reliance on such an argument, that the commerce with the French islands was not known in 1674, and therefore could not be comprised in that treaty. These pretexts being very little satisfactory to the Dutch, the Province of Holland, the chief sufferer, talked of reprisals. The English answer is in Tindal's Cont., vol. 9, p. 577-8. Undertaking to decide on a constitutional question within an independent nation, they said, if the Province of Holland, which had no authority, should fit out ships, they would be treated as pirates; and if the States General should do it, it would be taken as a declaration of war. Such was the birth of this spurious principle.

Being avowed, however, on the part of the Government, it was to be expected that it would have its effect on the courts of admiralty. As the decisions of these, during that period, were never reported, the best knowledge of them is to be gathered from references incidentally made to them, in the proceedings of other British courts, and in the proceedings of the high court of admiralty, since the reports of them have been published. The most precise information which has been obtained through the first channel, appears in the case of *Berens vs. Rucker*, before the court of King's bench, reported in 1 Blackstone, p. 313. This was the case of a Dutch ship which had taken in sugars at sea, off the Island of St. Eustatius, brought along side of her by French boats from a French island; which ship was captured in 1758, on her return with that cargo to Amsterdam. Lord Mansfield in pronouncing on the case in 1760, expressed himself as follows:

“This capture was certainly unjust. The pretence was that part of this cargo was put on board off Saint Eustatius by French boats from a French island. This is now a *settled point* by the *lords of appeals* to be the *same thing* as if they had been *landed* on the

Dutch shore, and then *put on board afterwards*, in which case there is no color for seizure. *The rule is*, that if a neutral ship trades to a French colony with *all* the privileges of a French ship, and is thus *adopted and naturalized*, it must be looked upon as a French ship, and is liable to be taken—not so, if she has only French produce on board, without taking it at a French port, *for it may be purchased of neutrals.*”

Here the ground of capture must be distinctly noted. It is not that the trade, as a trade allowed in war only, was unlawful, and thence incurred a forfeiture of both ship and cargo; the ground and measure of forfeiture, which are now alleged. The vessel is condemned on the ground, or presumption, that it had, by adoption, been made the *property of the enemy*; whilst the cargo is not liable to condemnation, if not proved to be enemy's property. In other words, the vessel is, in spite of the fact, presumed from the mere circumstance of navigating in a French channel, to be French property; and the cargo, although of French production, and found in a vessel looked upon as French, is notwithstanding these considerations, open to the presumption that it might be neutral property.

This shews only that the Herculean principle was at that time in its cradle; and that neither the extent of its powers, nor the wonders which it was to be called to perform, were at first understood. Its capacities were to be learnt and applied, as they might be unfolded by time and occasions. At that time, neutral vessels being admitted into new channels of French trade by grants of special licences to the vessels, the occasion was thought to be best answered with respect to the vessels, by the presumption, or rather the fiction, that they were French vessels; and with respect to the neutral cargo, as it did not fall precisely under the presumption applied to the vessels, it was left to escape until further time and occasions should teach the other shapes and uses, of which the innovation was susceptible.

These shapes and uses soon began to disclose themselves: for it appears from the references made in the case of the *Providentia*,\* tried before Sir W. Scott in 1799, that French West India produce, conveyed by neutrals from Monte Christi, a Spanish neutral port, was, in the progress of the war of 1756, condemned, on the pretext that the intervention of a neutral port, was a fraudulent evasion of the rule which condemned the trade with a French port; notwithstanding the previous rule of the Lords of appeal, according to which the landing or even trans-shipment of such produce, at a neutral port, neutralized the trade, and made it lawful.

There is some obscurity, it must be owned, as to the principle on which a neutral trade with the French colonies was condemned, after the discontinuance of special licences; it being sometimes stated in the arguments referring to that period, that the condemnation was founded on the principle, that the trade was virtually or adoptively, a French trade; and sometimes, that it was founded on the general principle that it was a trade not open in time of peace. Certain it is, that the original principle was that of a virtual adoption, this principle being commensurate with the original occasion; and that, as soon as this original principle was found insufficient to reach the new occasions, a strong tendency was seen towards a variation of the principle, in order to bring the new occasions within its reach.



It is remarkable that, notwithstanding the broad principle asserted by the cabinet through its diplomatic organ at the Hague, which interdicted to neutrals every trade not allowed to them in time of peace, the courts of Admiralty not only limited the principle at first, and hesitated afterwards to extend it, in the manner which has been seen; but never undertook to apply it to the *coasting trade*; though so strongly marked as a peace monopoly, and therefore so clearly within the range of the principle; nor does it appear, even, that the principle was applied to the trade with the *Spanish* colonies, after Spain joined in the war, notwithstanding the rigorous monopoly under which they are known to be generally kept, in time of peace.

It is still more important to remark, as a proof of the inconsistency always resulting from false principles, and the indulgence of unjustifiable views, that the English themselves, if the Annual Register is to be believed, were actually trading by means of flags of truce equivalent to licences, both directly with the French islands, and indirectly through Monte Christi, during the very period when they were confiscating the property of neutrals carrying on precisely the same trade, in the same manner.

Such is the state of the question as presented during the war of 1756. The next enquiry relates to the war of the American Revolution, or the French war of 1778.

Here it is conceded on the British side, that the new principle was, throughout that period, entirely suspended. On the other side, it may be affirmed, that it was absolutely abandoned.

One proof is drawn from the course of decisions, in the British high court of Admiralty, by Sir James Marriott, the predecessor of Sir Wm. Scott.

The first volume only of his decisions has yet found its way to this country. In that are contained the cases referred to below; \* all of which are adjudged on the principle, that the coasting trade, and of course every other branch of trade, not allowed to foreigners by a nation at peace, and which may be opened to neutral foreigners by such nation when at war, are lawful trades.

Although some of the ships, in these cases, were Danish, and others Dutch, and consequently within the stipulations of treaties which have been heretofore cited; yet there is no appearance that the Judge was guided in his decisions by that authority; nor is it in the least probable, that they will now be explained by a resort to it. But should such an attempt be made, it could be of no avail; because, among the cases, there are two, one of a Lubeck and the other of a Prussian vessel, which could be decided by no other rule than the general law of nations; there being no British treaty, with either Prussia or Lubeck, applicable to the question. There is another case, a *colonial* one too, decided 21st January, 1779, in which the law of nations must of necessity have been the sole guide. It was that of a French ship, bound from St. Domingo to Nantz. The general cargo, as well as the vessel, were condemned as enemies' property; reserving the question concerning the claims of considerable value, made by two passengers as neutrals, the one asserting himself to be a subject of Bohemia, the other of Tuscany. The articles claimed were ultimately condemned as *enemies' property*; without the slightest allusion to the illegality of a neutral trade



between a belligerent country and its colonies; which, if then maintained, as it is now, would at once have put an end to the claims.

It is strictly and incontrovertibly just, then, to say, that these decisions maintain the law of nations as asserted in this investigation; and abandon and renounce it, as asserted in the decisions of the same court, under its present Judge. During the war of 1778, the Judge had no guide whatever in prize cases, turning on this question, but the law of nations. Neither treaties, nor acts of parliament, nor any known orders of council, interposed any special rule controuling the operation of that law. That law, consequently, was the sole rule of the decisions; and these decisions, consequently, complete evidence of the law, as then understood and maintained by the court: and let it be repeated, that if such was the law in the case of the coasting trade, it was equally the law as to every other channel of trade, shut in peace, and laid open in war.

These decisions were, indeed, made by the high court of Admiralty, and not by the Lords Commissioners of Appeal, the authority in the last resort, on such subjects. But this consideration does not impeach the inference drawn from the decisions; which having not been reversed, nor appealed from, are fair evidence for the purpose to which they are applied. It is impossible to account for an omission to enter appeals, where the captors were in their own country, and must have had the best counsel, without supposing that the appeals afforded not the smallest chance of a more favorable decision.

But as a further and more unexceptionable proof that the principle was abandoned, it is stated by Sir Wm. Scott himself, that “in the case of the *Verwagtig*,\* (a vessel trading between France and Martinique during the war of 1778) and in *many other* succeeding cases, the *Lords of Appeal* decreed payment of freight to the neutral ship owner.” This, it must be observed, is a case of colonial trade; and a colonial trade of the most exclusive kind in time of peace; a trade between the colony and the parent country.

To these authorities, an explanation equally singular and unsatisfactory is opposed. It was understood, says Sir William Scott, that “France in opening her colonies, during the war [of 1778] declared that this was not done with a temporary view relative to the war, but on a general and permanent purpose of altering her colonial system, and of admitting foreign vessels, universally and at all times, to a participation of that commerce. Taking that to be the fact, (*however suspicious* its commencement might be, during the actual existence of the war,) there was no ground to say that neutrals were not carrying on a commerce, as ordinary as any other in which they could be engaged; and therefore, in the case of the *Verwagtig*, and many other succeeding cases, the lords decreed payment of freight to the neutral ship owner.”

At what particular time, and in what particular terms, this important declaration by France was made, is not mentioned; nor has any such declaration been discovered by a search which has been carried through all the French codes, and such of the annals of the time, as were most likely to contain it; and without some further account of this “declaration,” or this “profession” on the part of France, as it is elsewhere called in Rob. Reports, it is impossible to decide on the precise character and import of it.

But supposing the fact, as it was taken to be, how account for so unexampled an instance of blind confidence by Great Britain, in the sincerity of an enemy, always reproached by her with the want of sincerity; and on an occasion too, so peculiarly suspicious, as that of a profession at the commencement of war, calculated to disarm Great Britain of a most precious branch of her rights of war?

If her suspension of the new principle is not to be explained by an intentional return to the established law of nations; and the explanation of the fact lies in the alternative between her respect for a suspicious declaration of France, made in the suspicious crisis of a war, more than any other charged by her on the perfidious ambition of France; and her respect for those prudential motives which her own situation may have suggested for abandoning, rather than renewing, the attempt to maintain such a principle; it will not be easy to avoid preferring the explanation drawn from the following review of her situation.

However bold it may have been in Great Britain to advance and act upon the new principle in the war of 1756, it has been seen that she went but a small part of the length of it; and with an evident desire to make the innovation as little conspicuous and obnoxious as was consistent with her object. In this caution she was probably influenced by a regard, not only to the progress of opinion in Europe in favor of neutral rights; but particularly to the King of Prussia, whose friendship she courted, and who was known to be a patron of those rights. His dispute with Great Britain, produced by her seizure of Prussian vessels in the preceding war, and by his seizing in return, the Silesian funds mortgaged to Great Britain, is well known. The issue of this dispute has been represented as a complete triumph of the belligerent claims of Great Britain, over the pretensions of the neutral flag. The fact, however, is, that she was obliged to redeem the Silesian debt from the attachment laid on it, by paying to Prussia the sum of 20,000 pounds sterling, as an indemnity for the prizes made of Prussian ships.\*

At the commencement of the war of 1778, the public opinion had become still more enlightened and animated on the subject of neutral rights. The maritime success of Great Britain in the war of 1756, had alarmed, and the abuses of her power had sharpened the feelings of every commercial nation. Champions had started up all over Europe, maintaining with great learning and strong reasoning, the freedom of the seas, and the rights of the neutral flag. The principle that free ships make free goods, more especially employed a variety of very able pens; and had made a rapid progress. Other principles, the offspring or auxiliaries of this, and equally adverse to the maritime claims of Great Britain, were also gaining partizans. In a word, that state of fermentation in the public mind was prepared, which being nourished by the example and the policy of France, enabled Russia, in concert with France, to unite and arm all the maritime nations of Europe, against the principles maintained by Great Britain. To these discouraging circumstances in the situation of Great Britain, it must be added, that the cause in which she was fighting against her colonies, who had separated from her, was unpopular; that their coalition with her enemies, weakening her and strengthening them, had a double effect in depressing her; and that it happened, as was to be foreseen, that the fleets and cruisers brought against her, and the distress to which her own West Indies were reduced by her inability to supply their wants, made

it questionable, whether she might not lose, rather than gain, by renewing the principle which she had formerly asserted. Early in that war, Mr. Burke, in the House of Commons, exclaimed, “we are masters of the sea, no farther than it pleases the house of Bourbon to permit.”

The effect of this state of things, in tempering the policy and pretensions of Great Britain during the war of 1778, is attested by a series of her public acts too tedious to be here inserted, but which may be seen in Hennings’ collection.

But to whatever causes, the relinquishment by Great Britain of the new principle, is to be ascribed, the fact of the relinquishment remains the same; and that it did not proceed from any declaration made by France, that she had permanently abolished her colonial monopoly, is fully demonstrated by the following considerations.

The fact is, that such a declaration, or such an abolition by France, however satisfactory the evidence of it might be to the British Cabinet, could have no legal effect on the decisions of a Court, without some notification of instruction which is not pretended; and which is sufficiently contradicted, by the guarded terms used by Sir William Scott in speaking of the declaration. And that the then judge of the court, Sir James Mariott, was not in fact influenced in his decisions, either by the declaration of France itself, or by any instruction of his own government founded on such a declaration, is put beyond the possibility of doubt, not only by the want of reference thereto in the decisions, but by an acknowledgment made by Sir William Scott, in the case of the *Emanuel* in 1799, (1 Rob., p. 253;) the case of a neutral vessel carrying from one Spanish port to another, salt owned by the king of Spain, then at war with Great Britain. “With respect to authorities (says he) it has been much urged, that in three cases, *this war*, the Court of Admiralty has decreed payment of freight to vessels so employed: and I believe that such cases did pass, under an intimation of the opinion of the very learned person who preceded me, in which the parties acquiesced, without resorting to the authority of a higher tribunal.” If the decisions of Sir James Mariott in the war of 1778, had been guided by the declaration of France, and not by the law of nations, it is evident, as that declaration was inapplicable to the war of 1793, and had even been falsified on the return of peace in 1783, as stated by Sir William Scott himself, that the opinion intimated by Sir James Mariott with respect to cases, Spanish too, and not French cases, in the beginning of the war of 1793, could have no other basis than the principle, that according to the law of nations taken by itself, the trade of neutrals on belligerent coasts was a rightful trade.

Secondly. Were it admitted that a declaration by France had been so made and communicated, as to become a rule binding on the admiralty court, it is clear that the rule must have been restricted to cases of trade with the *French colonies*, and could have no effect on those of a trade with *Spanish* or *Dutch* colonies, whose governments had made no such declaration as is attributed to France: yet it is not pretended, nor is it known, that any distinction was made by the British courts, between the former and latter cases. The principle in question seems to have been equally renounced in all.\*

Thirdly. The alleged change in the system of France was restricted to her *colonies*. It is not pretended that any permanent change was either made, or declared in the

system of her coasting trade. But the decisions of the British court above cited, relate principally to the coasting trade. The principle then must have been drawn, not from the alleged change of France, but from the law of nations: and if the law of nations authorized in the judgment of the court, a coasting trade shut in peace and opened in war, it must have authorized, in the same judgment, the colonial and any other trade shut in peace and opened in war.

It is an inevitable conclusion, therefore, not only that the trade of neutrals to belligerent coasts and colonies, was sanctioned by the British courts, throughout the war of 1778, but that the sanction was derived from the law of nations; and, consequently, that the new principle, condemning such a trade, was not merely suspended under the influence of a particular consideration which ceased with that war, but was, in pursuance of the true principle of the law of nations, judicially abandoned and renounced.

Passing on to the war of 1793, it appears, however, that the policy of the British government, yielding to the temptations of the crisis, relapsed into the spirit and principle of her conduct towards neutral commerce, which had been introduced, in the war of 1756.

The French revolution which began to unfold itself in 1789, had spread alarm through the monarchies and hierarchies of Europe. Forgetting former animosities, and rival interests, all the great powers on the continent were united, either in arms or in enmity, against its principles and its examples: some of them, doubtless were stimulated, also, by hopes of acquisition and aggrandizement. It was not long before the British government began to calculate the influence of such a revolution, on her own political institutions; as well as the advantages to which the disposition of Europe, and the difficult situation of her ancient rival and enemy might be turned. War was, indeed, first declared by the French government; but the British government was, certainly, the first that wished it, and never perhaps entered into a war against France, with greater eagerness, or more sanguine hopes. With all Europe on her side, against an enemy in the pangs of a revolution, no measure seemed too bold to be tried; no success, too great to be expected.

One of her earliest measures was accordingly that of interdicting all neutral supplies of provisions to France, with a view to produce submission by famine.\*

The project, however, had little other effect, than to disgust those most interested in neutral commerce, and least hostile to France. This was particularly the case with the United States, who did not fail to make the most strenuous remonstrances against so extraordinary a proceeding. The correspondence of their Secretary of State with the British plenipotentiary, (Mr. Hammond), and of Mr. Pinckney the American plenipotentiary with Lord Grenville, the British Secretary of State, are proofs of the energy with which the innovation was combated, and of the feebleness and fallacy with which it was defended. The defence was rested on a loose expression of Vattel. Bynkershoeck, who had not altogether got rid of the ideas of the former century, and by whom Vattel probably was misled, could have furnished a still stronger authority.†

The next experiment of depredation on neutral commerce was directed, notwithstanding the former abandonment of the principle, and the continuance of the abandonment into the early cases of the war<sup>†</sup> of 1793, against that carried on with the possessions of France in the West Indies. This experiment too fell with peculiar weight on the United States. For some time the irregularities went on, without any known instructions from the government reviving the abandoned principle; but without the licentious excesses which followed.

As early, however, as November 6, 1793, instructions were issued, which struck generally at the neutral commerce with the French West Indies. That of the United States was the principal victim. The havoc was the greater, because the instructions being carried into operation before they were promulged, took the commerce by surprize.

This instruction of November 6th, 1793, was addressed to the commanders of ships of war, and to privateers having letters of Marque against France, in the following terms:

“That they shall stop and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and shall bring the same with their cargoes to legal adjudication in our courts of admiralty.”

In some respects this instruction went farther than the new principle asserted by Great Britain; in others it fell short of that principle.

It exceeded the principle in making the *produce* of a French colony, although owned by neutrals, and going from a neutral port where it might have been regularly naturalized, the criterion of the trade. The principle would have extended only to produce exported *immediately* from the colony, in a trade not permitted in time of peace.

Again, the principle was not applicable to an immediate trade from certain ports\* and places in the colonies, authorized by permanent regulations antecedent to the war. The instruction extends *to any colony*, and consequently violates a trade where it was permitted and customary before the war.

On the other hand it falls short of the principle, in as much—1, as it spares articles directly exported from, though not the produce of, the colonies—2, as it does not affect the coasting trade of France, and other branches of French trade, laid open in time of war, on account of the war.

With these mitigations, however, the instruction had a sweeping operation on the neutral commerce with the French colonies, carried on chiefly from the United States.

The resentment produced by it, and which was doubled by the ensnaring concealment of the instruction, appeared not only in the outcry of the suffering merchants, but in the discussions and proceedings of the government. Important restrictions on the commerce of Great Britain were agreed to by one branch of the Congress, and negatived by a single vote in the other. A sequestration of British funds and effects in

the United States was proposed and strongly supported. And an embargo withholding supplies essential to the subsistence of the British West Indies, actually passed into a law, and remained in force for some time. These measures, at length, gave way to the mission of a plenipotentiary extraordinary to the British court, which terminated in the treaty of 1794.

The British government, in the mean time, aware of the powerful tendency of such depredations, to drive the United States into a commercial, if no other warfare, against her, prudently retreated from the ground taken by this instruction, as early as the 8th of January, 1794, when she revoked the instruction to her cruisers, of November 6th, 1793, and substituted the following:

“1. That they shall bring in for lawful adjudication all vessels with their cargoes, that are loaded with goods the produce of the *French West India Islands*, and *coming directly* from any port of the said islands to any port in *Europe*.”

“2. That they shall bring in for lawful adjudication, all ships with their cargoes, that are loaded with goods the produce of the said islands, the property of which goods shall belong to subjects of France, to whatsoever ports the same may be bound.”

“3d. That they shall seize all ships that shall be found attempting to enter any port of the said islands that is, or shall be, blockaded by the arms of his majesty or his allies, and shall send them in with their cargoes for adjudication, according to the terms of the 2d article of the former instructions, bearing date the 8th day of June, 1793.”

“4th. That they shall seize all vessels laden wholly or in part with naval or military stores, bound to any port of the said islands, and shall send them into some convenient port belonging to his majesty, in order that they, together with their cargoes, may be proceeded against according to the rules of the law of nations.”

As the three last articles cannot be regarded as any relaxation or re-modification of the instructions of November, 1793, since they relate only to principles well known to have been long enforced by Great Britain, as a part of the law of nations, it is not easy to discern the motive to them. The only effect of the articles, as an enumeration and definition of belligerent rights, in certain branches of trade, seems to be, to beget perplexing questions with respect to these rights, in the branches of trade pretermitted.

The material article is the first. It varies the preceding instructions in three respects: 1st, in substituting “the French West India islands” for “any colony of France;” of which there are some not *islands*, and others not *West India* islands: 2d, in limiting the seizure, to produce “*coming directly*” from any port of the said islands: 3d, in the very important limitation of the seizure, to vessels bound from those islands to any port in *Europe*.

By these limitations it was apparently, intended to take the direct trade from the French West Indies to the United States, out of the operation of the order of 1793: and, probably also, the trade from the United States to the West Indies; leaving the trade *to Europe*, from the French West Indies, a prey to British cruisers. Whether it



was also meant, as seems to be implied, that the neutral trade from Europe to the French West Indies was to be undisturbed, is a distinct question. This question was actually raised under the ambiguity of the instruction, and decided, not without some marks of self distrust, by Sir Wm. Scott, in the case of a trade from France herself to a West India colony.\*

The explanation of this change in the instructions of the British Government is given, by the Reporter of Sir Wm. Scott's decisions, in the following passage extracted from the appendix to 4 Rob., p. 4: "The relaxations that have since [the instructions of November 6, 1793] been adopted, have originated chiefly in the change that has taken place in the trade of that part of the world, since the establishment of an independent Government on the continent of America. In consequence of that event, American vessels had been admitted to trade in some articles, and on certain conditions, with the colonies both of this country and of France. Such a permission had become a part of the general commercial arrangements, as the ordinary state of their trade in time of peace. The commerce of America was therefore abridged by the *foregoing instructions*, and debarred of the right generally ascribed to neutral trade in time of war, that it may be continued with particular exceptions, on the basis of its ordinary establishment. In consequence of representations made by the American Government, *to this effect*, new instructions to our cruisers were issued, 8th January, 1794, apparently designed to exempt American ships trading between their own country and the colonies of France."

One remark suggested by this explanation is, that if it be a just defence of the orders of January, 1794, it is a severe imputation on those of November, 1793; for the sole reason which is stated, as requiring this revocation of the orders of 1793, was in existence at the date of those rigorous orders; and ought, therefore, to have prevented them. Yet they were not only not prevented, but were permitted to have a secret and extensive operation on the American commerce. Nor does it appear, that in any of the decisions on the captures made within that period, conformably to the instructions, but contrary, as is here admitted, to the law of nations, which, on the British principle, authorized the American commerce, at least as far as it had been actually enjoyed with the French, in time of peace, the court ever undertook to modify the instructions; as is alleged to have been done, in the war of 1778, in consequence of the professions of France that she had opened her colonial ports, generally, to the permanent trade of other nations.

The explanation calls for two other remarks. The first is, that the instruction goes beyond the reason assigned for it. The reason assigned is, that the trade between the United States and the French islands had, by the permission of France, become "the ordinary state of their trade in time of peace." Now so far as this was the fact, the trade is expressly and truly stated, in the explanation itself, to have been limited to "some articles," and "on certain conditions." But the instruction is admitted to have been designed to exempt, without any such limitations, American ships trading between their own country and the colonies of France.

The second remark is, that it is not a fact, that the *representations of the American Government* were made *to the effect* here stated; namely, that the instructions of 1793

debarred them of the right of trading with the French colonies in time of war, *according to the ordinary state of the trade* permitted to them *in time of peace*. The representations of the American Government recognized no such principle, nor included any such complaint; as is proved by official documents\* on the subject.

A third remark might be added. If the ordinary permissions of France to trade with her colonies, was a good reason for exempting the trade of the United States from the order of November, 1793, the exemption ought to have been coextensive with the permissions; and, consequently, to have embraced the *neutrals of Europe*, who enjoyed the same permissions as the United States; instead of being restricted to the latter.

One is really at a loss, which most to admire, the hasty and careless facility with which orders proceed from the Government of a great and an enlightened nation, laying prostrate the commerce and rights of its friends; or the defective and preposterous explanations given of such orders, by those who undertake to vindicate or apologize for them.

But whatever may have been the origin, or the intention of the second orders of 1794, revoking the restraints imposed by those of 1793, on the United States; whilst they suffered those restraints to continue, in great part at least, on other nations; two consequences resulted, which seem not to have been taken sufficiently into foresight.

One of them was, that the nations of Europe, excluded from the trade not forbidden to the United States, were not a little soured by the distinction; and which, very possibly, may have contributed to the revival of the sympathies which brought about the armed neutrality of 1800.

The other was, the vast growth of the carrying trade of the United States, which supplied all parts of Europe, with the produce of the West Indies, and without affording to Great Britain any of the profits of an entrepot.

The development of these consequences could not fail to awaken the attention of the British Government, and is the best key to the instruction which was issued January 25, 1798; and which was extended to the possessions of Spain and Holland, then united with France against Great Britain.

It revoked the instructions of January, 1794, reciting as the consideration which rendered the alteration expedient, “the present state of the commerce of Great Britain, as well as that of neutral countries;” and in lieu thereof, the following was issued:

“That they should bring in for lawful adjudication, all vessels with their cargoes, that are laden with goods, the produce of any island or settlement belonging to France, Spain, or the United Provinces, and coming directly from any port of the said islands or settlements, *to any port in Europe, not being a port of this kingdom, nor a port of that country, to which such ships, being neutral ships, shall belong.*” The residue of the articles merely extend to the islands and settlements of France, Spain, and Holland, the three last articles in the instructions of January, 1794.



The effect of this new change in the instructions was, to sanction a direct trade from *all* the French islands, as well as from those in the *West Indies*, and also from the French *settlements* which were not islands, with a like sanction, to a like trade, from the islands and settlements of the other enemies of Great Britain; to extend to neutrals in Europe, the enjoyment of this trade, with a refusal to the American States, of the *direct trade*, from those islands and settlements to such European neutrals; and finally, to permit to these States, as well as to the neutrals of Europe, a direct trade from the hostile islands and settlements *to Great Britain herself*.

The explanation attempted by the reporter, Dr. Robinson, in his appendix to the 4th vol., p. 4-5, is, that “In consequence of the relaxation [in 1794] of the general principle in favor of *American* vessels; a similar liberty of resorting to the colonial market, for the supply of their own consumption, was conceded to the *neutral* States of *Europe*, a concession rendered more reasonable by the events of war, which, by annihilating the trade of France, Spain, and Holland, had entirely deprived the States of Europe of the opportunity of supplying themselves with the articles of colonial produce in those markets.”

With regard to the *permission to all neutrals* to convey the produce of the enemies’ colonies, directly to *British ports*, he is silent.

From a summary, however, of the discussions which had taken place on cases before the Lords of Appeal, as it is given in the appendix to 4 Rob., p. 6, an explanation of this part of the regulation, might be easily collected, if it were not otherwise sufficiently obvious. Among the arguments used for so construing the last order of 1798, as to justify a Danish vessel in trading from a Spanish colony, to a neutral country, to which the vessel *did not belong*; it is observed, “that, originally, the pretension to exclude *all neutrals*, was uniformly applied on the part of the belligerent; by which the effect of *reducing* such settlements *for want of supplies*, became a *probable issue of the war*; now, since the relaxations have conceded to neutral merchants the liberty of carrying thither cargoes of innoxious articles, and also of withdrawing the produce of the colony, for the purpose of carrying it to their own ports; now, to restrict them from carrying such cargoes *directly to the ports of other neutral States*, becomes a rule apparently capricious in its operation, and one, of which the policy is not evident. From the northern nations of *Europe*, no apprehensions are to be entertained of a *competition injurious to the commercial interests of our own country*. To exclude *them* for this mode of traffic [that is of trafficking directly from such colonies to other neutral countries] in the produce of the enemy’s colonies, is to throw a *farther* advantage into the hands of *American* merchants, who can, with greater ease, import it first into their own country, and then, by *re-exportation*, send it on to the neutral nations of Europe.”

No other key is wanted to let us into the real policy of the orders of 1798; which placed the neutral nations of Europe, and the United States on the same footing, by extending the rights of the former, and thereby abridging the advantages of the latter. This change of “the actual state of the commerce of this country (G. B.) as well as that of neutral countries” was expedient for two purposes: It conciliated the Northern nations, then perhaps listening to a revival of the armed neutrality, and *from whom*

“no apprehensions were to be entertained” of an injurious competition with the commercial interests of Great Britain; and at the same time, it so far took the advantages of re-exportation out of the hands of the American merchants, from whom such a competition, probably was apprehended.

But a mere adjustment of the balance between neutrals in their advantageous trade with the enemy colonies, did not answer all the purposes which were to be consulted. It gave Great Britain herself, no share of the forbidden fruit. She took at once, therefore, the determination, whilst she would permit none of the neutral merchants of any country to carry on this colonial trade of her enemies with another neutral country, to authorize them *all* to carry it on *with herself*; disguising, as well as she could, the policy of making herself the centre and thoroughfare of so extensive a branch of profit, under the general expediency of changing “the state of commerce both British and neutral” as it had resulted from her regulations of 1794; and avoiding, as much as she could, to present to notice, the palpable inconsistency of making herself a party to a trade with her colonial enemies, at the very moment when she was exerting a belligerent pretension, having no other basis, than the probable reduction of them, by suppressing all trade whatever with them.

This subject is too important not to be a little further pursued. Unpleasant as the task is, to trace into consequences, so selfish and so abounding in contradictions, the use made by Great Britain of the principle assumed by her, the development is due to truth and to the occasion. It will have the important effect, at the same time, of throwing further light on the checkered scene exhibited by the admiralty jurisprudence of Great Britain.

It must be added then, that the *commercial policy* for which she employs her new *belligerent* principle, is the more apparent from two subsidiary pretensions, as new, as they are at variance with the maritime rights of neutral nations.

The object of *drawing* through her own warehouses and counting-houses, the colonial trade of her enemies, on its way from the West Indies to the other countries of Europe, being counteracted by the extensive intercourse between the United States and those colonies, and by the re-exportation from the United States, of the imported surplus of colonial produce, the project was adopted, of *forcing* this trade directly from the West Indies to, and through Great Britain; 1st, by checking the West India importations into the United States, and thereby lessening the surplus for re-exportation; 2d, by embarrassing the re-exportation from the United States; both considerations seconded, no doubt, by the avidity of her cruizers and by the public interest, supposed to be incorporated with their success in making prizes; and the first consideration, seconded also, perhaps, by a desire to give an indirect check to the exportation of contraband of war from the United States.

In order to check importations, the principle is advanced, that the outward and the return voyage are to be regarded, as forming but a *single voyage*; and consequently, if a vessel is found with an innocent cargo on board, but on her return from a hostile port, her outward cargo to which, was as contraband of war subject to capture, the

vessel is thereby rendered liable to capture, and the chance for capture, by that means, doubled.

That this principle is of modern date, can be shewn by more than negative evidence; and from a source highly respectable. When Sir L. Jenkins was judge of the high court of admiralty, in the latter period of the 17th century, it was the practice, sometimes for the king, at others for the commissioners of appeal, to call for his official opinions in writing, on cases depending in other courts, or diplomatically represented to the government. These rescripts are valuable, not only as one of the scattered and scanty materials composing the printed stock of admiralty precedents in Great Britain; but as the testimony of a man, who appears to have been not undeservedly regarded as an oracle in his department of law; and to have delivered his opinions with a candor and rectitude, the more meritorious as he served a sovereign who gave little encouragement to these virtues, and as he was himself of a temper and principles sufficiently courtly.

The case of a Swedish vessel, which had conveyed enemy's goods, having been seized on her return, with neutral goods, was represented to the government by the Swedish Resident; and by the Government referred to Sir L. Jenkins, the judge of the high court of admiralty. His report is so interesting in another respect, as well as that for which it was required, that it shall be given in his own words:

“The question which I am (in obedience to his Majesty's most gracious pleasure) to answer unto, being a matter of fact, I thought it my duty not to rely wholly on my own memory or observation, but further to inquire of Sir Robert Wiseman, his majesty's advocate general; Sir William Turner, his royal highness, the lord high admiral's advocate; Mr. Alexander Check, his majesty's proctor; Mr. Roger How, principal actuary and register in the high court of admiralty in England; whether they, or any of them, had observed, or could call to mind, that in the late war against the Dutch, any one ship otherwise free, (as belonging to some of his majesty's allies,) having carried goods belonging to his majesty's enemies, *from one enemy's port to another*, and being seized (after it had discharged the said goods) *laden with the proceeds of that freight* which it had carried and received of the enemy upon the account of the ship's owners, had been adjudged prize to his majesty; they all unanimously resolved that they had not observed, nor could call to mind that any such judgment or condemnation ever passed in the said court; and to this their testimony I must (as far as my experience reaches) concur: and if my opinion be (as it seems to be) required, I do not (with submission to better judgment) know any thing, either in the statutes of this realm, or in his majesty's declarations upon occasion of the late war, *nor yet in the laws and customs of the seas*, that can (supposing the property of the said proceed to be *bona fide* vested in the ship owners his majesty's allies) give sufficient ground for a condemnation in this case. And the said advocates (upon the debate I had with them) did declare themselves positively of the same opinion. Written with my hand this 6th day of February, 1667.”\* Sir L. Jenkins' works, 2 vol., p. 741.

Here the point is clearly established, that a vessel found with a lawful cargo, on a return voyage, cannot be affected by the unlawfulness of the cargo immediately

preceding it; and, consequently, that an outward and return voyage, cannot be considered as but one voyage, or the character of one as transfused into the other.

It is true that, in this case, the cargo in question was not contraband of war, but enemy's property. But there is no room for a distinction in the principle applicable to the two cases. If the two voyages in fact make one and the same voyage in law, an outward cargo of enemy's property must authorize capture in the returned voyage as much as an outward cargo of contraband would authorize it. If the two voyages do not make one and the same; the contraband of war in one voyage, can no more affect another voyage, than enemy's property, in one voyage, can effect another voyage.

It will not have escaped attention that, in the case stated in the report of Jenkins, the voyage in which enemy's property had been carried, and which it was imagined might thence have vitiated the return voyage, was a *coasting* voyage from one enemy's port to another. Yet so immaterial was *that circumstance*, at *that time*, that it appears not even to have been taken into his consideration, much less to have influenced his opinion. Had it been otherwise, it would indeed have made his decision so much the stronger against the amalgamation of two voyages, on account of the unlawfulness of one of them: for on that supposition the first of the two voyages would have been doubly unlawful, as engaged both in carrying enemy's property, and in carrying it from one enemy's port to another.

But this particular principle is not only of modern date, but of very recent date indeed. Its history, like that of many other belligerent innovations by Great Britain, is not unworthy of attention.

In December, 1798, in the case of the Frederick Molke, a Danish vessel that had got into Havre, then deemed in a state of blockade, and was taken on her way out, August 18th, 1798, it was urged to be like the case of a return voyage, where the cargo of the outward voyage had been contraband. Sir William Scott admitted that, in the latter case, "*the penalty does not attach on the returned voyage*," but denied the affinity between the cases: "there is this essential difference," said he, "that in *contraband* the offence is *deposited with the cargo* whilst in such a case as this, it is continued and *renewed* in the subsequent conduct of the ship;"\* the act of *egress* being, according to him, as culpable as the act of *ingress*.

In August, 1799, in the case of the Margaretha Magdalena; a vessel returning to Copenhagen from Batavia, her outward cargo having consisted of contraband goods, was seized at St. Helena, September, 1798. On the ground, however, that the ship and cargo were neutral, and that the outward shipment from Copenhagen was contingent and not absolutely for Batavia, but sent under the management of the master to invest the proceeds in the produce of Batavia, restitution was decreed by Sir William Scott, notwithstanding the fact that the contraband "*articles were actually sold at Batavia*," with a remark only, that there was great reason to bring this case to adjudication, as a case very proper for enquiry. On this occasion the judge made the following observations: "It is certainly an alarming circumstance in this case, that although the outward cargo appears to have consisted of contraband goods, yet the principal owner appears publicly at Copenhagen, and makes oath, "that there were no prohibited

goods on board, destined to the ports of any party now at war.” The master himself describes the cargo that he carried out as *naval stores*, and in looking into the invoice I find that they are there represented *as goods to be sold*. That being so, I must hold that it was a most noxious exportation, and an act of very hostile character, to send out articles of this description to the enemy, in direct violation of public treaties, and of the duty which the owners owe to their own government. I should consider it as an act that would *affect the neutral in some degree* on this *returned voyage*, for although a ship *on her return* is not liable to confiscation for having *carried a cargo of contraband* on her *outward voyage*, yet it would be a little too much to say, that *all impression* is done away; because if it appears that the owner had sent such a cargo, under a certificate obtained on a false oath, that there was no contraband on board, it could not but affect his credit at least, and induce the court to look very scrupulously into all the actions and representations of such a person.”\*

That the judge was beginning to be a little unquiet under the rule imposed on himself, not to consider a ship on her return voyage as liable to confiscation for having carried a cargo of contraband on her outward voyage, is sufficiently visible. He is found, nevertheless, still submitting to the restriction.

The case of the Immanuel succeeded November 7th, 1799. It is the case of a Hamburg ship, taken 14th August, 1799, on a voyage from Hamburg to St. Domingo, having in her voyage touched at Bordeaux, where she sold part of her cargo, and took a quantity of other articles for St. Domingo. The question was started, whether the stores which had been discharged at Bordeaux, though originally destined for St. Domingo, were contraband or not. The inference of the judge was, that they were not of a contraband nature, at least that they were left ambiguous, and without any particular means remaining of affording a certainty upon the matter. “If so,” said he, “it is useless to imagine what the effect of contraband, in *such circumstances*, would have been. I shall say no more, than that *I incline to think* that the discharge of the goods at Bordeaux would have extinguished their powers of infection. It would be an extension of this rule of infection, not justified by any former application of it, to say, that after the contraband was actually withdrawn, a mortal taint stuck to the goods, with which it had once travelled, and rendered them liable to confiscation, even after the *contraband itself was out of its reach*.”\*

This was not indeed a return voyage, but one link of an outward voyage. The reason, however, given why contraband, after being discharged, could not leave a confiscating taint on the expedition, namely, because itself was out of the reach of confiscation, is precisely common to the two cases; yet it would seem that the judge is becoming not a little languid in maintaining the opinion, “that the offence of contraband is deposited with the cargo.” He now “*inclines to think* that such would be the effect.”

February 5, 1800, the case of the Rosalie and Betsey, was that of a ship taken May 31, 1799, on a voyage from the Isle of France, asserted to be to Hamburg. It was made a question of property, turning on a question of fraud; the fraud in the returned voyage was held to be reinforced by the fraud in the outward voyage; and that fraud is stated

by Sir William Scott, “as more noxious on account of the *contraband nature* of several of the articles of the *outward cargo*.”

Here contraband in an outward voyage was, in spite of the maxim that its offence was deposited with the cargo, allowed to have an *influence* on the character of the *returned voyage*. Still it was but an indirect and partial influence. It was held to be an *aggravation only* of the fraud, the fraud being the gist of the offence.

In 1800, June 24, occurs the case of the Nancy, Knudson master, a ship taken on a voyage to Copenhagen from Batavia, whither she had carried contraband of war. The cargo appears to have been condemned, on the ground of fraud in the papers and destination, *combined with the contraband quality* of the *outward cargo*. The complexion and weight, however, which the last ingredient had assumed in the mind of the judge, are seen in the following extract from the judgment pronounced by him:

“But it is said, this is a past transaction, and that in case of contraband, the returned voyage has *not usually* been deemed connected with the outward. In *European* voyages of no great extent, where the master goes out on one adventure, and receives at his delivering ports, new instructions and further orders, in consequence of advice obtained of the state of the markets, and other contingent circumstances, *that rule* has prevailed; *but* I do not think, in *distant* voyages to the *East Indies*, conducted in the manner this has been, the same rule is fit to be applied. In *such a transaction*, the different parts are not to be considered as *two voyages*, but as *one entire transaction*, formed upon one original plan, conducted by the same persons, and under one set of instructions, *ab ovo usque ad mala*.”\* This condemnation of the cargo was confirmed by the lords of appeal, and the indulgence even allowed with respect to the ship, by the high court of admiralty, reversed by that superior tribunal.

The existence of contraband in an outward voyage, not only figures more considerably in this, than in any preceding case; but the judge gets hold of a new implement of judicial warfare on neutral commerce. In aid of presumptive fraud, of the alleged continuity of fraud from the outward into the returned voyage, and of the aggravation given to fraud by the ingredient of contraband in the outward voyage; in aid of all these, the *distance of the voyage*, makes for the first time, its appearance. In the case of the Margaretha Magdalena, the voyage, like this, was a voyage to Batavia. In the case of the Rosalie and Betsey, the voyage was also into the East Indian seas. In neither of these cases, the slightest allusion is made to that criterion of right and wrong. The discovery then may fairly be dated with the case of the Nancy, of no older date than June, 1800.

But mark the reason, why *distant* voyages to the East Indies are distinguished from European voyages of no great extent. It is, because in the latter the master “receives at his delivering ports, new instructions and further orders, in consequence of advice obtained of the state of the markets, and other contingent circumstances;” whereas, in distant voyages to the East Indies, *conducted in the manner this has been*, the two voyages are to be considered as one entire transaction, formed upon one original plan, conducted by the same persons, and under one set of instructions.

If the reason here given for the distinction between distant voyages and voyages of no great extent, be a good one, it is not easy to see the reason for requiring, in addition to the distance of the voyage to the East Indies, that it should be conducted in the manner of this particular voyage; unless indeed it be, as there is too much room to remark in the decisions of the Judge, with a view to rest every case, as much as possible, on its own particular circumstances; and thereby avoid the judicial fetters formed by a chain of definite precedents.

Certain it is, that if the outward and returned voyages are to be taken as one, where the distance of them is such, that new orders cannot be given, in consequence of new advices from the foreign ports of delivery, as may be done in voyages of no great extent; but that the whole business must be executed under one original set of instructions; every voyage to the East Indies, *in whatever manner conducted*, must fall within the rule which determines the outward and returned voyage to be but one voyage; in other words, that in that extensive branch of neutral commerce, the outward and returned voyage, making but one, contraband in the outward cargo, *though deposited at its place of destination*, is to have the same effect on the returned voyage, as it would have had on the outward voyage, if actually intercepted on the outward voyage.

Nay more; the rule must be applicable to every *European voyage, of great extent*; an extent so great as to require that the sale of the outward cargo at the ports of delivery, and the purchase of a return cargo, should be provided for, in the same original instructions.

In no view can the rule be less applicable to *distant voyages* between Europe and the West Indies, than between Europe and the East Indies; nor more to European voyages than to American voyages to the West Indies, where these are of so great extent as to require that the returned voyage should be provided for in the same set of instructions with the outward voyage.

Whether these analogies and inferences entered into the contemplation of the Judge on this occasion, is an enquiry which may be waived. Nor is it known to the public, whether any intermediate steps were taken by him, or by the superior tribunal, between that date and the 24th June, 1803, conducting the policy or opinion of the cabinet, towards the instructions of this last date. These form, however, a very natural result of those preliminary ideas, as appears by the tenor of the instructions, which is as follows:

“In consideration of the present state of commerce, we are pleased hereby to direct the commanders of our ships of war and privateers, not to seize any neutral vessel which shall be carrying on trade directly between the colonies of enemies and the neutral country to which the vessel belongs, and laden with the property of inhabitants of such neutral country: Provided, that such neutral vessel shall not be supplying, nor shall have, on the *outward voyage* supplied, the enemy with any articles of *contraband of war*; and shall not be trading with any blockaded port.”



In these instructions we find the principle formally adopted, and the returned cargoes of West India produce actually obstructed, on their way to the United States, by the application of the principle, wherever the outward cargo had included contraband. We find, of course, the West India trade so far forced out of the channel to Europe through the United States, into such channels to and through Great Britain, as she may chuse to prescribe.

This being necessarily and obviously the commercial effect of the instructions, it may fairly be supposed that it corresponds with the intentions of a nation so clear-sighted in whatever affects her commerce; and, consequently, that the principle on which this instruction is founded, was assumed as subsidiary to the commercial policy on which was founded the main principle under investigation.

Another observation, with respect to this instruction, forces itself upon us. It was a heavy reproach against the instruction of November 6th, 1793, that it was not promulged until it had for some time been ensnaring, and laying waste, the commerce of neutral nations with the West Indies. The instruction of June 24, 1803, first found its way (probably by chance) to public notice in the United States, from the obscure island of Tortola, in the summer of 1805. It must, then, have been in the pockets of cruisers, ensnaring and destroying the commerce of this country, as far as that degree of innovation could have that effect, for a period of about two years. The reproach is heightened, too, by the consideration that the snare, in this case, was successful in proportion to the respect observed towards former instructions, the faith of which was violated by the *ex post facto* operation of that in question. A reparation of the damage is the least atonement that a just and wise nation can wish to make, for such a trespass on all the maxims of public morality, as well as of national honor.

The second pretension subsidiary to the commercial policy of instructions, clothed with the language of belligerent rights, is that of subjecting to capture, colonial produce, re-exported from a neutral country to countries to which a direct transportation from the colonies by vessels of the re-exporting country, has been disallowed by British regulations. The effect of this pretension evidently is, to check neutral nations, particularly the United States, in the circuitous transportation of West India produce; and in the same proportion, to force the trade into channels terminating in British ports. And the effect is the more particularly in her favor, as the re-exportation of the surplus carried into her ports can be regulated by her own laws, for her own interests; whilst she will not permit the laws of other countries to regulate the re-exportation of the surplus carried into their respective ports.

That this pretension, also, is as new as it is arbitrary, will be best seen by a review of its rise and progress; which will at the same time, as in the other instance, illustrate the inconstancy and inconsistency of the maritime proceedings of Great Britain toward other nations.

Prior to the war of 1756, no trace of any such pretension is discovered; and it is testified by the authority of Lord Mansfield, as already seen, that a principle was, during that war, judicially settled in opposition to it. A neutral vessel, off the neutral island of St. Eustatius, had received on board a part of her cargo from French boats,



from a French colony. "This," says his lordship, "is now a *settled point by the lords* of appeals, to be the same thing as if they had been *landed* on the Dutch shore, and then put on board afterwards; in *which case* there is no *color* for seizure."

Here the rule was solemnly settled by the highest admiralty tribunal in Great Britain, that the trans-shipment, off a neutral port, of colonial goods from an enemy's vessel, protected the goods from capture, and that where such goods had been landed and reladen, there was not even a *color for seizure*.

Notwithstanding this solemn recognition of the neutral right, it was found, as also has been seen, that French produce exported by neutrals from the neutral port of Monte Christi, during the war of 1756, was not protected by the rule.

During the war of 1778, the whole claim of disturbing neutral commerce on the ground of its not being open in peace as well as in war, having been relinquished, the question could not occur until the war of 1793. And what is not to pass unnoticed, the first case in which the point fell under judicial observation, appears to have been that of the *Immanuel* in November, 1799. During the six preceding years, as may be inferred from what then fell from the judge, no doubt had existed, that an importation of colonial produce into a neutral country, converted it into the commercial stock of the country, with all the rights, especially those of exportation, incident to the produce or manufactures of the country itself.

It will be most satisfactory to present the opinion of Sir William Scott on that occasion, in the words of his reporter. "It is argued that the neutral can import the manufactures of France to his own country, and from thence directly to the French colony; why not immediately from France, since the same purpose is effected? It is answered, that it is effected in a manner more consistent with the general rights of neutrals, and less subservient to the special convenience of the enemy. If a Hamburg merchant imports the manufactures of France into his own country (which he will rarely do if he has like manufactures of his own, but which in *all* cases he has an incontrovertible right to do) and exports them afterwards to the French colony, which he does not in their original French character, but as goods which, by *importation* had become part of the national stock of his own neutral country, they come to that colony with all the inconvenience of aggravated delay and expense; so if he imports from the colony to Hamburg, and afterwards to France, the commodities of the colony, they come to the mother country under a proportional disadvantage; in short, the rule presses on the supply at both extremities, and, therefore, if any considerations of advantage may influence the judgment of a belligerent country in the enforcement of the right, which upon principle it possesses, to interfere with its enemy's colonial trade, it is in that shape of this trade, that considerations of this nature have their chief and most effective operation."\*

Although the judge is somewhat guarded in his terms, *more consistent* with the *general rights*, and *less subservient* to the special convenience of the enemy; and somewhat vague, if not obscure, in his reasoning; yet he admits that an *importation* of goods from a belligerent country, into a neutral country, had the effect of making them a part of the national stock of the neutral country, equally entitled with the

national stock itself, to be exported to a belligerent country. What circumstances would constitute an importation are not specified; nor does it appear in what light a mere trans-shipment, at a neutral port, would have been regarded.

The next occasion, on which the judge delivered an opinion on this subject, occurred in a case before the court, February 5, 1800, and which came before it again on farther proof, April 29, 1800. It was the case of an American ship taken October 16, 1799, on a voyage from Marblehead to Bilboa, with a mixed cargo of fish, sugar and cocoa. The fish, which made the principal part of the cargo, could not enter into the question. The sugar was part of a whole cargo brought from the Havanna in the same ship, had been warehoused from some time in June till some time in August, during the repair of the ship, and was then reshipped. The cocoa, small in quantity, was originally from a Spanish settlement, and had been trans-shipped from another vessel, lying at Marblehead, after having been entered at the custom-house. *The ship had been restored by the captors.* The property of the cargo was proved. The legality of the voyage was the sole question. On this question, Sir William Scott pronounced the following judgment:

“There remains then only the question of law, which has been raised, whether this is not such a trade as will fall under the principle that has been applied to the interposition of neutrals in the colonial trade of the enemy. On which it is said that if an American is not allowed to carry on this trade directly, neither can it [he?] be allowed to do it circuitously. An American has *undoubtedly* a right to import the produce of the Spanish colonies for his own use; and after it is imported bona fide into his own country, he would be at liberty to carry them on to the general commerce of Europe: Very different would such a case be from the Dutch cases, in which there was an original contract from the beginning, and under a special Dutch licence to go from Holland to Surinam, and to return again to Holland with a cargo of colonial produce. It is not my business to say what is universally the test of a bona fide importation. It is argued that it would not be sufficient that the duties should be paid, and that the cargo should be landed. *If these criteria are not to be resorted to, I should be at a loss to know what should be the test;* and I am strongly disposed to hold, that it would be sufficient *that the goods should be landed and the duties paid.* If it appears to have been landed and warehoused for a considerable time, it does, I think, raise a forcible presumption on that side; and it throws it on the other party to shew how this could be merely insidious and colorable. There is, I think, reason to believe that the sugar was a part and parcel of a cargo said to have been brought from a Spanish colony in this vessel; and if so, the very distribution of the remainder is some proof that they were not brought with an intention only of sending them on. But I have besides positive proof in the affidavit of Mr. Asa Hooper, who swears *that the duties had been paid for them.* Then the only difficulty remains as to the cocoa, and it is said by one of the witnesses, and by one only, that it was trans-shipped from another vessel, and that it had been brought into America only ten days before; but although there is something of a difficulty arising on this small part of the cargo, yet upon the whole I cannot think it weighty enough to induce me to send the case across the Atlantic for still further proof, as to the facts of this recent importation and trans-shipment, or of its having been transferred to the present proprietors, or of having been exported without a previous payment of import duties. If it had composed a larger part of the cargo, I

might have deemed it reasonable to have had somewhat more of satisfaction on some of these points, which do not appear with sufficient certainty to found any legal conclusion against it. It appears by the *collector's certificate* that it had been *entered* and *imported*, and I think that these words are *sufficient to answer the fair demands of the court.*"

It must be confessed that we perceive, in this opinion of the judge, somewhat of that customary forecast, which in tying a knot to bind himself, avoids drawing it too close to be loosened a little, if there should be occasion. It is, nevertheless, established by the precedent, that the landing of the goods and paying the duties, is a sufficient test of the importation; and that the certificate of the collector that "they have been entered and imported, is all the evidence of the fact, that can *fairly* be demanded by the court."

It might indeed have been expected that the rule stated by Lord Mansfield to have been *settled by the lords of appeals*, [which makes the trans-shipment to be equivalent to the landing and reshipment of goods, and this last procedure to take away all color for seizure,] would have found its way into the notice of the judge. That rule, however, cannot be impaired by any thing in his decision for two reasons. One is, that the further satisfaction, which, if the part of the cargo transshipped had been more considerable, he might have deemed reasonable on some of the questions; might refer not to the legality of the voyage, but to the question of property; and it is certainly agreeable to all the just rules of interpretation so to understand it, rather than to suppose a purpose in an inferior court, to decide in direct opposition to a rule settled by the superior court. The other reason is still more conclusive; it is, that on the supposition of such a purpose in an inferior court, it could have no legal effect in controuling the rule *settled* by the superior court, the rule by which alone the conduct of individuals could be governed.

Such has been the *judicial* exposition of the neutral right, even under the British restrictions. The acknowledgment by the *cabinet itself*, was officially disclosed on the following occasion, and to the following effect:

The cruisers of Great Britain having seized, and the vice admiralty courts having condemned, American vessels bound from the United States to the Spanish West Indies, on the pretext that their cargoes consisted of articles the growth of Spain, then at war with Great Britain; the American Minister in London, in March, 1801, represented to the British Government the iniquity of the proceeding, with the indignation which it inspired: and required that precise instructions should be dispatched to the proper officers in the West Indies and Nova Scotia, to put an end to the depredations. The subject was referred to the king's advocate general, an extract from whose report was communicated by the British Secretary of State to the American minister, with information that the king had ordered the doctrine laid down in the report, to be immediately transmitted to the several inferior judges, as the law for their future guidance and direction.

The extract containing this doctrine shall be literally recited:

“I have the honor to report, that the sentence of the vice admiralty court appears to be erroneous, and to be founded in a misapprehension or misapplication of the principles laid down in the decision of the court of admiralty referred to, without attending to the limitations therein contained.

“The general principle respecting the colonial trade has in the course of the present war been to a certain degree relaxed in consideration of the present state of commerce. It is now *distinctly understood*, and has been repeatedly so decided by the high court of appeals, that the produce of the colonies of the enemy may be imported by a neutral into his own country, and may be re-exported from thence, even to the mother country of such colony; and in like manner the produce and manufactures of the mother country may, in this circuitous mode, legally find their way to the colonies. The direct trade, however, between the mother country and its colonies has not, I apprehend, been recognized as legal, either by his majesty’s Government or by his tribunals.

“What is a direct trade, or what amounts to an intermediate importation into the neutral country, may sometimes be a question of some difficulty. A general definition of either applicable to all cases, cannot well be laid down. The question must depend upon the particular circumstances of each case; perhaps the mere touching in the neutral country, to take fresh clearances, may fairly be considered as a fraudulent evasion, and as in effect the direct trade; but the high court of admiralty has expressly decided (and I see no reason to expect that the *court of appeal will vary the rule*) that *landing the goods and paying the duties* in the neutral country, *breaks the continuity of the voyage*, and is such an importation as legalizes the trade; altho’ the goods be *reshipped* in the *same vessel*, and on account of the *same neutral proprietors*, and forwarded for sale to the mother country.”\*

It is impossible to express the law meant to be here laid down in clearer terms, so far as it determines “that landing the goods and paying the duties” in a neutral country, legalizes the circuitous trade, even between a belligerent country and its own colonies. What inferior circumstances would have the same effect are not specified. It is not decided without a “perhaps” that the mere touching, &c., would be insufficient to legalize the trade. Nor is the legality even of a *direct trade* between the mother country and its colonies, denied in stronger terms than “I *apprehend* it has not been recognized.”

Thus stood the admiralty in Great Britain, as announced by British tribunals, and officially communicated by the British Cabinet to the neutral world. So it had continued to stand, as a pledge and safeguard to neutrals, conforming themselves to it, from the dates of those authorities, the last of which is as far back as the spring of the year 1801.

With what astonishment, then, must the neutral world now learn, from the decision of Sir William Scott on the 23d July, 1805, that, according to the rule of law just laid down, after much deliberation, by the lords of appeals, “the circumstances of landing the goods or securing the duties, do not furnish complete evidence of the termination of the voyage;” and that without this complete evidence, derived from the *original*

*intention* of the importing voyage, the voyage from the neutral port will be treated as the continuance of the voyage from the colony to the mother country.

This political change in the judicial rules of condemnation, admits no other satisfactory, than a commercial explanation; for the loss of character, which it induces, is a greater sacrifice than could be made to the cupidity of cruisers, or the value of their prizes to the public.

The whole course, indeed, of modifications pursued by the instructions, and by the decisions of the courts as they appear from day to day, can leave no doubt that the primary object with Great Britain has been to transfer to herself as large a share as possible of the commercial advantages yielded by the colonies of her enemies. An absolute monopoly was embarrassed by the irresistible pretensions of neutral countries; more especially of the United States, whose neighborhood and habits of intercourse, together with other considerations, forbade a perseverance in the original attempt to exclude them. They were accordingly the first of the neutral nations towards which a relaxation was afforded. The relaxation, after considerable delay, was extended, by the instruction of 1798, to the neutral nations of Europe. That instruction was founded on a compromise between the interest and the prudence of Great Britain. It permitted neutral nations to trade *directly* with the colonies of her enemies; without trading in colonial productions with one another; and permitted all of them to carry those productions *directly* to *Great Britain*. This arrangement was manifestly calculated to limit the importations of each neutral country to the amount of its own consumption; and consequently to turn the immense residue of colonial wealth, through neutral vessels, into her own market; whence it might be dispensed, under her own regulations, to the neutral countries of Europe having no direct commerce with the West Indies, and even to the belligerent nations whose commerce with their respective colonies she has as completely destroyed, as she has their commerce with foreign countries. The arrangement was specious, but proved to be deceptive. It was expected that the expense and delay of a circuitous trade through the United States would prevent importations and re-exportations, interfering with the projected trade directly from the West Indies to herself; and as long as this expectation was in any degree indulged, the right of re-exportation was admitted, though reluctantly, both by the Government and the courts. Experience, however, finally shewed, that the activity, the capital, and the economy employed by the American traders, overpowered the disadvantages incident to the circuit through the ports of the United States; and secured to them the profits of supplying Europe with the colonial productions of her enemies. In proportion as this unforeseen operation disclosed itself, the *commercial* jealousy of Great Britain began to take alarm. Obstructions were to be thrown in the way of importations. Re-exportations were seen with growing discontent. The idea of continuity, by which two voyages were consolidated into one, came into vogue. The Vice Admiralty courts, regardless of the superior decisions in England, would not allow that the landing of a cargo, and paying the duties, protected it against condemnation. At length appeared *the sentence of Sir Wm. Scott*, above cited, carrying into effect the construction of the inferior courts, as having been deliberately sanctioned by the Lords of Appeal. The doctrine established by that decision has been followed by other decisions and dicta, at first requiring the re-exportation, in another ship, then a previous sale of the articles in the neutral

market, then other conditions, one after another, as they were found necessary; till it is finally understood, that no precautions whatever are to bar the cruisers from suspecting, nor the courts from scrutinizing, the *intention* of the original importer, and that the proof of this intention not to re-export the articles, is to fall on the claimant. To fill up the measure of judicial despotism, these wanton innovations are now extended to vessels returning from the belligerent mother countries, as well as to those going thither from the United States; with the addition of demands of proof never before heard of in prize courts, on points utterly unknown to the law of nations.

These unexampled and vexatious proceedings manifestly have in view *the entire obstruction* of colonial re-exports from the United States; and it would be more candid in Great Britain, if not more just, to give public notice, at once, that in all such cases capture and condemnation would be authorized.

Her present system, as subsidiary to the extension of her commerce, will be still further seen in her concurrent measures, of a type not less extraordinary than that of any which have preceded them.

According to the instructions issued within the period of the existing war, or to the received interpretation of them, the permission given to neutrals by those of 1798, to carry the produce of enemy's colonies, directly therefrom to Great Britain, has not been continued. At first view this might appear to be inconsistent with the policy ascribed to her, in obstructing re-exportations from the United States. The act of Parliament, of June 27, 1805, however, which has been already noticed, changes this appearance of departure from that policy, into a new proof, and even an extension of that policy. By the regulations of that act a direct trade is opened between the British colonies in the West Indies and those of her enemies; and her enemies themselves are invited to enter into the trade. Whilst neutrals, therefore, are excluded from carrying colonial produce directly from the colonies to Great Britain, the commercial views of Great Britain are answered by the substitution of another channel through her own colonies; with the additional advantage of a *monopoly to her own ships*, in the transportation from her colonies across the Atlantic; and for the sake of this advantage, or for that of repressing the growth of neutral rivalship, or on both these accounts, she has been willing to encounter all the reproach of cultivating an avowed commerce with her enemies, in the very moment of laying new restrictions on that of neutrals with them.

Further; the act of Parliament, of June 27, 1805, providing for a trade between Great Britain and the colonies of her enemies, through the medium of free ports in her own colonies, was preceded by an act of April 10, 1805, authorizing licences to *British subjects*, to import, *during the war*, into Great Britain, in *neutral vessels*, for their *own* or neutral account, from the American colonies of her enemies, most of their productions; requiring, at the same time, that all sugar and coffee so imported should be *re-exported*; and that *the value* of a certain portion of the imports from such colonies should be returned *in goods and commodities from Great Britain*.

Again; in concert with the act of June 27, instructions, founded on another act of Parliament, were issued, June 29, 1805, authorizing British subjects to export in

neutral vessels to France, Spain, and Holland, a long list of articles, including their respective colonial productions; and to import therefrom a long list of such articles as suited her own wants.

To complete the arrangement, in all its forms, it has been officially announced in the American Gazettes, conformably to a resolution of the British privy council, of August 3, 1805, that the trade with the settlements and islands belonging to the enemy, in America and the West Indies, is to be carried on through the medium of the British free ports in the West Indies, and *not otherwise*.

The system of Great Britain may, therefore, now be considered as announced to all the world, without disguise, and by the most solemn acts of her government. Her navy having destroyed the trade of her enemies, as well between the mother countries and their colonies, as between the former and neutral countries; and her courts, by putting an end to re-exportations from neutral countries, reducing the importations into these, to the mere amount of their own consumption; the immense surplus of productions accumulating in the American possessions of her enemies can find no outlet but through the free ports provided for it; nor any other market than the British market, and those to which she finds it for her interest to distribute it; with a view to which, she not only allows her enemies to trade with her possessions, but allows her own subjects to trade with her enemies. And thus, in defiance as well of her treason laws and of her trade laws, as of the rights of neutrality, under the law of nations, we find her, in the just and emphatic language of the President, “taking to herself, by an inconsistency at which reason revolts, a commerce with her own enemy, which she denies to a neutral, on the ground of its aiding that enemy in the war.”\*

But let us return for a moment to the series of instructions of which an historical review has been taken; and advert to some additional lights in which the judicial construction and application of them present the conduct of Great Britain.

Prior to the order of November 6, 1793, the general principle forbidding to neutrals a trade opened to them during the war, must, if it be a principle of the law of nations, as asserted by Great Britain, have been the rule of Admiralty decisions. Accordingly, it appears, by 4 Rob. Appendix, p. 12, that condemnations in cases prior to that date were, in the court of Appeals, made to rest on that principle.

The orders of November 6, 1793, designated for the operation of the principle, the trade with the colonies of the enemy; as well the trade to, as the trade from, them.

The orders of January, 1794, expressly revoking the orders of November, 1793, designated for the capture, the trade only *from the West India Islands* of the enemy, and bound directly to Europe, only.

The orders of January, 1798, revoking expressly the orders of January, 1794, designated for capture the trade from the islands or settlements of the enemies, bound directly to any port in Europe; excepting what might be bound to British ports, or to the ports of the country to which the neutral vessels should belong.

Without entering into a variety of minute questions growing out of the varied and very inaccurate expressions in which the orders are penned, several of very great importance occur, in expounding and applying the rules laid down.

The first question is, whether the first order of 1793, which made no express reference to the general principle, and which was limited to the colonial branch of the enemy's trade, was to be understood as merely a specification of certain cases, to which the general principle was applicable, leaving the general principle in force as to all unspecified cases; or whether this specification of certain cases was to be understood as implying a legalization of cases unspecified.

The question arises, also, under the successive orders, each of them revoking the orders immediately preceding, whether it was to be understood, that the specification of certain cases did, or did not, legalize the cases omitted in the same order, but specified in the orders preceding.

The more obvious construction of the original order, even, seems to be, rather that it was meant to define the *only* cases to which the general belligerent claim was to be applied, than that it was meant merely to notify the claim in those particular cases; a claim not more requiring notification in those cases, than in the cases not notified.

With respect to the orders of posterior dates, the fair construction implies, that the belligerent claim was narrowed, first, by all the difference between the orders of 1793 and those of 1794; and finally, by all the difference between the orders of 1794, and those of 1798.

Taking the whole together under these constructions, the application of the general principle of capture was restricted by these orders to the trade of neutrals *from* the colonies of enemies, *directly* to ports, other than their own *respective ports* and the *British ports*, and consequently there remained exempt from capture:

- 1st. The coasting trade, and every branch of trade not colonial.
- 2d. The trade *from any* neutral country, *to* belligerent colonies.
- 3d. The trade by neutrals *from* any belligerent country *to* its own colonies, and to the colonies of another belligerent country.
- 4th. The trade between belligerent colonies, whether belonging to the same or to different belligerent countries.

Applying this rule of implication to the two orders only of 1794 and 1798; and admitting those of 1793 not to have superseded by implication, the claims to capture in cases not therein specified, there will be no other exception to the relations or exemptions just enumerated in favor of neutral commerce, but the coasting trade, and other trades not colonial, to which Great Britain has applied, or may choose to apply, the general principle.



In general the high court of admiralty seems, by applying the assumed principle to the coasting trade, to have pursued that construction of the original order of 1793, which left the general principle in force as to cases not specified in it; and to have considered the relaxations in the succeeding orders of 1794 and 1798, as referring solely to the colonial trade.

There appears, however, at no time to have been any clear and fixed opinion in the court, with respect to the illegality and penal consequences of the coasting trade.

Few cases are reported, perhaps few have occurred, of discussions relative to this branch of trade. In 1 Rob., p. 104, the subject is incidentally brought into view, in a case where a French vessel had been purchased. The doctrine held by the judge is expressed as follows: "We certainly do allow it, [the purchase,] but only to persons conducting themselves in a fair neutral manner, &c.; besides, this vessel appears to have been engaged in the coasting trade of France. The court has never gone so far as to say, that pursuing one voyage of that kind would be sufficient to fix a hostile character: but in my opinion, a habit of such trading would. Such a voyage however must raise a strong degree of suspicion against a neutral claim; and the plunging at once into *a trade so highly dangerous*, creates a presumption that there is an enemy proprietor lurking behind the cover of a neutral name." Here, not the coasting trade itself, but the presumption of enemy's property found in it, is made the ground of animadversion.

In the case of the *Speculation*, the same idea presents itself.\*

The *Emanuel*† was itself the case of a coasting trade. In this case the judge descanted with great energy and rigor, on the manifest illegality of the coasting trade. "Can there be described," says he, "a more effective accommodation that can be given to an enemy during war than to undertake it for him during his own inability?" He did not however proceed further than to refuse freight on the principle settled by ancient judgments, *that "neutrals are not permitted to trade on freight."* He particularly refers to the case of the *Mercurius*, [Lords, March 7, 1795,] in which freight was refused. Why were not the ships confiscated in these cases? that being laid down in other cases as included in the penalty for illegal voyages, and actually applied ultimately to cases of a trade between a colony and the mother country, to which the coasting trade is strictly analogous; both being trades from one port to another port of the same nation. It is not even to be inferred from the authorities here cited, that a coasting trade, in the produce of the country, if carried not on freight, but as property belonging to the neutral owner of the ship, is subject to any penalty. This indulgence to the coasting, and rigor towards the colonial trade, is it to be explained by the fertility of the one, and the little value of the other, as a source of captures and commercial profit, or in what other way?

With respect to the orders of '94 and '98, and the colonial trade, it appears to have been in general understood, that they were to be construed as successively enlarging the trade of neutrals with the colonies of enemies, in the manner and to the extent above explained.

The dilemma was indeed unavoidable; either the orders were to be considered as relaxations, (and if relaxations at all, in that extent,) or as leaving the general principle in force in cases not specified in the orders, and therefore as no relaxations at all.

This latter decision would have given a character of mockery to the profession and parade of making, in their orders, so many sacrifices of belligerent rights to a spirit of moderation and amity towards neutrals. The former side of the dilemma, therefore, was necessarily taken. The orders, those of '94 and '98 at least, were relaxations.

As relaxations however in the extent required by an obvious and consistent interpretation, the door, opened to neutral commerce with the belligerent colonies, was found to be wider than was compatible either with the interests of British commerce, and the avidity of British cruisers, or the probable intentions of the British government.

What was to be the remedy? The first tried was that of shutting the door gradually, by the dint of constructions, as may be seen by tracing the colonial cases adjudged by Sir William Scott, and reported by Robinson, and the decisions of the Lords of Appeals referred to by the reporter.

The task was assuredly not a little difficult, of which there is the strongest demonstration in the crooked and contradictory reasonings and decrees, into which it forced the very eminent talents of the judge who presides in the high court of admiralty.

In addition to the evidence already presented, take the following comparison between his rule of construction in the case of the *Providentia*,\* and the rule of construction in the case of the *Immanuel*.†

In the former case, August 16, 1799, he observes, “the first instructions were to bring in all ships which had been trading with any colony of the enemy: but this country afterwards receded from these directions; and the second orders were to bring in all ships laden with produce of the West India islands *coming directly* from the ports of the said islands *to* any port in Europe. I cannot but consider this as an abandonment of the former law, [instruction,] and I cannot but think that a cruiser taking this instruction, in *conjunction with those* given before *must have inferred* that it was no longer the intention of government to bring in, and much less to confiscate,” [was there room for this distinction?] “cargoes of West India produce, *unless coming to some port* in Europe: this was followed by instructions now in force, which direct the bringing in of all vessels laden with the produce of the French and Spanish settlements, coming *from* the ports of such settlements to any port of Europe, other than the ports of that country to which the vessel belongs. It is certainly not laid down in the negative that they shall not bring in such vessels as are coming from such settlements to their own ports; but *looking at the former instruction*, I think it was a strong admonition to cruisers not to bring in such ships, and I believe it has been generally so understood and acted upon by them; and in this court cargoes brought *from Surinam to* ports in Europe to which the vessels belonged, have been uniformly restored on proof of the neutrality of the property.”

The reasoning here is plain and just. The first instructions designated for capture the colonial trade, without distinguishing between Europe and America: the second designated the trade to Europe only: therefore, by fair inference, the trade to America was exempted from capture.

Again, the second orders designated for capture the trade to Europe: the third orders designated the trade to ports of Europe *not being of Great Britain or of the country owning the vessel*: therefore by fair inference the trade to Great Britain and to countries owning the vessels, was exempted from capture.

In the *Immanuel*, November 7, 1799, the case was that of a neutral ship taken on a voyage last *from* France *to* a French colony. According to the reasoning of Sir William Scott, just quoted, the inevitable inference ought to have been that the voyage was legal.

The first instructions designated for capture the trade *to* and *from* the colonies. Both the second and third designated for capture the trade only *from* the colonies; therefore, according to that reasoning, the trade *to* the colonies was *exempted from capture*.

Hear nevertheless the reasoning employed by the judge himself in this case.

After combating the neutral right to trade with the colonies of an enemy, by arguments applicable, *in principle*, as well to a trade between neutral ports and the colonies, as to a trade between the mother country and its colonies; he proceeds to state, in answer to all pleas for a neutral trade from the mother country to its colonies, “that the true rule to this court is the text of the instructions; what is not found therein permitted, is understood to be prohibited, upon this plain principle, that the colony trade is generally prohibited, and that whatever is not specially relaxed, continues in a state of interdiction.”

Now as what is *not permitted*, not *specially relaxed*, is by the instruction to continue prohibited, the question to be decided is, what it is that is permitted, or specially relaxed by the instructions. Is it what is positively and expressly permitted or relaxed? Then there is no permission or relaxation at all; for every thing positive and express in the instruction is for the capture, not for the permission or relaxation. Is it to be a permission or relaxation implied and inferred from a positive and specified prohibition in one order, and an omission of that or of a part of that prohibition, in a succeeding order? Then the neutral trade from a belligerent country *to* its colonies, which was prohibited in the order of 1793, and omitted in the orders of 1794 and 1798, was as much permitted, as specially relaxed, as the trade from a neutral country *to* the colonies of an enemy, is permitted or relaxed by the omission in the orders of 1794 and '98, to prohibit the trade *to* the colonies, which as well as the trade *from* the colonies, was positively and specially prohibited by the previous order of 1793; or to recur to the reasoning of Sir William Scott, in the former case of the *Providentia*, as much permitted or relaxed as the trade from the colonies going *not to Europe*, was inferred to be so from the *order* of 1794, *taken in conjunction* with the order of 1793; the order of '93 having prohibited the trade from the colonies generally, and the order

of '94 having omitted to prohibit more of the trade from the colonies than what was bound to some port in Europe.

The judge concludes with declaring, "I see no favorable distinction between an outward and return voyage. I consider the intent of the instruction to apply equally to both communications, though the return voyage is the only one specially mentioned."

What favorable distinction, then, could the judge see between the outward and the return voyage, in a trade between a *neutral* country, and the colonies of an enemy, more than between the two voyages to Spain, a mother country, and the colonies? Is not the *return* voyage the only one *specially* mentioned, whether the instruction be applied to the former trade or to the latter trade? This is self evident. Either then he must admit the distinction in both, and say that the return voyage only being specially mentioned, the outward voyage is in both trades permitted; or he must reject the distinction in both, and say, that the outward voyage, tho' the return voyage only be specially mentioned, is prohibited in both. A different course however was pursued. The instruction was applied to the outward voyage in the neutral trade from the mother country to the colony, without being considered as applicable to the outward voyage in the trade from the neutral country to a colony; which last has not as yet been subjected to condemnation. Whether that is to be its future destiny, as has happened to some other branches of commerce, where it was equally precluded by legal decisions and even *official assurances*, is among the arcana of the admiralty cabinet of Great Britain.

The judgment in this case, it is to be observed, did not go beyond the condemnation of the goods. The vessel was restored, but with a forfeiture of freight and expences.

By degrees, however, with the aid of alleged fraud, of false destination, and of contraband in the outward voyages, the ship as well as the cargo were brought within the rules of condemnation in the high court of admiralty. The decision of the lords of appeal has finally established, in the case of a voyage from a Spanish colony to a neutral, but forbidden port in Europe, that any illegal trade of neutrals with the colonies of an enemy forfeits both ship and cargo.\*

Other examples might be drawn from the proceedings in the British courts of admiralty, to illustrate the constructive return towards the general principle which had been mitigated by successive instructions, and the anomalous and entangled decisions, which have been employed for the purpose. These illustrations cannot be here pursued, without too great an addition to the prolixity which has already been incurred. It will only therefore be remarked generally; first, that the course of proceedings, as they relate to the coasting, and different branches of the colonial trade; to the grounds on which these have been interdicted to neutrals; and to the penalties attached to breaches of the interdictions, compose a labyrinth for which no concatenation of principles, no thread of reasoning whatever, affords a clue: secondly, that constructive decisions, as appears in the last volume of Robinson's reports, have not only restored, in a great measure, the operation of the general principle; but have introduced collateral principles, greatly extending the mischiefs of its operation.

Whilst all the considerations therefore which originally led to the examination of this principle, are acquiring additional force, it is fortunate that so irresistible a testimony against its legitimacy, should have been furnished by the conduct of Great Britain herself.

Review of the reasons urged in defence of the British principle.

Although some of the reasons by which this belligerent claim of Great Britain is defended, have incidentally fallen under consideration in the course which the subject has taken, yet a more particular notice of those most relied on, may be necessary to complete the present examination.

The principal champions for the claim, are the judge of the high court of admiralty himself, Sir William Scott; Mr. Ward, now under Secretary of State in Great Britain, who is sufficiently known by his treatises on the law of nations, one of which embraces this precise subject; and Mr. Browne, a professor of civil law in the University of Dublin, and author of a work on civil and admiralty law.

Sir William Scott has, in every view, the first title to be heard.

In the judgment delivered by him in the case of the *Immanuel*, his eloquence has painted the belligerent claim in very glowing colours. The passage shall be given in his own words:

“It is an indubitable right of the belligerent to possess himself of such places, as of any other possession of his enemy. This is his common right, but he has the certain means of carrying such a right into effect, if he has a decided superiority at sea: such colonies are dependent for their existence, as colonies, on foreign supplies; if they cannot be supplied and defended they must fall to the belligerent of course—and if the belligerent chooses to apply his means to such an object, what right has a third party, perfectly neutral, to step in and prevent the execution? No existing interest of his is affected by it; he can have no right to apply to his own use the beneficial consequences of the mere act of the belligerent, and say, ‘True it is, you have, by force of arms, forced such places out of the exclusive possession of the enemy, but I will share the benefit of the conquest, and by sharing its benefits prevent its progress. You have in effect, and by lawful means, turned the enemy out of the possession which he had exclusively maintained against the whole world, and with whom we had never presumed to interfere, but we will interpose to prevent his absolute surrender, by the means of that very opening, which the prevalence of your arms alone has effected; supplies shall be sent and their products shall be exported; you have lawfully destroyed his monopoly, but you shall not be permitted to possess it yourself; we insist to share the fruits of your victories, and your blood and treasure have been expended, not for your own interests, but for the common benefit of others.’ Upon these grounds it cannot be contended to be a right of neutrals, to intrude into a commerce which had been uniformly shut against them, and which is now forced open merely by the pressure of war; for when the enemy, under an entire inability to supply his colonies and to export their products, affects to open them to neutrals, it is not his will but his necessity that changes his system; that change is the direct and

unavoidable consequence of the compulsion of war, it is a measure not of *French* councils, but of *British* force.”

The first remark to be made is, that were the intrinsic reasonableness of the claim admitted, it would not follow that the claim is justified by the law of nations as actually established. Reason is indeed the main source from which the law of nations is deduced; and in questions of a doubtful nature, is the only rule by which the decision ought to be made. But the law of nations, as an established code, as an actual rule of conduct among nations, includes, as already explained, a variety of usages and regulations, founded in consent, either tacit or express, and superadding to the precepts of reason, rules of conduct of a kind altogether positive and mutable. If reason and conveniency alone, without regard to usage and authority, were to decide all questions of public law, not a few of the received doctrines would at once be superseded; and among the first, some to which Great Britain is most pertinaciously attached. What would become of her favorite claim, to seize and condemn all enemy's property, laden in neutral vessels, if the claim were brought to the simple test of reason? a claim which gives so much more vexation to the nations at peace, than it contributes to any just advantage of those at war. On this question, it is well known, that the appeal has been constantly made by Great Britain from the reasoning of her adversaries, to the authority of celebrated jurists, and other testimonies of the established rules and practice of nations. She must not expect to vary her test of right, according to her individual interest: to appeal to authority when reason is against her, and to reason, when authority is against her.

In testing the British claim, then, by the law of nations, recurrence must be had to other sources than the abstract dictates of reason; to those very sources from which it has been shewn that her claim is an unauthorized innovation on the law of nations.

But let us examine this appeal of the eloquent Judge to the reasonableness of his cause, and see what is gained by it.

“It is an indubitable right of the belligerent to *possess* himself of such places, viz: colonies, [but the argument extends *to all places* shut against neutral commerce in time of peace,] as of any other possession of his enemy.” Without question he has the right to possess himself of any place belonging to his enemy.

“But he has the certain means of carrying such a right into effect if he has a decided superiority at sea.” This is not so universally true as is assumed. A land force will be also necessary; unless both the superiority at sea and the situation of the colony be such as to admit a complete interruption of supplies; and then, a blockade must be the only legitimate expedient.

“Such colonies are dependent for their existence as colonies, on foreign supplies: if they cannot be supplied and defended they must fall to the belligerent of course.” It is certainly true that they must fall, if they can be neither fed nor defended. But it is not so true that colonies, *as such*, are dependent on foreign supplies. Some insular colonies are so dependent; others are not. Few, if any, of the *continental* colonies or settlements are dependent on foreign supplies.

“And if the belligerent chooses to apply his means to such an object, what right has a third party perfectly neutral to step in, and prevent the execution?” No right at all to step in; provided the belligerent does, in fact, apply his means to that object, and, in the mode, conformable to the law of nations; that is, by intercepting contraband of war, and availing himself of his decided superiority at sea, to blockade the places, which if deprived of foreign supplies, must fall into his hands of course.

Take the argument under another aspect. Colonies must fall without foreign supplies; therefore, it is said, a belligerent, without invading or investing them, may prevent neutrals from supplying them.

The argument has one tendency which ought not to have escaped the penetration of its author. If the dependence of a place for its existence and defence on foreign supplies, be the ground of the belligerent right to intercept all neutral trade whatever with it, it will not be very easy to find a reasonable ground for the belligerent right to obstruct neutral supplies to a place blockaded, where the place, as frequently occurs, does not depend on foreign supplies for its existence and defence.

Or the argument may take another turn, which ought not to escape the attention of neutrals. If the applicability, without an actual application of the means, to the legitimate object of possessing himself of the colonies of enemies, can justify the capture of neutral trade with such places, the mere existence of a force applicable to the purpose of a blockade any where, will, without an actual blockade, equally authorize the capture of a neutral trade with ports susceptible of blockade; and thus the neutral trade becomes interdicted with every part of the dominions of her enemy; on the same principle as interdicts it with the colonial part of their dominions; a blockade being as legitimate an object of war as conquest; and a decided superiority at sea being at least as applicable to the former, as to the latter object.

But an essential vice of the argument lies in the fallacy of the inference. It no more follows from the dependence of colonies on foreign supplies, that neutrals have no right to trade with them, with the exceptions of contraband and of blockaded ports, than it follows from the dependence of other countries or parts of countries on foreign supplies, that neutrals have no such right. Is not Holland, is not Portugal, is not even Spain, at all times, dependent on foreign supplies for their subsistence; not less perhaps than some of the insular colonies in the West, and much more than some in the East Indies? Yet since the usurped power of obstructing *all* neutral trade with an enemy was abandoned by belligerent nations has it ever been pretended that that dependence gave a right to the enemies of those countries to prevent neutral supplies to them?

The argument fails when brought to another test, If the dependence on foreign necessities constitutes the belligerent claim against the neutral trade to colonies, the principle of the claim limits it to such colonies as labour under this dependence. The continental colonies or settlements, which have within themselves resources, necessary for their existence, and which therefore no decided superiority at sea can reduce into the possession of a belligerent, are clearly not within the utmost range of the principle. Yet no distinction is made in the application of it, either in argument or

practice, between the most sterile and indefensible island, and the vast and fertile provinces on the continent of South America.

Thus far, then, the judge has found no foothold for the belligerent pretension which he endeavors to support.

But he must be heard further: "No existing interest of his [the neutral] is affected by it," [an exclusion, &c.]

The interests of neutrals may be materially affected by the loss of the customary supplies from belligerent colonies, as must happen, if they can neither trade directly with the colonies, nor receive supplies from them thro' the mother country. This is the consideration expressly assigned, in the appendix to 4 Rob., for the orders of 1798: "Neutral vessels were by this relaxation allowed to carry on a direct commerce between the colony of an enemy and their own country; a concession rendered more reasonable by the events of war, which by annihilating the trade of France, Spain, and Holland, had *entirely deprived* the States of Europe, of the *opportunity of supplying themselves* with the articles of colonial produce, in those markets." This is a view of the subject very different from that given by Sir William Scott here, and in another paragraph; where he represents "Guadaloupe and Jamaica, as no more to Germany, than if they were settlements in the mountains of the moon, to commercial purposes, as not in the same planet."

The judge proceeds, "He [the neutral] can have no right to apply to his own use, the beneficial consequences of the mere act of the belligerent."

Why not? In many respects, as will hereafter be seen, the neutral suffers by war; is it unreasonable that in some respects, he should profit by its effects?

Waiving this consideration, it does not follow that one belligerent has a right to deprive a neutral of a *colonial* market opened to him under the pressure of war, by another belligerent, any more than of any new market or new channel of trade, in relation *to the mother country*, opened under a like pressure. As yet, however, the latter pretension has not appeared.\* It is even disavowed in a succeeding passage of this very judgment. Is it not the pressure of war, which at this time, obliges the enemies of Great Britain, to abandon in great measure, to neutral vessels, the trade between themselves and other countries? Is it not the pressure of war, during which more food is consumed, with fewer hands to raise it, that often compels nations at war, to open their ports to the supplies and ships of neutrals, contrary to their ordinary regulations in time of peace? In a word, the whole commercial policy of belligerent towards neutral nations, undergoes changes, which the latter is in the constant practice of "applying to their own use." And it is manifest that Great Britain is as ready, as any of her enemies, to lay open her navigation and her colonial markets, though so rigorously shut in time of peace, whenever the pressure of war, makes it her interest, that neutrals should apply the benefit of these changes to their own use.



It is perfectly clear, then, that the mere circumstance of an increase of profit to neutrals, from a participation in branches of trade opened under the pressure of war, does not render that participation unlawful.

The sequel of the argument assumes a very singular shape. The neutral has no right to say to the belligerent,—“True it is you have by force of arms forced such places out of the exclusive possession of the enemy, but I will share the benefit of the conquest; and by sharing its benefits, prevent its progress. You have, in effect, and by lawful means, turned the enemy out of the possession which he had exclusively maintained against the whole world, and with whom we had never presumed to interfere; but we will interpose to prevent his absolute surrender, by the means of that very opening which the prevalence of your arms alone has effected.”

Here let it be observed, the case first stated is, that the *place* has been forced by one belligerent out of the possession of another belligerent, and that the neutral is undertaking to share the benefit of the *conquest*. Were that the real intention, as it is the inevitable import of the statement, there could be no advocate for a neutral pretension to interfere. But with an inaccuracy (a harder term will not be applied) little to have been looked for where it is found, this conquest, this turning of the enemy out of exclusive possession, does not in the least mean, as is quickly disclosed, a transfer of the *place* or *colony* to a new sovereign. The colony remains precisely as it did; not even attacked or threatened by a military operation. The conquest really meant turns out to be nothing more than the creation of a certain degree of difficulty and danger in the trade between the colony and the mother country. With this change in the statement of the fact, the inference with respect to the intrusion of a neutral commerce must, unfortunately for the argument, undergo a correspondent change. As the conquest of the colony would have justified the conqueror stepping into the exclusive possession, out of which his arms had forced his enemy, in prohibiting a neutral interference with its trade, it is equally certain, that he is not justified in any such prohibition by the mere obstruction thrown in the way of the ordinary colonial trade; any more than he would be justified by obstructions thrown equally in the way of other branches of his enemy's trade, in prohibiting the entrance of neutrals into them.

That the meaning of the judge is shifted from an expulsion of the enemy from his colony, to an obstruction of his trade with his colony, is put beyond all question by the conclusion of this hypothetical address of the neutral to the belligerent,—“Supplies shall be sent, and their products shall be exported; you have lawfully destroyed *his monopoly*, but you shall not be permitted to *possess it yourself*.”

Thus the right of a belligerent to possess himself of the colonies of his enemies depending on foreign supplies, which, in the beginning of the argument, was the ground of the unlawfulness of such neutral supplies, as might prevent the colonies from falling into the hands of the belligerent, undergoes a complete transformation in its progress, and ends in a right of the belligerent to supply the colonies himself, in exclusion of neutrals. The neutral is interdicted from sending supplies to an enemy's colony, and exporting its produce; not because it would interfere with the reduction of

an enemy's possession; but because it would interfere with a commercial monopoly. This at least would be a new principle in the law of nations.

But it is worth while to enquire how the right of a belligerent to subdue the colonies of his enemy, and for that purpose to obstruct neutral supplies to them, can be reconciled with the actual regulations of the British Government on this subject. Whilst this claim is exercised, in general, so much to the disadvantage and dissatisfaction of neutrals, it is relaxed in some respects which are fatal to the very purpose of the belligerent to *subdue* the colonies of his enemy; which purpose alone could give a colour to any such obstruction of neutral commerce. The orders both of 1794 and of 1798 limit their restrictions on neutrals to the trade *from* colonies; leaving by implication, unrestricted, the trade *to* the colonies; or they manifest, at least, under every construction, a solicitude rather against the trade *from*, than against the trade *to* the colonies. Now if the object and the pretext, in controuling the trade with the colonies, be the conquest of the colonies, is it not extraordinary that whilst checks are opposed to the exports, which can, at the most, have but a remote influence in preserving them from the necessity of surrender, the channel should be left open for the importation of those foreign supplies, for the want of which, they might fall to the belligerent of course? How is this to be explained? Not, certainly, by a *belligerent* policy, which is completely defeated by the relaxation. There is but one explanation that is satisfactory, and it must not be deemed uncandid to resort to it. As the orders have endeavored to give to the trade from the colonies such a course as was most favorable to imports into Great Britain, the course allowed to the conveyance of supplies to the colonies is equally favorable to the export of *manufactures* from Great Britain. British manufactures, it must have been supposed, could find their way to hostile colonies, through no channel so conveniently and certainly, as through that of neutrals which conveys the means of subsistence. Whilst the regulation, therefore, defeats the measure of conquest, it extends the market for manufactures. Every fold of this belligerent claim wraps up some commercial project.

In prosecuting his argument, the judge occupies another ground for this belligerent pretension: "Different degrees of relaxation," he observes, "have been expressed in different instructions issued at various times during the war. It is admitted that no such relaxation has gone the length of authorizing a direct commerce of neutrals, between the mother country and its colonies; *because* such a commerce could not be admitted without a *total surrender* of the principle: for allow such a commerce to neutrals, and the *mother country* of the enemy recovers, with some increase of expence, the direct *market of the colonies*, and the *direct influx* of their productions; it enjoys as before, the *duties of import and export*, the same facilities of sale and supply, and the mass of *public inconvenience* is very slightly diminished."

It was lately the object of dispossessing the enemy of his colonies altogether, that authorized the obstruction of neutral supplies. It was next the object of securing to the belligerent himself, the monopoly of the commerce with those colonies, that gave him such an authority. Now the authority is derived from the policy of withholding from the mother country of the colony, the public conveniencies arising from the revenue and from the commercial profits supplied by her direct intercourse with her colonies.

It cannot be necessary to dwell on the hollowness of this foundation, for the claim to make war on the participation of neutrals in a colonial trade. It will be merely observed, or rather repeated, that if neutrals have no right to trade with an enemy, where the enemy in consequence of the pressure of the war, would otherwise lose the revenues and other public advantages flowing from the trade, the inference fairly is, that Great Britain, by driving the ships of her enemies, as she does at this moment, altogether from the sea, may renew with effect the old and exploded tyranny of interdicting *all neutral commerce* whatever with her enemies.

This last argument only against the neutral trade to colonies, was applicable to the coasting trade. There, neither conquest, nor the substitution of the belligerent's own commerce, could be the object. It will accordingly be seen in the case of the *Immanuel*,\* that the belligerent claim is founded, as it is here, on its general effect in cramping the revenues of the enemy, and in inflicting a pressure which may compel a due sense and observance of justice.

It only remains to advert to a reply, from the judge to the counsel at the bar, with which he closes the argumentative part of his judgment.

The inconsistency of Great Britain, in making, in time of war, the same relaxations in her navigation and colonial monopolies, which she denies the right of her enemies to make, is so obvious that it could not possibly escape the notice of the counsel for neutral claimants. The more striking the inconsistency, however, the greater the delicacy which was to be observed in pressing it on the court. It appears accordingly to have been brought into view, in one instance only, in Robinson's Admiralty Reports, which was in this case of the *Immanuel*; and here it is managed with much tenderness, and seasoned, finally, with some material concessions to the known opinions of the Bench and the government. In order to do justice to Mr. Arnold and Mr. Sewell, charged on that occasion with the defence of the neutral claimants, and for the sake of some very judicious reflections of a more general nature, with which they introduce their particular argument, no abridgment will be made of the following passage:

“It is true that the general colonial law of Europe has created a monopoly, from which other countries are generally precluded; at the same time laws respecting colonies, and laws respecting trade in general, have always undergone some change and relaxation after the breaking out of hostilities; it is necessary that it should be so, with regard to the rights of neutral nations; because as war cannot be carried on between the principal powers of Europe, in such a manner as to confine the effects of it to themselves alone, it follows that there must be some changes and variation in the trade of Europe, and it cannot be said that neutrals may not take the benefit of any advantages that may offer from these changes—because if so, it would lead to a total destruction of neutral trade; if they were to suffer the obstructions in their old trade, which war always brings with it, and were not permitted to engage in new channels, it would amount to a total extinction of neutral commerce: such a position, therefore, cannot be maintained, that they may not avail themselves of what is beneficial in these changes, in lieu of what they must necessarily suffer, in other parts of their trade, in time of war. It is not meant that they should be entirely set at liberty from all

the restrictions of peace—that would be going too far. But that, as there has been a regular course of relaxations, as well in our navigation laws, *as in the colonial trade*, in admitting importations and exportations not allowed in time of peace; it seems not to be too much to say, that if they have been regularly relaxed in former wars, neutral merchants may think themselves at liberty to engage in it, in any ensuing war, with impunity; and *it does justify a presumption, that as a belligerent country allows a change in its own system as necessary, and invites neutrals to trade in its colonies under relaxations, so it would allow them to trade in the same manner, with the colonies of the enemy.*”

In reply:—

“It is an argument,” says the judge, “rather of a more legal nature than any derived from those general topics of commercial policy, that variations are made in the commercial systems of every country *in wars and on account of wars*, by means of which neutrals are admitted and invited into different kinds of trade, from which they stand usually excluded; and if so, no one belligerent country has a right to interfere with neutrals for acting under variations of a like kind made for similar reasons in the commercial policy of its enemy. And certainly if this proposition could be maintained without any limitation, that wherever any variation whatever is made during a war, and on account of the state of war, the party who makes it, binds himself in all the variations to which the necessities of the enemy can compel him, the *whole colony trade* of the enemy is *legalized*; and the instructions which are directed against any part are equally unjust and impertinent; for it is not denied that some such variations may be found in the commercial policy of this country itself; although some that have been cited are not exactly of that nature. The opening of free ports is not necessarily a measure arising from the demands of war; it is frequently a peace measure in the colonial system of every country: there are others, which more directly arise out of the necessities of war;—the admission of foreigners into the merchant service as well as into the military service of this country;—the permission given to vessels, to import commodities not the growth, produce, and manufacture of the country to which they belong, and other relaxations of the act of navigation, and other regulations founded thereon: these, it is true, take place in war, *and arise out of a state of war*; but then they do not arise out of the *predominance of the enemies force*, or out of any necessity *resulting therefrom*; and this I take to be the *true foundation of the principle*. It is not every convenience, or even *every necessity* arising out of a state of war; but *that necessity* which arises out of the *impossibility* of otherwise providing against the urgency of distress inflicted by the hand of a *superior enemy*, that can be admitted to produce such an effect. Thus, in time of war, every country admits foreigners into its general service—every country obtains, by the means of neutral vessels, those products of the enemy’s country which it cannot possibly receive, either by means of *his* navigation or its own. These are ordinary measures, to which every country has resort in every war, whether prosperous or adverse: they arise, it is true, out of a state of war, but are totally *independent of its events*, and have therefore no common origin with those *compelled relaxations of the colonial monopoly*; these are acts of distress, signals of defeat and depression; they are no better than partial surrenders to the force of the enemy, for the mere purpose of preventing a total dispossession. I omit other

observations which have been urged and have their force: it is sufficient that the variations alluded to stand upon grounds of a *most distinguishable nature*.”

On comparing the argument of the counsel with the discourse of the judge, there is but too much room to remark, that there are in the former a coolness and clearness not unworthy of the Bench; and in the latter a florid and fervid stile, which might have been less unsuitable to the zeal of the bar. But it is more important to examine and weigh the effect which their respective reasonings, so far as those of the judge can be extricated from the general and somewhat obscure expressions employed by him, ought to have on the point in question.

The reasoning at the bar is simply this—that as Great Britain is herself in the practice of opening to neutrals, in time of war, channels of navigation and colonial markets, which she shuts to them in time of peace; she ought to allow, or might reasonably be presumed to allow, as equally lawful in time of war, a like relaxation of the colonial system of her enemies.

The judge does not deny the fact that Great Britain is in the practice of relaxing in time of war her system of colonial trade. He does not deny the inference that a like relaxation would be equally lawful on the part of her enemies. It might have been expected, therefore, that in his reply he would have allowed to the enemies of Great Britain the same right to capture neutrals trading with her colonies, as is exercised by Great Britain against neutrals trading with the colonies of her enemies; and have contented himself with the advantage enjoyed by Great Britain in her superior means of intercepting the neutral trade with her enemies, and of preventing her enemies from intercepting the neutral trade with herself. This, it would seem, was a more consistent, and also a more politic ground to have taken. The judge was of a different opinion. Unwilling to make even that degree of concession, he attempts to retain the privilege claimed by Great Britain, and at the same time withhold it from her enemies; by certain distinctions between the two cases. With what success the distinctions are made is now to be seen.

One of the distinctions is between a colonial trade which is *frequently opened in peace*, as in the case of *free ports*, and a colonial trade opened in war only.

The example of *free ports* was not very happily chosen; for it has been seen that the trade from such ports in the French West Indies to the United States, was not excepted in the British orders on the subject of neutral trade with the colonies of France; nor is it known that any such exception has been made in the British courts of admiralty.

The distinction, however, fails in its essential point. It is not an uncommon thing for relaxations to take place *in time of peace* as well as in time of war, in the colonial monopolies of all the European nations. The Spaniards, the French, and the Dutch,\* never fail to open their colonies to foreign supplies, whenever a scarcity, or other cause, renders it inconvenient to supply them from European sources. Even on this ground then, as admitted by the judge himself, a neutral trade with enemy's colonies would be lawful in time of war.

Another distinction is intimated between the ordinary measures of relaxation, to which every country has resort in every war, whether prosperous or adverse, and unusual measures of relaxation produced by a peculiar state of the war.

Here again the distinction directly militates against the object for which it is made, it being well known to be an *ordinary* measure, with the enemies of Great Britain, in all modern wars at least, to open their colonial ports to neutral supplies. Prior to the American revolution, Great Britain had, in these States, resources which rendered it unnecessary for her colonies to invite supplies, if indeed they could have been obtained, from any foreign sources. In her wars since that event, she has followed the example of her enemies in relaxing her colonial system, as far as was necessary to obtain supplies, from the sources and through the channels which furnish her enemies. At this moment, her islands are as open as the colonies of her enemies to the supplies and the vessels of the United States, with this difference, indeed, that her ports are opened by regulations more temporizing and more special, than those of some, if not all, of her enemies; and therefore with pretensions to legality, according to her own standard, inferior to those of her enemies.

The remaining distinction is the sole fortress on which the defence of the principle maintained by the judge, must depend. This distinction is so novel, and in its appearance so refined, that in explaining it some difficulty was naturally felt, in the selection of apposite expressions. A critic, tinctured with want of candor, might be tempted to exclaim, that a distinction between a necessity arising out of a state of war, and a necessity arising out of an impossibility, which impossibility arises out of a state of war, was a subject less proper for discussion, than for a less serious treatment.

The judge, however, cannot be justly charged with a want of meaning, whatever may have been his difficulty or his caution in expressing it. It may be collected, with sufficient certainty, that he meant to establish the right of Britain, and the want of right in her enemies to interrupt neutral commerce, on the predominance of force, on the decided superiority at sea, which she enjoys, and on the inferiority of force, under which her enemies labour. When she opens her colonial ports to neutrals, although it arises out of a state of war, it does not arise, like theirs, out of the predominance of the enemy's force. This predominance he frankly declares to be the *true foundation of the principle*.

And thus we are arrived at the *true foundation* of the principle which has so often varied its attitudes of defence, and when driven from one stand, has been so ready to occupy another. Finding no asylum elsewhere, it at length boldly asserts, as its *true foundation, a mere superiority of force*. It is right in Great Britain to capture and condemn a neutral trade with her enemies, disallowed by her enemies in time of peace, for the sole reason that her force is predominant at sea. And it is wrong in her enemies to capture and condemn a neutral trade with British colonies, because their maritime force is inferior to hers. The question no longer is, whether the trade be right or wrong in itself, but on which side the superiority of force lies? The law of nations, the rights of neutrals, the freedom of the seas, the commerce of the world, are to depend, not on any fixed principle of justice, but on the comparative state of naval armaments, which itself may change at every moment, may depend on the event of a

battle, on the skill of an admiral, on the tack of the wind; on one of those thousand casualties which verify the admonition, that the battle is not always given to the strong, any more than the race to the swift.

A government, which avows such a principle of conduct among nations, must feel great confidence in the permanence, as well as the predominance of its own power.

It would nevertheless not be unwise in any nation, to reflect on the vicissitudes of human affairs, and to ask herself the honest question, how she would relish the application of the principle, if in the course of events, a maritime superiority should happen to change sides? Should Great Britain ever find the state of things thus reversed, she might wish, in vain perhaps, to let her claim pass silently into abeyance, as she alleges was done in the war of 1778.

Nor would it be less unworthy of her wisdom to reflect, that if a predominance of force on one element confers right, a similar right might result from a predominance of force on another element.

The supposition may be made to press more immediately on her reflections. Great Britain as a maritime power is as dependent on external commerce, as the insular dominions of her enemies are, as colonies, dependent on external supplies. In this general view, the principle which she employs against the colonies of her enemies, may be turned by her enemies against herself. But a more particular view demands her attention. She has already beheld her principal enemy on a coast little distant from her own, by a decided preponderance of force on land, and a threatened co-operation of naval armaments giving to the war an unexampled pressure on her faculties and resources. The wheel of fortune may reproduce the crisis. Her seamen may be taken from her merchant ships, to man her fleets. Her fleets may be called home from the protection of commerce, to the defence of the State. In this posture of things, her harvest may fail, her existence may depend on foreign food; its importation on neutral commerce; and the successful use of this resource, on the right of neutral ships to a navigation not open to them in times of peace. With such monitory possibilities in view, ought an enlightened nation by her own example, and her own language, to authorize her enemies to say to her friends—you have no right to step into a trade with our enemy, from which his monopoly of the navigation excluded you in times of peace; you have no right to import for him supplies which are absolutely necessary for his support, and which the distress I am inflicting, renders it impossible for him otherwise to obtain. Neither have you any right by a trade, also forbidden in time of peace, to furnish to his colonies the supplies which his command of the sea no longer ensures to them, and without which they must fall of course into our possession.

What reply could be made to such an expostulation, by a neutral, who had not refused to recognise a like claim on the part of Great Britain; and, by the refusal, consulted better the interest of Great Britain, than she had consulted it herself in advancing the claim?

Taking leave of the very distinguished judge, with these observations, some notice is next due to Mr. Ward and Mr. Browne.

A remark that soon occurs on opening the volumes of these writers is, that both of them confound the principle here in question, with the question whether free ships make free goods, and under this confusion, bring the former within the arguments and authorities belonging to the latter only. The confusion results not only from the more general expressions in which they describe the controversy between neutral and belligerent nations, on the subject of commerce; but is promoted by their frequent use of the terms “carrying trade,” without distinguishing between the carriage of enemies property in neutral vessels, and the neutral carriage of neutral property in channels navigated in time of peace by domestic carriers only. These questions are evidently and essentially distinct; and the distinction answers, of itself, much of the reasoning employed by those writers; and most, of the authorities cited by them.

With respect to the *consolato del mare*, so much appealed to by Mr. Ward, it has been already observed that however direct its authority may be against the principle that enemy’s property in neutral vessels is subject to confiscation, there is not a sentence in that compilation which directly or indirectly recognizes or favors a belligerent claim, to confiscate neutral property, on the principle that it is found in channels of trade not open at all to other than subjects or citizens of the belligerent, in time of peace. The negative testimony of the *consolato*, therefore, is completely in favor of the contrary principle.

In recurring to Grotius, Mr. Ward is led, by his own comment on the passage which describes the rights of belligerents against the trade of neutrals, to conclude that the real question before Grotius, was that which Grotius said had been so much and so sharply agitated, namely, whether a belligerent had a right to interdict *all* neutral commerce with his antagonist; and Mr. Ward accordingly takes the *defensive* ground of maintaining that the neutral “claim to a carrying trade had never entered the mind of Grotius.”

If by the “*carrying trade*” Mr. Ward means the carriage of *enemy’s property*, it must have been within the view of Grotius; because he has furnished Mr. Ward himself with an authority against the lawfulness of such a trade. If by the “*carrying trade*” he meant a trade carried on in war, where it was not allowed in peace, it is strictly true, that it appears never to have entered the mind of Grotius. It did not enter his mind, because no such particular claim had ever been asserted or exercised against neutrals. The general claim to intercept all neutral commerce with an enemy, did enter into his mind and into his discussion, as well as the other particular claims of belligerents in the case of contraband and of blockades; because as well that general claim, as those particular claims, had, at different periods, been asserted and exercised against neutrals. To suppose that the carrying trade could be unnoticed by Grotius, for any other reason than that no belligerent right to intercept that particular branch of trade, had been asserted, would be the more preposterous, for the reason suggested by Mr. Ward, “that Grotius lived in a time when his countrymen were raising to its height the source of their commerce, by rendering their State the emporium of trade, and becoming the *carriers of the rest of the world;*” carriers as well of their own property as of the property of others, and in every channel which might be opened to them with profit to the carriers.



Notwithstanding this relinquishment of the authority of Grotius, in relation to the carrying trade, Mr. Ward has shewn a strong inclination to extract from certain terms employed by Grotius, on the subject before him, some general countenance to the British principle.

Grotius, it must be admitted, is less definite in explaining himself in this particular instance, than he is in others; and much less so, than other jurists who have succeeded him. It is impossible at the same time to put on his words, any construction that will avail Mr. Ward.

Although the passage has been heretofore analyzed, it will not be improper to re-examine it with a particular reference to the argument of this writer.

Grotius having made his distribution of the articles of neutral commerce into three classes—1st, of such as are wholly of pacific use—2d, such as are wholly military, and 3d, such as are, *usus ancipitis*—of a doubtful or double use, enlarges on this 3d class in the words following—“*In tertio illo genere, usûs ancipitis, distinguendus erit belli status. Nam si tueri me non possum nisi quæ mittuntur intercipiam, necessitas ut alibi exposuimus jus dabit sub onere restitutionis, nisi causa alia accedat. Quod si juris mei executionem rerum subvectio impederit, id que sciri potuerit qui advexit, ut si oppidum obsessum tenebam, si portus clausos, et jam deditio aut pax expectabatur, tenebitur ille mihi de damno culpa dato, ut qui debitorem carceri eximit,\* &c., &c.*” He proceeds next to graduate the injuries done to the belligerent and the penalties due to the neutral, according to certain distinctions since exploded, particularly the distinction between a just and unjust war, on which he founds a rule; “*Quod si præterea evidentissima sit hostis mei in me injustitia, et ille eum in bello iniquissimo confirmet, jam non tantum civiliter tenebitur de damno sed et criminaliter, &c.*”

From this text, Mr. Ward makes the following deduction: “The tenor of these words ‘*status belli*’ which is a general description; of ‘*juris executione*’ which is the very right to take arms; of ‘*pax expectabatur*’ which is a final termination of hostilities, not surrender of the besieged place; and lastly of ‘*bello confirmet*’ which is demonstrably applicable to the whole field of war: these (he says) prove him to be occupied with the general plan of operations, and the general exigencies of a state of hostility.”

The great importance attached to this passage in Grotius, and the extensive consequences drawn from it by this learned champion of the British principle, will be apologies for a more critical attention to the passage, than it could be thought, of itself, to require.

Whether Grotius did or did not limit his meaning to the nature of contraband articles, and the case of blockades; it is demonstrable that his words are inapplicable to the distinction between a trade permitted, and a trade not permitted in peace.

1. According to Grotius, the articles in question are of the third class only, the class of a doubtful or double use: the principle of Great Britain makes no such distinction. Articles of every class and kind found in the new channel of trade, are rendered unlawful by the channel itself, however inapplicable they may be to the uses of war.

2. According to Grotius, it is one state of war compared to another state of war, that is to be distinguished—“*distinguendus erit belli status*.” According to Great Britain, the essence of the distinction is, between the state of war, and the state of peace; or rather between the state of the municipal laws of commerce in time of war, and the state of those laws in time of peace.

3. According to Grotius, the right to intercept the neutral commerce accrues from its particular necessity, as a measure of defence: according to Great Britain, the necessity is not the criterion. If there be no such necessity, the trade is condemned, in case the channel were unlawful before the war. Be the necessity what it may, the trade is free, if the channel was lawful before the war.

4. According to Grotius it must be such a necessity as he had elsewhere pointed out—“*ut alibi exposuimus*.” The British advocates have not undertaken to show any other passage of Grotius, giving the explanation which their principle requires. No such passage exists.

5. According to Grotius, the articles intercepted, if no other cause prevent, are to be restored. According to the British decisions, no such restitution is due. Both vessel and cargo are confiscated.

6. Finally—The war to which Grotius refers, when he uses the expression “*bello confirmet*” is a war of the most evident injustice—“*evidentissima injustitia; bello iniquissimo confirmet*,” not *bello confirmet*, as cited by Mr. Ward. The distinction between *just* and *unjust* wars, does not enter into the principle, on which Great Britain founds her belligerent claim. It is, in fact, disclaimed by Bynkershoek,\* who succeeded Grotius; and tho’ countenanced by Vattel, is generally understood to be excluded from questions affecting belligerent and neutral rights.

Whether the text of Grotius, therefore, is to be understood as confined, or not confined to the case of contraband and blockade, it cannot possibly be applied to the case of a trade asserted to be unlawful in war, merely as being a trade not permitted in peace.

It may be observed nevertheless, in justice to Grotius, that his meaning, ought in fairness, not to be extended beyond the cases of contraband and blockades: First, because it is the only construction that can satisfy one part of the text; whilst the terms used in the other part, are by no means, inconsistent with that construction. The expression least apposite to the case of a blockade, is that of “*pax expectabatur*,” or “the expectation of peace,” as an event which might be frustrated by the neutral commerce. But there may certainly be wars, where peace itself might depend on a blockade. It is obvious that a blockade of particular ports, such as that of Amsterdam, the chief emporium of the country of Grotius, might influence the question of peace, as well as the question of capitulation. Or to state a case still more decisive: a state at war, may consist of little more than the place actually blockaded. Venice and Genoa, formerly, Hamburgh at present, are examples. A close and continued blockade of such places as these, would necessarily involve a question of peace, with that of a surrender.

Again; the meaning of Grotius ought not to be extended, as Mr. Ward extends it, beyond those two cases of contraband and blockade “to the general plan of operations, and the general exigencies of a state of hostility;” because this construction is directly at variance with the principle heretofore cited from Grotius; particularly in the note where he condemns the practice of England and Holland, in their general prohibition of neutral trade with their enemy.

But the construction attempted by Mr. Ward not only puts Grotius at variance with himself; it puts Mr. Ward at variance with himself also; as well as with the limits affixed to the principle by his own government. For if the belligerent right laid down in the passage of Grotius be not restricted to contraband and blockades, and cannot be applied to the British distinction between a trade in war and a trade in peace; but extends to the general exigency of hostilities; it is impossible to deny to belligerents a right to intercept *all* neutral trade with their enemy, whenever the state of the war, the accomplishment of justice, or the expectation of peace, prescribe it; or whenever a neutral trade may be calculated to *confirm* an enemy *in the war*. The consequence is inevitable, Yet Mr. Ward, expressly,\* in another place, disclaims any such a latitude in the rights of war, with an exultation that his country had once, and once only, attempted it; and, on seeing its injustice, candidly renounced the attempt.

The observations which have been already made on Pufendorf, and on his letter to Groningius, cited by Barbeyrac, afford a conclusive reply to the use which Mr. Ward faintly endeavors to make of that authority, on the point here in question. He seems, indeed, in general, rather to combat it as an authority claimed by an opponent, than to claim it as of much weight in his own scale.

Bynkershoeck and Heineccius, though jointly cited as explicit authority for the principle that free ships do not make free goods, are neither of them appealed to by Mr. Ward as supporting the principle that a trade not allowed in peace was unlawful in war. This silence of Mr. Ward, considering his spirit of research, and his zeal for this latter principle, may reasonably be ascribed to his discovery that he could gain nothing by bringing it to the test of those authorities.

The same inference may be drawn from his silence with respect to the authority of Vattel, as to a trade of that description.

In Hubner, whose authority it is a great object with Mr. Ward to discredit, he finds a half concession, to which he does not fail to summon a marked attention. Hubner, it seems, referring\* to the case of a neutral trade with an enemy’s colonies opened on account of the war, admits that it is subject to some uncertainty, “quelque incertitude.” He immediately subjoins, however, “that he does not see why neutral sovereigns should refuse themselves so considerable a benefit when it offers; provided they abstain from supplying those colonies with any merchandize which is prohibited in war. It is true,” he adds, “if, besides that, they are careful not to carry provisions thither, by which I mean, articles of the first and second necessity, which, in time of war, are fully and more than equivalent to contraband of war properly so called; then it is *evident* that neutral nations may lawfully carry on that commerce, because the principal cause of its being opened to them during the war, will not have had the

effect intended to be produced; by means of which that commerce will no longer have any thing that may directly influence the war, and which consequently may be an object of the right which belligerent nations have of opposing every thing which tends to the immediate assistance of their enemies.” In this ramble of Hubner, from the plain path in which he commenced his answer to the uncertainty suggested by himself, he bewilders both himself and his subject, and lays a foundation for real uncertainties, in his attempt to remove an imaginary one. How could distinctions be maintained, in practice, between provisions of the first and those of the second necessity, and between both and all other provisions? What is meant by the right which belligerent nations have of opposing *every* thing, which *tends* to the immediate assistance of their enemies?

But were the concession free from these incumbrances, it could not avail the advocates for the British doctrine: *First*, because the concession is limited to the colonial trade, not extending even to the coasting trade: *Secondly*, because it is limited to the case of those *necessary* supplies to the colonies, which were the object in opening the trade to neutrals; whereas the British doctrine extends to all trade *to* and *from* the colonies.

If any thing further be requisite to invalidate this fugitive concession, or rather hesitation of Hubner, it is amply furnished by Hubner himself, in sec. 5, of the same chap. and book, in which he systematically establishes principles, by which the rights of neutral commerce are to be determined.

“But let us suppose,” says he, “that the commerce of a neutral nation with one of the belligerent parties, however innocent it may be, should indirectly strengthen the latter, does it follow, that his adversary has a right to hinder it, to the detriment of the neutral nation? who, in carrying it on, neither had nor could have that particular object in view; which merely exercises her industry as in time of peace; and which, besides, will be very glad to trade with that same adversary, upon the like terms, as far as his commercial laws will permit, and the nature and interest of its own commerce may require.

“To attempt to render a neutral State responsible for the increase of the strength of an enemy, because that increase arises from the commerce which that State carries on with him, is to impute to one, a thing which he has caused by mere accident.”

Again—“Neutral nations by trading with those who are at war, merely avail themselves of their incontestible right. Now whoever makes use of his right, and merely does so, never can do an injury to another, which he can have a right to complain of. The possible consequences of just, innocent, and lawful acts, never can hinder us from doing them, at least there is no one who has a right to prohibit us, &c.”

With such principles in his mind, it is not wonderful, that if Hubner was startled, as Mr. Ward expresses it, by the terms of his own premises, he should be more startled at his own concession; and that finding himself at a loss to explain the ground on which such a claim as that of Great Britain could in any degree be reconciled with the rights of neutral commerce, he should be in a hurry to resume his principle, “that there is no

reason why sovereign States who are neuter, should refuse the advantage presenting itself, provided they abstain from supplying colonies with contraband.”

Hubner wrote in the war of 1756. Another Danish writer, Hennings, published a treatise on “neutrality,” in the interval between the war of 1778 and the war of 1793. His authority is precise and peremptory against Mr. Ward.

After the capture of Grenada, and the Grenadines by the French, in the war of 1778, an act was passed by the British parliament\* to “protect goods or merchandize of the growth, produce, or manufacture of those islands, on board neutral vessels bound to neutral ports during the present hostilities,” with provisoes, that the protection should not extend to cargoes from any other island, nor affect any sentence of any vice admiralty court, which prior to a given day should have condemned productions of the said islands.

There is some obscurity in the object and the text of this act. To make it consistent, however, with itself, as well as with the acknowledgment on all hands, that a neutral trade in neutral property was free, during that period, with French colonies, it must be understood, as intended either to exempt the trade of those islands, which had become French, from the operation of British laws, and to put them on the same footing with other French islands; or to exempt from capture the *property* of the inhabitants of the islands, become French property and French subjects; an indulgence† that might be thought due to those who had but just ceased to be British subjects, and who might be restored to that character by a peace.\*

Hennings, however, conceiving the act to have been intended to legalize a neutral trade with French colonies, which otherwise might be subjected by the British courts to condemnation, is led to the following assertion of the law of nations in opposition to such a principle:

“An important subject which ought to be here noticed, is the trade with the colonies in America. Is there any principle on which the sugar islands in the West Indies ought to be considered as blockaded? And if there is no such principle, why is the permission of Great Britain required for neutral ships to take sugars from the islands of Grenada and the Grenadines, since those islands have fallen into the hands of the French, and the French had opened a free trade to Martinico, and to their other islands, &c.?”

“This law is *evidently* contrary to the rights of neutral powers, and they might refuse to acknowledge its obligation, as France alone has a right to permit or prohibit trading with her colonies, and as long as she permits it, no neutral ought to be molested therein.”

Hubner and Hennings appear to be the only writers who have taken notice of the principle in question. The former having written at a period when the principle was in operation was doubtless influenced by that consideration. The attention of the latter seems to have been drawn to the subject by the act of parliament concerning Grenada and the Grenadines, which he was inserting in his collection of State papers, and by the construction which he gave to the purport of that act.

The other numerous writers of most modern date, though generally strenuous advocates for the neutral rights of commerce, make no allusion to the British principle: For it would be absurd to regard in the light of an allusion to, and consequently a recognition of this particular principle, the language they happen to use in stating the general principle, that when war arises between some nations, the nations at peace with all, are to proceed in their trade with all, on the same footing in time of war as they did before the war broke out. The obvious meaning of these phrases is, that with the particular exceptions of contraband and blockades made by all of them, the neutral right to trade with a nation at war remains the same as if that nation was at peace; and consequently the right to trade to whatever places, in whatever articles, and in whatever vessels, their regulations might mutually permit. That such must have been the intention of such writers as Galiani, Azuni, and even Lampredi, as well as of Schlegel and the German writers, cannot be questioned, without setting up a forced construction of a particular phrase, in opposition to the whole tenor of their publications; without supposing that whilst they contend for the general system of the armed neutrality, of which this is an essential principle, and have for their main object the enlargement of neutral rights, they could, by a loose stroke of the pen sacrifice a neutral right, far more important than those which they took up their pens to maintain. Such suppositions cannot for a moment be entertained. Nor indeed have any of the partizans of Great Britain undertaken to advance them.

With respect to the opinion of these very late writers, indeed, it is impossible to doubt that their sentiments are in opposition to the belligerent principle of Great Britain. If they have not been more expressly so, their silence is readily explained by the period when they wrote, that is, after the abandonment of the principle during the war of 1778, and before their attention could be called to the subject by the occurrences of the war of 1793. As late even as the year 1799, it was affirmed at the bar of the high court of admiralty, that “in the late practice of this court, *during this war*, there have been a variety of cases from the French and Dutch colonies, in which the court has either ordered further proof, or restored in the first instance.”\* And in a prior case, in the same year, Sir William Scott in reply to an argument at the bar, that the illegality of a trade between the mother countries and their West Indies had been in a good measure abandoned in the decisions of the lords of appeal, does not pretend that any contrary decisions had taken place. He says only—“I am not acquainted with any decision to that effect; and *I doubt* very much whether any decision *yet made* has given even an indirect countenance to this supposed dereliction of a principle rational in itself, and conformable to all general reasoning on the subject.”† Even the orders of council, commencing in January, 1793, could not have been known to these writers; and if they had, were so loosely expressed, so frequently changed, and had their effects as so great a distance from European jurists, that the innovation could not be expected to become an immediate subject of their attention and discussion.

To the incidental hesitation of Hubner, then, opposed by his own deliberate explanation of his principles, are to be opposed the direct authority of one of his countrymen, and the unanimous authority of a host of modern writers, all of a date later than Hubner, and many of them more distinguished for their talents and their erudition on subjects of public law.



It will be found that Mr. Ward is not more successful in his definitions and reasonings on this subject, than in his appeal to the authority of Jurists.

That the obscurity and incongruity into which this heresy in public law betrays the votaries who engage in its defence, may be the better seen, Mr. Ward shall be exhibited in his own words:

“Let it be remembered, therefore, that the question on the part of the belligerent is not, as has been grossly supposed, whether he has a right to interfere with the neutral; but merely whether he cannot prevent the neutral from interfering with him? In other words, whether, when the former *extends* the bounds of his trade not *with* but *for* a belligerent; not only purchases what he wants for his own consumption, or sells his usual peace supply of articles; but sells to him articles which may be easily converted into the means of annoyance; or even turns carrier for his oppressed friend who uses the surplus strength which is thus afforded him against his opponent; whether in such case the other belligerent has no reason to be offended, and to reclaim those rights which the pretended neutral is disposed to deny him? This is in fact the true state of the question.”\*

“In granting, therefore, the fair and reasonable enjoyment of their privileges to neutral nations, there must always be added the fair and reasonable caution that they use them so as not to hurt the belligerent; and that I may not seem to entrench myself in general ‘*ubi sæpe versatur error,*’ I would add that they have certainly no right to use them in any one, the smallest degree *more* than they did in times of peace, nor even in so great a degree, if such augmented, or the ordinary use of them, bears immediate mischief to either belligerent. For example, they may increase their purchases to any amount in the belligerent countries, provided their own consumption required it, and provided they remain domiciled in their own country. But if they persist in carrying, much more, if they extend their faculty of carrying for the belligerent, where the latter was in the habit of carrying before; and if, in consequence, he is enabled to come to the battle, and to stand the shock of war, with augmented strength, which he never would nor could have possessed without it, I see little or no difference between this and an actual loan of military assistance. All the distinction is, that he substitutes his own people in the place of taking foreigners, for every man which the neutral lends to his trade enables him to furnish a man to his own hostile fleets. In other words, it enables him to meet his enemy with undiminished forces, and yet preserve entire his sources of revenue; when, if it was not for this conduct of the neutral, either the forces or the revenue of the belligerent must be diminished.\*

“According to our principles, the same reason which applies to contraband, applies to all *nocent* cases whatsoever.”

A complaint in general terms that a power, which had hitherto stood by, should step in and do that for the belligerent which he was no longer able to do himself, introduces the following passage: “to come a little more into the detail and application of this argument, let us suppose, as was the case with France, a heavy duty on foreign freight had formed an almost fundamental law of her own commercial code; which in times of peace, was a kind of *navigation act amounting to an interdiction of foreign*

*interference*; and that of a sudden, while engaged in war, *wanting her sailors*, perhaps her *merchant ships*, for hostile expeditions, at the same time wanting the pecuniary and other sources of her trade, which would thus be extinguished, she applied to nations calling themselves neutral, by taking off this duty, or even by bounties, to carry on this trade. Here is a proof how necessary this trade is to her exigencies, and how impossible it is to preserve it, consistently with her warfare. But where is the man of plain understanding, and uninterested in the question, who would not determine, that if the neutral accepted the offer, that instant he interfered in the war, &c.?"†

“These observations apply very generally to all the carrying trade, but they more particularly apply to that specific claim in the first article of the armed neutrality of 1780, to navigate freely on the coasts, and from port to port of nations at war. In so far as the coasting trade of a nation is more valuable and more necessary to its existence than its foreign commerce; in just so far is the interposition of neutrals more powerful in its favor.”‡

These extracts cannot be charged with perverting or mutilating the argumentative part of Mr. Ward’s vindication of the belligerent claim in question.

The views of this claim, which Mr. Ward here gives, are, it must be confessed, so vague and so confused that it is difficult to fix on the real meaning of the writer. As far as it can be reduced to any thing like precision, he appears to be at variance with himself; and what is perhaps, not less extraordinary, at variance with Sir William Scott; sometimes going beyond the belligerent claims of the judge, and sometimes relinquishing a part of them.

Thus, on comparing him with himself, he first allows neutrals to increase their purchases to any amount; provided their own consumption require it. He next states, that the neutral privilege is not only not to be used in the smallest degree more than in peace, but not in the *ordinary degree*, if it bears immediate mischief to either belligerent. Finally, he maintains, that the same reason which applies to contraband, applies to *all nocent* cases whatsoever.

On comparing him with Sir William Scott, Mr. Ward admits that neutrals have a right to trade, so far as to purchase and increase their purchases, to the amount of their own consumption. It has been sufficiently seen that Sir William Scott, and indeed his superiors both in the admiralty and executive departments, consider the trade of neutrals, beyond the permission to trade in peace, as merely a relaxation of the rights of war. Here then he stops short of Sir William Scott.

If we are not to consider that, as his real meaning, but pass on to his next position, which denies to neutrals a trade, even in the *ordinary degree*, if it bears immediate mischief to a belligerent (by which the context will not permit us to understand any possible allusion to contraband) he here expressly contradicts Sir William Scott, who lays it down with emphasis “that the general rule is, that the neutral has a right to carry on in time of war, his accustomed trade, to the *utmost extent* of which that accustomed trade is capable.”



If we recur to his last and most rigorous position, that all *nocent cases* whatever are within the reason applicable to contraband; he must be still more extensively at variance with Sir William Scott.

In support of the claim, whatever be the extent in which he means to give it, Mr. Ward urges the unlawfulness of a neutral trade, which “is not *with*, but *for* an enemy.” This has been a very favorite phrase with the patrons of the British claim. It probably was first used in expressing the fiction by which neutral ships, licensed to trade with the French colonies, were converted into French ships. In its application to the subsequent pretext, which determines the channel of trade itself to be unlawful, it is not easy to find any distinct signification: If by trading *for* an enemy be meant, carrying in neutral vessels *enemy's property*, the phrase has no connection with the present question; which is not, whether enemy's property in a neutral ship be liable to capture, but whether neutral property in a neutral ship, in a particular channel, be a lawful trade: If by trading *for* an enemy be meant, carrying to or from his ports, neutral property, where he used to carry it himself; then it cannot be any thing more than trading *with*, not *for* him, during the war; as he traded with, not for the neutral nation, before the war; and the case is nothing more than a relaxation of a navigation act: If by trading with an enemy be meant, carrying neutral articles of trade, which he would neither carry himself nor permit to be carried by neutrals before the war, but the carriage of which he permits both to neutrals and to himself during the war; this can no more be *trading for, notwithstanding*, than it was *trading for, notwithstanding each other*, for either to carry to the other during war or peace, *articles* at one time prohibited, and then permitted by the other; and the case is nothing more than a relaxation with respect to the articles of commerce; as the former was a relaxation with respect to the vessels transporting the articles. The same distinctions and inferences are generally applicable where particular ports shut, at one time, come to be opened, at another.

The essence of the argument supposed to be compressed into this equivocal phrase, thus, evaporates altogether in the analysis. It either means nothing that is true, or nothing that is to the purpose.

But the real hinge on which the reasoning of Mr. Ward turns, is, the injury resulting to one belligerent, from the advantage given to another, by a neutral whose ships and mariners carry on a trade previously carried on by the belligerent himself, and which, consequently, enables the belligerent to employ his own ships and mariners in the operations of war; without even relinquishing the revenue which has its sources in commerce. Between this and an actual loan of military assistance by the neutral, Mr. Ward can see no difference; and this is the most plausible consideration perhaps which could be urged in the cause which he defends.

But unfortunately for this defence, it is completely subverted by three other considerations:

1. The argument is just as applicable to cases where the vessels of the nation, before it was at war, were actually employed, without any *legal* exclusion of those of the neutral nation, as to cases where there was a legal exclusion of foreign vessels before, and a legal admission of them during, the war. In both cases, the belligerent vessels

and seamen, as far as they are liberated by the substitution of foreign vessels and seamen, may be added to his military strength, without any diminution of his exports and imports, or of the revenues connected with them. Either, therefore, the argument must be extended (which will not be undertaken) to the latter case, or it loses its force, as to the former.

2. It has been shewn that Great Britain does herself, thus relax her navigation act; and avowedly for the purposes of substituting neutral vessels and mariners in place of those which she finds it expedient to employ in the operations of war. Mr. Ward must therefore either relinquish his argument, or condemn the practice of his own government.

3. This fundamental argument of Mr. Ward is expressly thrown out of the question by Sir William Scott, who admits that Great Britain, like all countries, in all wars, relaxes her navigation acts and other regulations founded thereon, in order to obtain the service of foreigners with their vessels, where she did without it in times of peace; but that these relaxations, though they arise out of a state of war, do not arise from that predominance of force which he takes to be the true foundation of the principle.\*

When Mr. Ward then asks, “where is the man of plain understanding, and uninterested in the question, who would not determine, that if the neutral accepted the offer, [of a trade from which the ships and seamen of the belligerent were withdrawn for the purposes of war,] that instant he interfered in the war?” A man may be named whose determination of the question, Mr. Ward, as may be inferred from his eulogies on Sir William Scott, would of all men be the last to contest.

On turning to the work of Mr. Browne, it does not appear that he has presented any views of the subject, which require particular examination. He has, in fact, done little more than appeal to the authority of Sir William Scott, and praise and repeat the arguments of Mr. Ward.

It may be thought, that some notice ought to be taken of a discourse of the present Earl of Liverpool, prefixed to his collection of treaties. It would be injustice to the distinguished author of that defence of the maritime principles of Great Britain, to deny it the merit of learning, ingenuity, and a vein of candor more than is always found in such discussions. His attention, however, was almost wholly directed to the question whether free ships make free goods, a question not within the limits of this investigation. He has, indeed, a few cursory observations, such as could not be here noticed without going into unnecessary repetitions, in favor of the doctrine that a trade not customary in peace cannot be lawful in war. These observations, he concludes, with one referred to by Mr. Ward as of great force, on the general question between belligerent and neutral nations; namely, “that if this right were admitted, it would be the interest of all commercial States to promote dissensions among their neighbors.”

If there be any plausibility in this argument, it is certainly all the merit that can be claimed for it. The wars which afflict mankind, are not produced by the intrigues or cupidity of the weaker nations, who wish to remain in peace, whilst their neighbors are at war. They are the offspring of ambitious, and not unfrequently commercial

rivalships, among the more powerful nations themselves. This is a fact attested by all history. If maxims of public law are to be tested, therefore, by their pacific tendency, such maxims, it is evident, must be favored as circumscribing, not the rights and interests of neutral nations, but the belligerent and commercial interests, of their more powerful and warlike neighbors.

As a further answer to the observations of this noble author, and as a final answer to all the arguments which are drawn from the intrinsic equity or conveniency of this principle, the following considerations must have weight with all candid and competent judges.

In the first place it may be repeated, that on a question which is to be decided, not by the abstract precepts of reason, but by the rules of law positively in force, it is not sufficient to show on which side an intrinsic reasonableness can be traced. It is necessary to shew, on which side the law as in force, is found to be. In the present case, it has been shewn that this law is not for, but against, the British side of the question.

But secondly, it is denied that if reason, equity, or conveniency, were alone to decide the question, the decision would be different from that which the law in force pronounces on it.

War imposes on neutral commerce a variety of privations and embarrassments. It is reasonable, therefore, as well as lawful, that neutrals should enjoy the advantages which may happen to arise from war.

1. In the case of contraband, the articles of which, especially according to the British catalogue, may compose an important branch of exports in time of peace, the commerce of particular nations remaining at peace may suffer material defalcations from the exercise of the rights of war.
2. In the case of enemy's property carried by neutral ships, (as Great Britain, at least, understands and enforces the law of nations,) a branch of trade more or less important to all commercial nations, and constituting the most profitable branch of trade with some in times of peace, becomes an object of belligerent interruption and confiscation.
3. In the case of blockades the abridgment and embarrassment to which the trade of neutrals, especially those at a distance, is subjected by war, form other important items of loss on their side. This is a belligerent claim, on which much might be said, if the notoriety of its effects, to say nothing of its extravagant abuses, did not render it unnecessary.
4. The interruptions, proceeding from searches of neutral vessels on the high seas, the erroneous suspicions and inferences which send them into port for trial, the difficulty of obtaining all the requisites proofs thereon by the claimant, the delays and expences incident to the judicial proceedings, more especially where the trial is at a great distance, and above all when appeals still more distant become necessary, the changes

in the state of markets during all these delays, which convert into loss the gains promised by the expedition, the suspension of the mercantile funds, the heavy sacrifices, and sometimes bankruptcies thence ensuing; all these injuries, which war brings on neutral commerce, taken together, must surely, during war, require a very great weight in the opposite scale to balance them, and the weight of these injuries is sometimes not a little increased by the piracies which a state of war generates and emboldens.

The injuries, besides, which are here enumerated, are limited to such proceedings as the laws of war may be thought to authorize. To a fair estimate of the evils suffered by neutral commerce, must be added all those abuses which never fail to be mingled with the exercise of belligerent rights on the high seas; the protracted interruptions, the personal insults, the violent or furtive spoliations, with a thousand irregularities, which are more or less inseparable from the proceeding, and which can seldom be so far verified and prosecuted to effect against the wrong-doers, as to amount to a reparation.

If the evils, brought on neutrals by a state of war, were to be traced to their full extent, a long list of a distinct kind ought moreover to be thrown into the same scale. How many condemnations are made either directly contrary to the law of nations, or by means of unjust presumptions, or arbitrary rules of evidence, against neutral claimants! How often and how severely are the neutral appellants aggrieved by measuring the restitution awarded to them, not according to the actual loss, but according to the deficient estimates, or the scanty proceeds of sales, decreed by ignorant or corrupt vice admiralty courts,\* in places and under circumstances, which reduce the price to a mere fraction of the value! Examples of this sort might easily be multiplied; but they may be thought of the less weight in the present case, as they furnish a just ground of resort from the ordinary tribunals of justice, to those ulterior remedies, which depend on negotiations and arrangements between the belligerent and neutral governments. But whatever may be the provisions for indemnity, obtained in these modes, it remains an important truth on the present subject, that besides the intermediate disadvantage to neutral traders from the mere delay of diplomatic and conventional remedies, the justice stipulated is always rendered very incomplete, by the difficulties in verifying the losses and damages sustained.

The principle urged against a neutral trade in time of war, not permitted in peace, is the more unreasonable, because it gives to a tribunal established by the belligerent party only, a latitude of judgment improper to be confided to courts of justice, however constituted.\*

In cases, even where the tribunal has an equal relation to both the parties, it has ever been deemed proper, that the rules of decision should be as plain and as determinate as possible; in order not only, that they might be the surer guide to those who are to observe them; but also a better guard against the partialities and errors of those who are to apply them. Say, then, whether it be not an abandonment of every reasonable precaution, while the judges have in their national prejudices, in the tenure of their official emoluments, and in their hopes of personal advancements, an exclusive relation to one of the parties; say whether it be not unreasonable to leave to the

opinion, perhaps to the conjectures of a tribunal so composed, the questions whether in a distant quarter of the globe a particular trade\* was or was not allowed before the war, whether if not allowed before the war, its allowance during the war, proceeded from causes distinct from the war, or arising out of the war; whether the allowance had or had not been common to all wars; whether again, if resulting from the particular pressure of the war, the pressure amounted to a necessity; whether if amounting to a necessity, the necessity resulted from an impossibility, imposed by a decided predominance and superiority at sea, of the adverse party? These are not questions of fancy or of unfairness. They are questions which it has been seen, that the enlightened judge in the British high court of admiralty has himself recognized as involved in the principle for which he contends. But they are questions in their nature improper to be decided by any judicial authority whatever; and in their importance, they are questions too great to be left even to the sovereign authority of a country where the rights of other sovereigns are to be the object of the decision.

Finally:—The belligerent claim, to intercept a neutral trade in war not open in peace, is rendered still more extravagantly preposterous and pernicious, by the latitude which it is now assuming. According to late decisions in the British courts, it is in future to be a rule, that produce of an enemy's colony, lawfully imported into a neutral country, and incorporated into its commercial stock, as far as the ordinary regulations of a sovereign State can work such an effect, is to be subject on re-exportation to capture and condemnation; unless it can be shewn that it was imported in the preceeding voyage, with an intention that it should not be re-exported. Consider for a moment the indignity offered to a neutral sovereign in subjecting the integrity of its internal regulations to the scrutiny of foreign courts, and to the interested suspicions of belligerent cruizers; consider the oppression on the individual traders, inseparable from a trial in a distant court, and perhaps an appeal to another court still more distant, where the intention of an antecedent voyage is to be traced through all the labyrinth of mercantile transactions. A neutral vessel goes to sea, with a cargo consisting, in whole or in part, of colonial produce. It may be the produce of a *neutral* colony. It may be the produce of the country exporting it: The United States already produce cotton, sugar, rice, &c., as well as the West Indies. The cruiser does not forget, that the proof will probably be thrown on the claimants; that besides the possibility that it may be a licensed capture, the difficulty of proof may have the same effect in producing condemnation. He recollects also that in the event of an acquittal the costs\* will, where there is the least color for seizure, be thrown on the claimants; and that, at the worst, he can only be put to the inconvenience of giving up a few men to take charge of the prize, in exchange for a few others, not unfrequently *impressed into the vacancy*. In a word, his calculation is, that he may gain, and cannot lose. Will not, under such circumstances, every hogshead of sugar, or bale of cotton, or barrel of rum, &c., be a signal for detention? Could ingenuity devise a project holding out a more effectual premium for the multiplication of vexations searches and seizures, beyond even the ordinary proportion of condemnations? A project, in fact, more unjust in itself, more disrespectful to neutral notions, or more fatal to the liberty and interests of neutral commerce? Would Great Britain be patient under such proceedings against her, if she held in her hands, the means of controuling them? If she will not answer for herself all the world will answer for her, that she would not, and what is more, that she ought not.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE AND WILLIAM PINKNEY.

Department of State May 17—1806.

D. Of S. Mss.  
Instr.

Gentlemen,

I herewith enclose a Commission and letters of credence authorizing you to treat with the British Government concerning the maritime wrongs which have been committed, and the regulation of commerce and navigation, between the parties. Your authority is made several as well as joint, as a provision for any contingency depriving either of the co-operation of the other.

The importance of the trust is evinced by its being made the occasion of an Extraordinary Mission, as well as by the subjects which it embraces. And I have great pleasure in expressing the confidence which the President feels in the prudence and talents to which the business is committed.

It is his particular wish that the British Government should be made fully to understand that the United States are sincerely and anxiously disposed to cherish good will and liberal intercourse between the two nations, that an unwillingness alone to take measures not congenial with that disposition has made them so long patient under violations of their rights and of the rules of a friendly reciprocity; and when forced at length by accumulating wrongs to depart from an absolute forbearance, they have not only selected a mode strictly pacific, but in demonstration of their friendly policy, have connected with the measure, an extraordinary mission, with powers to remove every source of difference, and even to enlarge the foundations of future harmony and mutual interest.

There can be the less ground of umbrage to the British Government, in the Act prohibiting the importation of certain Articles of British manufacture 1st because there is nothing on the face of the Act beyond a mere commercial regulation, tending to foster manufactures in the United States, to lessen our dependence on a single nation by the distribution of our trade, and to substitute for woolens and linens, manufactures made from one of our principal agricultural staples. 2nd because it is far short of a reciprocity with British exclusions of American Articles of export. 3d because as a commercial measure discriminating in time of war, between British and other nations, it has examples in British practice. It deserves attention also that a discrimination was made, and under another name still exists, in the amount of convoy duty imposed on the trade between Great Britain with Europe, and with America. 4th because the measure cannot be ascribed to a partiality towards the enemies of Great Britain, or to a view of favoring them in the war; having for its sole object the interest of the United States, which it pursues in a mode strictly conformable to the rights and the practice of all nations.

To observations of this kind it may be useful to add that the measure was undertaken before the late change in the British Ministry, and does not therefore imply any particular distrust of the views of the new one, but merely a belief that it was most consistent with self respect not to be diverted, by an occurrence of that nature, from a ground which had been deliberately and publicly assumed; not to mention that no assurances sufficiently decisive had been received that a disposition to correct the evil in question predominated in the present Cabinet; whilst it was known that some of its most distinguished members have heretofore been among the warmest champions of the maritime doctrines in which those evils have their origin.

In one respect the act may even be favorable to the objects of the present Cabinet, if it should be disposed to make unpopular concessions refused by their predecessors; since concessions alone can now regain a lost market for certain important and popular classes of British manufactures.

In fine the Act may truly be represented as so far from derogating from the amicable dispositions of the United States towards Great Britain, that it has resulted solely from the inefficacy of their protracted and reiterated endeavors otherwise to obtain a just redress, and from a hope that an appeal in this peaceable form to the reflections and interests of an enlightened nation, would be more successful in removing every obstacle to a perfect and permanent cordiality between the two nations.

The instructions given to Mr. Monroe Jan'y 5- 1804, having taken into view, and being still applicable to a great proportion of the matter now committed to your joint negotiations, it will be most convenient to refer you to those instructions as your general guide, and to confine the present, to the alterations and additions, which a change of circumstances, or a contemplation of new objects may require.

The first article of the project comprized in the instructions of 1804, relates to the impressment of seamen. The importance of an effectual remedy for this practice, derives urgency from the licentiousness with which it is still pursued, and from the growing impatience of this Country under it. So indispensable is some adequate provision for the case, that the President makes it a necessary preliminary to any stipulation requiring a repeal of the Act shutting the Market of the U. States against certain British manufactures. At the same time he authorizes you in case the ultimatum as stated in the Article above referred to, should not be acceptable to the British Government, to substitute one in the terms following—"No seaman nor sea faring person shall upon the high seas, and without the jurisdiction of either party, be demanded or taken out of any ship or vessel, belonging to the Citizens or subjects of one of the parties, by the public or private armed ships or men of war belonging to or in the service of the other party; and strict orders shall be given for the observance of this engagement."

An article in these terms was, with the acquiescence of Lord Hawkesbury and Mr. Addington, concerted between Mr. King and lord St Vincent on the approaching renewal of the late war. It was frustrated by an exception of the "narrow seas", inserted by Lord St Vincent; an exception so evidently inadmissible both in principle and in practice, that it must have been intended as a pretext for evading the stipulation

at that time. Perhaps the present Ministry may neither be disposed to resort to such a pretext, nor unwilling to avail themselves of the precise sanction as far as it was given by their predecessors.

With respect to contraband which is the subject of the 4th art, it may be observed that as it excludes naval stores from the list, and is otherwise limited to articles strictly military, it must be admissible to Great Britain, [and] leave but feeble objections to an abolition of contraband altogether. In the present state of the arts in Europe, with the intercourse by land, no nation at war with Great Britain can be much embarrassed by leaving those particular articles subject to maritime capture. Whilst belligerent nations therefore have little interest in the limited right against contraband, it imposes on neutrals all the evils resulting from suspicious and vexatious searches, and from questions incident to the terms used in the actual enumeration. It is not an unreasonable hope therefore, that in place of this article, an entire abolition of contraband may be substituted. Should this be found unattainable, it may be an improvement of the Article, as it stands, to subjoin for the sake of greater caution, to the positive enumeration, a negative specification of certain Articles, such as provisions, money naval stores &c as in no case to be deemed within the meaning of the article with a proviso, that the specification shall not be construed to imply in the least, that any articles not specified in the exception, shall on that account be liable to be drawn into question.

A doctrine has been lately introduced by the British Courts and at length adopted by the instructions of June 1803, to British Cruizers, which regards contraband conveyed in one voyage as affecting a resumed or returning voyage, altho' contraband shall have been previously deposited at its port of destination. It will be a further improvement of the Article to insert a declaratory clause against the innovation, and the abuses incident to it.

The 4th article, besides the stipulation on the subject of contraband, relates to two other subjects; 1st That of free ships free goods, 2nd that of a trade with enemy's Colonies.

1st. With respect to the first, the principle that a neutral flag covers the property of an enemy, is relinquished, in pursuance of the example of the Russian Treaty on which the article is modelled; the relinquishment however being connected with and conditioned on, the provision required in favor of the neutral right to the Colonial Trade. The importance of that principle to the security of neutral commerce, and to the freedom of the seas, has at all times been felt by the United States; and altho' they have not asserted it as the established law of nations, they have ever been anxious to see it made a part of that law. It was with reluctance, of course, that a contrary stipulation was authorized, and merely as a mean of obtaining from Great Britain, the recognition of a principle now become of more importance to neutral nations possessing mercantile Capital, than the principle of "free ships free goods." It is to be particularly kept in view therefore that such a contrary stipulation is to be avoided if possible, and if unavoidable that the stipulation be so modified as to interfere as little as possible with the spirit and policy of any provisions in favor of the principle which may be likely to be introduced into a Treaty of peace among the present belligerent



powers of Europe. Should it be known that Russia as well as France meant to insist on such a provision, and that such a stipulation by the United States however modified, will naturally affect her confidence and good will towards them, the objection to the measure will acquire a force that can yield only to the consideration that without such a sacrifice the provisions for the security of our seamen, and of our neutral commerce, cannot be obtained and that the sacrifice will effectually answer these purposes.

2d. The vast importance of the Colonial trade, with the circumstances and the excitement which have taken place since the date of the Original instructions to Mr. Monroe, will require that the neutral right on this subject, be provided for in an appropriate Article, and in terms more explicit than are used in the Article under review. As the right in this case, turns on the general principle that neutrals may lawfully trade, with the exception of Blockades and contraband, to and between all ports of an enemy and in all Articles, altho' the trade shall not have been open to them in time of peace, particular care is to be taken that no part of the principle be expressly or virtually abandoned, as being no part of the law of nations. On the contrary it is much to be desired that the general principle in its full extent, be laid down in the stipulation. But as this may not be attainable and as too much ought not to be risked by an inflexible pursuit of abstract right, especially against the example and the sentiments of great powers having concurrent interests with the United States; you are left at liberty if found necessary to abridge the right in practice, as it is done in the supplement of Octr 1801 to the Treaty of June of that year, between Russia and Great Britain; not omitting to provide that in case Great Britain should by her Treaties or instructions leave to any other nation the right in a greater extent than it is stipulated to the United States, they may claim the enjoyment of it in an equal extent.

The abuses which have been committed by Great Britain under the pretext that a neutral trade, from enemy Colonies, through neutral ports, was a direct trade, render it indispensable to guard against such a pretext by some express declaration on that point. The most that can be conceded on the part of the United States, is that the landing of the goods, the securing the duties, and the change of the ship, or preferably the landing of the goods alone, or with the securing the duties, shall be requisite to destroy the identity of the voyage and the directness of the trade, and that the ordinary documents of the Custom House officers, shall be sufficient evidence of the facts or fact.

A satisfactory provision on this subject of a trade with enemy Colonies, is deemed of so much consequence to the rights and interests of the United States, and is so well understood to have been contemplated along with a like provision against the impressment of seamen, in the late Act of Congress prohibiting the importation of certain classes of British Manufactures that, as was enjoined with respect to the provision against impressment, no stipulation is to be entered into not consistent with a continuance of that Act, unless the provision with respect to the Colonial trade be also obtained.

In remodelling the provision with respect to the Colonial trade, you may with great propriety urge a distinction between the West India Colonies, and the very distant ones in the East Indies and elsewhere; and the reasonableness of limiting to the

former, the exception of the direct trade with their present Countries, out of the general neutral right. The distinction is supported by several considerations, particularly by the greater difficulty, in the case of the more distant Colonies, of previously knowing, and eventually proving the regulations as they may have actually stood in time of peace; and by the ruinous delays and expences attending the judicial investigations. The British Courts have in fact admitted the distinction so far as to presume the lawfulness of the neutral trade with the East India Colonies, as being generally open in peace as well as war; whilst they reverse the presumption with respect to the West Indies.

In addition to what is proposed on the subject of blockades in VI & VII articles, the perseverance of Great Britain in considering a notification of a blockade, and even of an intended blockade, to a foreign Government, or its Ministers at London, as a notice to its Citizens, and as rendering a vessel wherever found in a destination to the notified port, as liable to capture, calls for a special remedy. The palpable injustice of the practice, is aggravated by the auxiliary rule prevailing in the British Courts, that the blockade is to be held in legal force, until the Governmental notification be expressly rescinded; however certain the fact may be that the blockade was never formed or had ceased. You will be at no loss for topics to enforce the inconsistency of these innovations with the law of nations, with the nature of blockades, with the safety of neutral commerce; and particularly with the communication made to this Government by order of the British Government in the year 1804; according to which the British Commanders and Vice Admiralty Courts, were instructed “not to consider any blockade of the Islands of Martinique and Guadaloupe as existing unless in respect of particular ports which may be actually invested, and then not to capture vessels bound to such ports unless they shall previously have been warned not to enter them.”

The absurdity of substituting such diplomatic notifications in place of a special warning from the blockading ships, cannot be better illustrated than by the fact, that before the notification of a proposed blockade of Cadiz in the year 1805 was received here from our Minister at London, official information was received from Cadiz, that the blockade had actually been raised, by an enemy’s fleet.

It may be worth your attention that a distinction has been admitted by the British Courts, in consideration of the distance of the United States from the European Blockades, between their Citizens and those of States less distant; the notice required for the former being more positive than is made necessary for the latter. You will be able to avail yourselves in the discussion, and perhaps in the modification of the Article, of the reasons on which such a distinction rests.

The instructions in the hands of Mr. Monroe are silent with respect to Convoys. If the footing on which the neutral right on that subject is placed by the Russian and British Treaty of 1801, can be turned to advantage in your negotiations, and should be understood to coincide with the present way of thinking of Russia and other maritime powers, an article corresponding with the regulations in that Treaty, may be admitted. But as the United States are not in the practice of Convoying their trade, nor likely to be so within the period of any stipulation now to be made, and as the progress of

opinion is rather favorable than discouraging to the enlargement of neutral rights, it is in a general view desirable that any stipulation, such as Great Britain will probably admit, should at this time be entered into. In whatever arrangement on the subject limiting the protecting right of public ships of war, may be deemed expedient, you will be careful so to express the limitation, that it may be applied to the exercise of the right without affecting the abstract right itself.

There remains as an object of great importance, some adequate provision against the insults and injuries committed by British cruizers in the vicinity of our shores and harbors. These have been heretofore a topic of remonstrance, and have in a late instance, been repeated with circumstances peculiarly provoking, as they include the murder of an American seaman within the jurisdictional limits of the United States. Mr. Monroe is in full possession of the documents explaining a former instance. Herewith will be received those relating to the late one. They not only support a just demand of an exemplary punishment of the offenders and of indemnity for the spoliations, but call for some stipulations guarding against such outrages in future. With this view it is proper that all armed belligerent ships should be expressly and effectually restrained from making seizures or searches within a certain distance from our Coasts, or taking stations near our harbours, commodious for those purposes.

In defining the distance protected against belligerent proceedings, it would not perhaps be unreasonable, considering the extent of the United States, the shoalness of their coast and the natural indication furnished by the well defined path of the Gulph stream, to expect an immunity for the space between that limit and the american shore. But at least it may be insisted that the extent of the neutral immunity should correspond with the claims maintained by Great Britain, around her own territory. Without any particular enquiry into the extent of these, it may be observed 1 That the British Act of Parliament in the year 1730—9 G. 2 C. 35 supposed to be that called the Hovering Act assumes for certain purposes of trade, the distance of four leagues from the shores. 2 That it appears that both in the Reign of James I and of Charles II<sup>1</sup> the security of the commerce with British ports was provided for, by express prohibitions against the roving or hovering of belligerent ships so near the neutral harbours and coasts of Great Britain as to disturb or threaten vessels homeward or outward bound; as well as against belligerent proceedings generally within an inconvenient approach towards British territory.

With this example, and with a view to what is suggested by our own experience, it may be expected that the British Government will not refuse to concur in an Article to the following effect.

“It is agreed that all armed vessels belonging to either of the parties engaged in war shall be effectually restrained by positive orders and penal provisions from seizing, searching or otherwise interrupting or disturbing vessels to whomsoever belonging, and whether outward or inward bound within the harbours, or the Chambers formed by headlands, or anywhere at sea within the distance of four leagues from the shore, or from a right line from one head-land to another; it is further agreed that by like orders and provisions all armed vessels shall be effectually restrained by the party to which they respectively belong, from stationing themselves, or from roving or

hovering, so near the entry of any of the harbours or coasts of the other, as that Merchantmen shall apprehend their passage to be unsafe, or a danger of being set upon and surprised; and that in all cases where death shall be occasioned by any proceeding contrary to these stipulations, and the offender cannot, conveniently be brought to trial and punishment under the laws of the party offended he shall on demand made within NA months be delivered up for that purpose.”

If the distance of four leagues cannot be obtained, any distance not less than one sea league may be substituted in the Article. It will occur to you that the stipulation against the roving and hovering of armed ships on our coasts so as to endanger or alarm trading vessels, will acquire importance as the space entitled to immunity shall be narrowed.

Another object not comprehended in the instructions of 1804 to Mr. Monroe, is rendered important by the number of illegal captures and injuries, which have been committed by British Cruizers since that date. An indemnity for them is due on every consideration of justice and friendship and is enforced by the example heretofore given by Great Britain herself, as well as by other nations which have provided by Treaty for repairing the spoliations practised under colour of their authority. You will press this as an object too reasonable not to be confidently expected by the United States. Many of the claims indeed for indemnification are so obviously just that a refusal to satisfy them, cannot be decently made, and ought not therefore to be presumed.

The two modes most readily presenting themselves for a comprehensive provision for the claims, are first the establishment of a Board analogous to that provided for in the 7th Art of the Treaty of 1794; secondly, the substitution of a gross sum to be distributed among the claimants according to a liquidation to be made under the authority of the United States.

The second is the most eligible, if the gross sum to be allowed, be thought to approach the amount of losses to be indemnified. To assist you in estimating these, the statements addressed to this Department by the underwriter and others, are herewith transmitted. These statements with those furnished by Mr Lyman to Novr 1st will be [have?] to be reduced according to the redress which shall have been judicially afforded, and on the other hand to be augmented by the addition of cases not reported here, and to be collected from the sources of information within your own reach.

If the first mode should be adopted, great care will be requisite, in describing the cases, to employ such general terms as will comprehend all that are fairly entitled to redress. It will be well at the same time to secure, by specifying, such of the cases as can be specified and as are least susceptible of objection. Under this head may be classed 1 cases in which the official communication made by Lord Hawkesbury to Mr. King of the 11th day of April 1801 has been violated 2d Cases in which the rules of blockade stated in Mr. Merry’s communication to the Department of State on the 12th day of April 1804 have been violated. 3d Cases where the territorial jurisdiction of the United States has been violated.

The list of neutral rights asserted in the Report of the Secretary of State to the President on the 25th day of Jan'y 1806, will suggest other specifications which may be attempted. It may be worth recollecting that the British order of Council bearing date 24th June 1803, and subjecting to capture vessels on a return voyage, which had carried contraband in the outward voyage, was never promulgated, nor was it known that such a rule was to be enforced until the summer of 1805. Could the rule be regarded otherwise than as it certainly is, an innovation on the law of nations, all captures before it was made known, and contrary to antecedent practice, would be marked by an unjust surprise, fairly entitling them to redress.

The business to come before such a board may be much diminished by the reference of cases, particularly of costs and damages and such others whose description by common consent entitles them to redress, to the Kings Advocate and an Advocate to be named on your part (Dr. Laurence for Example) who may be authorized to report the sums due, subject to the approbation in each case of Mr. Lyman our Agent. As far as the cases fall within the observation here made, a liquidation of them may be carried on during the period of negotiation.

Altho' the subject of indemnifications for past wrongs is to be pressed as of great magnitude in a satisfactory adjustment of our differences with Great Britain; yet as the British Government may be inflexible in refusing an arrangement implying that her maritime principles of capture were contrary to the law of nations, whilst she would not be inflexible in stipulating a future practice conformable to our wishes, it is not thought proper that a provision for indemnities should be an absolute condition of the repeal of the Act of Congress concerning British manufactures, provided satisfactory arrangements shall be made relative to impressments, and the trade with enemy's Colonies. Still however it is to be kept in view that there are claims founded on Acts of British cruizers violating the law of nations as recognized by Great Britain herself, and others founded on unexpected departures, without notice from rules of practice deliberately settled and formally announced. Of these, examples have been referred to in the communication of Lord Hawkesbury to Mr. King and of Mr. Merry to the Department of State.

With respect to claims of these several kinds, it is evident that provision is clearly due for them, and that it may be made without implication which can alarm the pride or the caution which may be professed. You will not fail therefore, to bring if necessary, these claims into view, as distinguished from others founded on controverted principles, and to let it be understood that a refusal of them will be a painful ingredient in the negotiations for extinguishing discontents on both sides, and consolidating and perpetuating the friendship between them. In case this distinction should operate in the adjustment, it will furnish an additional reason for preferring a gross sum, to the liquidations of a joint Board, first because it will admit of a liberal sum, if the British Government should be liberally disposed, on presumptions not affecting her maritime principles. Secondly, because it will leave the United States free to apply the gross sum, in redressing claims, according to our maritime principles. A precedent for such an expedient may be found in the Convention of Jan'y 1756 between Great Britain and Persia; whereby a gross sum of £20,000 sterling was paid to the latter as an extinguishment of claims on account of illegal captures,

without reference to the precise rules by which it was to be applied. The treaty of Pardo in Jan'y 1739 between Great Britain and Spain, is another precedent. In that Treaty the sum of £95,000 sterling was stipulated in the like general manner, to be paid to Great Britain by Spain, as a compromise for all reparation of maritime injuries.

If the United States succeed in making satisfactory arrangements on the principal points of impressment of seamen, Colonial trade, and still more if provision be also made for indemnity for spoliations, it may be naturally expected that Great Britain will require, not only the repeal of the prohibitory act of last Session, but also some security that the United States will not by subsequent acts of the same nature place her on a worse footing than other nations. She may reasonably urge that demand on the double plea, of having yielded on those points which were the subjects of complaint on the part of the United States, and of her being now for want of a Commercial Treaty placed in that respect at the discretion of the United States; whilst they are precluded by their Treaties with the enemies of Great Britain (Holland, France and Spain) from the power of laying prohibitions or restrictions particularly affecting those nations.

The most natural arrangement in that respect will be simply to agree that the two parties shall enjoy in the ports of each other in regard to commerce and Navigation, the privileges of the most favored nation. But the Article should be framed so as to embrace 1<sup>st</sup> every privilege and particularly the exemption from higher duties of every description either on imports or exports and including Convoy duties, that are paid by the most favored nation; 2<sup>dly</sup> all the possessions of Great Britain in every port of the world; which will secure admission at all times in both East and West Indies, on the same terms as are now or may in future be enjoyed by the most favored nation, whether it be a friend or an enemy.

The same clause of the footing of the most favored nation may be extended not only to navigation and Commercial intercourse between the two nations, but to points which relate to the rights and duties of belligerents and neutrals: an arrangement which would secure to Great Britain the same rights in relation to the admission of her armed vessels in our ports and to the exclusion of her enemies privateers and of their prizes, which are now enjoyed by Holland, Spain and other most favored nations: whilst it would place the rights of the United States as neutrals on the same footing with Russia or the most favored nation in respect to search, Convoys, blockades and contraband.

If, it shall be thought eligible to place the reciprocal commercial privileges of the two nations on a more definite basis than they would be placed by the general expression of the most favored nation (a stipulation which is liable to the difficulty of ascertaining the equivalent to be given in cases where a privilege is granted by one of the contracting parties to another nation in exchange for some favor which the other contracting party cannot specifically give) it may be done, either by abolishing all alien duties either on vessel or cargo, or both, and reciprocally placing the vessels of the other nation on the same footing with national vessels; conformably to a provision in which Great Britain concurred by an Act of Parliament in the year 1802 or by

fixing the maximum of alien duty which each nation shall have the right to impose on the vessel or Cargoes of the other nation. But should the last plan be adopted, care must be taken 1st that in fixing the maximum of the alien duty to be levied on vessels, all charges whatever and under whatever name known, whether tonnage Light House money, port charges &c. shall be included. 2dly That the maximum of the alien duty to be levied on merchandize imported in the vessels of the other nation (beyond the duties levied on similar Articles imported in the national vessels) shall be a per centage on the value of the merchandize itself and not on the original duty 3dly that the right of imposing such maximum duties either on the vessels or merchandize shall never be exercised so as to contravene the other stipulation of enjoying the privileges of the most favored nation. 4thly That the stipulation shall not embrace vessels and cargoes coming from or going to ports from which the vessels or cargoes of the United States are excluded.

Should the expedient of a Maximum be adopted, it must not be overlooked that the productions of the United States exported to Great Britain employ a far greater tonnage than the exports from Great Britain to the United States; that the higher the maximum therefore the more favorable to Great Britain, who may avail herself according to the degree of it to secure to her vessels the carriage of our bulky productions, of which her duty on Tobacco imported in American vessels is an example; leaving to the United States the opportunity only of securing to their vessels the carriage of her unbulky exports; and that consequently no maximum ought to be admitted more unfavorable to the United States, than the regulations likely to prevail, if uncontroled by Treaty. A mutual abolition of alien duties would probably be favorable to the Navigation of the United States, which would then have to contend on equal terms with British Navigation, for which it may be expected to be at least a match at all times, and more than a match when Great Britain is at War, which is not less than half the time.

The only great branch of Commercial intercourse which would remain unprovided for, is that of intercourse with the British Colonies and dependencies: and if nothing can be obtained on that ground, care also must be taken in framing the Article for reciprocally enjoying the privileges of the most favored nation, not to deprive the United States of the right of making such regulations as they may think proper in relation to vessels coming from ports from which their own vessels are excluded, or in relation generally to the intercourse with such ports.

As the United States confer no particular benefit on the British possessions in the East Indies by their intercourse with that Country, it can hardly be expected that Great Britain will grant anything more than the general stipulation to be placed on the footing of the most favored Nation; or possibly a stipulation to the United States of the privileges heretofore granted to foreigners, which in relation to the coasting trade, and the trade from India ports to all foreign Countries as well as that owning the vessel exceeded the privileges stipulated in the Treaty of 1794.

But as relates to the West Indies and North American Colonies it must be a permanent object of the United States, to have the intercourse with them made as free as that with Europe. The relative situation of the United States and those Colonies, and

particularly those wants which we can alone supply, must necessarily produce that effect at some no very distant period. And it should not be voluntarily retarded either by abandoning by Treaty the strong hold which our right of stopping the intercourse gives us; or by accepting any temporary or trifling privilege, the exercise of which would diminish the probability of soon obtaining a perfectly free trade.

It is not probable that Great Britain will be disposed to open the intercourse to our vessels with her North American Colonies; nor does it appear that any limitation or restriction can be offered by the United States, calculated to quiet the apprehensions of Great Britain that to open that trade to our vessels would destroy their own. It is not perceived that any thing else can be proposed but perfect reciprocity as is contemplated in relation to the Intercourse between the United States and the British dominions in Europe, such reciprocity to consist either of a total abolition of alien duties or of a fixed Maximum as above stated; and the intercourse to be also either general or confined to Articles of the growth, produce or manufacture of the United States and of the said Colonies respectively. It must not be forgotten, as relates to our commerce with Nova Scotia and New Brunswick that however advantageous to both parties, it is more beneficial to the United States than to those Colonies. The importation of not less than 30, perhaps 50 thousand tons of Plaister to our agriculture needs no comment; and notwithstanding our exclusion from their ports, we have in fact, as the trade has hitherto been carried on, a greater share of it than themselves. This however is the result of a connivance in practice which may possibly be withdrawn. The produce of their fisheries is brought by them from Halifax to Boston, and by us from Boston carried to the West Indies. Their plaister is brought by them from Fundy Bay to Maine, and by us from Maine to New York, Philada and the Chesapeake. A strong jealousy seems to exist between the shipping interest of Massachusetts and that of those Colonies. Hence the wish of their legislative assemblies to prohibit the exportation of plaister in their own vessels to our Eastern ports; and hence the law which laid the light House money tax and a high duty on their fish, taking away at the same time the drawback of the re-exportation of such fish. An enlightened policy and a mutual wish to promote the real interest and welfare of the inhabitants on both sides, should induce both Governments to throw the trade perfectly open. But it cannot be denied that it will give us a very great share of their carrying trade.

The minimum which should be accepted in relation to the intercourse with the West Indies, will be the admission of our vessels laden solely with Articles of our growth, produce or manufacture, the importation of which [in] British vessels is not prohibited, on the same terms as British vessels solely laden with the Colonial Articles shall be admitted in our ports, that is to say, either without alien duties or with a fixed maximum of such alien duties with the two following restrictions. 1st. That Great Britain may prohibit our vessels from exporting from the British West India Islands in Sugar and Coffee, more than one half of the proceeds of their inward Cargoes. 2dly That such Sugar and Coffee shall be exported only to the United States, or that the vessels thus admitted in the West Indies shall be obliged to return and land their Cargoes in the United States, provided they may however, on their return touch at any other West India Island or the Bahamas to complete their cargo. For it is usual to carry the specie which proceeds from the sale of a cargo in the West Indies to



Turks Island or the Bahamas and there load with Salt for the United States. Altho' those restrictions and particularly the first be inconvenient, yet they may be acquiesced in. As respects the first restriction the value of our average exportation, to the British West India Islands, being Six Millions of dollars and our exportations from thence in every article (Sugar & Coffee excepted) being three Millions of dollars the privilege of bringing in return in Sugar & Coffee one half of the value of our exportations will just complete the return cargoes. But it would be desirable that the restriction should be altogether dispensed with or that Great Britain should allow the exportation in those two Articles to the amount of  $\frac{1}{2}$  or  $\frac{3}{4}$  of the value of our Cargoes. As relates to Great Britain, if she once yields the point of admission, the restrictions which are proposed seem to be amply sufficient to remove her minor objections. We now import notwithstanding the nominal prohibitions to some amount in American vessels: about one million and a half dollars being the whole amount imported from the British islands, in both American and British vessels. The value of our average importations from all the world is in sugar, 7,800,000 in coffee 8,400,000, or more than 16 Millions of dollars. The value of our annual consumption exclusively of the New Orleans Sugar, is in sugar 4,000,000 in coffee 1,500,000 or  $5\frac{1}{2}$  Millions of dollars.

To permit us therefore to import for 3 millions cannot enable us to re-export. And three millions of dollars compared with the value of the Sugar and Coffee exported annually from the British West Indies which amounts to less than NA millions cannot in any degree affect their own commerce or navigation.

The second restriction is intended still more effectually to remove any apprehension that our vessels might become carriers of British West India produce to any other Country than the United States. And it may even if insisted on, be farther agreed that no drawback shall be allowable on the re-exportation of those Articles imported from the British West Indies in American vessels, provided, however, that on that condition the first mentioned restriction limiting the quantity which may be thus imported from the British West Indies in American vessels, shall be dispensed with. The utmost care is to be taken in framing the restriction on re-exporting from the United States, the produce of the British West Indies, imported in American vessels, so to express it as to leave no possible pretext for applying the restriction to any similar Articles, whether produced within the United States, or imported from any other than English possessions.

It will be a reasonable Stipulation on the part of Great Britain, that at all times and places at which the trade of the United States is admitted generally or partially the residence of Consuls and factors shall also be admitted.

The duration of the Commercial part of the Treaty and of any other parts which do not establish in their full extent, the rights of neutral nations, ought not to exceed the term of Eight years; and an abridgment even of that term may perhaps be rendered expedient by the tenor of Articles not inconsistent with those instructions.

I have the honor to be, Gentlemen &c

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE AND WILLIAM PINKNEY.

Department of State, February 3d 1807.

D. Of S. Mss.  
Instr.

Gentlemen,

The triplicate of your communications of Nov. 11th has just been received. Those of Sept. 12th had been previously received in due time.

The turn which the negotiation has taken, was not expected, and excites as much of regret as of disappointment. The conciliatory spirit manifested on both sides, with the apparent consistency of the interest of Great Britain, with the right of the American flag, touching impressment, seemed to promise as much success to your efforts on the subject as on the others, and, notwithstanding the perseverance of the British Cabinet in resisting your reasonable propositions, the hope is not abandoned that a more enlightened and enlarged policy will finally overcome scruples which doubtless proceed more from habits of opinion and official caution, than from an unbiased regard to all the considerations which enter into the true merits of the question.

In the meantime the President has with all those friendly and conciliatory dispositions which produced your mission, and pervade your instructions, weighed the arrangement held out in your last letter which contemplates a formal adjustment of the other topics under discussion, and an informal understanding only, on that of impressment. The result of his deliberations, which I am now to state to you, is, that it does not comport with his views of the national Sentiment or the Legislative policy, that any Treaty should be entered into with the British Government which, whilst on every other point it is either limited to, or short of strict right, would include no article providing for a case which both in principle and in practice is so feelingly connected with the honor and sovereignty of the Nation, as well as with its fair interests; and indeed with the peace of both nations. The President thinks it more eligible under all circumstances that if no satisfactory or formal stipulation on the subject of impressment be attainable the negotiation should be made to terminate without any formal compact whatever, but with a mutual understanding, founded on friendly and liberal discussions and explanations, that in practice each party will entirely conform to what may be thus informally settled. And you are authorized, in case an arrangement of this kind shall be satisfactory in its substance, to give assurances that as long as it shall be duly respected in practice by the other party more particularly on the subjects of neutral trade and impressment, it will be earnestly, and probably, successfully recommended to Congress by the President not to permit the non-importation act to go into operation. You are also authorized to inform the British Government that the President, adhering to the sentiments which led him to recommend to Congress at the commencement of the Session, a suspension of the act, and trusting to the influence of mutual dispositions and interests in giving an amicable issue to the negotiations, will, if no intervening intelligence forbid, exercise the authority vested in him by the Act, of continuing its suspension from the 1st day of

July to the time limited by the Act, and which will afford to Congress who will then be in Session, the opportunity of making due provision for the case.

You will perceive that this explanation of the views of the President, requires, that if previous to the receipt of it, a Treaty not including an article relating to impressments should have been concluded and be on the way, the British Commissioners should be candidly apprized of the reason for not expecting ratification, and that on this ground they be invited to enter anew on the business, with an eye to such a result as has just been explained and authorized.

Having thus communicated the outline assigned by the President as your guide in the important and delicate task on your hands, I proceed to make a few observations which are suggested by the contents of your last dispatch, and which may be of use in your further discussions and your final arrangements.

## IMPRESSMENTS.

The British Government is under an egregious mistake in supposing that “no recent causes of complaint have occurred,” on this subject. How far the language of Mr. Lyman’s books may countenance this error I cannot say, but I think it probable that even there the means of correcting it may be found. In the American Seas, including the West Indies, the impressments have perhaps at no time been more numerous or vexatious. It is equally a mistake therefore to suppose “that no probable inconvenience can result from the postponement of an Article” for this case.

The remedy proposed in the Note from the British Commissioners, however well intended, does not inspire the confidence here which gave it so much value in their judgment. They see the favorable side only, of the character of their naval Commanders. The spirit which vexes neutrals in their maritime rights, is fully understood by neutrals only. The habits generated by naval command, and the interest which is felt in the abuse of it, both as respects captures and impressments, render inadequate every provision which does not put an end to all discretionary power in the commanders. As long as the British navy has so complete an ascendancy on the high seas, its commanders have not only an interest in violating the rights of neutrals within the limits of neutral patience, especially of those whose commerce and mariners are unguarded by fleets: they feel moreover the strongest temptation, as is well known from the occasional language of some of them, to covet the full range for spoliation opened by a state of War. The rich harvest promised by the commerce of the United States, gives to this cupidity all its force. Whatever general injuries might accrue to their nation, or whatever surplus of reprisals might result to American Cruizers, the fortunes of British Cruizers would not be the less certain in the event of hostilities between the two nations.

Whilst all these considerations require in our behalf the most precise and peremptory security against the propensities of British naval commanders, and, on the tender subject of impressments more than any other, it is impossible to find equivalent or even important motives on the British side for declining a security. The proposition which you have made, aided by the internal regulations which the British Government

is always free to make, closes all the considerable avenues through which its seamen can find their way into our service. The only loss consequently which could remain, would be in the number at present in this service; with a deduction of those who might from time to time voluntarily leave it, or be found within the limits of Great Britain or of her possessions; and in the proportion of this reduced number who might otherwise be gained by impressment. The smallness of this loss appears from the annual amount of impressments, which has not exceeded a few hundred British seamen, the great mass consisting of real Americans and of subjects of other neutral powers. And even from the few British seamen ought to be deducted those impressed within neutral ports, where it is agreed that the proceeding is clearly unlawful.

Under this view of the subject the sacrifice which Great Britain would make dwindles to the merest trifle; or rather, there is just reason to believe that instead of a loss, she would find an actual gain, in the excess of the deserters who would be surrendered by the United States, over the number actually recoverable by impressment.

In practice, therefore Great Britain would make no sacrifice by acceding to our terms; and her principle, if not expressly saved by a recital as it easily might be, would in effect be so by the tenor of the arrangement; inasmuch as she would obtain for her forbearance to exercise what she deems a right, a right to measures on our part which we have a right to refuse. She would consequently merely exchange one right for another. She would also, by such forbearance, violate no personal right of individuals under her protection. The United States on the other hand in yielding to the claims of Great Britain, on this subject, would necessarily surrender what they deem an essential right of their flag and of their Sovereignty, without even acquiring any new right; would violate the right of the individuals under the protection of both; and expose their native Citizens to all the calamitous mistakes voluntary and involuntary, of which experience gives such forcible warning.

I take for granted that you have not failed to make due use of the arrangement concerted by Mr. King with Lord Hawksbury in the year 1802 for settling the question of impressments. On that occasion, and under that administration, the British principle was fairly renounced in favor of the right of our flag; Lord Hawksbury having agreed to prohibit impressments altogether on the High seas; and Lord St. Vincent requiring nothing more than an exception of the narrow seas, an exception resting on the obsolete claim of Great Britain to some peculiar dominion over them. I have thought it not amiss to inclose another extract from Mr. King's letter giving an account of that transaction.

In the Note of Novr 8th from the British Commissioners, the Security held out to the crews of our vessels is that instructions have been given, and *will be repeated*, for enforcing the greatest caution &c. If the future instructions are to be repetitions of the past, we well know the inefficacy of them. Any instructions which are to answer the purpose, must differ essentially from the past, both in their tenor and their sanctions. In case an informal arrangement should be substituted for a regular stipulation, it may reasonably be expected from the candor of the British Government, that the instructions on which we are to rely, should be communicated to you.

## COLONIAL TRADE.

It may reasonably be expected that on this subject the British Government will not persist in attempting to place the United States on a worse footing than Russia. In agreeing to consider the storing for a *month*, and changing the ship, as a naturalization of the property, the concession would be on our side, not on theirs; and in making this a condition on which alone we could trade with enemy Colonies even directly to and from our own ports, beyond the amount of our own consumption, we should make every sacrifice short of a complete abandonment of our principle, while they would retain as much of their pretension as is compatible with any sacrifice whatever, a pretension too, which they have in so many ways fairly precluded themselves from now maintaining. In addition to the many authorities for this remark, already known to you, you will find one of the highest grade in 5th vol. of Tomlin's edition of Brown's cases in Parliament, p. 328—Hendricks and others against Cunningham & others, where it was expressly admitted by the House of Lords, in a war case before them, "it is now established by repeated determinations, that neither ships nor cargoes, the property of subjects of neutral powers, either going to trade *at* or coming *from* the French West India Islands, with cargoes purchased there, are liable to capture: and therefore when a ship and cargo so circumstanced are seized and condemned, the seizure and condemnation shall be reversed and the value of the ship and cargo accounted for and paid to the owners by the captors."

As it has generally happened that the British instructions issued to the Vice Admiralty Courts, and naval Commanders have not come first to light in British prints, I inclose one of Novr 14, which has just made its appearance in ours. As it relates to the present subject, it claims attention as a proof that all questions as to the legality of the voyage, in a Russian Trade with the enemies of Great Britain is excluded, by limiting the right of capture to cases where innocence or *ownership* of the *Articles*, are questioned. The instruction may at least be considered as coextensive in its favorable import with the Article in the Russian Treaty, which you have been authorized to admit into your arrangements; and in that view, as well as on account of its date, the instruction may furnish a convenient topic of argument or expostulation.

If the British Government once consent that the United States may make their ports a medium of trade between the Colonies of its enemies and other Countries belligerent as well as neutral, why should there be a wish to clog it with the regulations suggested? Why not in fact consent to a direct trade by our merchants, between those Colonies and all other Countries? Is it that the price may be a little raised on the consumers by the circuit of the voyage, and the charges incident to the port regulations? This cannot be presumed. With respect to the enemies of Great Britain the object would be unimportant. With respect to her neutral friends, it would not be a legitimate object. Must not the answer then be sought in the mere policy of lessening the competition with, and thereby favoring the price of British and other Colonial productions reexported by British Merchants, from British ports; and sought consequently not in a belligerent right, or even in a policy merely belligerent; but in one which has no origin or plea but those of commercial jealousy and monopoly.

## BLOCKADES.

On this subject, it is fortunate that Great Britain has already in a formal communication, admitted the principle for which we contend. It will be only necessary therefore, to hold to the true sense of her own act. The words of the communication are “that vessels must be *warned* not to enter.” The term *warn* technically imports a distinction between an individual notice to vessels; and a general notice by proclamation or diplomatic communication; and the terms *not to enter* equally distinguishes a notice at or very near the blockaded port; from a notice directed against the original destination, or the apparent intention of a vessel, nowise approaching such a port.

## MARGINAL JURISDICTION ON THE HIGH SEAS.

There could surely be no pretext for allowing less than a marine league from the shore; that being the narrowest allowance found in any authorities on the law of nations. If any nation can fairly claim a greater extent, the United States have pleas which cannot be rejected; and if any nation is more particularly bound by its own example not to contest our claim, Great Britain must be so by the extent of her own claims to jurisdiction on the seas which surround her. It is hoped at least that within the extent of one league you will be able to obtain an effectual prohibition of British ships of War, from repeating the irregularities which have so much vexed our commerce and provoked the public resentment; and against which an Article in your instructions emphatically provides. It cannot be too earnestly pressed on the British Government, that in applying the remedy copied from regulations heretofore enforced against a violation of the neutral rights of British harbours and Coasts, nothing will be done than what is essential to the preservation of harmony between the two Nations. In no case is the temptation or the facility greater to ships of War, for annoying our commerce than in their hovering on our coasts, and about our harbours; nor is the natural sensibility in any case more justly or more highly excited than by such insults. The communications lately made to Mr. Monroe, with respect to the conduct of British Commanders even within our own waters, will strengthen the claim for such an arrangement on this subject, and for such new orders, from the British Government, as will be satisfactory security against future causes of complaint.

## EAST AND WEST INDIA TRADES.

If the West India Trade cannot be put on some such footing as is authorized by your instructions, it will be evidently best, to leave it as it is; and of course, with a freedom to either party to make such regulations as may be justified by those of the other.

With respect to the East India Trade, you will find a very useful light thrown on it, in the remarks of Mr. Crowninshield of which several copies were forwarded in October. They will confirm to you the impolicy, as explained in your instructions admitted into the Treaty of 1794. The general footing of other nations in peace with Great Britain, will be clearly more advantageous; and on this footing it will be well to leave or place

it, if no peculiar advantages of which there are intimations in Mr. Crowninshield's remarks, can be obtained.

## INDEMNIFICATIONS.

The justice of these ought to be admitted by Great Britain, whenever the claim is founded on violations of our rights as they may be recognized in any new arrangement or understanding between the parties. But in cases, of which there are many examples, where the claim is supported by principles which she never contested, the British Government ought to have too much respect for its professions and its reputation, to hesitate at concurring in a provision analogous to that heretofore adopted.

It is not satisfactory to allege that in all such cases, redress may be obtained in the ordinary course of judicial proceedings. If this were true, there would be sound policy as well as true equity and economy in transferring the complaints from partial tribunals occupied with a great mass of other cases, to a joint tribunal exclusively charged with this special trust. But it is not true that redress is attainable in the ordinary course of justice, and under the actual constitution and rules of the tribunals which administer it in cases of captures. Of this, the facts within your knowledge and particularly some which have been lately transmitted to Mr. Monroe are ample and striking proofs; and will doubtless derive from the manner of your presenting them, all the force with which they can appeal to the sentiments and principles which ought to guide the policy of an enlightened nation.

I Have The Honor To Be, &C.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, March 31st, 1807.

D. Of S. Mss.  
Instr.

Sir,

In my last letter of the 26th inst, I inclosed you a copy of one from Mr. Erskine communicating the British order of Jany 7th and of my answer. Occurring circumstances and further reflection on that extraordinary measure produced a return to the subject, and another letter was added to the first answer. A copy is enclosed with the same view which led to the last inclosure.

The more this order is examined, the more unjustifiable it appears in its principle, the more comprehensive in its terms, and the more mischeivous in its operation. In the recitals prefacing the measure, as communicated by Mr. Erskine, in the order itself, and in the Note of Lord Howick to you, there is a medley of motives for which a cause must be sought either in the puzzle to find an adequate one, or in the policy of being able to shift from one to another according to the posture which the case may take. Whatever be the explanation, the order, in relation to the United States at least, must ever remain with the candid and intelligent, a violation of those rules of law and of justice which are binding on all nations, and which the greatest nations ought to pride themselves most in honorably observing. Considered as a retaliation on the United States for permitting the injury done to Great Britain thro' their commerce, by the French decree, the order, over and above the objections stated to Mr. Erskine subjects the British Government to a charge of the most striking inconsistency, in first admitting that the decree gave a right to retaliate in the event only of a failure of the United States to controul its operation, as well as that such a failure alone would justify a final refusal of the Treaty signed by its Commissions; and then actually proceeding to retaliate before it was possible for the decision of the United States to be known or even made.

If it be said as is stated that captures had commenced under the decree, the fact would be of little avail. Such occurrences could not have escaped anticipation, nor can the amount of them under the present superiority of British power at sea afford the slightest plea for the extensive and premature retaliation comprized in the order. A Government, valuing its honor and its character, ought to have dreaded less the injury to its interests from the pillage committed by a few cruizers, on neutral commerce, than the reproach or even the suspicion, that a pretext was eagerly seized for unloosing a spirit, impatient under the restraint of neutral rights, and panting for the spoils of neutral trade. The British Government does not sufficiently reflect on the advantage which such appearances give to her adversary, and the appeal they are both making to the judgment, the interests and the sympathies of the world. If Great Britain wishes to be regarded as the champion of Law, of right and of order among nations, her example must support her pretensions. It must be a contrast to injustice and to obnoxious innovations. She must not turn the indignation of mankind from the



violence of which she complains on one element, to scenes more hostile to established principles on the element on which she bears sway. In a word, she ought to recollect, that the good opinion and good will of other nations, and particularly of the United States, is worth far more to her, than all the wealth which her Navy, covering as it does every sea, can plunder from their innocent commerce.

As to the scope of the order, it is evident that its terms comprehend not only the possessions of France and of her allies in Europe; but in every other quarter; and consequently both in the West and in the East Indies. And as to the injury which, if the order be executed as it will be interpreted, by British Cruizers, in the full extent of its meaning, will be brought on the commerce of the United States, an idea may be collected from the glance at it in the letter to Mr. Erskine. The inclosed statement of the amount of our Exports to Europe and of the proportion of them which, not being destined to England may be food for this predatory order, will reduce the estimate to some precision. To make it still more precise however, it will be necessary, on one hand to transfer *from* the proportion cleared for Great Britain, as much as may have touched there only on its way to continental ports; and, on the other, to deduct the inconsiderable destinations to Portugal, the Baltic, and the Austrian ports in the Mediterranean.

Having in your hands the material which this communication will complete, you will be able to make whatever representations to the British Government you may deem expedient, in order to produce a proper revision of the order. If it shall have been finally ascertained that the French Decree will not be applied to the commerce of the United States, you will of course insist on an immediate revocation of the order so far as it may have been applied to that commerce; and if, as in that case the order can no longer be maintained on the principle of retaliation, the pretext of a blockade or of illegality in the trade as a coasting one, be substituted, you will be at no loss for the grounds on which the order is to be combated, and its revocation demanded.

Among the papers accompanying my last was a printed copy of the Proclamation, suspending the Non-importation Act, until December next. This measure of the President under any circumstances, ought to be reviewed as the effect of his amicable policy towards Great Britain. But when it is considered as having been taken with the British order of Jany before him, and a measure subject to the strictures which have been made on it, it is the strongest proof that could be given of his solicitude to smooth the path of negotiation and to secure a happy result to it; and in this light you will be pleased on the proper occasions, to present it.

I Have The Honor To Be, Etc.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE AND WILLIAM PINKNEY

Department of State, May 20th 1807.

D. Of S. Mss.  
Instr.

Gentlemen,

My letter of March 18th acknowledged the receipt of your dispatches and of the Treaty signed on the 31 Decr., of which Mr Purviance was the bearer, and signified that the sentiments and views of the President formed on the actual posture of our affairs with Great Britain, would, without any useless delay, be communicated.<sup>1</sup> The subject is accordingly resumed in this dispatch, with which Mr. Purviance will be charged. To render his passage the more sure and convenient, he takes it in the sloop of War, Wasp, which will convey him to a British port, on her way to the Mediterranean. She will touch also at a French port, probably L'Orient, with dispatches for Genl Armstrong and Mr Bowdoin, and will afford a good opportunity for any communications you may have occasion to make to those gentlemen.

The President has seen in your exertions to accomplish the great objects of your instructions, ample proofs of that zeal and patriotism in which he confided; and feels deep regret that your success has not corresponded with the reasonableness of your propositions, and the ability with which they were supported. He laments more especially, that the British Government has not yielded to the just and cogent considerations which forbid the practice of its Cruizers in visiting and impressing the Crews of our vessels, covered by an independent flag, and guarded by the laws of the high seas, which ought to be sacred with all nations.

The President continues to regard this subject in the light in which it has been pressed on the justice and friendship of Great Britain. He cannot reconcile it with his duty to our sea faring citizens, or with the sensibility or sovereignty of the nation, to recognize even constructively, a principle that would expose on the high seas, their liberty, their lives, every thing in a word that is dearest to the human heart, to the capricious or interested sentences which may be pronounced against their allegiance, by officers of a foreign Government, whom neither the law of nations, nor even the laws of that Government will allow to decide in the ownership or character of the minutest article of property found in a like situation.

It has a great and necessary weight also with the President, that the views of Congress, as manifested during the Session which passed the non-importation Act, as well as the primary rank held by the object of securing American Crews against British impressment, among the objects which suggested the solemnity of an Extraordinary Mission, are opposed to any Conventional arrangement, which, without effectually providing for that object, would disarm the United States of the means deemed most eligible as an eventual remedy.

It is considered moreover by the President the more reasonable that the necessary concession in this case should be made by Great Britain, rather than by the United States, on the double consideration; first, that a concession on our part would violate both a moral and political duty of the Government to our Citizens; which would not be the case on the other side; secondly that a greater number of American Citizens than of British subjects are, in fact, impressed from our vessels; and that, consequently, more of wrong is done to the United States, than of right to Great Britain; taking even her own claim for the legal criterion.

On these grounds, the President is constrained to decline any arrangement, formal or informal, which does not comprize a provision against impressments from American vessels on the high seas, and which would, notwithstanding be a bar to legislative measures, such as Congress have thought, or may think proper, to adopt for controuling that species of aggression.

Persevering at the same time in his earnest desire to establish the harmony of the two nations on a proper foundation, and calculating on the motives which must be equally felt by Great Britain to secure that important object, it is his intention that your efforts should be revived, with a view to such alterations of the instrument signed on the 31st Decr, as render it acceptable to the United States.

That you may the more fully understand his impressions and purposes, I will explain the alterations which are to be regarded as essential; and proceed then to such observations on the several Articles, as will shew the other alterations which are to be attempted, and the degree of importance respectively attached to them.

1st. Without a provision against impressments, substantially such as is contemplated in your original instructions, no Treaty is to be concluded.

2d. The eleventh Article on the subject of Colonial trade cannot be admitted, unless freed from the conditions which restrict to the market of Europe, the reexportation of Colonial produce, and to European Articles, the supplies to the Colonial market.

3d. The change made by the 3d Article in the provisions of the Treaty of 1794, relative to the trade with the British possessions in India, by limiting the privilege to a direct trade *from* the United States, as well as *to* them, is deemed an insuperable objection.

4th. Either an express provision is to be insisted on for indemnifying sufferers from wrongful captures, or at least a saving, in some form or other, of their rights against any implied abandonment.

5th. Article 18 and 19 to be so altered as to leave the United States free as a neutral nation to keep and place other belligerent nations on an equality with Great Britain.

6th. Such an alternative as is presented by the declaratory note on the subject of the French decree of Novr 21-1806 will be admissible.

First. The considerations which render a provision on the subject of impressments indispensable, have been already sufficiently explained.

Second. The essential importance of the amendment required in the 11th article, results from the extensive effect which the article, if unamended, would have on the system of our commerce as hitherto carried on, with the sanction or acquiescence of Great Britain herself.

It was hoped that the British Government in regulating the subject of this article, would at least have yielded to the example of its Treaty with Russia. It could not have been supposed, that a modification would be insisted on, which shuts to our neutral commerce important channels, left open by the adjudications of British Courts, and particularly by the principle officially communicated by that Government to this, thro' Mr King in the year 1801.

According to that principle and those adjudications, the indirect trade thro' our neutral ports was as free from enemy Colonies to every other part of the world, as to Europe; and as free to such Colonies, in the Articles of all other Countries, as in European Articles.

According to the tenor of the Article, and the general prohibitory principle assumed by Great Britain, to which it has an implied reference, the productions both of the Continental and of the insular Colonies in America, can no longer be re-exported as heretofore to any part of Asia or Africa, or *even* of America; and consequently can no longer enter into the trades carried on, from the United States, to the Asiatic and African shores of the Mediterranean; nor to any of the places, beyond the cape of Good Hope offering a market for them; nor finally to any other enemy or neutral Colonies in this quarter, to which in reason, as well as according to practice, they ought to be as re-exportable, as to the Countries in Europe to which such Colonies belong.

In like manner the importations from beyond the Cape of Good Hope, more especially the cotton fabrics of China and India, can no longer be sent, as heretofore, to the West Indies, or the Spanish Main, where they not only now yield a great profit to our merchants, but being mixed in cargoes with the produce of this Country, facilitate and encourage the trade in the latter. Besides the effect of the Article in abridging so materially our valuable commerce, the distinction which it introduces between the manufactures of Europe and those of China and India, is charged with evils of another sort. In many cases it might not be easy to pronounce on the real origin of the Articles. It is not improbable that supposititious attempts also might be occasionally made, by the least scrupulous traders. With such pretexts as these, arguing from the abuse made of less plausible ones, the interruptions and vexations of our trade, by the greedy cruizers which swarm on the ocean, could not fail to be augmented in a degree, not a little enforcing the objection to the article in its present form.

As the prohibitory principle of Great Britain does not extend to the case of a Colonial Trade usually open, and no judicial decision has professedly applied the principle to such a trade, it is a reasonable inference, that the Article will be so construed as to

interfere with the trade of that description, between enemy Colonies beyond the Cape of Good Hope, and other Countries and ports, in that quarter. But on the other hand, it may not be amiss to guard against a construction of the Article that would abolish the rule observed in the prize Courts of Great Britain, which, in the case of the Eastern Colonies, presumes that these ports were always open, and thereby throws on the captors, instead of the claimants, the disadvantage of proving the fact in question.

It is observable that the duration of this article is limited to the period of the present hostilities, whilst the others are to be in force for ten years; so that if there should be a peace and a renewal of the war, as is very possible, within the latter period, the onerous parts of the bargain would survive a part, in consideration of which, they were assumed. Justice and reciprocity evidently require that the more important articles of the Treaty should be regarded as conditions of each other, and therefore that they should be co-durable. In this point of view, you will bring the subject under reconsideration; and without making this particular amendment an ultimatum, press it with all the force which it merits. This amendment ought to be the less resisted on the British side, as it would still leave to that side, an advantage resulting from the nature of the two great objects to be attained by the United States, namely, the immunity of our crews, and of our neutral commerce, which are connected with a state of war only; whereas the stipulations, valued by Great Britain, will operate constantly throughout the period of the Treaty, as well in a state of peace, as in a state of war.

Whatever term may finally be settled for the continuance of the regulation, it will be proper to retain the clause which saves the right involved in the article, from any constructive abandonment or abridgement. Even the temporary modification of the right, as it will stand without the inadmissible restrictions now in the article, is considered as an important sacrifice on the part of the United States to their desire of friendly adjustment with Great Britain. To an admission of the Article with those restrictions, the President prefers the footing promised to the Colonial trade, by the deference of Great Britain for the maritime powers, and by an unfettered right of the United States to adapt their regulations to the course which her policy may take.

That the operations of the Article in its present form, might be more fully understood, it was thought proper to avail the public of the ideas of a citizen of great intelligence and experience with respect to a valuable elucidation of the subject. They will suggest, at the same time, some explanatory precautions worthy of attention; particularly in the case of Articles, which paying no duty on importation into the United States, do not fall under the regulation of drawbacks; and in the case of securing by bond, instead of actually paying, the duties allowed to be drawn back. It appears by the observations in your letter of Jany 3d that the bond was understood, as it surely ought to be, equivalent to actual payment. But this is a point so material, that it cannot be too explicitly guarded against the misinterpretation of interested Cruizers, and the ignorance or perverseness of inferior Courts.

3. The necessity of the change required in the third article, in order to secure an indirect, as well as a direct trade to the British East Indies, will be fully explained by the observations which have been obtained from several of our best informed Citizens on that subject, and which are herewith inclosed.

As the latitude of intercourse was stipulated by the 13th Art of the Treaty of 1794, as judicially expounded by British superior Courts; as it was enjoyed by the United States prior to that epoch, and has been always enjoyed, both before and since by other friendly nations; and as there is reason to believe that the British Government has been at all times ready since the Article expired, to renew it in its original form; it may justly be expected that the inserted innovation will not be insisted on. Should the expectation fail, the course preferred is to drop the article altogether, leaving the trade on the general footing of the most favored nation, or even trusting to the interest of Great Britain for such regulation as may correspond with that of the United States.

Should the negotiation take up the East India Article of the Treaty of 1794, you will find several amendments suggested in the extracts above referred to, some of which may be attempted with the greater chance of success, as they are harmless, if not favorable, to the British system. To these suggestions may be added a privilege to American vessels, of touching at the Cape of Good Hope. The objection to such a stipulation, under the present defeasible title of Great Britain to the Cape, may be obviated by a descriptive provision, not necessarily applicable to it, in the event of its restitution by a Treaty of peace, but embracing it, in case the British title should be established by that event: It may be agreed "that vessels of the United States may touch for refreshment at all the ports and places in the possession of Great Britain on or in the African or Asiatic seas."

4. Without a provision, or a reservation, as to the claims of indemnity, an abandonment of them may be inferred from a Treaty as being a final settlement of existing controversies. It cannot be presumed that a precaution against such an inference, in any mode that may be most effectual, can be opposed or complained of. On the contrary it excites just surprise that so much resistance should be made to indemnifications supported by the clearest rules of right, and by a precedent in a former Treaty between the two Countries, from which so many other Articles have been copied. The only colorable plea for refusing the desired provision, flows from a presumption not only that the British Courts are disposed, but that they are competent, to the purpose of complete redress. Not to repeat observations heretofore made on this subject, an unanswerable one is suggested by the clause in the NA Article of the Treaty annulling the principle, or rather the pretence, that vessels without contraband of war on board, returning from a port to which they had carried articles of that sort, were subject to capture and condemnation. Previous even to this recognition, it had been settled as the law of Nations by the British High Court of Admiralty, that vessels so circumstanced were exempt from interruption. Yet a British order of August 1803 expressly declares them to be lawful prize; and it is well known that a number of American vessels have been seized and condemned under that order. Here then is a class of wrongs, undeniably entitled to redress, and which neither can nor ever could possibly be redressed, in the ordinary course; it being an avowed rule with the prize Courts to follow such orders of the Government, as either expounding or superseding the law of nations. Even cases not finally decided, would probably be considered as falling under the rule existing at the time of the capture, and consequently be added to this catalogue of acknowledged, but unredressed injuries.

5. Articles 18 & 19—An effect of these Articles is to secure to British Cruizers and their prizes, a treatment in American ports, more favorable, than will be permitted to those of an enemy, with a saving of contrary stipulations already made, and a prohibition of any such in future. As none of our Treaties with the belligerent Nations (France excepted) stipulate to the Cruizers an equality in this respect, and as there are parties to the War, with whom we have no Treaties, it follows that a discrimination is made in the midst of war between the belligerent nations, which it will not be in the power of the United States to redress.

Weighty considerations would dissuade from such a deviation from a strict equality towards belligerent nations, if stipulated at a time least liable to objection. But it would be difficult to justify a stipulation, in the midst of war, substituting for an existing equality, an advantage to one of the belligerent parties over its adversaries; and that too, without any compensation to the neutrals, shielding its motive from the appearance of mere partiality. Hitherto the United States have avoided as much as possible such embarrassments; and with this view have gratuitously extended to all belligerents the privileges stipulated to any of them. Great Britain has had the benefit of this scrupulous policy. She can therefore with less reason expect it to be relinquished for her benefit.

The last paragraph of the 19th Art, establishes a just principle as to the responsibility of a neutral nation whose territory has been violated by captures within the limits; but by extending the principle to the two miles added to our jurisdiction by the 12th art, qualified as that addition is, it is made peculiarly important that an amendment should take place.

Passing by the failure of a reciprocity, either in the terms or the probable operation of the responsibility, the United States seem to be bound to claim from the enemies of Great Britain, redress for a hostile act, which such enemies may not have renounced their right to commit within the given space; making thus the United States liable to the one party, without a correspondent liability to them in the other party; and at the same time entitling Great Britain to redress for acts committed by her enemies, which she has reserved to herself a right to commit against them.

Should all the other belligerent nations contrary to probability, concur, in the addition of two miles to our jurisdiction this construction would still be applicable to their armed ships; those unarmed alone being within the additional immunity against British Cruizers; and the armed as well as the unarmed ships of Great Britain, being expressly within the additional responsibility of the United States.

6. No Treaty can be sanctioned by the United States, under the alternative presented by the declaratory note on the subject of the French decree of Novr 21st. It is hoped that the occasion which produced it will have vanished, and that it will not be renewed in connection with a future signature on the part of Great Britain. The utmost allowable in such a case would be a candid declaration that in signing or ratifying the Treaty, it was understood on the part of Great Britain, that nothing therein contained would be a bar to any measures, which if no such Treaty existed, would be lawful as a retaliation against the measures of an enemy. And with such a declaration, it would be

proper, on the part of the United States, to combine an equivalent protest against its being understood, that either the Treaty or the British declaration would derogate from any rights or immunities, against the effect of such retaliating measures, which would lawfully appertain to them, as a neutral nation, in case no such Treaty or declaration existed.

Having given this view of the alterations which are to be held essential, I proceed to notice such others as, tho' not included in the ultimatum, are to be regarded as more or less deserving your best exertions. This will be most conveniently done, by a review of the several Articles in their numerical order.

The 2, 4 & 5 all relate to the trade and navigation between the two Countries. The two first make no change in the stipulations of the Treaty of 1794. The last has changed, and much for the better, the provisions of that Treaty, on the subject of tonnage and navigation.

Two important questions however, enter into an estimate of these articles.

The first is whether they are to be understood as a bar to any regulations, such as navigation Acts, which would merely establish a reciprocity with British regulations. From the construction which seems to have always [been] put on the same stipulations in the Treaty of 1794, it is concluded that no such bar could be created, and consequently that the Articles are in that respect unexceptionable. It may be well, nevertheless, to ascertain that the subject is viewed in this light by the British Government.

The second question is, whether the parties be, or be not, mutually restrained from laying *duties*, as well as prohibitions, unfavorably discriminating between Articles exported to them, and like articles exported, to other nations.

According to the construction put by the United States on the same clauses in the Treaty of 1794, the mutual restraint was applicable to discriminations of both kinds. The British discriminating duties on exports, introduced under the name of Convoy duties and since continued and augmented under other names, were accordingly combated, during the existence of the Treaty, as infractions of its text. The British Government however, never yielded to our construction either in discussion or in practice. And it appears from what passed in your negotiations on this subject, that the construction which is to prevail, admits discriminating duties on exports.

In this point of view, the stipulation merits very serious attention. It cannot be regarded as either reciprocal or fair in principle, or, as just and friendly in practice.

In the case of prohibitions, where both Governments are on an equal footing, because it is understood that both have the authority to impose them, neither is left at liberty to exercise the authority.

In the case of duties, where the British Government possesses the authority to impose them, but where it is well known that the authority is withheld from the Government of the United States by their Constitution, the Articles are silent; and of course the



British Government is left free to impose discriminating duties on their exports, whilst no such duties can be imposed by that of the United States. How will it be in practice? Stating the exports of Great Britain to the United States at 6 millions sterling only, the present duty of 4 pCt levies a tax on the United States amounting to 240 thousand pounds, or One million, Sixty five thousand Six hundred dollars; and there is nothing, whilst the War in Europe checks competition there, and whilst obvious causes must for a long time enfeeble it here, that can secure us against further augmentations of the tribute.

Even under a regulation placing the United States on the footing of the most favored nation, it appears that the British Government would draw into its Treasury from our consumption  $\frac{3}{8}$  of the revenue now paid by the United States. Such a footing, however, would be material, as giving the United States the benefits of the Check accruing from the more manufacturing State of the European Nations. But to be deprived of that check by the Want of an Article, putting us on the footing of the Nations most favored by Great Britain, and at the same time deprived of our own checks, by clauses putting Great Britain on the Commercial footing of the nations most favored by the United States, would, in effect, confirm a foreign authority to tax the people of the United States, without the chance of reciprocity or redress.

The British duty on exports to the United States has another effect, not entirely to be disregarded. It proportionally augments the price of British manufactures, reexported from the United States to other markets, and so far promotes a direct supply from Great Britain, by her own merchants and ships. Should this not be the effect of her regulations as now framed, there is nothing that would forbid a change of them, having that for its object.

On these considerations it is enjoined upon you by the President to press in the strongest terms, such an explanation or amendment of this part of the Treaty, as will, if possible restrain Great Britain altogether from taxing exports to the United States, or at least place them on the footing of the most favored nation; or if neither be attainable, such a change in the instrument in other respects, as will reserve to the United States the right to discriminate between Great Britain and other nations in their *prohibition* of exports, the only discrimination in the case of exports, permitted by the Constitution. The unwillingness of the President to risk an entire failure of the projected accommodation with Great Britain restrains him from making an Amendment of this part of the Treaty a *sine qua non*; but he considers it so reasonable, and so much called for by the opinions and feelings of this Country, that he is equally anxious and confident with respect to a compliance on the part of the British Government.

## ART. 6.

This article as taking the case of the West India trade out of any general stipulation of privileges granted to other nations, may prove convenient, by disincumbering measures which may be taken against the British monopoly, from questions of which that stipulation might otherwise be susceptible.

Art. 7, tho' to remain if desired, would be more reasonable without the last paragraph, or with a right only to except places and periods, at which the trade of the other party may not be permitted.

## ART. 8.

This article is framed with more accuracy than the 17th on the same subject in the Treaty of 1794, and is improved by the additional paragraph at the close of it. But as such general stipulations have not been found of much avail in practice, and as it continued to be the wish of the President to avoid, especially at the present juncture, unnecessary confirmations of the principle that a neutral flag does not protect enemies property, an omission of the Article is much preferred, unless it be so varied as to be free from the objection. This may be easily done, by substituting a general stipulation, "that in all cases where vessels shall be captured or detained for any lawful cause, they shall be brought to the nearest or most convenient port; and such part only of the Articles on board as are confiscable by the law of nations shall be made prize; and the vessel, unless by that law subject also to confiscation, shall be at liberty to proceed &c."

There ought to be the less hesitation on the British side in making this change, as the Article in its present form departs from that of 1794; and there is the more reason on our side for requiring the change, as the addition of "for other lawful cause" after specifying the two cases of the enemy's property and contraband of War, is probably valued by Great Britain as supporting her doctrine, and impairing ours, with respect to Colonial trade. The only case other than those specified, to which the right of capture is applicable, is that of blockades, which might have been as easily specified, as provided for by such a residuary phrase; and the pretext for appropriating this phrase to the case of the Colonial trade would be strengthened by the specific provision, in a subsequent article for the case of blockades.

It cannot be alleged that the specifications of the two cases, of enemy's property and contraband of war, are necessary to prevent uncertainty and controversy; the United States having sufficiently manifested their acquiescence in these causes of capture. If there be a source of uncertainty and controversy, it is in the expressions "*other* lawful cause" and "*otherwise* confiscable" and this source could not be increased by the change here proposed.

## ART. 9.

This article is an improvement of that on the same subject in the Treaty of 1794; inasmuch as it excepts from the list of contraband, tar and pitch, when not bound to a port of naval equipment, and when so bound, substitutes preemption for forfeiture. It has an advantage also, in the clause renouncing the principle of the British order of Augt 1803 against vessels returning from the places, to which they had carried contraband of War.

On the other hand, it would not have been unreasonable to expect that the British Government would, in a Treaty with the United States, have insisted on no stipulation

less favorable, than her stipulation on the same subject, with Russia, especially as the Naval stores exported from the United States, are equally the growth and produce of the Country.

Consistency again, as well as reason evidently required, that the exception in favor of tar and pitch should have been extended to every species of naval stores, equally applicable to other uses than those of War, and destined to places other than those of naval equipment.

Lastly it is observable, that even turpentine and rosin are not included with Tar and pitch in the favorable exceptions, tho' of a character so kindred as to leave no pretext for the distinction.

Neither has the British Government the slightest ground for regarding as a concession, the stipulated immunity of a vessel, which, on her outward voyage, had carried contraband to a hostile port. The principle asserted by her order on that subject is an innovation against the clearest right of neutrals as recognized and enforced even by British Courts. The very language of the Article implies that this is a *pretence* for the innovation.

These considerations urge a remodification of the Article, and they are strengthened by the great dislike of the President to formal regulations at this particular moment, of principles combated by some, and unfavorable to all neutral nations. So ineligible indeed, in his view, is any step tending in the least to retard the progress of these principles, that naval stores are to be left on a stipulated list of contraband, in the event only of an inflexible refusal of the British Government to omit them; nor are they to be retained in any event, without an addition or explanation that will except turpentine and Rosin, as well as tar and pitch, there being no plausible motive for the distinction; and the quantity and value of the two former exported from the United States, being found, on enquiry, to make them of equal importance with the two latter. It can scarcely be supposed that the British Government will insist on this unwarrantable distinction. It is not indeed improbable, that it has been a mere inadvertence. Such an inference is favored by the circumstance of your speaking, in your comment on this article, of Tar and *Turpentine*, as being the two exceptions. Whatever the true state of the case may be, it is thought better to omit a list of contraband altogether, than not to include in the exception from it Turpentine and Rosin, as well as tar and pitch.

## ART. 10.

The abuse of Blockades has been so extravagant and has produced so much vexation and injury to the fair commerce of the United States, that, as on one hand it is of great importance to find a remedy; so, on the other, it is the more necessary, that the remedy should be such as not itself, to admit of abuse. The considerations which reconciled you to the tenor of the Article, as at least a constructive approach to a solid provision for the case, are allowed the weight which they justly merit; whilst the course which your discussions took, are a proof of the exertions which were used to give the Article a more satisfactory form.

The failure however of the British Commissioners to substantiate a favorable construction of the Article, by a proper explanatory letter addressed to you, with their reasons for refusing to insert in the Treaty a definition of blockade, justify apprehensions that the vague terms, which alone were permitted to compose the Article, would be more likely to be turned against our object, by Courts and Cruizers, and perhaps by a less liberal Cabinet, than to receive in practice the more favorable construction which candor anticipated.

The British doctrine of blockades exemplified by practice, is different from that of all other nations, as well as from the reason and nature of that operation of War. The mode of notifying a blockade by proclamations and diplomatic communications, of what too is to be done, is more particularly the evil which is to be corrected. Against these nominal blockades, the Article does not sufficiently close the door. The preamble itself, which refers to distance of situation, as a frequent cause of not knowing that a blockade exists, tho' in one view giving the United States the advantage of a favorable presumption, in another view, carries an admission unfavorable to our principle, which rests not on the distance of situation, but on the nature of the case, and which consequently rejects, in *all* cases the legal sufficiency of notifications in the British mode. The preamble is liable to the remark also that it separates our cause from the common one of neutral nations in a less distant situation, and that the principle of it, may even be pleaded against us in the case of blockades in the West Indies. These considerations would have been outweighed by the advantage of establishing a satisfactory rule on the subject, in favor of our trade; but without such a provision in the article, it is thought less advisable to retain it, than to trust to the law of blockades as laid down by all writers of authority, as supported by all treaties which define it, and more especially as recognized and communicated to the United States by the British Government thro' its Minister here in NA last; not to mention the influence, which the course of events, and the sentiments of the Maritime Nations in friendship with Great Britain may have in producing a reform on this subject.

The last paragraph tho' subjecting persons in Civil as well as military service of an enemy, to capture, in our vessels, may prove a valuable safeguard to ordinary passengers and Mariners, against the wrongs which they now frequently experience, and which affect the vessels as well as themselves.

## ART. 12.

It is much regretted that a provision could not be obtained against the practice of British Cruizers, in hovering and taking Stations for the purpose of surprizing the trade going in and out of our harbours; a practice which the British Government felt to be so injurious to the dignity and rights of that nation at periods when it was neutral. An addition of two miles nevertheless, to our maritime jurisdiction, so far as to protect neutral and other unarmed vessels, notwithstanding its want of anything like a due reciprocity, is not without its value. This value will at the same time be very materially impaired if the stipulation cannot be liberated from the clause requiring the consent of the other belligerent Nations, as necessary to exempt their vessels from search and seizure. None of the other belligerent nations have in fact unarmed vessels

engaged in our trade, nor are they likely to have any during the war; and these alone could derive advantage from their consent; their armed vessels being expressly excepted. There can be no motive with them therefore, to agree to the regulation. They would rather be tempted to embarrass it, with a view to continue as much as possible vexations which lessen the mutual good will of the parties. And as by their not agreeing to the regulations, the right is reserved to British Cruizers to examine all vessels for the purpose of ascertaining whether they may not belong to a belligerent, the disturbance of our trade might be little diminished within the additional two Miles. Besides the mere interruption of a search concerning the vessel, it is hardly to be expected from the general spirit of Cruizers, that the search will not be extended to the Cargo, and if the latter should be thus or otherwise found or suspected to be of a confiscable sort that the temptation to capture would be resisted; the less so perhaps, as the increased distance from the shore, and the increased difficulty of proof would favor the chance of condemnation, or at least countenance Courts in their propensity to refuse damages and Costs to the claimants.

To secure the advantage promised by this Article, the right of search ought to be suppressed altogether; the additional space enjoying in this respect the same immunity as is allowed to the marine league. To this object the President wishes your endeavours to be directed.

I reserve for the 19th Art. another view of the subject which will claim your attention.

### ART. 13.

The general provision here copied from the Treaty of 1794, tho' not hitherto found of much effect, in controuling the licenciousness of Cruizers, and very different from the special rules in favor of neutrals contained in most treaties which touch the subject of search, enters very properly into a comprehensive arrangement between two friendly nations. The introductory sentence alone, which consists of new matter invites particular notice. The expressions "*as the course of the war may possibly permit*" and "*observing as much as possible the acknowledged principles and rules of the law of nations*" however favorably *intended* by the British Negotiators, will not improbably be construed into a relaxation of the neutral right in favor of belligerent pleas, drawn from circumstances of which belligerent Agents will be the Judges. The expressions may easily be so varied as to refer simply to the law of nations for the rule, and to the friendship of the parties, for the spirit, according to which the search is to be conducted. If such an Amendment should be deliberately rejected by the British Government, it will be a proof of lurking danger, that will recommend an omission of what relates to the subject of search in preference to retaining it.

Arts. 14, 15 & 16 call for no particular observation.

### ART. 17.

So much of the Article as relates to the admission of ships of war, would be advantageously exchanged for a general stipulation, allowing on this subject the privilege granted to the most favored nation. It would then be in the power of the

United States to limit the number admissible at one time; whereas such an indefinite admission of British ships imposes on our neutrality a like indulgence to the fleets of other nations. Such an alteration of the article is the more reasonable and important, as there will be little reciprocity in its operation, the United States having but few ships; and the inconveniences from British ships in our ports being much greater than those from our ships in British ports.

The engagement to treat officers of the Navy with respect, is not only too indefinite to be enforced by penal regulations, but implies a reproachful defect of hospitality and civility. In this light it was viewed during the discussions of the Treaty of 1794. The clause probably grew then out of recent complaints, well or ill founded, of disrespectful conduct on some occasion towards British officers. If latter occurrences were to be consulted, it would be a more apt provision now, to stipulate for the punishment of naval commanders making insulting and ungrateful returns for the kindness and respect shown them in our ports and towns. The President makes almost a point of excluding this part of the Article.

Arts. 18 & 19 already noticed.

#### ART: 20.

Considering the great number of British merchants residing in the United States, with the great means of influence possessed by them, and the very few American Merchants who reside in Great Britain, the inconvenience which may be incident to such a protracted right to remain during a state of war, is evidently much greater on our side than on the other. In this view the stipulation is very unequal. The liberal spirit of it is, at the same time, highly commendable. It were only to be wished that the readiness of one side to make sacrifices of this sort, to a spirit which ought to pervade every part of a Treaty between the parties, had been less met by an apparent disposition on the other side, rather to extort from than to emulate it.

Art: 21. Not agreeable, but not to be an insuperable obstacle.

Art: 22 is altogether proper.

#### ART: 23.

This Article granting the privileges of the most favored nation, seems to require explanation if not alteration. The terms “shall *continue* to be on the footing of the most favored nation,” implies that the parties are now on that footing. To look no further, the discrimination between Export from Great Britain to Europe and to the United States is a proof that the fact is otherwise.

But may not the expression be construed into a barrier against the laws on the part of the United States, establishing a reciprocity with the British navigation Act and West India regulations. It might be impolitic to extend such laws to all other nations, as it would be just to extend them to such as had not adopted the restrictive system of

Great Britain. And yet a discrimination might be arraigned as not *continuing* Great Britain in the same footing with other Nations.

The object of this Article, so far as it is a legitimate one, would be sufficiently provided for by a mutual stipulation of the privileges in trade and navigation enjoyed by the most favored nation; and such stipulations moreover ought in justice to import or imply, that where privileges are granted to a third Nation in consideration of privileges received, the privileges cannot be claimed under the stipulation, without a return of the same or of equivalent privileges. The condition is certainly not without difficulties in the execution, but it avoids a greater evil. Should Spain or France open her Colonies to our ships and productions, on our granting certain privileges to her trade, these could not be claimed or expected by the most friendly nation who would not pay the price of them.

Arts: 24 & 25 are entirely proper.

## ART: 26.

It is particularly desirable that the duration of the Treaty should be abridged, to the term limited in the instructions of the 5th Jan'y 1804.

Having taken this view of the subject with reference to a formal Treaty under new modifications, it is necessary to recollect that you were authorized by my letter of Feby 3d, to enter into informal arrangements and that before the receipt of my letter of March 18th a plan of that sort may have been definitively settled. In such a state of things, it is impossible to do better than to leave your own judgments, aided by a knowledge of circumstances unknown here, and by the sentiments of the President now communicated, to decide how far it may be eligible, or otherwise, to attempt to supersede that informal arrangement, by opening the negotiation herein contemplated.

Should, on another hand, the negotiation be found in the state authorized by my letter of March 18th, that is to say, matured provisionally only, and consequently leaving the door open for the experiment now provided for, it must equally remain with your own judgments, guided by a comparison of the terms of the provisional arrangement, with the present instructions, to decide how far it may be best to close the former, or to pursue the objects of the latter with a view in case of failure, to return to and close the former.

Whatever may be the course recommended by the actual state of things, you will feel the propriety of smoothing the way for it, by the explanations which will best satisfy the British Government that the several steps taken on the part of the United States have proceeded from their solicitude to find some ground on which the difficulties and differences existing between the two Countries, might be amicably and permanently terminated. You will be equally aware of the importance of transmitting hither as early and as circumstantial information of your proceedings and prospects, as opportunities will permit; and will particularly keep in mind the earnest desire of the President to possess, in due time, every material preparatory to the

Communications relating to our affairs with Great Britain, which will be so anxiously expected on the meeting of Congress the first Monday in December.

Since the contents of this Dispatch were determined on, and mostly prepared, advices have been received of the change which is taking place in the British administration. Composed as the new one is likely to be, or rather is said to be the event will subject our British affairs to new calculations. The difference in the general complexion ascribed to the politics of the rival parties towards the United States and the language held by some individuals of the one now entering the Cabinet, augur, on one hand, fresh obstacles to a favorable negotiation. On the other hand, however, a less degree of confidence in their own strength than was felt by their predecessors, and a dread of furnishing these with such a topic as might be found in a real or impending collision with this Country, may be a powerful controul on illiberal dispositions towards it. Another favorable consideration is, that an important member of the New Ministry, Lord Hawksbury, was formerly as the head of the foreign Department, the person who negotiated with Mr. King a relinquishment of impressments on the high seas, who made to the same public minister, the Communications assuring to neutrals a re-exportation of Colonial produce unfettered in any respect other than by the condition of its having been landed and paid the ordinary duties, and finally who communicated to this Government thro' Mr. Merry, the instructions given to the British Commanders and Courts in the West Indies, in which blockades, and the mode of giving notice of them were defined in terms liable to no objection. His concurrence therefore in an admissible provision, on these cardinal points, is due to that consistency which all men value more or less; and to which you will of course appeal, as far as circumstances may invite and delicacy permit. The inducement to touch that string is the greater as it has not appeared that in any of the late Parliamentary discussions, this nobleman has joined in the unfriendly language held in relation to the neutral and commercial rights of this Country. It is to be recollected also that Lord Sidmouth, was at the Head of the administration at the period alluded to, and consequently ought to be induced by a like regard for his character to promote the adjustment we claim, in case he should be excepted, as is said to be not improbable, out of the dismissal of his colleagues.

There are considerations moreover which cannot be without weight with a prudent Cabinet, however composed. They must know that apart from the obstacles which may be opposed here to the use of British manufactures, the United States, by a mere reciprocation of the British navigation and Colonial laws, may give a very serious blow to a favorite system, a blow that would be felt perhaps as much too in its example, as in its immediate operation. Should this policy be adopted by the United States, as it respects the British West Indies, the value of those possessions would be either speedily lost, or be no otherwise than by a compliance with the fair reciprocity claimed by this Country. It can no longer be unknown to the most sanguine partizan of the Colonial Monopoly, that the necessaries of life and of cultivation, can be furnished to those Islands from no other source than the United States; that immediate ruin would ensue if this source were shut up; and that a gradual one would be the effect of even turning the supplies out of the present direct channel, into a circuitous one thro' neutral ports in the West Indies. In this latter alternative, the least unfavorable that presents, the produce of this Country would be carried to, probably a



Danish Island with the same mercantile profit, and the same employment of our navigation, as if carried to the British Island consuming it; and would thence be transported to the British Island with little advantage to British Ships, which would necessarily be sent in ballast, and confined to a sickly climate; whilst the enhanced price of the supplies would be fatal first to the prosperity and finally to the existence of those dependencies.

It ought to occur moreover to the British Government that its marine may become as dependant as its Colonies on the supplies of the United States. As an auxiliary resource for naval stores, this Country must be at all times important to Great Britain. But it will be the sole and therefore an essential one in case that of the Baltic and even of the black sea, should fail. And it may be justly remarked that a prohibition of this branch of our exports would be a less sacrifice than that of any other important one; inasmuch as some of the Articles of which it consists, being necessary to ourselves, and of an exhaustible nature, make it a problem whether the regulation would not in itself accord with our permanent interests.

Lastly it should not be forgotten that the United States are one of the Granaries which supply the annual deficit of the British harvests. The northern part of Europe, the usual concurrent resource is in a situation that must disable it, for some time, whatever the course of events may be, to spare any of its stock of food; nor can any substitute, other than the redundant harvests of the United States, be relied on to make up that deficiency. Add to this prospect, the possibility of an unfavorable season requiring enlarged importations of bread from the only source that can furnish it, and the risk of losing this would be an evil which no provident Counsels would neglect to guard against, by any measures equitable in themselves, or even by concessions neither dishonorable nor materially injurious.

On the other hand Great Britain having been led by her peculiar system to carry her commercial exclusions and restrictions to the utmost limit permitted by her immediate wants, would find no countervailing resources to be turned against the United States. She could not prohibit the importation of our productions: These are necessaries which feed her people, which supply her manufactories, which keep up her navy, and which, by direct and indirect contributions to her revenue and credit strengthen all her faculties as a great power. As little could she prohibit the exportation of her manufactures to the United States: This is the last evil she would think of inflicting on herself. If it withheld from us the means of enjoyment, it would take from her own people the means of existence.

Would War be a better resort? That it would be a calamity to the United States is so well understood by them that peace has been cherished in the midst of provocations which scarcely permitted honor to listen to interest, to reason or to humanity. War they will continue to avert by every policy which can be reconciled with the essential duties which a nation owes to itself. But what will be the gain and the loss to Great Britain by a choice of this resort? The spoils of our defenceless commerce might enrich her greedy cruizers and flatter the sentiments of national wealth. A temporary spasm might, at the same time, be produced in the affairs of the United States. But these effects weigh little against the Considerations which belong to the opposite

scale. To say nothing of the hostile use that might be made against Great Britain of 50,000 seamen, not less hardy or enterprising than her own, nor of her vulnerable possessions in our neighbourhood, which tho' little desired by the United States, are highly prized by her, nor of the general tendency of adding the United States to the mass of nations already in arms against her; it is enough to observe, that a war with the United States involves a complete loss of the principal remaining market for her manufactures, and of the principal, perhaps the sole, remaining source of supplies without which all her faculties must wither. Nor is it an unimportant circumstance, tho' it seems to have engaged little of her attention, that in the loss would be included, all the advantages which she now derives from the neutrality of our flag, and of our ports, and for which she could find no substitutes in distributing her manufactures, and even her fish to their necessary markets, and in obtaining the returns which she wants. The more these collateral advantages are enquired into, the more important will the interest appear which Great Britain has in preserving them.

These are views of the subject, which, tho' not to be presented to Great Britain with an air of menace or defiance, equally forbidden by respect to ourselves, and to her, may find a proper way to her attention. They merit hers as well as ours; and if they ought to promote on both sides, a spirit of accommodation, they shew at the same time that Great Britain is not the party which has the least interest in taking Counsel from them.

I have the honor to be, Gentlemen, &c.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State, May 22d, 1807.

D. Of S. Mss.  
Instr.

Sir,

The two last letters received from you were of Dec. 24 and Jany. 16.

The decree of Nov. 21st communicated in the first had previously reached us, and had excited apprehensions which were repressed only by the inarticulate import of its Articles, and the presumption that it would be executed in a sense not inconsistent with the respect due the Treaty between France and the United States. The explanations given you by the Minister of Marine, were seen by the President with much pleasure, and it only remains to learn that they have been confirmed by the express authority of the Emperor. We are the more anxious for this information as it will fortify the remonstrances which have been presented at London against the British order of Jany. 7. Should it, contrary to expectation, turn out that the French decree was meant, and is to operate according to the latitude of its terms, you will of course have made the proper representations, grounded as well on the principles of public law, as on the express stipulations of the Convention of 1800. Nothing, besides, could be more preposterous than to blend with an appeal to neutral rights and neutral Nations, a gross infraction of the former, and outrage on the sentiments of the latter; unless it be to invite a species of contest on the high seas, in which the adversary has every possible advantage. But on the more probable supposition that the decree will not be unfavorably expounded, it will be still necessary to press on the French Government a dispatch of such orders to their Cruizers in every quarter, as will prevent a construction of the decree favorable to their licencious cupidity. The moment your letter was received, the answer of the French Minister of Marine to your note, was communicated to Genl. Turreau, with a call on him to transmit it immediately to the French Governors in the West Indies. This he readily engaged to do. But notwithstanding this precaution, there are proofs that the West India Privateers have, under colour of the Edict, committed depredations which will constitute just claims of redress from their Government.

Mr. Erving has forwarded a Spanish decree also avowedly pursuing the example, and the views of the French Emperor. The terms of this decree are even more vague, or rather more broad than those of the prototype; and if not speedily recalled or corrected, will doubtless extend the scene of spoliations already begun in that quarter; and of course thicken the cloud that hangs over the amity of the two Nations.

Your other letter (of Jany. 16) intimates a hope that the return of the French Court to Paris, would soon afford an opportunity of renewing your communications with the Minister of Foreign Relations. The course of events appear to have prevented this opportunity, and to have prolonged the suspense in which our affairs have been kept, unless, indeed, other channels and modes should have been found for bringing them

to an issue. The delays, and the pretexts for them, have put the patience of the United States to a severe trial. It ought not to be supposed by Spain, or her ally, that a crisis can be much longer procrastinated. The impending collision on the Western side of the Mississippi has indeed been obviated; but the adjustment suspends only the danger which threatened the peace in that quarter; whilst, on the Eastern side of the Mississippi, the obstinacy of the Spanish authorities in vexing and obstructing the use of the Mobile by our Citizens living on its Waters, and having no other channel of communication with the sea, is kindling a flame which has been with difficulty kept under, and must in a short time acquire a force not to be resisted. This state of things without adverting to other topics, demands the instant and most serious attention of all who are friendly to peace between Spain and the United States. It cannot, and ought not to be disguised, that the time is approaching when the latter may have no other choice, than between a foreign and an internal conflict.

The Treaty signed at London in Dec last not having obtained the objects of the United States, and being moreover otherwise objectionable in some of its Articles, has not received the approbation of the President, nor been submitted to the consideration of the Senate. The Wasp sloop of War which conveys this to a French port, carries back to England Mr. Purviance, with instructions for our Commissioners to attempt a remodification of the instrument; and, particularly, to insist on a remedy for the case of British impressments from American vessels on the high seas, which forms no Article in the instrument signed on the 31st Decr, and without which no Treaty will be concluded.

I enclose a printed statement of what passed on the examination of Col. Burr before the Chief Justice. His trial commences this day. A profusion of affidavits had charged him with a complication of crimes, and a number of witnesses will attend to support the charges. The great distance of others will prevent their attendance, unless the trial should be adjourned. The pains which have been taken to investigate, suppress, and punish the hostile enterprize, understood to be principally aimed against the Spanish possessions, present a conspicuous contrast to the perfidious conduct of Spain through a series of years towards the United States. The occurrence demands the attention of Spain as a proof also, that she owes the safety of her possessions, to the controul of the very Government which she has been so scandalously endeavouring to dismember and overturn.

There is strong ground for believing that Yrujo plotted with Burr on the idea that a dismemberment of the Union was the object. The silence and manner of Turreau leave no doubt that he did not regard Mexico as the object. Merry was in the secret of the plot as directed against the Spanish possessions, and relished it; but without committing his Government.

It merits your attention to ascertain the Agents and intrigues of Burr at Paris.

I send you herewith a series of newspapers, and a statistical publication giving some interesting views of this Country.

May 24.—I have just received your letter of Feby. 15 continued March 20: Both of them are silent as to the decree of Novr. 21 from which I infer that it does not operate against our Commercial rights. I regret that even at the latter date, you were unable to make any favorable communications with respect to our affairs with Spain.

I have the honor to be, &c.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, May 22d, 1807.

D. Of S. Mss.  
Instr.

Sir;

In my letter of March 18th to the joint Commissioners, it was signified that in a Conventional arrangement on the subject of Boundaries, it would be inconsistent with the views of the President, to open any part of Louisiana, to a British trade with the Indians. From the evident solicitude of the British Government on this point, it is highly probable that the determination of the President will be a bar to any adjustment of that part of the differences between the two Countries; nor is it very probable, considering the jealousy and want of information on the British side, that independently of that obstacle the adjustment would at this time be concluded. That you may not however be without any information which might contribute to its accuracy, or put you on your guard against propositions militating against any of our just pretensions, I transmit herewith copies of a communication from the Governor of New York, and of another from the Governor of Vermont. With respect to the last it may be sufficient merely to save the right of correcting the alleged error at a future day. With respect to the subject of the former, it may be proper either to leave that also open to future discussion, or rather to provide for a joint examination and report relative to the Islands and channels in the St. Laurence, &c. The most obvious and convenient demarkation would seem to be the channel best fitted for navigation. But as a more equal division of the Islands might possibly be made without losing sight of a sufficient channel for common use, and as military positions may be involved in the case, it may be most safe and satisfactory to both parties, to proceed on more thorough and impartial information than is now possessed by either. I address these communications to our Ordinary Minister at London, merely because the subject has not been formally transferred to the joint Commissioners. They will of course be for the use of the latter, if this branch of the negotiations should remain in their hands.

I have already had frequent occasion to transmit accounts of British outrages in the American seas, and particularly on our coasts and within our harbours. I am now under the necessity of communicating a recent insult from the Commanding officer of the Driver sloop of War, lying at the time, in violation of law, in the harbour of Charleston, which is too gross to be otherwise explained than by the letter containing it, the original of which is herewith inclosed, and will be legal proof of the offence.

You will lay the case before the British Government without comment, because that cannot be necessary, and without any special requisition, because a silent appeal to its own sensibility, ought to be the most effectual, as it will be the most respectful course for obtaining the satisfaction due to the United States. It will remain to be seen in this case, as in that of Capt. Whitby, how far it is the disposition of the British Government to reform, by proper examples, the outrages and arrogance which their naval Commanders have too long practised with impunity.

In addition to this enormity of the Capt. of the Driver, it is proper to inclose an instance of another stamp, which involves the Court of Vice Admiralty at Bermuda, as well as Capt. Berresford who commands the Cambrian, another of the interdicted ships. You will find by the inclosed letter from Mr. NA at Bermuda that a dispatch from the Charge des Affaires of the United States at Madrid, found on board an American vessel, sent by Berresford for trial at Bermuda, was, after having the seals broken, and of course been read, thrown into the Registrars office, left there for several Months, and finally *permitted* only to be forwarded to its address; the letter continuing throughout without being even sealed. To place this disgraceful proceeding in its just light, it is to be noted that the dispatch was under the official seal, and endorsed in the hand writing, and with the name of Mr. Erving, as from the Legation of the United States at Madrid; and that an inclosed letter from him to me, endorsed in his hand *private*, was treated in the same manner. This occurrence, and it is far from being the only one of the sort, will afford another test of the degree of respect entertained by that Government, as well for its own honor, as for the most sacred of all rightly belonging to others.

As a further evidence of the aggressions and provocations experienced by our National rights from the Licentiousness of British Officers and Agents, I inclose a statement from our late Commercial Agent at Curacao, of the proceedings at that Island at, and subsequent to its capture by the British arms. I inclose also copies of Affidavits of a Pilot and of the Master of the Brig Mercury, relating to the Conduct of the Frigate Melampus. These wrongs contribute to swell the just claims of indemnity, of which the amount is in other respects so considerable.

In my letter of NA I explained the violation of our territory by the British ships of war which destroyed the French 74 near the shore of North Carolina, and inclosed the copy of a letter from the French Plenipotentiary here on that subject. In another of late date he redoubles his remonstrances, and presses in the strongest manner, the reparation due to his Government for the wrong done to it.

That the British Government understands and feels what is due from others to her own territorial jurisdiction is sufficiently manifested by the Complaint lately delivered by its Minister here in consequence of special instructions against an irregularity committed in the harbour of Malta, by the Commander of a public vessel of the United States. An explanation of the incident, with the Note of Mr. Erskine will be found in the documents which make a part of the present inclosures. Mr. Erskine was immediately told that the United States were as ready to do as to demand justice; that in the case stated the punishment of a British subject, by a foreign Officer, within British jurisdiction, instead of a resort to the local Magistracy, was an assumption of power not to be justified, however it might be mitigated by the frequency of examples given by British Commanders; and that the respect of the United States for the principle which had been violated would be proved by the measures which would be pursued. The President being now returned to the Seat of Government, a more formal answer to the same effect, will be given as soon as the pressing and weighty business on hand will permit.

The coincidence of this incident with the remonstrances proceeding from the United States may be made to bear advantageously on the reasonableness and necessity of regulations which will put an end to all such occasions of irritation and ill will between the two Countries. It cannot be too strongly repeated that without some effectual provision against the wanton spoliations and insults committed by British Cruizers on our Coasts and even within our harbours, no other arrangements whatever can have the desired effect, of maintaining and confirming the harmony of the two Nations. And it deserves the serious consideration of the British Government whether any provision will be effectual which does not suppress the practice of British Cruizers in watching and waylaying our commerce in the vicinity of our ports. The British Nation prides itself on a respect for the authority of the law of Nations. Let it then consult the rules laid down on this point by all jurists who treat of it. Let the learned and respectable Azuni be consulted, or even Vattell so often appealed to in support of British principles. Great Britain professes a particular regard to system and consistency in all her political and legal principles, let her then trace in her own principles and claims, when she was a neutral nation, the illegality of the proceedings of which we complain. Certain it is that if these proceedings continue to find no adequate remedy elsewhere, they must present a dilemma here which may compel the United States to seek one either in the extension of measures already exemplified, or in such others as may be deemed more efficacious.

You will have received a statement of the case of Yrujo of which two copies have been inclosed to you. He has not yet been subjected to any further consequence of his misbehaviour, than a degradation from the exercise of his functions. The suspicions are very strong that he intrigued and co-operated with the projects of Burr as being levelled against the Unity of the Empire. The intercepted letters from him to his Court, which were communicated by the British Ministers, tho' as you observe less important than had been presumed, convict him of the libellous and mischievous spirit of his communications. You will take occasion to express to the British Government the sense entertained by the President of the cordial manner in which it furnished the contents of those letters.

Col. Burr's trial commences at Richmond to day. There is a profusion of affidavits charging him with a complication of crimes. What the force of the Oral testimony, or the event of the Trial, may be, cannot be foretold. Much of the strongest testimony will necessarily be absent, unless a postponement should take place. I send you a printed copy of what passed on his examination before the Chief Justice.

I send you also, a series of news-papers, with a late statistical publication containing some interesting views of our National faculties and resources.

I have the honor to be, &c.



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Department of State, July 6th, 1807.

D. Of S. Mss.  
Instr.

Sir,

The documents herewith inclosed from No. 1 to No. 9 inclusive, explain the hostile attack, with the insulting pretext for it, lately committed near the Capes of Virginia, by the British ship of War the Leopard, on the American frigate the Chesapeake. No. 10 is a copy of the Proclamation issued by the President, interdicting, in consequence of that outrage, the use of our waters and every other accommodation, to all British Armed ships.

1st. *This enormity is not a subject for discussion.*<sup>1</sup> The immunity of a national ship of War from every species and purpose of search on the high seas, has never been contested by any nation. Great Britain would be second to none, in resenting such a violation of her rights, and such an insult to her flag. She may bring the case to the test of her own feelings, by supposing that, instead of the customary demand of our marines serving compulsively even, on board her ships of war, opportunities had been seized for rescuing them, in like manner, whenever the superiority of force, or the chance of surprize, might be possessed by our ships of War.

But the present case is marked by circumstances which give it a peculiar die. The seamen taken from the Chesapeake had been ascertained to be native Citizens of the United States; and this fact was made known to the bearer of the demand, and doubtless communicated by him to his commander, previous to the commencement of the attack. It is a fact also, affirmed by two of the men, with every appearance of truth, that they had been impressed from American vessels into the British frigate from which they escaped, and by the third, that having been impressed from a British merchant ship, he had accepted the recruiting bounty under that duress, and with a view to alleviate his situation, till he could escape to his own country: and that the attack was made during a period of negotiation, and in the midst of friendly assurances from the British Government.

The printed papers, herewith sent, will enable you to judge of the spirit which has been roused by the occasion. It pervades the whole community, is abolishing the distinctions of party; and, regarding only the indignity offered to the Sovereignty and flag of the Nation, and the blood of Citizens so wantonly and wickedly shed, demands, in the loudest tone, an honorable reparation.

With this demand you are charged by the President. The tenor of his proclamation will be your guide, in reminding the British Government of the uniform proofs given by the United States of their disposition to maintain, faithfully, every friendly relation; of the multiplied infractions of their rights by British Naval Commanders on our coasts and in our harbours; of the inefficacy of reiterated appeals to the justice and

friendship of that Government; and of the moderation on the part of the United States, which reiterated disappointments had not extinguished; till at length no alternative is left, but a voluntary satisfaction on the part of Great Britain, or a resort to means depending on the United States alone.

The nature and extent of the satisfaction ought to be suggested to the British Government, not less by a sense of its own honor, than by justice to that of the United States.

*A formal disavowal of the deed, and restoration of the four seamen to the ship from which they were taken, are things of course and indispensable. As a security for the future, an entire abolition of impressments from vessels under the flag of the United States, if not already arranged, is also to make an indispensable part of the satisfaction. The abolition must be on terms compatible with the instructions to yourself and Mr. Pinkney on this subject; and if possible without the authorized rejection from the service of the United States of British seamen who have not been two years in it. Should it be impossible to avoid this concession on the part of the United States, it ought of itself, as being more than a reasonable price for future security, to extend the reparation due for the past.*

But, beyond *these indispensable conditions the United States have a right to expect every solemnity of form and every other ingredient of retribution and respect, which, according to usage and the sentiments of mankind, are proper in the strongest cases of insult, to the rights and sovereignty of a nation. And the British Government is to be apprized of the importance of a full compliance with this expectation, to the thorough healing of the wound which has been made in the feelings of the American Nation.*

Should it be alleged as a ground for declining or diminishing the satisfaction in this case, that the United States have themselves taken it, by the interdict contained in the proclamation, the answer will be obvious. The interdict is a measure not of reparation, but of precaution; and would besides be amply justified by occurrences prior to the extraordinary outrage in question.

The exclusion of all armed ships whatever from our waters is, in fact, so much required by the vexations and dangers to our peace experienced from their visits, that the President makes it a special part of the charge to you, to avoid laying the United States under any species of restraint from adopting that remedy. Being extended to all belligerent nations, none of them could of right complain; and with the less reason, as the policy of most nations has limited the admission of foreign ships of war, into their ports, to such number as, being inferior to the naval force of the Country, could be readily made to respect its authority and laws.

As it may be useful in enforcing the justice of the present demands, to bring into view applicable cases, especially where Great Britain has been the complaining party, I refer you to the ground taken, and the language held by her, in those of the Faulkland Islands, and Nootka Sound; notwithstanding the assertion by Spain, in both cases, that the real right was in her, and the possession only in Great Britain. These cases will be found in the Annual Registers for 1771 and 79, and in the parliamentary debates for

those years. In the latter you will find also two cases referred to, in one of which the French King sent an Ambassador Extraordinary to the King of Sardinia, in the most public and solemn manner, with an apology for an infringement of his territorial rights in the pursuit of a smuggler and murderer. In the other case, an Ambassador Extraordinary was sent by the British Government to the Court of Portugal, with an apology for the pursuit and destruction by Admiral Boscawen, of certain French ships on the coasts of this last Kingdom. Many other cases more or less analogous may doubtless be found, see particularly the reparation by France to Great Britain for the attack on Turks Island in 1764, as related in the Annual Register and in Smollets continuation of Hume vol. 10; the proceedings in the case of an English merchantman, which suffered much in her crew and otherwise from the fire of certain Spanish Zebecs cruising in the Mediterranean, and the execution of the Lieutenant of a privateer for firing a gun into a venetian Merchantman, which killed the Capt. as stated in the Annual Register for 1781 page 94. The case of an affront to a Russian Ambassador in the Reign of Queen Ann, tho' less analogous shews, in a general view, the solemnity with which reparation is made for insults having immediate relation to the Sovereignty of a nation.

Altho' the principle which was outraged in the proceedings against the American Frigate, is independent of the question concerning the allegiance of the seamen taken from her, the fact that they were citizens of the United States, and not British subjects may have such an influence on the feelings of all, and perhaps on the feelings of some unacquainted with the laws and usages of nations, that it has been thought proper to seek more regular proofs of their National character than were deemed sufficient in the first instance. These proofs will be added by this conveyance, if obtained in time for it; if not, by the first that succeeds.

The President has an evident right to expect from the British Government, not only an ample reparation to the United States in this case, but that it will be decided without difficulty or delay. *Should this expectation fail, and above all, should reparation be refused, it will be incumbent on you to take the proper measures for hastening home, according to the degree of urgency, all American vessels remaining in British ports; using for the purpose the mode least likely to awaken the attention of the British Government. Where there may be no ground to distrust the prudence or fidelity of Consuls, they will probably be found the fittest vehicles for your intimations. It will be particularly requisite to communicate to our public ships in the Mediterranean the state of appearances, if it be such as ought to influence their movements.*

*All negotiation with the British Government on other subjects will of course be suspended until satisfaction on this be so pledged and arranged as to render negotiation honorable.*

Whatever may be the *result or the prospect*, you will please to *forward to us the earliest information.*

The scope of the proclamation will signify to you, that the President has yielded to the presumption, that the hostile act of the British Commander did not pursue the intentions of his Government. It is not indeed easy to suppose, that so rash and critical

a step, should have originated with the admiral; but it is still more difficult to believe, that such orders were prescribed by any Government, under circumstances, such as existed between Great Britain and the United States.

Calculations founded on dates, are also strongly opposed to the supposition, that the orders in question could have been transmitted from England. In the same scale are to be put the apparent and declared persuasion of the British representative Mr. Erskine, that no orders of a hostile spirit could have been issued or authorized by his Government, and the coincidence of this assurance with the amicable professions of Mr. Canning, the organ of the new administration, as stated in the dispatch of the 22d April from yourself and Mr. Pinkney.

Proceeding on these considerations, the President has inferred, that the justice and honor of the British Government will readily make the atonement required; and in that expectation, he has forborne an immediate call of Congress, notwithstanding the strong wish which has been manifested by many, that measures depending on their authority, should without delay be adopted. *The motives to this forbearance have, at the same time, been strengthened by the policy of avoiding a course, which might stimulate the British cruizers in this quarter to arrest our ships and seamen now arriving and shortly expected in great numbers, from all quarters.* It is probable, however, that *the Legislature will be convened in time to receive the answer of the British Government on the subject of this dispatch; or even sooner if the conduct of the British squadron here, or other occurrences, should require immediate measures beyond the authority of the Executive.*

You are not unaware of the good will and respect for the United States, and personally even for the President, which have been manifested *by the Emperor of Russia*, nor of the inducements to cultivate *the friendship of so great a power*, entertaining principles *and having interests, according* in some important views, *with those of the United States*. This consideration combined with the *subsisting relations between Russia and Great Britain*, make it proper in the opinion of the President, that *in case of an express or probable refusal of the satisfaction demanded of the British Government, you should take an early occasion*, if there be no special objections unknown here, *of communicating to the Russian Minister at London, the hostile insult* which has been offered, as well as the *resort which may become necessary on our part, to measures constituting or leading to war*, and of making *him sensible of the regret which will be felt, at a rupture with a power, to which the Emperor is allied by so many close and important interests.*

In order to give you the more expedition and security to the present dispatch, a public armed vessel, the Revenge, is especially employed, and Dr. Bullus is made the bearer, who was on board the Chesapeake on his way to a Consulate in the Mediterranean, and will be able to detail and explain circumstances, which may possibly become interesting *in the course of your communications with the British Government.*

The vessel after depositing Dr. Bullus at a British port will proceed *with dispatches to a French port*, but will return to England with a view to bring the result of your transactions with the British Government. *The trip to France will afford you and Mr.*

*Pinkney a favorable opportunity for communicating with our ministers at Paris, who being instructed to regulate their conduct on the present occasion, by the advices they may receive from you will need every explanation that can throw light on the probable turn and issue of things with Great Britain.*

I have, &c.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG AND JAMES BOWDOIN.

Department of State, July 15th, 1807.

D. Of S. Mss.  
Instr.

Gentlemen,

The inclosed copy of a proclamation by the President will inform you of a late extraordinary hostility and insult committed by a British ship of War on a frigate of the United States near the Capes of Virginia, and of the measures taken by the President in consequence of the outrage. The subsequent proceedings of the British Squadron in our waters, have borne a like stamp of hostility; and altho' it may be found that these provocations have not issued from or may be disavowed and expiated by the British Government it may also be found that the United States must take on themselves the reparation that is due to them. For this event it is necessary to be prepared; as well with a view to our finances, as to other resources and arrangements.

In this state of things, the President, taking into consideration the objections to an application of the public funds to objects not immediately connected with the public safety, instructs you to suspend the negotiation for the purchase of the Floridas, unless it shall be agreed by Spain that payment for them, shall in case of a rupture between Great Britain and the U. States, be postponed till the end of one year after they shall have settled their differences; and that in the mean time no interest shall be paid on the debt. You will of course understand it to be inconsistent with this instruction either to draw on the Treasury, or to obtain a credit in Europe, for any part of the sum allotted for the purchase of the Floridas.

Should a bargain have been made for the Floridas and payments stipulated, as contemplated by former instructions, you will press in the most serious and emphatic manner, a remodification of the terms which will adjust them to the instruction here given. Such a compliance may justly be expected in return for the advantages which Spain and her allies will derive, in various respects from a contest between this country and their enemy. It may further be expected that, in consideration of these advantages to them, and of the general effect of a War, or even a cessation of commerce with Great Britain on the pecuniary faculties of the United States, the price demanded for the Floridas, will be at least greatly reduced. To this consideration, it may be added, that whilst the pecuniary faculties of the United States will be so materially benumbed in the event of a rupture with Great Britain, those of Spain may be essentially aided, by the facility which that event will give to the command of her South American Treasure through the United States. Finally it is not unworthy of consideration, that the introduction of hostile relations between the United States and Great Britain, may remove objections hitherto felt by the latter, to enterprizes against the Floridas, and lead to a military occupancy of them with views very adverse to the policy of Spain.

Should Spain still obstinately persist in rejecting or retarding an arrangement concerning the Floridas, she must at least see the necessity of hastening a satisfactory one on other subjects, particularly in the case of the Mobbille for the free use of which by the United States, orders ought to be sent without a moments delay.

The President leaves to your own discretion the use to be made of observations of this kind, and entertains an entire confidence, that your management of the whole business will be such as will best comport with the circumstances of the crisis, and conduce most to the object entrusted to you.

This dispatch goes by the Revenge, a public armed vessel charged with instructions to our Ministers in London, to require from the British Government the satisfaction due for the insult to the U. States. She will touch at a French port from which one of her officers will proceed to Paris. She will also return from England to France, and convey to you from Mr. Monroe and Mr. Pinkney, the communications rendered proper by the conduct and countenance of the British Government in relation to the United States. The influence which those communications ought to have on your proceedings, will depend on the tenor of them, and must be left to your own discernment and sound judgment.

I have the pleasure to assure you that the spirit excited throughout our nation, by the gross attack on its sovereignty, is that of the most ardent and determined patriotism. You will find sufficient specimens of it in the papers herewith inclosed.

I have the honor to be &c.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, July 17, 1807.

D. Of S. Mss.  
Instr.

Sir,

Since the event which led to the Proclamation of the 2 inst, the British squadron has conducted itself in a continued spirit of insolence and hostility. Merchant vessels arriving and departing have been challenged, fired at, examined and detained within our jurisdiction, with as little scruple as if they were at open sea. Even a Revenue Cutter conveying the Vice President and his sick daughter from Washington to New York and wearing her distinctive and well known colours did not escape insult. Not satisfied with these outrages, the British Commodore Douglass advanced into Hampton Roads with his whole squadron consisting of two 74's one ship of 50 guns and a frigate; threatened by his soundings and other indications, a hostile approach to Norfolk; and actually blockaded the town by forcibly obstructing all water communication with it. In a word, the course of proceeding amounted as much to an invasion and a siege as if an Army had embarked and invested it on the land side. It is now said that the whole squadron has left Hampton roads, in consequence of a formal notice of the Presidents proclamation; and has fallen down to their former position at a small distance from the Capes; awaiting probably the further orders of the commanding Admiral at Halifax.

These enormities superadded to all that have gone before, particularly in the case of Bradley, Whitby, Love, the destruction of the French Ship on the sea board of North Carolina, the refusals of Douglass whilst within our waters to give up American seamen not denied to be such; to say nothing of British violences against our vessels in foreign ports, as in Lisbon and Canton, form a mass of injuries and provocations which have justly excited the indignant feelings of the nation and severely tried the patience of the Government. On the present occasion, it will be proper to bring these collective outrages into view; and to give them all the force they ought to have not only in augmenting retribution for the past, but in producing securities for the future. Among these the enlargement of our Marginal jurisdiction, and the prohibition of cruizers to hover about our harbours and way-lay our trade, merit every exertion that can properly be made, and if not obtained, will place in a stronger view, the necessity of leaving unfettered the right of the United States to exclude all foreign armed ships from our ports and waters. In the adjustment between Great Britain and Spain, of the Affair of Nootka Sound, there is an Article which acknowledges and stipulates to the latter a margin of ten leagues. Every consideration which could suggest such a latitude in favor of the Spanish Territory equally at least supports the claim of the United States. In addition to the remarks heretofore made on the subject of infesting our commerce near the mouths of our harbours, I beg leave to refer to what is contained in Azuni in relation to it.

I have the honor to be, &c.



[\[Back to Table of Contents\]](#)

## TO JAMES BOWDOIN.

Department of State, July 17th, 1807.

D. Of S. Mss.  
Instr.

Sir,

Since the event which led to the late Proclamation of the President, inclosed in the letter to Genl. Armstrong and yourself, the British squadron in the Waters of Virginia, has conducted itself in the same insolent and hostile spirit. Merchant vessels arriving and departing have been challenged, fired at, examined and detained, within our jurisdiction, with as little scruple as if they were at open sea. Not satisfied with these outrages, the British Commodore Douglass advanced into Hampton Roads with his whole squadron, consisting of two 74's, a ship of 50 guns, and a frigate; threatened by his soundings and other preparations an hostile approach to Norfolk; and actually blockaded the Town by forcibly obstructing all water communication with it. In a word, the course of proceeding has amounted as much to an invasion and a siege, as if an Army had debarked and invested the town on the land side. It is now said that the whole squadron has left Hampton Roads, in consequence of a formal notice of the President's proclamation, and fallen down to their former position at a small distance within the Capes, probably awaiting the further orders of the Commanding Admiral at Halifax.

The spirit and exertions called forth by the Crisis, have been truly gratifying. Volunteers turned out by thousands. The situations most exposed to predatory debarkations were guarded; and Norfolk was soon made safe by a judicious disposition of the Chesapeake, refitted for the occasion, a French frigate which happened to be in the harbour, and a few gun Boats, and by availing the whole of the support of the fortifications in the vicinity.

The Grand Jury, during the late Session of the Circuit Court at Richmond, found Bills of Treason and Misdemeanor against Aaron Burr, Jonathan Dayton, John Smith (Senator from Ohio) Blannerhasset and several others. Their trials will take place on the 3d of next month.

I have the honor to inclose a private letter from the President, which renders it unnecessary for me to say more in reference to the considerations which personally interest you, than that he acquiesces in your proposed return to the United States, but with a wish to avail the public of your services at Madrid if not disagreeable to you, and if there be no objection to this arrangement, presented by circumstances in our affairs with Spain, better known to you than to us. The way for the arrangement seems to be fairly opened by the late substitution of the Chevalier de Foronda as Charge d' Affaires, in place of the Marquis d' Yrujo, and by the understood purpose of transferring hither the present Minister Plenipotentiary of Spain at Milan.

In the present posture of our relations to Great Britain it is prudent to turn them, as much as can be honorably done, to account in our other foreign relations. In the joint letter to you and Genl. Armstrong, this policy has been explained as it applied to the objects embraced by the joint Commission. But there are other cases in which Spain is counselled by her own interest to promote that of the United States; particularly by giving greater latitude and security to our commerce with her American possessions, above all with the important and Convenient Island of Cuba. I offer this idea for your attention and improvement; and I pray you to communicate it to Mr. Erving, with such of the other matters contained in the dispatches now forwarded, as it may be useful for him to possess.

I have the honor to be &c.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Department of State, October 21, 1807.

D. Of S. Mss.  
Instr.

Sir,

I inclose for your information copies of the letters which have passed on several subjects between Mr. Erskine and the Department of State; and which it may be useful for you to possess. The proceedings at Halifax with respect to one of the men taken from the Chesapeake, and whose restoration was included in the demand of reparation for that outrage, are calculated to inspire great distrust of the temper and intentions of the British Government towards this Country. Is it conceivable that at so late a day Berkley could be unapprized of the light in which his original offence was viewed by his superiors, or that if apprized of their displeasure at it, he would brave the consequences of an additional temerity of so irreparable a character. Before the receipt of this communication you will probably have been enabled to interpret the phenomenon, and this communication suggests the light in which it is to be presented to the British Government. If the responsibility rests on Berkley or any other Officer, and that Government means to give the satisfaction due to the honor of the United States, there can be no pretext for refusing to make the severest example of the Offender or Offenders. Among the papers accompanying this will be found British evidence that the seaman sentenced to death was not a deserter from a British ship of war as alleged on his trial, but a merchantman only. You will find also that, according to information received here thro' the Collector of Baltimore the Court martial at Halifax, disregarding still further every restraint of law, of decency and of common prudence, proceeded to the trial of the three other men taken from the Chesapeake, without even pretending that they were British subjects, that a partial execution of the sentence on one of them was fatal to his life, and that the two others were forced into the service of a British Ship of War, by making that the alternative of the doom to which they were sentenced. Should this information be confirmed, and it has not yet been impaired by any circumstance whatever, the measure of atrocity will be filled up, and every motive supplied for requiring on our part and for affording on that of Great Britain the full measure of punishment due to it.

The last letter received from Mr. Erskine respecting the detention of a letter to him from Vice Admiral Berkley will not be answered, unless the subject should be resumed after receiving mine which had not reached him at the date of his. If a further answer should be required, it may be necessary to remind him that if the ground for a prosecution were as legal as he supposes, the measure however it might be dictated by the respect which the United States owe to themselves, could not be demanded of right by a Government which has left unpunished the repeated violations committed by its officers on the most solemn dispatches of the United States. Instances of these have from time to time been transmitted to you. In that of the letter from the President to the King of Holland with the great seal internally impressed, the offence was of the most flagrant kind, and rendered the more conspicuous by its publication in the

British Newspapers. This circumstance, whilst it necessarily brought the aggravated insult to the notice of the Government might the rather have been expected to be followed by the punishment of the guilty officer, as this course alone could guard the Government itself to which the copy of the President's letter must be presumed to have been sent by the officer who violated it, against appearances and conjectures of the most unfavorable sort.

I have the honor to be &c.

[\[Back to Table of Contents\]](#)

TO WILLIAM PINKNEY.

Department of State, Dec. 23, 1807.

D. Of S. Mss.  
Instr.

Sir,

Mr. Erskine having been so good as to let me know that the Mail of this evening will carry his dispatches for a British packet, which will sail from New York immediately on their arrival there, and other conveyances now failing, I avail myself of the opportunity to inclose you a copy of a message from the President to Congress, and their Act in pursuance of it, laying an immediate embargo on war vessels and exports. The policy and the causes of the measure are explained in the message itself. But it may be proper to authorize you to assure the British Government, as has just been expressed to its Minister here, that the Act is a measure of precaution only called for by the occasion; that it is to be considered as neither hostile in its character, nor as justifying or inviting or leading to hostility with any Nation whatever; and particularly as opposing no obstacle whatever to amicable negotiations and satisfactory adjustments with Great Britain, on the subjects of difference between the two Countries.

Mr. Monroe arrived at Norfolk on the 12th inst, and at this place last night. Mr. Rose has not been heard of, since his reported departure from England on the 9th of Nov.

The suddenness of the present opportunity does not allow me time to add more than a newspaper containing a part of the proceedings of Congress in relation to the Embargo, and assurances of the Esteem & Consideration with which

I Remain Sir &C.

END OF VOL. VII.

[\[1\]](#)

TO JAMES MONROE.

Washington, Mar. 1, 1803.

Dear Sir,—

Since you left us we have no further intelligence from N. Orleans, except a letter dated Jany 20 from the vice Consular agent there, from which it appears that the letters to the Govr. & Intendant from the Spanish Minister here, had arrived abt. the 13th., and had not on the 20th., produced the desired change in the state of things. The delay however does not seem to have been viewed by the Consul as any proof, that

the Intendant would not conform to the interposition. The idea continued that he had taken measures without orders from his Govt There are letters (according to that from the Consul) for the Marquis Yrujo now on the way by land. These will probably shew whether the Intendant will yield or not. The despatch vessel which carried the Marquis's letters is not yet returned. The detention of her beyond the allotted time is favorably interpreted by him; on the presumption that she waits for a satisfactory answer, which the pride of the Intendant postpones as long as possible. The Newspapers will have informed you of the turn given to the proceedings of Congs. on the subject of N. Orleans, &c. The proposition of Mr. Ross in the Senate which drove at war thro' a delegation of unconstitutional power to the Executive were discussed very elaborately, and *with open doors*. The adversaries of them triumphed in the debate, and threw them out by 15 votes agst 11. On the motion of Mr. Breckenridge measures of expenseless or cheap preparation in the stile of those which attended Mr Jay's mission to G. Britain, have been agreed on in the Senate. It is uncertain whether even these will pass the House of Reps. If they should as is perhaps not improper, they will not be understood as indicating no views that ought to excite suspicions or unfriendly sensations in either of the Govt. to which your Mission is addressed. The truth is that justice & peace prevail not only in the Public Councils; but in the body of the Community, and will continue to do so as long as the conduct of other nations will permit. But France & Spain cannot be too deeply impressed with the necessity of revising their relations to us thro' the Misspi, if they wish to enjoy our friendship, or preclude a state of things which will be more formidable than any that either of those powers has yet experienced. Some adjustments such as those which you have to propose have become indispensable. The whole of what we wish is not too much to secure permanent harmony between the parties. Something much better than has hitherto been enjoyed by the States, is essential to any tolerable degree of it even for the present.

I enclose you an extract of a letter from Mr. Gallatin, which could not be well incorporated with the instructions. The information it gives may nevertheless be of use, & I take this mode of putting it in your hands.

I understand that a bill is likely to pass granting Genl. Fayette 12,000 acres of land, as due for military services. We are anxious that a clause may be inserted authorizing the President to locate the tract wherever he pleases. Should this idea succeed, the grant may become of great value, perhaps beyond the contemplation of the Marquis or his most sanguine friends. Without such a clause, the land may be of little account, and will probably fall short of the lowest expectations.

In the instructions relative to Art VI, you will find an important discretion given on the subject of Beaumarchais claim. It was suggested by the possibility that the claim may be pressed with an energy beyond its importance in any public view; Such a discretion was therefore highly expedient, and may possibly be used with desirable effect.

You will receive herewith sundry printed papers, & I recommend that you receive from Mr Gilston whatever Newspapers he may have on hand for Mr Livingston.

I have not heard from you since yours of the 22d. If I should find on the rect. of your next that I have time eno', you shall hear again from me before your departure; but it will probably be on private subjects only.

Mrs. Madison offers with me affectionate respects, an agreeable voyage, and happy scenes to Mrs. Monroe & Miss Eliza, as well as to yourself.

Adieu

P. S. Your instructions &c &c will be put into the mail tomorrow evening. Some unavoidable delays have prevented their going by the present.

***(Extract Of A Letter From Albert Gallatin, EsqR., To J. Madison, EsqR.)***

Dated Feby 7, 1803.

If West Florida can alone be purchased, it is certainly worth attending to; but in that case, making the river Iberville the boundary as it was made in the treaty of 1762 between France and England, the article should be so worded as to give us the whole channel of that river, or at least to permit us to open it so as to render it navigable in all seasons. At present the bed is 30 feet above low water mark for 15 miles from the Mississippi to Amit river; but I have no doubt that a very small opening would be widened & deepened afterwards by the river. There is no obstruction, the whole being level and mud or sand. But supposing even a portage there, the advantage of american houses settled in a american *port* would soon give a preference over New Orleans to that port. The seaport may be perhaps on the main between Pearl & Pargacola rivers; but certainly on the Island called "Ship Island" as through the passage between that & the next island there are more than 20 feet water & good anchorage close to the shore which faces the main. A frigate of 36 guns was seen there by E. Jones, (the first clerk in my office who is brother of our late consul at New Orleans & lived ten years with him in W. Florida) & it is the reason of its bearing that name. Judge Bay says that there is another island, called Deer Island close to the entrance of Lake Pontchartrain which affords the same advantages. That Jones disbelieves; but the other is certain, and as it is about half way between Mobile & the Lake; as the whole navigation between these two places is locked in by the Islands & safe even for open boats & canoes, that island would become the proper seaport for both rivers Mississippi and Mobile; for you can bring but 9 feet up Mobile bay, 7 feet over the bar of Lake Pontchartrain & 15 over the bar at the mouth of the Mississippi. It results from all that, that the possession of West Florida, even without New Orleans island, is extremely important, and that if it can be obtained, it ought expressly to include all the islands within twenty leagues or such distance as to include those which are marked on the map.—*Enclosed to James Monroe, 1 Mar. 1803—Mad. MSS.*

[1] Madison instructed Pinckney on March 21, 1803: Since my letter of the 8th instant, the Marquis d'Yrujo has received answers to his letters to the Governor and Intendant of Louisiana in which it is stated by the latter, as well as the former officer, that the suspension of our deposit, was not the effect of any orders from the Spanish

Government. No intimation however was given that the suspension would be removed in consequence of the original interposition of the Spanish Minister. In this state of things, rendered the more critical by the rising indignation of the Western Country, and the approach of the season when the privation of the deposit would be felt in all its force, a letter was written from this Department, to the Spanish Minister, of which a copy is inclosed. You will find by the tenor of his to the Secretary of State, of which a printed translation is also inclosed, that he has taken on himself to insure a correction of the wrong which has been committed. It can scarcely be doubted that his prudent zeal to preserve tranquility between Spain and the United States, and to save the former from the heavy damages likely to fall on her, will be approved by his government; and it is to be hoped that the energy of his interposition with the local authority at New Orleans, will be effectual, in case these authorities should not have previously changed hands. Should such a change have taken place, the letter from Mr. Pichon the charge d'Affaires of the French Republic of which a printed translation is likewise inclosed is well adapted to give a right turn to the conduct of the Spanish Agents. In whatever hands the Mouth of the Mississippi may be, it is essential to peace, as well as to right, that the gifts of nature, and the guarantees of Treaty should be duly respected.

It appears by a letter of February 15 from the Vice Agent of the United States at New Orleans, that the Intendant had opened the market there for provisions going down the Mississippi. This measure is represented as essential to the subsistence of the Colony, and if so, makes the folly of the Intendant, as conspicuous as his arrogance, in provoking the resentments of a powerful neighbour, from whose good will the necessaries of life were to be drawn.—*D. of S. MSS. Instr.*

[\[1\]](#)

TO JAMES MONROE.

Washington, Apl. 20, 1803.

Dear Sir

You will receive with this all the communications claimed by the actual & eventual posture of our affairs in the hands of yourself & Mr Livingston. You will find also that the Spanish Govt has pretty promptly corrected the wrong done by its Officer at N. Orleans. This event will be a heavy blow to the clamorous for war, and will be very soothing to those immediately interested in the trade of the Missisipi. The temper manifested by our Western Citizens has been throughout the best that can be conceived. The real injury from the suspension of the deposit was *howr\*much lessened* by the previous destruction of the *intire crop* of *wheat* in Kentucky, by the number of *sea vessels built* on the *Ohio* and *by throngs of vessels* from *Atlantic ports* to the Mississippi, some of which *ascended* to the Natches. The permission also to supply the market at N. O. & to ship the surplus as Spanish property to Spanish ports, was *turned to good account*. The trial *therefore has been much alleviated*. Certain it is that the *hearts and hopes* of the *Western people* are strongly fixed on the *Mississippi*



*for the future boundary. Should no improvement of existing rights be gained the disappointment will be great. Still respect for principle & character, aversion to war & taxes the hope of a speedy conjuncture more favorable, and attachment to the present order of things will be persuasive exhortations to patience. It is even a doubt with some of the best judges whether the deposit alone would not be waved for a while rather than it should be the immediate ground of war and an alliance with England. This suggested a particular passage in the official letter now sent you & Mr. L.*

*The elections in New England are running much against the administration. In Virginia the result is but very partially known. Brent is outvoted by Lewis. In general things continue well in that state.*

*The affair between the President and J. Walker has had a happy eclairsissement. Even this general communication is for your own bosom as already privy to the affair.*

I have recd. a very friendly letter from Genl Fayette, which I shall answer as soon as I can get some further information. We are all much distressed by his late accident, and are anxious for every proof to be given him of the affection of this Country. Congress found an occasion of voting about 11 or 12,000 acres of land N. W. of the Ohio with liberty to locate it any where. This may be made worth now probably abt 20,000 dollars. In a little time the value must greatly increase. Whether anything else can or will be done, you can judge as well as myself. Assure him of my undiminished friendship for him, which he knows to have been perfectly sincere and ardent.

Mr. Coleman has sent a list of the furniture. It is some articles short of your list, & which contains a few we shall not want. They are not yet arrived here.—*Mad. MSS.*

[\[1\]](#)

To James Monroe.

Washington, July 30, 1803.

Dear Sir

I received your favor of by Mr. Hughes, the bearer of the public despatches from you & Mr L. The purchase of Louisiana in its full extent, tho' not contemplated is received with warm, & in a manner universal approbation. The uses to which it may be turned, render it a truly noble acquisition. Under prudent management it may be made to do much good as well as to prevent much evil. By lessening the military establishment otherwise requisite or countenanced, it will answer the double purpose of saving expence & favoring liberty. This is a point of view in which the Treaty will be particularly grateful to a most respectable description of our Citizens. It will be of great importance also to take the regulation & settlement of that Territory out of other hands, into those of the U. S. who will be able to manage both for the general interest

& conveniency. By securing also the exclusive jurisdiction of the Mississippi to the mouth, a source of much perplexity & collision is effectually cut off.

The communications of your *\*colleague* hither, have fully *betrayed* the feelings excited by your *messs.*, and that *he was precipitating the business soon after yr. arrival* without respect to the measure of the *govt.*, to *yr. self*, or to the advantage to be expected from *the presence & co-operation of the more immediate depository of the objects and sensibilities of his country*. It is highly probable that if the *appeal* to the *French Govt.* had been less *hackneyed* by the *ordinary minister* and been made under the *solemnity of a joint and extraordinary embassy* the *impression* would have been *greater & the gain better*.

What course will be taken by *his friends here* remains to be seen. You will find in the *gazettes a letter from Paris* understood to be from *Swan* inclosing a *copy of his memorial* representing it as *the primary cause of the cession, praising the patriotism* which undertook *so great a service without authority*, and *throwing your agency out of any real merit while by good fortune it snatched the ostensible merit*. This letter with the *memorl* has been published in all our papers some of them making *comments favorable to Mr. Livingston*, others doing justice to you, others ascribing the result wholly to the *impending rupture*. Another letter from Paris has been published *wh makes him Magnus Apollo*. The publication of the memorial is so improper and in reference to the writer invites such strictures that [an answer?] from him is not to be presumed. The passages against *Engld.* have not escaped the lash. It would not be very wonderful if they were to be noticed *formally or informally by the British Legation here*.

My public letter will shew the light in which the purchase of all Louisiana is viewed, and the manner in which it was thought proper to touch *Mr. L.*, in complaining that the *commn* did not authorize the *measure, notwithstanding* the information given that *he was negotg. for more than the East side of the Misst.* The pecuniary arrangements are much *disrelished*, particularly by *Mr Gallatin*. The irredeemability of the stock which gives it a value above *par*, the preference of the *creditors* to the *true object* in the *cash payment* and the barring of a *priority* among them, are *errors* most regarded. The origin of the two last is *easily understood*. The claims of the different *creditors* rest on principles as different. . . .—*Monroe MSS.*

[1]

To James Monroe.

Washington Ocr. 10, 1803.

Dear Sir

Finding that Mr. Purveyance is within reach of a few lines, I add them to what he is already charged with, to observe that Yrujo has written another remonstrance agst. our acquisition of Louisiana, alledging as a further objection that France by not obtaining

the stipulated acknowledgments of the King of Etruria from the Courts of Petersburg & London had a defective title herself to the Cession. Nothing can be more absurd than these cavils on the part of Spain, unless it should be her using in support of them force agst. our taking possession. This she will scarcely attempt, if not backed by France, wch. we hope is impossible. I am writing on this subject to Livingston & Pinkney. I have already done so to Yrujo giving him to understand, that we shall not withhold any means that may be rendered necessary to secure our object. Pichon is perfectly well disposed, is offended with the Spanish Minister, & if left under the orders he now has, will cooperate zealously, with an honest view to the honor & obligations of his own Country. On our part I trust every thing that the crisis demands will be done, and that we shall speedily be in possession of the valuable object which the Treaty with France has gained for us. Baring is here, but having not yet called on me I have had no opportunity of paying him civilities or obtaining explanations from him. I wait anxiously for your next. Your last was of Aug. 15. I hope you have been favorably recd, and will bring the British Govt. more & more to understand their own interests as well as our rights. Insist on instructions to *all* their naval officers, to abstain from impressions & to respect our jurisdictional rights. Incidents are daily occurring which otherwise may overcome the calculating policy of the Present Executive, & provoke the public temper into an irresistible impetus on the public Councils. Mr K. says that if he cd have remained a little longer, the British Govt might possibly have been brought into a contract guarding agst this evil, but that the business is to be effected at that Court by the U. S. not so well by formal notes & official discussions as by the frankness & familiarity of explanatory & expostulatory observations in private discourse. I give you this in confidence, as a hint that may be useful. Mr. Purveyance had seized your wishes before I returned hither, & I did not know till this moment that he had not sailed. I write in great haste to secure the present mail, which is the only one that promises a conveyance by him. He will give you much public & all private information.—*Mad. MSS.*

[\[1\]](#)

## TO BARBÉ MARBOIS.

Novr 4, 1803.

Sir

I recd your favor of the 21 prairial, with a pleasure which is redoubled by the consideration that I am able in acknowledging it, to inform you of the formal approbation of the late Treaty & conn. by every branch of our Govt. The event establishes, I hope forever, perfect harmony between the two Countries. It is the more likely to do so, as it is founded in a policy, coeval with their political relations, of removing as much as possible all sources of jealousy & collision. The frankness & uprightness which marked the progress of this transaction, are truly honorable to all concerned in it; and it is an agreeable circumstance, that, in the exchange of ratifications, it was closed in the same spirit of mutual confidence, Mr Pichon inferring, doubtless with the truest reason, that an unqualified exchange, under actual

circumstances, would best accord with the real views of his Government. It remains now to compleat the work by an honest execution of the mutual stipulations. On our part the sequel will certainly correspond with the good faith & prompt arrangements thus far pursued; and full reliance is placed on the reciprocal disposition of your Govt of which so many proofs have been seen.

The interposition of Spain, is an incident not more unexpected, than it is unreasonable. It is to be wished, that it may terminate without any serious consequences, even to herself. Whatever turn it may take, the honour of the French Govt. guaranties the object at which our measures are pointed; & the interest of France will equally lie in making the fruits of these measures, hers, as well as ours.

I partake Sir in all the satisfaction which you feel at an event which awakens recollections both of a public & private nature, so agreeable to both of us; and I pray you to be assured that I observe with sincere pleasure, in the share you have contributed to it, those enlarged views and honorable principles, which confirm the high esteem & distinguished consideration with which I remain, Dr sir, your friend & Servt.—*Mad. MSS.*

TO JAMES MONROE.

Washington. Decr. 26 1803.

Dear Sir

I have recd I believe all your letters public and private down to that of October 22, written merely to say that all continued well. I have taken due care of the communications on the subject of your—. Everything seems to be well understood on this side the water. I cannot say more now as I write of necessity without cypher.

M. Merry has been with us some time. He appears to be an amiable man in private society, and a candid and agreeable one in public business. A foolish circumstance of etiquette has created some sensibility in Mrs Merry and perhaps himself; but they will find so uniform & sincere a disposition in all connected with the Govt to cultivate a cordial society with them, and to manifest every proper respect for their characters and station, that if any unfavorable impression has happened, it must be very transient. It would be unfortunate if it were otherwise, because a dissatisfaction of whatever sort, or however produced, might mingle itself with his general feelings, and, thro' them, with the agency committed to him.

We have had several conversations both incidental & formal on the topics most interesting to the two Countries. I have taken pains to make him sensible of the tendency of certain proceedings on the British side, and of their injustice as well as impolicy. I communicated to him a few days ago, the intention of the President to explain our views fully to you on these topics, and to authorize you to negotiate such conventional eclaircissements and arrangements as may put an end to every danger to which the harmony between the two Countries is now subjected. His ideas appeared

to be moderate, & his disposition conciliatory. As he will doubtless communicate to his Govt. what passed us, I think it proper, in order to place you on a level of information, to observe briefly, that the plan will be to get rid of impressments altogether on the high seas, to define blockades & contraband according to the last Treaty between G. B. & Russia, to regulate visits & searches of our vessels, according to the Treaty of 1786 between G. B. and France, to put aside the doctrine, that a Colonial trade, not allowed in time of peace, is unlawful in time of war; and in return to agree to a mutual surrender of deserters from ships and from garrisons, and to a legislative provision agt exporting articles enumerated as contraband to places within the jurisdiction of an enemy. This will be the outline, excepting a few minor propositions. The subject is now before the Cabinet, and it will not be long before it will be forwarded to you in its details. It is much to be desired that something may be done to consolidate the good understanding between the two nations, and I really believe that there is nothing aimed at by us that is not for the true interest of both parties. I am not without hopes that Mr Merry sees the business in a good degree in the same light, and that his representations will co-operate with your reasonings on it. I am glad to learn that in Europe violations of our maritime rights are so much mitigated in comparison with the former war. It is a good omen. In the American seas, however the scene is very different, and I fear is growing worse & worse. Impressments and other outrages on our flag are multiplying, and the depredations, under pretext of blockades, are going on in rivalry with all the extravagances of the last war. I will send herewith if I can, certain documents, both as to impressments and blockades which will explain the justice of these remarks, and satisfy you, as they ought to do the British Govt that the friendship & patience of this country are put to a severe trial. A Bill has been brought in Congress with a view to some remedy. It proposes to forbid the use of our pilots, our ports, and our supplies & hospitalities to any ship of war which shall be proved & proclaimed to have impressed or otherwise insulted those on board our vessels. Whether it will be pursued into a law is uncertain; but if it should not, the forbearance will proceed merely from a hope that a remedy to the evil is contemplated by negotiations. The public mind is rising to a state of high sensibility, and no other consideration than such a hope would I am persuaded, suspend the effect of it on the Legislative Councils. It is to be wished that the introduction of the Bill may not be misconstrued into an unfriendly disposition towards G. Britain. I have every reason to believe that the supposed necessity of it is deeply regretted, and that a just accommodation of all differences with G. B. will give the most sincere and general satisfaction. Louisiana was delivered by the Spanish authorities at N. Orleans to Laussat, on the 30th of Novr. Our Comssrs, Claibourne & Wilkinson with their troops, were at Fort Adams on their way to receive the transfer to the U. States All difficulties therefore are at an end in that quarter. Nothing appears to have passed in relation to W. Florida, or the boundaries in general. It is understood that Spain does not include any territory E. of the Misspi except the island of N. O. in the idea of Louisiana. It will be an easy matter to take possession according to our idea. The mode alone can beget a question.

You omitted the bill of the Paris Silver Smith, referred to in your last.—Yrs. *Monroe MSS.*

[1] A copy of the above letter was also forwarded to Pinckney, excepting the postscript. *Note in the original.* The postscript related to the appointment of commissioners to liquidate claims under the convention of April 30, 1803.

[1] Madison wrote to Monroe privately, January 18th.—

I write you by Mr. Baring, who will also take charge of full instructions on the subject of a Convention with G. B. for putting an end to impressments &c. It is of great importance to the harmony of the two Countries that the project should not entirely fail. There is not time to forward by this opportunity instructions relative to Madrid. They will probably soon follow. In the mean time, you will collect from a letter which the President writes his present views with respect to that Mission. I refer to the same source also for other things of which a repetition is unnecessary, particularly the arrangement as to Louisiana. . . .

The inclosed paper has an address to Mr. Merry, which shows the importance to G. Britain of a stipulation to surrender her deserting seamen. She cannot expect this to be either stipulated or practised, whilst impressments go on. On the contrary she must expect other States to follow the example of Va. which will throw the whole trade between the two Countries in time of war at least into American vessels.—*Mad. MSS.*

[1] On February 7 Madison wrote to Livingston:

The public letters you will receive by this conveyance acknowledge all the letters recd from you since the date of those last written to you, except your correspondence with Mr Monroe. This I have thought proper to acknowledge in a private letter because I have not placed it on the files of the office. You left me free to consider the letters which passed between you as private, and I have not yet decided that it can be of use to dispose of them as of a public nature. Should it on further consideration be deemed proper to view them in this light, they can at any time be deposited in the office; whereas if now deposited, and a further consideration should oppose this use of them, the step would be irrevocable. It is much to be desired, on various grounds, that the mutual sensibilities which betray themselves in the correspondence should have no greater publicity than may be inevitable, and that no insuperable obstacles should be thrown in the way of that oblivion of disagreeable incidents, which cannot but be favored by your mutual respect and liberality. . . . . .

You will find in the public letter the reasons for not heretofore forwarding a letter of leave, and of the intention to forward one only on rect. of your determination to make use of it. It was not wished to take any step which might be misinterpreted as an instruction for your return, and it was conceived that the letter you possess could, if your return was resolved on, without impropriety be made use of. The date alone suggests any difficulty, and that admits so easy an explanation, as scarcely to be regarded as one. You will I am persuaded be sensible that the footing on which the matter has been put was that deemed most consistent with the delicacy & friendship entertained for you, and which seemed best to reconcile a due respect for your personal inclinations with the respect due to the interest the public has in your diplomatic services.—*Mad. Mss.*

[1] The omitted portion of the instruction relates to the payment of claims under the convention of 1800 with France, trade with Santo Domingo, and the convention with Spain.

[1] Italics for cypher.

[2] It was generally thought at the time that the Merry incident was nursed to imposing proportions by Mrs. Merry. Mrs. Samuel Harrison Smith thus describes her under date January 23, 1804: "She is said to be a woman of fine understanding and she is so entirely the talker and actor in all companies, that her good husband passes quite unnoticed." *The First Forty Years of Washington Society*, 46. Henry Adams, however, gives a different view in his *History of the United States*, ii., 367 *et seq.*

[1] Not deciphered.

[1] There is a copy of this instruction up to the part which encloses the correspondence with D'Yrujo in Madison's letter book in the Chicago Historical Society. Those portions which are printed in italics are in cypher in the letter book copy.

On June 20, 1804, Livingston wrote to Madison: "I should not hesitate to take possession of West Florida and act as if no doubt could be entertained of our title. Once in possession, France will find it necessary to make Spain acquiesce in it, as it would be very repugnant to her interest at this time to suffer hostilities between the two nations which would render it still more difficult for Spain than it now is—and it is now sufficiently so—to pay her tribute to France."—*Mad. Mss.*

[1] On April 10 Madison instructed Pinckney:

It is unnecessary to enter into a particular comment on the rude or rather insulting language which the Marquis D'Yrujo did not restrain himself from addressing to the Government of the United States. To speak of an Act of Congress as an "atrocious libel" after acknowledging that he had found it to be their Act; as an insulting usurpation of the unquestionable rights of his Sovereign, and as a direct contradiction to the assurances given to him from the President, would have justified an answer less mitigated than was given. The Spanish Government by making the case its own, will feel what it became the Government of the United States to feel, and will doubtless derive from that source and from a regard to the friendship between the two nations of which the Government of the U. States has given an example, the determinations comporting with the occasion. The President does not ask a recall of the Spanish Envoy, nor any particular animadversion on him. In consulting the respect which he owes to his station and to himself, he does not forget the laudable deportment of the Marquis D'Yrujo on other occasions and is willing to make all the allowance which can be reasonably claimed for a fervid zeal in a faithful functionary. But it is obvious that the intemperance and disrespect of this minister towards the Government of the United States on the present occasion has placed him on a footing unfriendly to the habitual cordiality with which intercommunications here between the two Governments have been conducted; and it will remain with the Spanish Government



in appreciating this circumstance to provide as it may judge best a suitable remedy for it. It might have been reasonably expected that the Marquis on finding the just displeasure given by his offensive language would be led by a return of his discretion to have substituted a proper one. Instead of that prudent course, his reply retains so much of the tone of his first letter that no stronger proof could be given of the moderation of the President and his respect for every link of connection with Spain than his not making it an obstacle at once to all further intercourse with him. *D. of S. Mss. Instr.*

[1] On July 18, 1804, he instructed Pinckney:

“The note of February 10 last from Mr. Cevallos [to Pinckney] inclosed in that [Pinckney’s] of Feby. 22d withdrawing the objection of Spain to the transfer of Louisiana from France to the United States, makes it proper that you should signify to the Spanish Government, that altho for reasons sufficiently explained the Spanish Government was considered by the United States as absolutely precluded from interposing such an objection, the President receives with satisfaction this act of justice and candor on the part of His Catholic Majesty.”—*D. of S. MSS. Instr.*

[1] He wrote to Merry Sept. 3:

“The several communications & representations to which it is a reply, had for their object to obtain your interposition towards repairing and controuling the irregularities practised by British ships of war in the Harbour of N. York and on the adjoining coasts. The resort was produced by a confidence that proceedings so contrary to public and local law, so irritating in their tendency and so much at variance with the sentiments which your Government is believed to entertain towards the U. States, would have received from you all the discountenance which they seemed to merit. Finding from the tenor of your letter, and it is found with much regret, that instead of the expected result, charges supported by regular proof against the British Commanders are considered as answered by the denials of the parties; that not only the authority to impress British subjects from American Vessels on the high seas is maintained, but a positive sanction is moreover given to the impressment of British subjects (which includes the decision of questions of allegiance) from British vessels within the acknowledged Sovereignty of the U. States, with an implied Sanction to the extraordinary pretension of a British naval Commander, the Captain of the Cambrian, to a dominion of his Ship over a certain space around it, even when lying in an American port; that the continuance of enemy ships in one of our ports, a continuance which may be prolonged indefinitely at the pleasure of an adequate force, is alleged as a sufficient vindication of the use which continues to be made of the Port by British ships, and of their proceedings in its vicinity to which that use is made subservient: finding, in a word that the view which you have been pleased to take of the complaints addressed to you, appears to be calculated rather to fortify than to restrain the British Commanders, in the course which they are pursuing; it is not perceived that any advantage is promised by the further discussion which might result from entering into the particular comments of which some of your observations are susceptible. It is deemed more proper to indulge the expectation that the subject will be seen by the Councils of his Britannic Majesty in a light more satisfactory to the U.



States, and more correspondent with the disposition to cherish all the friendly relations which so happily exist between the two Nations, and which are so strongly recommended by their mutual interests.

“The irregularities charged on the French ships of War now at N. York, were first notified to the Government by your representations on that head. You may assure yourself, Sir, that they will be enquired into with that attention which the U. States owe not only to their own jurisdiction; but to their neutral position, to which they will always be as ready to pay respect themselves, as to insist on it from others.”—*Mad. MSS.*

[1] From *A Collection of Papers on Political Literary and Moral Subjects*. By Noah Webster, LL.D. New York, 1843; p. 169.

Webster’s letter to which this is a reply is dated New Haven, August 20, 1804, deploring Hamilton’s death, and regrets that his eulogists have given him some credit not his due. Dr. Mason has declared the “original germ” of the Constitution “was in the bosom of Hamilton,” and that he suggested the idea of a radical change at the Annapolis convention. Webster calls attention to his pamphlet *Sketches of American Policy* eighteen months before the Annapolis convention and says: “I have always understood and declared that you made the first proposal, and brought forward a resolve for the purpose, in the House of Delegates of Virginia, in the session of December, 1785. In this I am confident of being correct, for I was in Richmond at that time. If wrong, please to set me right.

“Mr. Paine claims to be the first mover of the proposal for a national government, alledging that he suggested it to some friends in the year 1784 or 1785. Mr. Pelatiah Webster wrote a pamphlet on the subject of a different frame of government in 1784.” Webster’s *Collection &c.* 168.

See Madison’s introduction to the *Journal of the Constitutional Convention*, ante, Vol. II, p. 391.

[1] See, however, Madison’s letter to Webster of March 10, 1826, *post.*

[1] See Act of Parliament 35 G., 3 C., 92 S., 37-38 and Nalins’ *Commentaries Liv.* 1. Tit. 10, Art 1.—*Note in the Original.*

[1] Madison wrote to Livingston July 5:

“The communications from Genl Armstrong are not later than May 4. Those from Madrid are of about the same date. They concur in shewing that Spain struggles much agst our demands, & that France has her views in embarrassing if not defeating the negociation What the end will be remains to be seen. Altho’ appearances are not flattering, is there not some room to calculate, that When France finds she cannot get her hand into our pocket, and that our disputes with Spain may involve herself, & throw the U. S. into the British Scale, she will, unless events should place her above all such considerations. promote an adjustment of our affairs with her ally? Whether

Madrid or Paris be the Theatre, the issue, it would seem, equally depends on the influence, or rather authority over the Spanish Cabinet.”—*Mad. MSS.*

To G. W. Erving, chargé at Madrid, he wrote November 1, 1805:

“Dear Sir By Mr. Smith to whom this is committed you will receive the public letter in which the course approved by the P. is marked out for your conduct at Madrid. The grounds for it are strengthened by the posture of things in Europe, and by the approach of the Session of Congs. The impression made on this Country by the proud & perverse conclusion given by Spain to the endeavours of Mr. M. & Mr. P. to adjust our differences, ought if faithfully reported to her, to teach her a lesson salutary at all times & particularly so at the present moment. She may be sure that she will never better her stipulations with this Country by delay. If she calculates on the friend at her elbow, or be jogged by him into follies not altogether her own, she is so far to be pitied or despised, as she avails herself of such explanations. But here again she receives a lesson from the scene which appears to be opening in Europe agst the Imperial career of France. England seems as ready to play the fool with respect to this Country as her enemies. She is renewing her depredations on our Commerce in the most ruinous shapes, and has kindled a more general indignation among our Merchts. than was ever before expressed. How little do those great nations in Europe appear, in alternately smiling and frowning on the U. S., not according to any fixed sentiments or interests, but according to the winds & clouds of the moment. It will be the more honorable to the U. S. if they continue to present a contrast of steady and dignified conduct, doing justice under all circumstances to others, and taking no other advantage of events than to seek it for themselves.”—*Mad. MSS.*

[1] They were appointed jointly envoys to Spain March 17, 1806, but conducted the negotiations in Paris and did not go to Madrid.

[1] So in the original: probably junto is meant.

[1] This essay was written by Madison in 1806, and published anonymously in Washington towards the close of the year. There was no effort to conceal the authorship, however.

[\*] Azuni has given a very learned account of these ancient compilations, particularly of the *Consolato del Mare*, which he considers as a work of the Pisans, during the period of their maritime prosperity.

[\*] The extracts in the text are from the English edition and translation of Grotius, which is in general loose, and sometimes erroneous. It was inserted before there was an opportunity of comparing it with the original.

“Supervacuum videri posset agere nos de his, qui extra bellum sunt positi, quando in hos satis constet nullum esse jus bellicum. Sed quia occasione belli multa in eos, finitimos præsertim, patrari solent prætexta necessitate, repetendum hic breviter quod diximus alibi, necessitatem ut jus aliquod det in rem alienam, summam esse debere: requiri præterea ut ipso domino par necessitas non subsit: etiam ubi de necessitate

constat, non ultra sumendum quam exigit: id est, si custodia sufficiat, non sumendum usum; si usus, non sumendum abusum: si abusu sit opus, restituendum tamen rei pretium.”

[†] B. II, Ch. 2, sec. 10, in which the same precise sentiment is contained as is here repeated.

[\*] “Sed et questio incidere solet, quid liceat in eos qui hostes non sunt, aut dici non sunt, sed hostibus res aliquas subministrant. Nam et olim et nuper de ea re acriter certatum scimus, cum alii belli rigorem, alii commerciorum libertatem defenderent. Primum distinguendum inter res ipsas. Sunt enim quæ in bello tantum usum habent, ut arma: sunt quæ in bello nullum habent usum, at quæ voluptati inserviunt; sunt quæ et in bello et extra bellum usum habent, ut pecuniæ, commeatus, naves, et quæ navibus adsunt. In primo genere verum est dictum Amalasuinthæ ad Justininum, in hostium esse partibus qui ad bellum necessaria hosti administrat. Secundum genus querulam non habet.”

“In tertio illo genere usus ancipitis, distinguendus erit belli status. Nam si tueri me non possum nisi quæ mittuntur intercipiari, necessitas, ut alibi exposuimus, jus dabit, sed sub onere restitutionis, nisi causa alia accedat. Quod si juris mei executionem rerum subvectio impedierit, idque scire potuerit qui advexit, ut si oppidum obsessum tenebam, si portus clausos, et jam deditio aut pax expectabatur, tenebitur ille mihi de damno culpa dato, ut qui debitorem carceri exemit, aut fugam ejus in mea fraudem instruxit: et ad damni dati modum res quoque ejus capi, et dominium earum debiti consequendi causa quæri poterit. Si damnum nondum dederit, sed dari voluerit, jus erit rerum retentione eum cogere ut de futuro caveat obsidibus, pignoribus aut alio modo. Quod si preterea evidentissima sit hostis mei in me injustitia, et ille eum in bello iniquissimo confirmet, jam non tantum civiliter tenebitur de damno, sed et criminaliter, ut is qui judici imminenti reum manifestum eximit: atque eo nomine licebit in eum statuere quod delicto convenit, secundum ea quæ de pœnis diximus, quare intra eum modum etiam spoliari poterit.”

[\*] The original is “belli rigorem,” *rigor of war*.

[†] The note here of Barbeyrac, himself a respectable authority, is interesting both as it corroborates the liberal spirit of Grotius in favor of neutral commerce, and as it explains the ideas not only of Barbeyrac but of Cocceius, another respectable jurist, in relation to blockades. The note is as follows, see p. 539, note 5: “Our author [Grotius] here supposes the case of being reduced to the last extremity, and then his decision is well founded, whatever Mr. Cocceius says, Dissert. de Jur. Bel. in Amicos, sect. 12, wherein he only criticises our author in regard to what he advances elsewhere, *that in case of necessity, the effects become common*. It is true, it suffices, that at such a time the goods of another may be used without even the proprietor’s consent. But as to the following cases, that lawyer has reason, in my opinion, to say, § 15, 17, that provided that in furnishing corn, for instance, to an enemy besieged and pressed by another, it is not done with design to deliver him from that unhappy extremity, and the party is ready to sell the same goods also to the other enemy, the *state of neutrality and liberty of commerce* leave the besieger no room for complaint. I add, that there is the more

reason for this, if the seller had been accustomed to traffic in the same goods with the besieged before the war.” This last remark of Barbeyrac, as meant by him, is just. The primary duty of a neutral is impartiality; and the circumstance of an antecedent and habitual trade to the same place, would be the strongest, though not the only evidence, that the continuance of it, proceeded from the ordinary motives of mercantile gain, and not from an unlawful partiality towards one of the nations at war.

[\*] Quare quod dici solet, hostiles censerī res in hostium navibus repertas, non ita accipi debet quasi certa sit juris gentium lex, sed ut præsumptionem quandam indicet, quæ tamen validis in contrarium probationibus possit elidi. Atque ita in Hollandia nostra jam olim, anno scilicet 1338, flagrante cum Ansiaticis bello, frequenti senatu judicatum, et ex judicato in legem transiisse comperi.

[†] Sed neque amicorum naves in prædam veniunt ob res hostiles, nisi ex consensu id factum sit dominorum navis.

[\*] It is not amiss to remark, that the sentiments in this letter, so far as they favor the rights of neutral commerce, have the greater weight, as the writer, though a Saxon by birth, was a privy counsellor to the Elector of Brandenburg, and that the letter was written at Berlin, whilst Prussia was of the belligerent party against France.—Ompheda, p. 270.

Sir William Scott, supposing him to have been a Swede, endeavored, in the case of the Swedish convoy, to draw from that circumstance a peculiar emphasis to the concluding part of the letter, which, by grounding a prohibition of all trade with France on the extraordinary nature of the war, seemed to favor one of the grounds of which the Judge was willing to avail himself in his decision of that case. It is a little singular, however, that in consulting this document, he should have overlooked an express recognition by this illustrious authority, not three sentences preceding his quotation, of the neutral right to protect a trade *by force of convoy*; which was the precise question to be decided in the case.

[†] De his [non hostibus], quæritur quid facere vel non facere possunt, inter duos hostes.

[‡] Amicorum nostrorum hostes bifariam considerandos esse, vel ut amicos nostros, vel ut amicorum nostrorum hostes. Si ut amicos consideres, recte nobis iis adesse liceret, ope, consilio, eosque juvare, milite auxiliari, armis, et quibus cunque aliis in bello opus habent. Quatenus autem amicorum nostrorum hostes sunt, id nobis facere non licet, quia sic alterum alteri in bello præferremus, quod vetat æqualitas amicitiaecui in primis studendum est. Prestat cum utroque amicitiam conservare, quam alteri in bello favere, et sic alterius amicitia tacite renunciare. Et sane id, quod modo dicebam, non tantum ratio docet, sed et usus inter omnes fere gentes receptus. Quamvis enim libera sint cum amicorum nostrorum hostibus commercia, usu tamen placuit, ut *capite proximo* latius ostendam, ne alterutrum his rebus juvemus, quibus bellum contra amicos nostros intruatur et foveatur. Non licet igitur alterutri advehere ea, quibus in bello gerando opus habet, ut sunt tormenta, arma et quorum præcipuus in bello usus, milites; quin et milites variis gentium pactis excepti sunt; excepta

quandoque et navium materia, si quam maxime ea indigeat hostis ad extruendas naves, quibus contra amicos nostros uteretur. Excepta sæpe et cibaria, quando ab amicis nostris obsidione premuntur hostes, aut alias fame laborant. Optimo jure interdictum est, ne quid eorum hostibus subministremus, quia his rebus nos ipsi quodammodo vidiremur amicis nostris bellum facere. Igitur si hostes simpliciter consideremus ut amicos, recte cum iis commercia exercemus, et merces quascunque ad eos mittimus; Si consideremus ut amicorum nostrorum hostes, excipiuntur merces, quibus in bello amicis nostris noceatur, et hæc ratio priorem vincit; quomodocunque enim alteri contra alterum succurramus, bello nos interponimus, quod salva amicitia non licet.

[\*] Regula est, pactis fere perpetuis probata, ne non hostes, ad hostes nostros, vehant “*contrabande goederen*.” Si vehant, et deprehendantur, in commissum cadant, exceptis autem his, libere utrimque mercantur, et quaecunque alia ad hostes vehunt impune.

[†] Ex his fere intelligo, contrabanda dici, quæ, uti sunt, bello apta esse possunt, nec quicquam interesse an et extra bellum usum præbeant. Paucissima sunt belli instrumenta, quæ non et extra bellum præbeant usum sui.

[‡] Si omne materiam prohibeas, ex qua quid bello aptari possit, ingens esset catalogus rerum prohibitarum, quia nulla fere materia est, ex qua not saltem aliquid, bello aptum, facile fabricemus.

[\*] Ex ratione, utique, ejusmodi jus defendi non poterit; nam cur mihi non liceat uti nave amici mei, quanquam tui hostis, ad transvehendas merces meas? Si pacta non intercedant licet mihi, ut supra dicebam, cum hoste tuo commercia frequentare; quod si liceat, licebit quoque cum eo quoscunque contractus celebrare, emere, vendere, locare, conducere, atque ita porro. Quare, si ejus navem operamque conduxerim, ut res meas trans mare vehat, versatus sum in re omni jure licita. Tibi, qua hosti licebit navem ejus occupare, sed quo jure res meas, id est amici tui, occupabis? Si nempe probem res meas esse; alioquin Grotio adsentior, ex præsumptione quodam pro rebus hostilibus esse habenda quæ in navi hostili inveniuntur.

[\*] Si elles affectoient, &c.

[\*] The Translation, “continue their customary trade,” which might be construed to favor the British principle, is evidently erroneous. That which is substituted conveys the true meaning. It is curious that the two authors, Pufendorf and Vattel, who have alone appeared to speak a language any wise favorable to the doctrine in question, should owe the appearance to English mistranslations. It would be uncandid, nevertheless, to insinuate a design in the case; the more so as the translation of Pufendorf was prior to the origin of the British pretension: but the error of translations may have strengthened the pretensions which it countenances.

[\*] This rule corresponds with the sentiments of Grotius.

[\*] Martens in a note observes that “some powers have, *but in vain*, attempted to forbid neutral nations to carry on commerce with their enemies, of which he mentions the instance of the Dutch in 1666, and the joint instance of England and Holland in 1689. In both these instances, it is well known, the attempt was to intercept all trade with France, and not the trade only which was or might be opened by France during the war;” a distinction to which he was invited by the occasion either to have noticed, if he had thought it worthy of notice, as among the *vain attempts* of some powers to forbid neutral commerce, or to have inserted it in the text as an exception to the freedom of neutral commerce, if he had so viewed it, along with the other exceptions of contraband and blockaded places.

[\*] *Liberum quarumcunque rerum commercium, quemadmodum, cum nondum bellum esset.*—Lib. I, Ch. 10.

[\*] This is a continuation of the same pamphlet, but the first edition divided it in this way.

[\*] In the report by Sir G. Lee, Doctor Paul, Sir D. Ryder, and Mr. Murray, afterwards Lord Mansfield, in the case produced by the Silesia loan, the argument drawn from Treaties, on the question whether free ships make free goods, is not very worthy of the celebrated authors, or of the celebrity of the document. Two treaties, stipulating that free ships do not make free goods, are cited as direct proofs on the negative side of the question; and six, stipulating that free ships do make free goods, as exceptions, proving still more strongly the negative side of the question. It could not have been less fair, to consider the six as declaratory of the law, and the two as exceptions to it. But in either case, the inference presupposes, instead of proving, the point in question. As far as the point was to be considered as not otherwise proved, and as requiring the evidence of treaties to remove the uncertainty, the inference ought to have been reversed. The six witnesses ought to have out-weighed the two, and it was incumbent on the reporters, instead of simply referring to the treaties as a confirmation of their opinion, to have considered them as presenting an ostensible objection, which was to be answered.

[\*] Bynkerschoeck derives the law of nations from reason and usage [*ex ratione et usu*] and finds usage on the evidence of treaties and decrees [*pactis et edictis*.] He therefore makes treaties a legitimate source of the law of nations, and constantly adduces them to illustrate and verify his doctrines.—*Quest. Jur. Pub.*, Lib. I, Ch. 10.

[\*] Dumont, Tom. 6, part 1, p. 570.

[†] This is not a solitary instance of such a stipulation. Another is found in the treaty of 1661, between the United Provinces and Portugal, where it was made a general right of the neutral party to carry contraband to countries at war with the other party. Dum., vol. 6, p. 2, 368. Azuni refers to other instances; a treaty between Edward 4 and the Duke of Burgundy in 1468—England and Portugal 1642 and 1654—Spain and the Hanse Towns 1647.—Azuni, vol. 2, p. 145, of the French translation.

[\*] Portugal was at that time engaged in a war with Spain for the establishment of her independence, which was viewed by Spain as a rebellious war, and which France was willing, it seems, so far to regard in the same light as to acquiesce in this exception.

[†] This exception might have been made by Spain herself as a municipal regulation.

[\*] Dum., Tom. 6, part 2, page 266.

[†] Dumont, Tom. 6, part 2, p. 414.

[‡] Chalmers' collect. treaties, vol. 1, p. 154. Dumont, Tom. 7, part 1, p. 49.

[§] Dumont, Tom. 7, part 1, p. 169.

[?] Dum., Tom. 7, part 1, p. 317.

[\*] Dum., Tom. 7, part 1, p. 325.

[†] Dum., Tom. 7, part 1, p. 359.

[‡] Dum., Tom. 7, part 1, p. 439.

[§] Dum., Tom. 7, part 1, p. 359.

[?] Dum., Tom. 8, part 1, p. 35.

[¶] Azuni, vol. 2, p. 130.

[\*\*] Dum., Tom. 8, part 2, p. 115; Azuni, vol. 2, p. 124.

[††] Azuni, vol. 2, p. 131.

[‡‡] Martens' treaties, vol. 1, p. 255; vol. 2, p. 38.

[§§] The list, however, would not extend to the period between 1738 and 1761; no *general* collection of treaties to which Great Britain is not a party, during that period, being at hand. The chasm is of the less moment, as the British treaties of that period embrace most of the other maritime nations of Europe.

[\*] Chalmers, vol. 1, p. 32-3.

[\*] Chalm., vol. 1, p. 52.

[†] Chalm., 17-19.

[‡] Chalm., vol. 1, p. 154.

[§] Chalm., vol. 1, p. 163.



[?]Dum., Tom. 7, part 1, p. 126.

[¶]Chalm., vol. 1, p. 85.

[\*]That this treaty stipulated the rights of neutrals in the extent which it is cited to prove, is acknowledged by the British government, in the letter of Secretary Fox, of May 4, 1782, to M. Simolin the Russian Minister at London, in which this treaty is referred to as the basis of a reconciliation with Holland, and as “a treaty by which the principles of the armed neutrality are established *in their widest extent.*” The first article in the armed neutrality asserts the neutral right in question, and on that ground has been always combated by British writers, and in Parliamentary discussions. In the debate in the House of Commons on the treaty of 1786, with France, Mr. Fox took an occasion to remark that what was then done had “the *unanimous consent* of his Majesty’s Council.”

[†]Chalm., vol. 1, p. 177-179.

[\*]Chalm., vol. 1, p. 189.

[\*]See Sir William Temple’s correspondence with his government, vol. 4, p. 55, of his works, where the success of his efforts, made with the sanction of his government, is particularly rehearsed.

[†]See memorial of Dutch merchants in the Annual Register for 1778. These treaties remained in force for more than a century, viz: from 1674, to the war with the United Provinces in 1781.

[†]Jenkinson, vol. 1, p. 209.

[§]Id., vol. 1, p. 209.

[\*]Chalm., vol. 1, p. 390.

[\*]There are other treaties to which this reasoning is applicable.

[\*]Chalm., vol. 2, p. 109.

[†]Id., vol. 2, p. 341.

[†]Id., vol. 2, p. 174.

[§]Jenkinson, vol. 2, p. 263.

[?]Jenkinson, vol. 2, p. 265.

[¶]Chalm., vol. 2, p. 200.

[\*\*]Chalm., vol. 1, p. 312.



[††] Azuni, vol. 2, p. 129.

[‡‡] Jenkinson, vol. 2, p. 340.

[\*] The treaty *of commerce* at Utrecht not being specially mentioned in that of Aix la Chapelle, it may, perhaps, be questioned, whether it be included in the confirmation. The question is of little consequence, as that treaty is expressly included in the confirmation of preceding treaties, by the treaties of Paris, 1763 and 1783.

[†] Jenkinson, vol. 2, p. 374.

[‡] If Great Britain had rested her captures of vessels trading with colonies of enemies, during the war of 1756, on the principle now asserted, this treaty relinquished the principle.

[§] Jenk., vol. 2, p. 180.

[?] Jenk., vol. 3, p. 228.

[¶] Chalm., vol. 1, p. 97.

[\*\*] Jenk., vol. 3, p. 337.

[\*] Jenk., vol. 3, p. 377.

[†] Those treaties were not inserted in the treaty of Amiens, probably for the reasons which prevailed at Lisle.

[‡] See Lord Malmesbury's dispatch to Lord Grenville, dated 16th July, 1797.

[\*] The British government having become aware of the entire renunciation here made of her claim to intercept, in time of war, the commerce of neutrals with the colonies of her enemies, set on foot negotiations, with a view to new-model the stipulation. Nothing more, however, could be obtained from Russia than her concurrence in an explanatory declaration, dated October 20, of the same year, in the terms following: "In order to prevent any doubt or misunderstanding with regard to the contents of the second section of the third article of the convention, concluded 5-17 June, 1801, between his *Britannic Majesty* and his Majesty the Emperor of all the *Russias*, the said high contracting parties have agreed and declare, that the freedom of commerce and navigation granted by the said article to the subjects of a neutral power, [in the column in French, *de la puissance neutre*,] does not authorize them to carry in time of war, the produce and merchandize of the colonies of the belligerent power direct to the continental possessions; nor *vice versa* from the mother country to the enemy's colonies; but that the said subjects are, however, to enjoy the same advantages and facilities in this commerce, as are enjoyed by the most favored nations, and especially by the *United States of America*."

In this declaration it will be observed, that it excepts from the general right of the neutral party to trade with the colonies of an enemy, merely the *direct* trade between

the colony and the mother country. It leaves consequently, and *recognises* to the neutral party, 1, an *indirect* trade between the mother country and her colonies—2d, the trade between one belligerent country and the colonies of another—3d, the trade between the neutral party itself, and enemy colonies—4th, the trade between such colonies and any other neutral country.

Another observation is, that as the distinction made between the particular trade excepted and the other branches of colonial trade, is not deducible by any possible construction, from the terms of the original text, it must be understood to be a compromise of expediency, on the part of Russia, rather than a derogation from the principle on which the general right is founded.

It is to be further observed, that even the particular exception is abridged by an agreement on the part of Great Britain, that in case a *direct* trade between an enemy country and its colonies should be enjoyed by any other neutral country, equal advantages and facilities shall be extended to Russia.

It may be still further observed, that the reference to advantages and facilities, as they may be enjoyed by neutral nations, particularly the *United States*, seems to imply that the United States at least, (who are indeed alluded to by Sir William Scott, as a nation particularly favored by France—2 Rob. Rep., 168; 4 Rob. Rep. Append., p. 4,) furnished an example of such a state of things, and as no such state of things was applicable to them, but that arising from regulations of France, which, being prior to the war of 1793, authorised on the British principle itself, a like trade by the United States during the war, it follows that all captures and condemnations of American vessels trading between France and her colonies under those regulations, were on the British principle itself illegal, and ought to be indemnified.

Lastly, it may be observed, that the treaty to which this explanatory declaration relates, was accepted and ratified by Sweden and Denmark, and that these two powers are not parties to the declaration. If they afterwards became parties, it is more than is known. The observations, of which the declaration has been found susceptible, must, indeed, render the fact of little consequence in any point of view.

[\*] For the speech see a pamphlet entitled, “Substance of the speech delivered by Lord Grenville in the House of Lords, November 13, 1801.” The object of his Lordship was to make it appear that the treaty had abandoned certain maritime doctrines of Great Britain; among others the doctrine relating to the trade of neutrals with the colonies, and on the coasts of nations at war. This he has done with the most complete success. With respect to the legality of the doctrine, he assumes, rather than attempts to prove it. Had he employed in the latter investigation the same abilities and candor, which distinguish his discussion of the meaning of the treaty, he could not have failed to be as much convinced of the illegality of the doctrine abandoned, as he was of the abandonment itself. For the very lame replies made by other speakers, see Annual Register for 1802, chap. 4.

An anonymous author of six ingenious letters in vindication of the treaty attempts a distinction between its meaning and that of the armed neutralities, with a view to

reconcile the former with the British doctrine.

In the two treaties of armed neutrality in 1780 and 1800, the neutral right to trade with a party at war, is expressed as follows: “to navigate freely from port to port, and on the coasts of nations at war.”

In this treaty with Russia, the right is expressed with the following difference of terms: “to navigate freely to the ports, and upon the coasts of the nations at war.”

The author of the letters contends that the trade “from port to port” means a neutral trade in the purchased produce of the belligerent country carried coastwise; whereas to trade on the coasts of the belligerent, means nothing more than to proceed from one port to another, in making successive deliveries of the neutral cargo transported to the belligerent country.

The answer is simple as it is conclusive. To navigate on the coast is to navigate from port to port. This is its plain meaning. The distinction between neutral property carried to the belligerent country, and property acquired by a neutral in the belligerent country, is suggested neither by the distinct modes of expression, nor by any circumstance whatever affecting the interpretation of them. The distinction is purely arbitrary. It would not be more so if the different meanings which it assigns to these different phrases, were transposed. To navigate or trade from port to port, must mean to trade on the coasts; and to trade on the coast, is a coasting trade. It may be added, that the distinction and inference attempted, are contradicted both by the general scope of the treaty, and by the terms of Art. 3, § 2.

Were the criticism allowed all the force which the author claims for it, he would still give up more than he would gain. For the Russian treaty affirms the right to navigate freely *to the ports* of those at war, without excepting the colonies. The trade would therefore remain free between all neutral and colonial ports, and the neutral trade between a belligerent and its colonies, would be unlawful on no other ground but that it was merely a coasting trade, without any of those peculiarities often ascribed to the colonial trade by the advocates for the British principle.

From the aspect of the letters, it may be conjectured that they were not written without a knowledge of the views of the government; and that they were intended to give colour to the distinction on which the explanatory declaration above cited is founded; whether as a measure actually concluded, or projected only, does not appear, the letters having no date in the edition which has appeared in this country.

[\*] On the contrary these rights have been repeated in the following treaties subsequent to those of the armed neutrality, namely, Russia and Denmark, 8-19 October, 1782—Art. 16, 17, 2 Martens’ treaties, 290. Same and the Porte, 10-21 June, 1783—Art. 39, *Ib.*, p. 392. France and Holland, 10th November, 1785—Art. 8, *Ib.*, p. 616. Austria and Russia in the year 1785—Art. 12, *Ib.*, p. 624. France and same, 31st December, 1786—11th Jan., 1787—Art. 26-7, 3. *Mart. treat.*, p. 15. Russia and the king of the Two Sicilies, 6-17 January 1787—Art. 18, *Ib.*, p. 44. Portugal and Russia, 9-20 December, 1787—Art. 22, *Ib.*, p. 117.

[\*]Dum., Tom. 7, par. 2, p. 293.

[\*]To these might be added their treaties with the coast of Barbary, which are all favorable to the neutral rights of commerce. So are various treaties of Great Britain, and of the other powers of Europe, with that coast and with the Ottoman Porte; all of which, as well as those with the Asiatic powers, it was thought most proper to omit in this enquiry.

[\*]One of the results of that treaty comprehends a most important sanction from Great Britain, against the doctrine asserted by her. The 7th Article of the treaty stipulated a compensation to citizens of the United States, for the damages sustained from irregular and illegal captures, and established a joint board of 5 commissioners, to decide on all claims, according to equity, justice, and the *law of nations*. These claims were founded in a very great degree on captures authorized by the British instructions of November 6, 1793, and depending, therefore, on the question whether a neutral trade with belligerent colonies, shut in time of peace, was a lawful trade in time of war. The board, on a full consideration, reversed the sentences pronounced even by the admiralty tribunal in the last resort, in pursuance of those instructions; and consequently, as the commissioners were guided by the law of nations, the reversal decided that the instructions and the principle on which they were founded, were contrary to the law of nations. The joint commissioners were appointed, two by each of the parties, and the 5th by lot, which fell on an American citizen. Whether the British commissioners concurred in the decision, does not appear. But whether they did, or did not, the decision was equally binding; and affords a precedent of great weight in all similar controversies, between the two nations. Nor is the authority of the case impeached by the circumstance, that the casting voice was in an American citizen; first, because he was selected and nominated by the British side as an American candidate, possessing their confidence; secondly, because as a man, he was highly distinguished for the qualities fitting him for so independent a station; thirdly, because a joint tribunal so composed, must in every point of view, be less liable to improper bias, than a tribunal established by, and dependent on the orders of one of the parties only.

[\*]“This is all that I have been able to collect, for illustrating the rules laid down, in the act of navigation and of frauds, for the conduct of the European trade. And having now taken a view of the policy pursued for rendering the foreign trade of the whole world subservient to the increase of our shipping and navigation, I shall draw the reader’s attention to another part of the subject; and present to him the instances in which this spirit of prescribing the mode of carrying on foreign trade has been *compelled to yield*, and the execution of our navigation laws has been suspended, lest, in the attempt to enforce them, our commerce might be extinguished, or greatly endangered.

“The laws of navigation, like other laws, have given way to *necessity*; and have been suspended *in time of war*. During the dread of continual danger from an enemy at sea, it is well if foreign trade can be carried on at all; it is no time to be curious at to the build of the ship that is employed in it, how it is navigated, or whence it comes. At such conjunctures *it has been usual*, more or less, to suspend the act of navigation; the

first instance of this was in the Dutch war, in the reign of Charles II.

“It was then done, as was common in *those* times, by the prerogative exercised by the crown, of dispensing with laws upon urgent occasions. On the 6th March, 1664, it was found *necessary* to issue an order of council for suspending the act of navigation wholly, as far as regarded the import and export of Norway, and the Baltic sea, and as far as regarded Germany, Flanders, and France, provided the merchants and the owners of the ships were natural born subjects: it was further permitted to any one of a nation in amity to import from any parts, hemp, pitch, tar, masts, saltpetre, and copper, and to pay duty only as natural-born subjects. English merchants were permitted to *employ foreign ships* in the *coasting* and *plantation trade*; but they were to comply with the restriction of shipping in, and bringing their cargoes to England or Ireland.

“This was letting loose at once most of the restrictions belonging to our navigation system, and throwing it *among the rest of Europe*, to make the best of it, *during the time we were unable* to follow up the plan we had proposed to ourselves.

“In the war of 1740, when we had a war with both France and Spain, it was again *necessary* to relax from the strictness of our navigation laws; but it was endeavored to be done in such a way as would facilitate the carrying on of our trade, without wholly giving up the favorite object of British shipping; and this was, by permitting foreigners to become owners of British ships, and to trade as British subjects.

“In the war with France, beginning in the year 1756, the like law was passed to continue during that war; and again in the year 1779, during the continuance of the then subsisting *hostilities with France*.

“In these temporary expedients, we may trace the progressive increase of British shipping. In the Dutch war of 1664, the nation were obliged at once to abandon the Baltic trade, and to admit *foreign ships into the coasting and plantation trade*. But in the war of 1740 we made no other concession than that of admitting foreigners into the ownership of British-built ships, and to navigate with foreign seamen for carrying the European commodities to this country and *to the plantations*. This was also done in the war of 1756, and in the last war. However, in the last war, pressed as our trade was on all sides, we were *compelled* to yield a little further. Many articles of the trade of Asia, Africa, and America, were permitted to be brought *from any place, in any ships* belonging to a nation in amity. But in neither of these wars, not even in the last, when we had the maritime powers of both worlds to cope with, Spain, France, Holland, and America, did we allow foreign ships to participate in the coasting or in the plantation trade.”—*Reeves' Law of shipping and Navigation, part 2, chap. 3.*

The reason for not then opening the plantation trade is obvious. The only country furnishing the articles needed, was this country, with which Great Britain was then at war.

In the wars of Great Britain, since the United States have been a neutral country, her colonial trade has been opened to them.

[\*] It was overlooked by both sides in the discussion, that the neutral right to trade with the coasts and colonies of an enemy, and even to cover the property of an enemy, was stipulated by Great Britain to France, in the treaty of Utrecht, 1713, then in force, and to the Dutch in the treaty of 1674, then also in force. If it be said that the omission to notice these treaties was deliberate, and proceeded from a construction of the treaties which excluded from their purview, the colonial trade of an enemy, this presumed accuracy and deliberation of the speakers would strengthen the inference from the omission to cite the principle in question, that the principle was unknown to or disclaimed by them.

[\*] Lords' debates, 136, 154.

[\*] 2 Rob., 122, Am. edit.

[†] In the case of the Immanuel, 2 Rob., 156, Am. edit.

[‡] See Annual Reg., 1757-8.

[\*] Ibid, 1758.

[\*] 2 Robinson, 120.

[\*] The Yonge Helena, a Dutch ship, p. 141.

La Prosperite, or Welfaren, claimed as a Lubecker, p. 170.

Les Quatres Freres, a Danish vessel, p. 180.

The Verenderen, or Le Changement, a Prussian vessel, p. 220.

The Zelden, a Dutch ship, p. 243.

The Dame Catherine de Workeem, a Dutch ship, p. 258.

[\*] 1 Rob., 252.

[\*] The instrument containing this stipulation bears date January 16, 1756. It may be seen in Jenkinson's collection of treaties.

[\*] Hennings, a Danish writer, alluding to the period of the war of 1778, says, "But although in respect to the neutral trade to the colonies in America, since France has permitted it to all nations, nothing has been expressly conceded by Great Britain, yet the courts of admiralty have released all prizes which had been brought in, as coming from the French or Dutch possessions in America; and the commerce of neutrals with the colonies, has been generally permitted. This permission, therefore, may be considered as a settled point."—Treatise on Neutrality, p. 58.

[\*] See instructions of June 8, 1793.

[†] *Frumentum scilicet etiam non hostis, ad hostem recte advehit, excepta obsidionis famis-ve causa.*—Lib. I, Cap. 9.

[‡] The Charlotte, Coffin, an American vessel, taken on a voyage from Cayenne to Bordeaux, October, 1793, and reserved with a class of like cases, prior to the instructions of November, 1793, was tried and decided by the Lords of appeal in 1803. On the side of the claimants it was argued, that considering the *changeable ground* on which the principle, condemning a trade in war not permitted in peace, was *first established in 1756*, and the *apparent abandonment* of it during the war of 1778, neutral merchants were entitled to the benefit of a justifiable ignorance, until the instructions of November, 1793, had conveyed an admonition to them: on the other side it was contended that the principle was *sufficiently obvious* as a *principle of public law*, without any instructions, and that neutrals had no right to presume that relaxations confined to circumstances of the war of 1778 [on which subject by the way it was impossible they could have any knowledge] would be continued. The court concurring in this view of the case, pronounced the ship and cargo with the others in the like situation, subject to condemnation. 4 Rob., Appendix, p. 12. As the state of appearances had misled the “very learned person” who preceded Sir William Scott, into an opinion that the neutral trade, though not permitted in peace, was lawful in war, it was surely rather a hard sentence that refused to unlearned traders a plea of ignorance, of which so very learned an expositor of the law is obliged to avail himself. Besides, if “the principle was sufficiently obvious,” why were the cases depending on it reserved, and above all, why were the parties kept in uncertainty and expense for ten years, and till the war was over? These are questions which it is more easy to ask than to answer.

[\*] See the French free port act of 1784, in force in 1793.

[\*] Immanuel, 2 Rob., 156.

[\*] Among the printed documents of that period is a letter of January 9, 1794, from Mr. T. Pinckney, the American Minister at London, to Mr. Jefferson, then Secretary of State, in which, alluding to an interview with Lord Grenville, he says, “I reminded him that our ideas differed materially from theirs on this subject; and without repeating the arguments I had before addressed to him, both verbally and in writing, in support of our position, it was only necessary to say, that we did not admit the right of the belligerent Powers to interfere further in the commerce between neutral nations and their adversaries, than to prevent their carrying to them articles, which, by common usage, were established as contraband, and any articles to a place fairly blockaded; that consequently the two first articles, though founded upon *their principles*, of not suffering, in war, *a traffic which was not admitted by the same nations in time of peace*, and of taking their enemy’s property when found on board of neutral vessels, were nevertheless contrary to what *we contended* to be *the just principles* of the modern law of nations.”

[\*] The works of Jenkins have become so scarce, that it were to be wished that the parts at least, which contain his admiralty opinions and decisions, were republished. Considering the luminous character, and the official weight belonging to them, it



might have been expected that this would long ago have been done; as well as that his authority would have been more frequently consulted in admiralty proceedings. Perhaps one cause of the neglect may lie in the difference which would be exhibited between his testimony of the law of nations, and the expositions of modern date, on some other points beside that in the text. For example, in defining contraband, he limits it to things “*directly or immediately*” subservient to the uses of war; and expressly decides “pitch and tar” not to be contraband. By what authority has the law of nations been changed in this particular? Certainly, not by an *unanimous* consent of nations, as was required by Great Britain to change the law subjecting enemy’s property under a neutral flag, to confiscation; the contrary being admitted by Sir William Scott, who remarks that this was a point, though not the only point of British difference from the tenets of Sweden. 4 Rob., 201. With respect to tar and pitch, it cannot even be pretended, that any change in the uses of these articles, since that date, can have changed the reason of the rule, as it existed in the time of Jenkins; or that the change was merely an adaptation of the same general principle to particular circumstances: for tar and pitch had the same relation to ships, and ships the same relation to war, then as they have now.

[\*]1 Rob., p. 72.

[\*]Rob., p. 116, 117.

[\*]2 Rob., p. 164.

[\*]3 Rob., 105-6.

[\*]2 Rob., 169, 170.

[\*]See the printed correspondence.

[\*]President’s message, December 3, 1805.

[\*]2 Rob., p. 244.

[†]1 Rob., 249.

[\*]2 Rob., p. 126.

[†]2 Rob., p. 159.

[\*]4 Rob. Appen., p. 11.

[\*]The pretension has not appeared in the courts in England. But in a late case in the vice admiralty court at Halifax, it appears that the judge was disposed to consider the introduction of certain regulations at Bourdeaux, favorable to neutral commerce, as forming an *unusual* trade, and, in that view, as a legal ground of capture.

[\*]2 Rob., p. 249.



[\*] It is well known that the Dutch island of Curacao as well as that of St. Eustatius, has been constantly open in time of peace, to the trade of foreigners. The orders, however, of Great Britain, extend equally to those islands, with the other colonial possessions of her enemies.

[\*] This passage stands as follows in the English translation: “As to the third sort of things that are useful at all times, we must distinguish the present state of the war. For if I cannot defend myself without intercepting those things that are sent to my enemy, necessity (as I said before) will give me a good right to them, but upon condition of restitution, unless I have just cause to the contrary. But if the supply sent hinder the execution of my design, and the sender might have known as much; as if I have besieged a town or blocked up a port, and thereupon I quickly expect a surrender or a peace, that sender is obliged to make me satisfaction for the damage that I suffer upon his account as much as he that shall take a prisoner out of my custody.”

[\*] The whole passage is criticized, and, in several particulars, censured, by Bynkershoek: whose comment, at the same time, shews that he understood Grotius, not in the sense of Mr. Ward, but in that here assumed.—Lib. 1, C. 11.

[\*] See Ward’s Treatise, &c., p. 3.

[\*] Saisie, b. 1, c. 4, sec. 6.

[\*] This act being temporary, is not found in D. Pickering’s statutes at large—but is inserted at full length in Hennings’ collection of State papers during the war of 1778—vol. 2, p. 114.

[†] So great was the disposition to assuage the misfortunes of these islands, and perhaps to expiate the omission to defend them, that the Dutch, their enemies, were permitted by an additional instruction to trade with them, as also with St. Vincent and Dominica, freely as neutrals, for four months.—2 Hen., p. 105.

[\*] If the act is to be construed as a proof that the parliament did not think the general trade of neutrals with enemy colonies justified by the law of nations, and therefore, as requiring a special legalization by this act, it strengthens the proof that the courts thought otherwise; since they continued to release neutrals taken in the general trade with enemy colonies, in spite of the constructive denial of its legality by this act of parliament.

[\*] 2 Rob., 122.

[†] 1 Rob., 250.

[\*] P. 4.

[\*] P. 8, 9.

[†] P. 11.

[‡]P. 12.

[\*]2 Rob., 171.

[\*]The character of these courts may be estimated by a single fact stated on the floor of the British House of Commons, 29th April, 1801,—that out of three hundred and eighteen appeals, thirty-five only of the condemnations were confirmed by the superior court. Notwithstanding this enormity of abuses, and the strong remonstrances against them, no change was made in the courts till about four months before the war was over. They were then put on an establishment somewhat different, but which still leaves them a scourge to the fairest commerce of neutrals.

[\*]The English courts of municipal law are much celebrated for the independent character of the Judges, and the uniformity of their decisions. The same merit has been claimed for the prize courts. In answer to the objection made in a Prussian remonstrance against the condemnation of Prussian vessels during the war of 1739, viz: that the Admiralty courts were *ex parte* tribunals, and their decisions not binding on other nations, the Duke of Newcastle, in his letter enclosing the report of the four law officers, observes, “that these courts, both *inferior* courts and courts of appeal, always decide according to the universal law of nations only; except in those cases where particular treaties between the powers concerned have altered the dispositions of the law of nations.” In the Report itself it is declared, “that this Superior court [Lords of Appeal] judges by the same rule which governs the court of Admiralty, viz: the law of nations and the treaties subsisting with that neutral power whose subject is a party before them;” “that in England the crown never interferes with the course of justice. No *order* or *intimation* is ever given to *any judge*,” that “had it been intended, by agreement, to introduce between Prussia and England a variation, in any particular, from the law of nations, and consequently a new rule for the court of Admiralty to decide by, it could only be done by solemn *treaty in writing*, properly authorized and *authenticated*. The memory of it could not otherwise be preserved; the parties interested, and the *courts of admiralty*, could not *otherwise* take *notice of it*.” In the judgment pronounced by Sir Wm. Scott, in the case of the Swedish convoy, [1 Rob., 295,] the independent and elevated attributes of his judicial station are painted with his usual eloquence. “In forming that judgment,” says he, “I trust that it has not escaped my anxious recollection for one moment, what it is that the duty of my station calls for from me, namely, to consider myself as stationed here not to deliver *occasional* and *shifting* opinions to serve present purposes of particular *national interest*; but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some to be belligerent. The seat of judicial authority is indeed locally here in the belligerent country, according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question, exactly as he would determine the same question if sitting at Stockholm; to assert no pretension on the part of Great Britain, which he would not allow to Sweden in the same circumstances; and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the *universal law* upon the question.”

Does the judge either sustain these lofty pretensions, or justify the declaration of his government to Prussia, when, a few months after, in the case of the *Immanuel*, [2 Rob., 169.] he observes to the bar, “that much argument has been employed on grounds of commercial analogy; this trade is allowed; that trade is not more injurious; why not that to be considered as equally permitted? The obvious answer is, that the *true rule* to this court is, the *text* of the instructions. What is not found therein permitted, is understood to be prohibited, upon this general plain principle, that the colony trade is generally prohibited, and whatever is not specially relaxed continues in a state of interdiction.”

He is not extricated from these inconsistencies by alleging that the instructions, the text of which was taken as his rule, was a relaxation of the law of nations within the prerogative of the crown, and favorable to the interests of the neutral parties.—1. Because it was incumbent on him, if he meant to keep himself above all executive interference with the course of justice, to have reserved to him the right to test the instructions by the law of nations, instead of professing so ready and so unqualified a submission to the text of them. 2. Because without examining the extent of the royal prerogative, which depends on the local constitution and laws, it has been shewn that, in some respects, the instructions have extended the belligerent claims against neutral commerce *beyond* the law of nations, as asserted on the part of Great Britain.

[\*] How far the authority of these instructions has been pursued by the High court of Admiralty, in opposition to precedents of the Superior court settling the law of nations, is a fit subject of enquiry, for which the adequate means are not possessed.

The opinion has long and generally prevailed, that the Admiralty courts in England were not those independent and impartial expositors of the law of nations which they have professed to be; but rather the political organs of the government, so constituted as to deliver its *occasional* and *shifting* views, with reference to the occasional and shifting interests of the nation, belligerent and commercial. And it is to be regretted that this opinion is but too much countenanced by the series of royal orders and judicial decisions which the last and present war have produced. It would be an unjustifiable sacrifice of truth to complaisance, not to say, on the present occasion, that with all the merits of the illustrious civilian who presides in the high court of Admiralty, the Englishman at least is often discerned through the robes of the judge.

This want of confidence in the impartiality of the admiralty courts is the less surprising, when it is considered that the Lords of Appeal, who decide in the last resort, are frequently statesmen, not jurists; that they not only hold their seats in that court at the most absolute pleasure of the crown, but are members of the cabinet, and it may be presumed, are, in that capacity, the original advisers and framers of the very instructions, which in their judicial capacity they are to carry into effect.

With respect to the inferior prize courts, orders directly addressed to them are neither unusual nor concealed. As an example, take the orders communicated to Mr. King by Lord Hawkesbury, above cited. Another example is furnished by the orders communicated to this government through Mr. Merry in 1804, as having been

addressed to the vice admiralty courts in the West Indies, as a rule on the subject of blockades.

\* See the case reported by Robinson, vol. 4, p. 267, of a vessel in the trade to Senegal, and the difficulty, expence, and delay in ascertaining whether the trade was or was not open before the war. A case (of Coffin, an American citizen) is now depending, which involves the question, whether the trade from the island of Java in the East Indies, to Muscat in the Persian gulph, was or was not open before the war. This question was decided in the first instance by a vice-admiralty court at Ceylon; and will probably be removed to Great Britain for a re-examination. The case, therefore, will have for its space three quarters of the globe. Through what period of time it may extend is a problem to be decided. There are precedents, as has been already seen, for ten years at least.

[\*] It is well known to be the practice to favor the activity of cruizers against the colonial trade. Sir William Scott in the case of the *Providentia*, in which the ship and cargo were restored—2 Rob., 128, says, “Cases respecting the trade of neutrals with the colonies of the enemy are of considerable delicacy; and I therefore think it has been properly brought before the court.”

[1] See *L. Jenkins*, vol. i. and vol. ii.

[1] The treaty as actually presented by Purviance is as follows:

## ARTICLE 1St.

[Provides for peace and friendship between the two powers.]

## ARTICLE 2D.

It is agreed that the several Articles of the Treaty of Amity, Commerce and Navigation between His Majesty and the United States made at London on the Nineteenth day of November One Thousand Seven Hundred and Ninety Four which have not expired, nor as yet, had their full operation and effect, shall be confirmed in their best form, and in the full tenour; and that the contracting Parties will also from time to time enter into friendly explanations on the subject of the said Articles, for the purpose of removing all such doubts as may arise or have arisen as to the true import of the same, as well as for the purpose of rendering the said Articles more conformable to their mutual wishes and convenience.

## ARTICLE 3D.

His Majesty agrees, that the Vessels belonging to the United States of America, and sailing direct from the ports of the said States, shall be admitted and hospitably received in all the Sea Ports and Harbors of the British Dominions in the East Indies; and that the citizens of the said United States may freely carry on a trade between the said territories and the said United States in all articles of which the importation or exportation respectively, to or from the said Territories shall not be entirely prohibited. Provided only that it shall not be lawful for them in any time of war between the British government and any other power or State whatever, to export from the said Territories, without the special permission of the British government there, any Military Stores or Naval Stores or Rice. The Citizens of the United States shall pay for their Vessels, when admitted into the said Ports, no other or higher Tonnage than shall be payable on British Vessels, when admitted into the Ports of the United States. And they shall pay no higher or other Duties or Charges on the Importation or Exportation of the Cargoes of the said Vessels than shall be payable on the same Articles when imported or exported in British Vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British Territories to any Port or Place, except to some Port or Place in America, where the same shall be unladen and such Regulations shall be adopted by both Parties as shall, from time to time, be found necessary to enforce the due and faithful observance of this Stipulation. It is also understood, that the permission granted by this Article is not to extend to allow the vessels of the United States to carry on any part of the Coasting-trade of the said British Territories; but the vessels going out with their original Cargoes or part thereof; from one Port of discharge to another, are not to be considered as carrying on the Coasting trade, neither is this Article to be construed to allow the Citizens of the said States to settle or reside within the said Territories, or to go into the interior parts thereof, without the permission of the British government established there; And if any transgressions should be attempted against the regulations of the British government in this respect, the observance of the same shall and may be enforced against the Citizens of America in the same manner as against British Subjects or others transgressing the same Rule. And the Citizens of the United States, whenever they arrive in any Port or Harbour in the said Territories, or if they should be permitted in manner aforesaid to go to any other State therein, shall always be subject to the Laws, Government and Jurisdiction of whatever Nature, established in such Harbour, Port or Place according as the same may be. The Citizens of the United States may also touch for refreshment at the Island of St. Helena; but subject in all respects to such Regulations as the British government may, from time to time, establish there.

## ARTICLE 4Th.

There shall be between all the Dominions of His Majesty in Europe and the

Territories of the United States a reciprocal and perfect Liberty of Commerce and Navigation. The People and Inhabitants of the two Countries respectively shall have Liberty freely and securely, and without hindrance and molestation, to come with their Ships and Cargoes to the Lands, Countries, Cities, Ports, Places and Rivers, within the Dominions and Territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time; also to hire and possess houses and warehouses for the purposes of their Commerce; and generally, the Merchants and Traders on each side shall enjoy the most compleat protection and security for their Commerce, but subject always, as to what respects this Article, to the Laws and Statutes of the two Countries respectively.

## ARTICLE 5Th.

It is agreed that no other or higher Duties shall be paid by the Ships or Merchandize of the one Party in the Ports of the other, than such as are paid by the like Vessels or Merchandize of all other Nations. Nor shall any other or higher Duty be imposed in one Country on the Importation of any Articles, the Growth, Produce or Manufacture of the other, than are or shall be payable on the Importation of the like Articles, being of the Growth, Produce or Manufacture of any other foreign Country. Nor shall any Prohibition be imposed on the Exportation or Importation of any Articles to or from the Territories of the two Parties respectively, which shall not equally extend to all other Nations. But the British Government reserves to itself the Right of imposing on American vessels entering into the British Ports in Europe a Tonnage-Duty equal to that which shall at any time be payable by British vessels in the Ports of America; and the Government of the United States reserves to itself a Right of imposing on British Vessels, entering into the Ports of the United States, a Tonnage-Duty equal to that which shall at any time be payable by American Vessels in the British Ports in Europe. It is agreed that in the Trade of the two Countries with each other, the same Duties of Exportation and Importation on all Goods and Merchandize; and also the same Drawbacks and Bounties shall be paid and allowed in either Country, whether such Importation or Exportation shall be made in British or American Vessels.

## ARTICLE 6Th.

The High contracting Parties not having been able to arrange at present by Treaty any Commercial Intercourse between the Territories of the United States and His Majesty's Islands and Ports in the West-Indies, Agree that until that subject shall be regulated in a satisfactory manner, each of the Parties shall remain in the complete possession of its Rights in respect to such an Intercourse.

## ARTICLE 7Th.

It shall be free for the two contracting Parties respectively to appoint Consuls for the protection of Trade, to reside in the Dominions and Territories aforesaid; And the said Consuls shall enjoy those Liberties and Rights which belong to them by reason of their function. But, before any Consul shall act as such, he shall be in the usual manner approved and admitted by the Party to whom he is sent; And it is hereby declared to be lawful and proper, that in case of illegal or improper conduct towards the Laws or Government, a Consul may either be punished according to Law, if the Laws will reach the Case, or be dismissed, or even sent back, the offended Government assigning to the other the reasons for the same. Either of the Parties may except from the residence of Consuls, such particular Places as such Party shall judge proper to be excepted.

## ARTICLE 8Th.

It is agreed, that in all Cases where vessels shall be captured or detained on just suspicion of having on board Enemy's property or of carrying to the Enemy any of the Articles which are Contraband of War, or for other lawful cause, the said Vessel shall be brought to the nearest or most convenient Port; And if any Property of an Enemy should be found on board such Vessel, that part only, which belongs to the Enemy, or is otherwise confiscable, shall be made Prize and the Vessel, unless by Law subject to condemnation, shall be at liberty to proceed with the remainder of the Cargo, without any impediment. And it is agreed, that all proper measures shall be taken to prevent delay, in deciding the cases of Ships or Cargoes so brought in for adjudication; and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the Masters or Owners of such Ships. It is also agreed, that in all cases of unfounded detention, or other contravention of the Regulations stipulated by the present Treaty, the Owners of the Vessel and Cargo so detained shall be allowed damages proportioned to the loss occasioned thereby, together with the Costs and Charges of the Trial.

## ARTICLE 9Th.

In order to regulate what is in future to be esteemed contraband of War, it is agreed that under the said denomination shall be comprised all arms and Implements serving for the purposes of War, by Land or by Sea, such as Cannon, Muskets, Mortars, Petards, Bombs, Grenadoes, Carcasses, Saucisses, Carriages for Cannon, Musket-rests, Bandoliers, Gunpowder, Match, Salt-petre, Baus, Pikes, Swords, Head-pieces, Cuirasses, Halberts, Lances, Javelins, Horse-furniture, Holsters, Belts, and generally all other Implements of War; As also Timber for Ship-building, Copper in Sheets, Sail

Cloth, Hemp, and Cordage, and in general [with the exception of unwrought iron and Fir-planks; and also with the exception of Tar and Pitch, when not going to a Port of Naval Equipment, in which case they shall be entitled to pre-emption] whatever may serve directly to the equipment of Vessels; and all the above Articles are hereby declared to be just objects of confiscation, whenever they are to be attempted to be carried to an Enemy. But no Vessel shall be detained on pretence of carrying Contraband of War, unless some of the above mentioned articles, not excepted, are found on board of the said vessel at the time it is searched.

#### ARTICLE 10Th.

Whereas in consideration of the distance, and of other circumstances incident to the situation of the High contracting Parties, it may frequently happen that Vessels may sail for a Port or Place belonging to an Enemy, without knowing that the same is either besieged, blockaded or invested, it is agreed, that every vessel so circumstanced may be turned away from such Port or Place; but she shall not be detained, nor her Cargo, if not Contraband, be confiscated, unless after such notice she shall again attempt to enter: But she shall be permitted to go into any Port or Place she may think proper: Nor shall any vessel or goods of either Party, that may have entered into such Port or Place before the same was besieged, blockaded or invested by the other, and be found therein after the reduction or surrender of such Place, be liable to Confiscation, but shall be restored to the Owners or Proprietors thereof. Neither of the Parties, when at War, shall, during the continuance of the Treaty, take from on board the Vessels of the other, the subjects of the opposite Belligerent, unless they be in the actual employment of such Belligerent.

#### ARTICLE 11Th.

Whereas differences have arisen concerning the trading with the Colonies of His Majesty's Enemies, and the Instructions given by His Majesty to His Cruizers in regard thereto, it is agreed that during the present Hostilities all Articles of the Growth, Produce and Manufacture of Europe, not being Contraband of War, may be freely carried from the United States to the Port of any Colony, not blockaded, belonging to His Majesty's Enemies, provided such Goods shall previously have been entered and landed in the United States, and shall have paid the ordinary Duties on such Articles so imported for Home consumption, and on re-exportation shall after the drawbacks remain subject to a Duty equivalent to not less than one per cent ad valorem, and that the said Goods and the vessels conveying the same shall, from the time of their clearance from the American Port, be bonâ fide the property of Citizens and Inhabitants of the United States: And in like manner that all Articles, not being Contraband of War, and being the growth and produce of the Enemy's Colonies, may be brought to the United States, and after having been there landed, may be freely carried from thence to any Port of Europe, not blockaded, provided such Goods shall



previously have been entered and landed in the said United States, and shall have paid the ordinary Duties on Colonial articles so imported for Home consumption, and on re-exportation shall, after the drawback, remain subject to a Duty equivalent to not less than Two per Cent ad valorem; And provided that the said Goods and the vessel conveying the same, be bonâ fide the property of Citizens and Inhabitants of the United States. Provided always, that this Article, or anything therein contained, shall not operate to the prejudice of any Right belonging to either Party; but that after the expiration of the time limited for the Article, the Rights on both sides shall revive and be in full force.

## ARTICLE 12Th.

And whereas it is expedient to make special provisions respecting the maritime Jurisdiction of the High contracting Parties on the Coasts of their respective possessions in North America on account of peculiar circumstances belonging to those Coasts, it is agreed, that in all Cases where one of the said High contracting Parties shall be engaged in War, and the other shall be at peace, the Belligerent Power shall not stop, except for the purpose hereafter mentioned, the vessels of the Neutral Power, or the unarmed Vessels of other Nations within Five Marine Miles from the shore belonging to the said Neutral Power on the American Seas. Provided that the said Stipulations shall not take effect in favour of the Ships of any Nation or Nations, which shall not have agreed to respect the Limit aforesaid as the Line of Maritime Jurisdiction of the said Neutral State; and it is further stipulated that if either of the High contracting Parties shall be at War with any Nation or Nations which shall not have agreed to respect the said special Limit or Line of Maritime Jurisdiction herein agreed upon, such contracting Party shall have the Right to stop or search beyond the Limit of a Cannon Shot or Three Marine Miles from the said Coasts of the Neutral Power, for the purpose of ascertaining the Nation to which such vessel shall belong: And with respect to Ships and Property of the Nation or Nations not having agreed to respect the aforesaid Line of Jurisdiction, the Belligerent Power shall exercise the same Rights as if this Article did not exist; and the several provisions stipulated by this article shall have full force and effect only during the continuance of the present Treaty.

## ARTICLE 13Th.

With respect to the searching of Merchant Ships, the Commanders of Ships of War and Privateers shall conduct themselves as favourably as the course of the War then existing may possibly permit towards the most friendly Power that may remain neuter, observing as much as possible the acknowledged Principles and Rules of the Law of Nations: And for the better security of the respective Subjects and Citizens of the contracting Parties, and to prevent their suffering Injuries by the Men of War or Privateers of either Party, all Commanders of Ships of War and Privateers and all

others the said Subjects and Citizens shall forbear doing any damage to those of the other Party, or committing any outrage against them; And if they act to the contrary, they shall be punished and shall also be bound in the Persons and Estates to make satisfaction and reparation for all damages, and the Interest thereof, of whatever nature the said damages may be. For this cause all Commanders of Privateers, before they receive their Commissions, shall hereafter be compelled to give before a competent Judge, sufficient security by at least two responsible Sureties, who have no Interest in the said Privateer, each of whom, together with the said Commander, shall be jointly and severally bound in the Sum of Two Thousand Pounds Sterling; or, if such Ship be provided with above One Hundred and Fifty Seamen, or Soldiers, in the sum of Four Thousand Pounds Sterling, to satisfy all damages and injuries, which the said Privateer, or Officers, or Men, or any of them, may do or commit, during their Cruize, contrary to the tenor of this Treaty, or to the Laws and Instructions for regulating their conduct; and further, that in all cases of aggressions, the said Commissions shall be revoked and annulled.

It is also agreed, that whenever a Judge of a Court of Admiralty of either of the Parties shall pronounce sentence against any Vessel or Goods or Property belonging to the Subjects or Citizens of the other Party, a formal and duly authenticated copy of all the Proceedings in the Cause, and of the said sentence, shall, if required, be delivered to the Commander of the said Vessel, without the smallest delay, he paying all legal Fees and demands for the same.

#### ARTICLE 14Th.

It is further agreed that both the said contracting Parties shall not only refuse to receive any Pirates into any of their Ports, Havens or Towns, or permit any of their Inhabitants to receive, protect, harbour, conceal or assist them in any manner, but will bring to condign punishment all such Inhabitants as shall be guilty of such Acts or offences. And all their Ships, with the Goods and Merchandize taken by them and brought into the Port of either of the said Parties, shall be seized as far as they can be discovered, and shall be restored to the owners or the Factors or Agents duly deputed, and authorized in writing by them [proper evidence being shewn in the Court of Admiralty for proving the property] even in case such Effects should have passed into other hands by Sale, if it be proved that the Buyers knew, or had good reason to believe, or suspect that they had been piratically taken.

#### ARTICLE 15Th.

It is likewise agreed, that the Subjects and Citizens of the two Nations shall not do any Acts of hostility or violence against each other, nor accept commissions or Instructions so to act from any foreign Prince or State, Enemies to the other Party, nor shall the Enemies of one of the Parties be permitted to invite, or endeavour to enlist in

the military Service any of the Subjects or Citizens of the other Party: And the Laws against all such Offences and Aggressions shall be punctually executed; and if any Subject or Citizen of the said Parties respectively shall accept any foreign Commission, or Letters of Marque for arming any Vessel to act as a Privateer against the other Party, it is hereby declared to be lawful for the said Party to treat and punish the said Subject or Citizen, having such Commission or Letters of Marque, as a Pirate.

#### ARTICLE 16Th.

It is expressly stipulated that neither of the said contracting Parties will order or authorize any Acts of reprisal against the other on complaints of injuries and damages until the said Party shall first have presented to the other a statement thereof, verified by competent proof and evidence; and demanded justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

#### ARTICLE 17Th.

The Ships of War of each of the Contracting Parties shall at all times be hospitably received in the Ports of the others, their Officers and Crews paying due respect to the Laws and Government of the Country. The Officers shall be treated with that respect which is due to the Commissions which they bear; and if any Insult should be offered to them by any of the Inhabitants, all Offenders in this respect shall be punished as disturbers of the Peace and Amity between the two Countries. And both contracting Parties agree that in case any Vessel of the one should, by stress of Weather, danger from Enemies or other misfortunes, be reduced to the necessity of seeking shelter in any of the Ports of the other; into which such Vessel could not in ordinary Cases claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the other Government of the Place, be hospitably received and permitted to refit, and to purchase at the market price such necessaries as she may stand in need of, conformably to such Orders and Regulations as the Government of the Place having respect to the circumstances of each Case, shall prescribe. She shall not be allowed to break bulk or unload her Cargo unless the same shall be bonâ fide necessary to her being refitted; nor shall she be obliged to pay any Duties whatever, except only on such Articles as she may be permitted to sell for the purpose aforesaid.

#### ARTICLE 18Th.

It shall not be lawful for any foreign Privateers (not being Subjects or Citizens of either of the said Parties) who have Commissions from any Power or State in enmity with either Nation, to arm their ships in the Ports of either of the said Parties, nor to sell what they have taken, nor in any manner to exchange the same, nor shall they be

allowed to purchase more Provisions than shall be necessary for their going to the nearest Port of that Prince or State from which they obtained their Commissions.

## ARTICLE 19Th.

It shall be lawful for the Ships of War and Privateers, belonging to the said Parties respectively to carry whither soever they please the Ships and Goods taken from their Enemies, without being obliged to pay any Fees to the Offices of the Admiralty or to any Judges whatever, nor shall the said Prizes when they arrive at and enter the Ports of the said Parties be detained or seized, nor shall the Searchers or other officers of those Places visit such Prizes [except for the purpose of preventing the carrying of any part of the Cargo thereof on shore in any manner contrary to the established Laws of Revenue Navigation or Commerce] nor shall such officers take cognizance of the validity of such Prizes; but they shall be at liberty to hoist sail, and depart as speedily as may be, and carry their said Prizes to the Places mentioned in their Commissions or Patents, which the Commanders of the said Ships of War or Privateers shall be obliged to shew. No shelter or refuge shall be given in their Ports to such as have made a Prize upon the subjects or Citizens of either of the said Parties; But if forced by stress of weather or the dangers of the Sea to enter them, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible: Nothing in this Treaty contained, shall however be construed to operate contrary to the former and existing public Treaties with other Sovereigns or States; But the two Parties agree, that while they continue in amity, neither of them will in future make any Treaty that shall be inconsistent with this or the preceding Article. Neither of the said Parties shall permit the ships or Goods belonging to the Subjects or Citizens of the other to be taken within Cannon shot of the Coast, nor within the Jurisdiction described in Article 12, so long as the Provisions of the said Article shall be in force, by Ships of War or others having Commissions from any Prince, Republic or State whatever. But in case it should so happen, the Party, whose territorial Rights shall thus have been violated, shall use his utmost endeavours to obtain from the offending Party full and ample satisfaction for the Vessel or Vessels so taken, whether the same be Vessels of War or Merchant Vessels.

## ARTICLE 20Th.

If at any time a rupture should take place (which God forbid) between His Majesty and the United States, the Merchants and others of each of the two Nations, residing in the Dominions of the other, shall have the privilege of remaining and continuing their Trade, so long as they do it peaceably, and commit no offence against the Laws; and in case their conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of Twelve Months, from the publication of the order, shall be allowed them for the purpose, to remove with their families, effects and property; But this favour shall not be extended

to those who shall act contrary to the established laws; and for greater certainty, it is declared that such rupture shall not be deemed to exist, while negotiations for accommodating differences shall be depending, nor until the respective Ambassadors or Ministers if such there shall be, shall be recalled, or sent home on account of such differences, and not on account of personal misconduct, according to the nature and degree of which, both Parties retain their Rights, either to request the recall, or immediately to send home the Ambassador or Minister of the other; and that without prejudice to their mutual friendship and good understanding.

## ARTICLE 21St.

It is further agreed that His Majesty and the United States, on mutual requisitions by them respectively, or by their respective Ministers, or Officers, authorized to make the same, will deliver up to Justice all Persons, who being charged with murder or forgery, committed within the Jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality, as, according to the Laws of the Place, where the Fugitive or Person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the Fugitive.

## ARTICLE 22D.

In the event of a Shipwreck happening in a Place belonging to one or other of the High contracting Parties, not only every assistance shall be given to the unfortunate Persons, and no violence done to them, but also the effects which they shall have thrown out of the Ship into Sea, shall not be concealed or detained, nor damaged under any pretext whatever; on the contrary the above mentioned effects and Merchandize shall be preserved, and restored to them upon a suitable recompense being given to those who shall have assisted in saving their Persons, Vessels and Effects.

## ARTICLE 23D.

And it being the intention of the High contracting Parties, that the People of their respective Dominions shall continue to be on the footing of the most favoured Nation, it is agreed, that in case either Party shall hereafter, grant any additional advantages, in Navigation, or Trade, to any other Nation, the Subjects or Citizens of the other Party shall fully participate therein.

## ARTICLE 24Th.

The High Contracting Parties engage to communicate to each other, without delay, all such Laws as have been or shall be hereafter enacted by their respective Legislatures, as also all Measures which shall have been taken for the abolition or limitation of the African Slave Trade; and they further agree to use their best endeavours to procure the co-operation of other Powers for the final and complete abolition of a Trade so repugnant to the principles of Justice and Humanity.

## ARTICLE 25Th.

And it is further agreed that nothing herein contained shall contravene or effect the due execution of any Treaty or Treaties now actually subsisting between either of the High Contracting Parties and any other Power or Powers.

## ARTICLE 26Th.

This Treaty when the same shall have been ratified by His Majesty and by the President of the United States, with the advice of their Senate, and the respective Ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States for Ten Years, from the date of the exchange of the said Ratification and shall be reciprocally executed and observed with punctuality and the most sincere regard to good faith.[Done December 31, 1806.]

*Dept. of State MS. Despatches.*

[1]Italics for cypher.

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[1]

## TO JAMES MONROE.

Washington, Apl. 20, 1803.

Dear Sir

You will receive with this all the communications claimed by the actual & eventual posture of our affairs in the hands of yourself & Mr Livingston. You will find also that the Spanish Govt has pretty promptly corrected the wrong done by its Officer at N. Orleans. This event will be a heavy blow to the clamorous for war, and will be very soothing to those immediately interested in the trade of the Missisipi. The temper manifested by our Western Citizens has been throughout the best that can be conceived. The real injury from the suspension of the deposit was *howr\**<sup>much</sup> *lessened* by the previous destruction of the *intire crop* of *wheat* in Kentucky, by the number of *sea vessels built* on the *Ohio* and by *throng*s of *vessels* from *Atlantic ports* to the Mississippi, some of which *ascended* to the Natches. The permission also to supply the market at N. O. & to ship the surplus as Spanish property to Spanish ports, was *turned to good account*. The trial *therefore has been much alleviated*. Certain it is that the *hearts and hopes* of the *Western people* are strongly fixed on the *Mississippi* for the future *boundary*. Should no improvement of existing *rights be gained* the *disappointment* will be *great*. Still *respect for principle & character*, aversion to *war & taxes* the hope of a speedy conjuncture *more favorable*, and *attachment* to the present order of things will be persuasive *exhortations to patience*. It is even a doubt with some of the best judges whether the *deposit alone* would not be *waved* for a while rather than it should be the immediate ground of *war and an alliance with England*. This suggested a particular passage in the official letter now sent you & Mr. L.

The elections in *New England* are *running much against the administration*. In *Virginia* the result is but very partially *known*. *Brent* is *outvoted* by *Lewis*. In general things *continue well in that state*.

The affair between *the President* and *J. Walker* has had a happy *ecclaircissement*. Even this general communication is for your *own bosom* as already *privy to the affair*.

I have recd. a very friendly letter from Genl Fayette, which I shall answer as soon as I can get some further information. We are all much distressed by his late accident, and are anxious for every proof to be given him of the affection of this Country. Congress found an occasion of voting about 11 or 12,000 acres of land N. W. of the Ohio with liberty to locate it any where. This may be made worth now probably abt 20,000 dollars. In a little time the value must greatly increase. Whether anything else can or will be done, you can judge as well as myself. Assure him of my undiminished friendship for him, which he knows to have been perfectly sincere and ardent.

Mr. Coleman has sent a list of the furniture. It is some articles short of your list, & which contains a few we shall not want. They are not yet arrived here.—*Mad. MSS.*

[1]

To James Monroe.

Washington, July 30, 1803.

Dear Sir

I received your favor of by Mr. Hughes, the bearer of the public despatches from you & Mr L. The purchase of Louisiana in its full extent, tho' not contemplated is received with warm, & in a manner universal approbation. The uses to which it may be turned, render it a truly noble acquisition. Under prudent management it may be made to do much good as well as to prevent much evil. By lessening the military establishment otherwise requisite or countenanced, it will answer the double purpose of saving expence & favoring liberty. This is a point of view in which the Treaty will be particularly grateful to a most respectable description of our Citizens. It will be of great importance also to take the regulation & settlement of that Territory out of other hands, into those of the U. S. who will be able to manage both for the general interest & conveniency. By securing also the exclusive jurisdiction of the Mississippi to the mouth, a source of much perplexity & collision is effectually cut off.

The communications of your\**colleague* hither, have fully *betrayed* the feelings excited by your messa., and that *he was precipitating* the business soon after yr. arrival without respect to the measure of the govt., to yr. self, or to the advantage to be expected from *the presence & co-operation* of the more *immediate depository* of the objects and *sensibilities* of his country. It is highly probable that if the *appeal* to the French Govt. had been less *hackneyed* by the *ordinary minister* and been made under the *solemnity of a joint and extraordinary embassy* the *impression* would have been *greater & the gain better*.

What course will be taken by *his friends here* remains to be seen. You will find in the *gazettes a letter from Paris* understood to be from *Swan* inclosing a *copy of his memorial* representing it as *the primary cause of the cession*, praising the *patriotism* which undertook *so great a service without authority*, and *throwing your agency* out of any real *merit while* by good fortune it *snatched the ostensible merit*. This letter with the *memorl has been published in all our papers* some of them making *comments favorable to Mr. Livingston*, others doing justice to you, others ascribing the result wholly to the *impending rupture*. Another *letter from Paris* has been published wh makes him *Magnus Apollo*. The *publication of the memorial is so improper* and in reference to the *writer invites such strictures that* [an answer?] *from him is not to be presumed*. The *passages against Engld.* have not escaped the lash. It would not be very *wonderful if they were to be noticed formally or informally by the British Legation here*.

My public letter will shew the light in which the purchase of all Louisiana is viewed, and the manner in which it was thought proper to touch *Mr. L., in complaining* that the *commn did not authorize the measure, notwithstanding* the information given that



*he was negotg. for more than the East side of the Misst. The pecuniary arrangements are much disrelished, particularly by Mr Gallatin. The irredeemability of the stock which gives it a value above par, the preference of the creditors to the true object in the cash payment and the barring of a priority among them, are errors most regarded. The origin of the two last is easily understood. The claims of the different creditors rest on principles as different. . . .—Monroe MSS.*

[1]

## TO BARBÉ MARBOIS.

Novr 4, 1803.

Sir

I recd your favor of the 21 prairial, with a pleasure which is redoubled by the consideration that I am able in acknowledging it, to inform you of the formal approbation of the late Treaty & conn. by every branch of our Govt. The event establishes, I hope forever, perfect harmony between the two Countries. It is the more likely to do so, as it is founded in a policy, coeval with their political relations, of removing as much as possible all sources of jealousy & collision. The frankness & uprightness which marked the progress of this transaction, are truly honorable to all concerned in it; and it is an agreeable circumstance, that, in the exchange of ratifications, it was closed in the same spirit of mutual confidence, Mr Pichon inferring, doubtless with the truest reason, that an unqualified exchange, under actual circumstances, would best accord with the real views of his Government. It remains now to compleat the work by an honest execution of the mutual stipulations. On our part the sequel will certainly correspond with the good faith & prompt arrangements thus far pursued; and full reliance is placed on the reciprocal disposition of your Govt of which so many proofs have been seen.

The interposition of Spain, is an incident not more unexpected, than it is unreasonable. It is to be wished, that it may terminate without any serious consequences, even to herself. Whatever turn it may take, the honour of the French Govt. guaranties the object at which our measures are pointed; & the interest of France will equally lie in making the fruits of these measures, hers, as well as ours.

I partake Sir in all the satisfaction which you feel at an event which awakens recollections both of a public & private nature, so agreeable to both of us; and I pray you to be assured that I observe with sincere pleasure, in the share you have contributed to it, those enlarged views and honorable principles, which confirm the high esteem & distinguished consideration with which I remain, Dr sir, your friend & Servt.—*Mad. MSS.*

## TO JAMES MONROE.

Washington. Decr. 26 1803.

Dear Sir

I have recd I believe all your letters public and private down to that of October 22, written merely to say that all continued well. I have taken due care of the communications on the subject of your—. Everything seems to be well understood on this side the water. I cannot say more now as I write of necessity without cypher.

M. Merry has been with us some time. He appears to be an amiable man in private society, and a candid and agreeable one in public business. A foolish circumstance of etiquette has created some sensibility in Mrs Merry and perhaps himself; but they will find so uniform & sincere a disposition in all connected with the Govt to cultivate a cordial society with them, and to manifest every proper respect for their characters and station, that if any unfavorable impression has happened, it must be very transient. It would be unfortunate if it were otherwise, because a dissatisfaction of whatever sort, or however produced, might mingle itself with his general feelings, and, thro' them, with the agency committed to him.

We have had several conversations both incidental & formal on the topics most interesting to the two Countries. I have taken pains to make him sensible of the tendency of certain proceedings on the British side, and of their injustice as well as impolicy. I communicated to him a few days ago, the intention of the President to explain our views fully to you on these topics, and to authorize you to negotiate such conventional eclairecissements and arrangements as may put an end to every danger to which the harmony between the two Countries is now subjected. His ideas appeared to be moderate, & his disposition conciliatory. As he will doubtless communicate to his Govt. what passed us, I think it proper, in order to place you on a level of information, to observe briefly, that the plan will be to get rid of impressments altogether on the high seas, to define blockades & contraband according to the last Treaty between G. B. & Russia, to regulate visits & searches of our vessels, according to the Treaty of 1786 between G. B. and France, to put aside the doctrine, that a Colonial trade, not allowed in time of peace, is unlawful in time of war; and in return to agree to a mutual surrender of deserters from ships and from garrisons, and to a legislative provision agt exporting articles enumerated as contraband to places within the jurisdiction of an enemy. This will be the outline, excepting a few minor propositions. The subject is now before the Cabinet, and it will not be long before it will be forwarded to you in its details. It is much to be desired that something may be done to consolidate the good understanding between the two nations, and I really believe that there is nothing aimed at by us that is not for the true interest of both parties. I am not without hopes that Mr Merry sees the business in a good degree in the same light, and that his representations will co-operate with your reasonings on it. I am glad to learn that in Europe violations of our maritime rights are so much mitigated in comparison with the former war. It is a good omen. In the American seas, however the scene is very different, and I fear is growing worse & worse. Impressments and other outrages on our flag are multiplying, and the depredations, under pretext of blockades, are going on in rivalry with all the extravagances of the last war. I will send herewith if I can, certain documents, both as to impressments and blockades which will explain the justice of these remarks, and satisfy you, as they ought to do the British Govt that the friendship & patience of this country are put to a

severe trial. A Bill has been brought in Congress with a view to some remedy. It proposes to forbid the use of our pilots, our ports, and our supplies & hospitalities to any ship of war which shall be proved & proclaimed to have impressed or otherwise insulted those on board our vessels. Whether it will be pursued into a law is uncertain; but if it should not, the forbearance will proceed merely from a hope that a remedy to the evil is contemplated by negotiations. The public mind is rising to a state of high sensibility, and no other consideration than such a hope would I am persuaded, suspend the effect of it on the Legislative Councils. It is to be wished that the introduction of the Bill may not be misconstrued into an unfriendly disposition towards G. Britain. I have every reason to believe that the supposed necessity of it is deeply regretted, and that a just accommodation of all differences with G. B. will give the most sincere and general satisfaction. Louisiana was delivered by the Spanish authorities at N. Orleans to Laussat, on the 30th of Novr. Our Comsrs, Claibourne & Wilkinson with their troops, were at Fort Adams on their way to receive the transfer to the U. States All difficulties therefore are at an end in that quarter. Nothing appears to have passed in relation to W. Florida, or the boundaries in general. It is understood that Spain does not include any territory E. of the Missipi except the island of N. O. in the idea of Louisiana. It will be an easy matter to take possession according to our idea. The mode alone can beget a question.

You omitted the bill of the Paris Silver Smith, referred to in your last.—Yrs. *Monroe*  
*MSS.*

[\*] Italics for cypher.

[\*] Italics for cypher.

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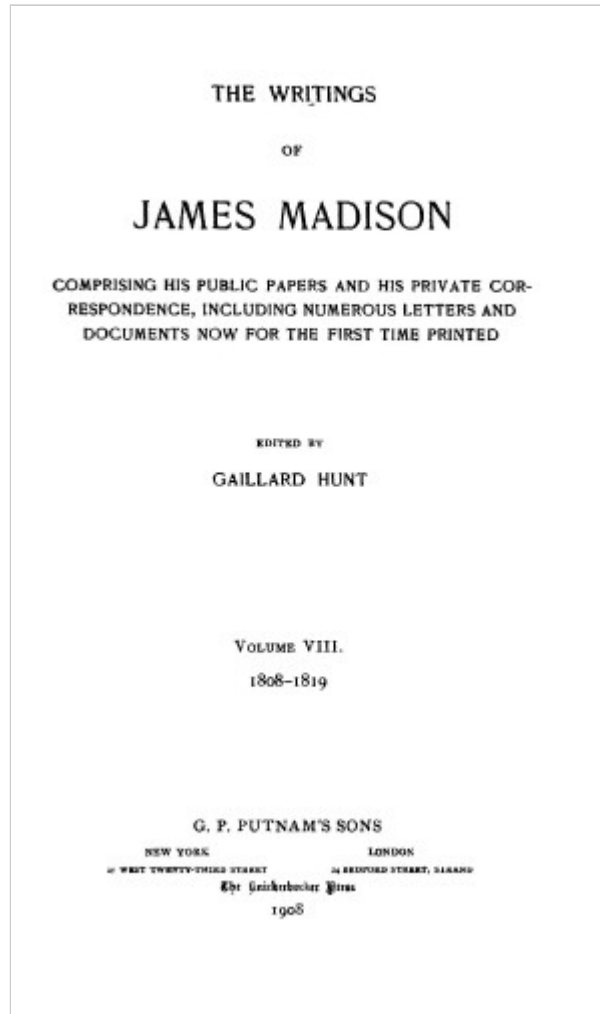
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CONTENTS OF VOLUME VIII.

	PAGE
Chronology . . . . .	xvii
1808.	
Negotiations with Mr. Rose, February 1st . . . . .	1
To William Pinkney, February 19th . . . . .	17
Official instruction.	
To William Pinkey, March 8th . . . . .	19
Official instruction.	
To William Pinkney, April 4th . . . . .	21
Official instruction.	
To William Pinkney, April 30th . . . . .	24
Official instruction.	
To John Armstrong, May 2d . . . . .	27
Official instruction.	
To William Pinkney, July 18th . . . . .	31
Official instruction.	
To John Armstrong, July 22nd . . . . .	36
Official instruction.	
1809.	
To William Pinkney, January 3d . . . . .	40
Official instruction.	
To William Pinkney, February 10th . . . . .	43
Official instruction.	
Inaugural Address, March 4th . . . . .	47
Proclamation, April 19th . . . . .	50
Renewing trade with Great Britain.	

v

## Table Of Contents

[Chronology of James Madison. 1808-1819.](#)  
[The Writings of James Madison.](#)  
[1808 - Negotiations With Mr. Rose. Mad. Mss. 1](#)  
[To John Armstrong. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[To John Armstrong. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[To John Armstrong. D. Of S. Mss. Instr.](#)  
[1809 - to William Pinkney. D. Of S. Mss. Instr.](#)  
[To William Pinkney. D. Of S. Mss. Instr.](#)  
[First Inaugural Address.](#)  
[Proclamation.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Marquis De Lafayette. 1](#)  
[Message to the Special Session of Congress.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Mrs. Madison.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Robert Smith. D. Of S. Mss. Misc. Lets.](#)  
[To Mrs. Madison. 1](#)  
[To Thomas Jefferson. 1](#)  
[First Annual Message.](#)  
[Special Message to Congress.](#)  
[1810 - to the Senate and House of Representatives of the United States:](#)  
[To George Joy. 1 D. Of S. Mss.](#)  
[To William Pinkney. 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To William Pinkney. 1](#)  
[To Thomas Jefferson. 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Robert Smith. D. Of S. Mss. Misc. Lets.](#)  
[To Robert Smith. D. Of S. Mss. Misc. Lets.](#)  
[To John Quincy Adams. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Proclamation.](#)  
[To John Armstrong. 1](#)

[To William Pinkney. 1](#)  
[Second Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[Special Message to Congress.](#)  
[1811 - to the Senate and House of Representatives of the United States:](#)  
[Veto Messages.](#)  
[To the House of Representatives of the United States:](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To James Monroe. Chic. Hist. Soc. Mss.](#)  
[Memorandum As to Robert Smith. 1 Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To the Inhabitants of the Town of New Haven. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Third Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[To J. Q. Adams. Mad. Mass.](#)  
[To Joel Barlow. 1 Mad. Mss.](#)  
[Special Message to Congress.](#)  
[To the Senate and House of Representatives of the United States:](#)  
[To the House of Representatives of the State of South Carolina. Mad. Mss.](#)  
[1812 - to Thomas Jefferson. Mad. Mss.](#)  
[To Joel Barlow. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Special Message to Congress.](#)  
[To the Senate and House of Representatives of the United States:](#)  
[To Jonathan Dayton. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Special Message to Congress.](#)  
[To the Senate and House of Representatives of the United States:](#)  
[Proclamation.](#)  
[Instructions For Privateers. 1 D. Of S. Mss. Instructions.](#)  
[To — Mad. Mss.](#)  
[To Henry Dearborn. 1 Mad. Mss.](#)  
[To Joel Barlow. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To S. Spring. Mad. Mss.](#)  
[To William Dearborn. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Fourth Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[To Jonas Galusha. 1 Mad. Mss.](#)  
[To William Eustis. 1 Mad. Mss.](#)  
[To Paul Hamilton. 1 Mad. Mss.](#)  
[Special Message to Congress.](#)  
[1813 - to the Senate and House of Representatives of the United States:](#)  
[Second Inaugural Address. 1](#)



[To David Humphreys. Mad. Mss.](#)  
[To John Nicholas. Mad. Mss.](#)  
[Message to the Special Session of Congress.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[To the Senate of the United States. 1 Mad. Mss.](#)  
[To Albert Gallatin. Mad. Mss.](#)  
[To Henry Dearborn. Mad. Mss.](#)  
[To Isaac Shelby. 1 Mad. Mss.](#)  
[To John Graham. Mad. Mss.](#)  
[To William Wirt. 1](#)  
[Fifth Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[Special Message to Congress.](#)  
[To the Senate and House of Representatives of the United States:](#)  
[1814 - to George W. Campbell. 1](#)  
[To George W. Campbell. 1](#)  
[Cabinet Memorandum. Chic. Hist. Soc. Mss.](#)  
[Cabinet Memorandum. 1 Mad. Mss. \( Submitted to the Cabinet, June 23 and 24, 1814.\)](#)  
[To John Armstrong. Mad. Mss.](#)  
[To C. J. Ingersoll. Mad. Mss.](#)  
[To John Armstrong. Chic. Hist. Soc. Mss.](#)  
[To James Monroe. 1 Monroe Mss.](#)  
[To James Monroe. Monroe Mss.](#)  
[To Mrs. Madison. 1](#)  
[Memorandum—aug. 24, 1814. 1 Mad. Mss.](#)  
[To James Monroe. 1](#)  
[To Mrs. Madison. 1](#)  
[Memorandum. 2 Mad. Mss.](#)  
[Proclamation.](#)  
[Sixth Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[To Daniel D. Tompkins. 1 Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To George W. Campbell. 1](#)  
[To Wilson Cary Nicholas. 1](#)  
[To Benjamin W. Crowninshield. 1 Mad. Mss.](#)  
[To John Adams. Mad. Mss.](#)  
[Special Message to Congress.](#)  
[1815 - to the Senate and House of Representatives of the United States:](#)  
[Special Message to Congress.](#)  
[To the Senate and House of Representatives of the United States:](#)  
[Veto Message.](#)  
[To the Senate of the United States:](#)  
[To Henry Dearborn. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Seventh Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)

[1816 - to John Graham. D. Of S. Mss. Misc. Lets.](#)  
[To James Monroe. D. Of S. Mss. Misc. Lets.](#)  
[To Alexander J. Dallas. 1 Mad. Mss.](#)  
[To James Monroe. D. Of S. Mss. Misc. Lets.](#)  
[To James Monroe. 1](#)  
[To James Monroe. D. Of S. Mss. Misc. Lets.](#)  
[To John Graham. D. Of S. Mss. Misc. Lets.](#)  
[To James Monroe. D. Of S. Mss. Misc. Lets.](#)  
[To James Monroe. 1](#)  
[To Alexander J. Dallas. Mad. Mss.](#)  
[To James Monroe. 1](#)  
[To James Monroe. 1](#)  
[To W. H. Crawford. Mad. Mss.](#)  
[To William H. Crawford. 2](#)  
[To William H. Crawford. 1](#)  
[To Wilson Cary Nicholas. 1](#)  
[To John Adams. Mad. Mss.](#)  
[Eighth Annual Message.](#)  
[Fellow-citizens of the Senate and of the House of Representatives:](#)  
[1817 - to William H. Crawford. Mad. Mss.](#)  
[Veto Message.](#)  
[To the House of Representatives of the United States:](#)  
[To James Monroe. D. Of S. Mss. Instr.](#)  
[To John Adams. 1](#)  
[To D Lynch, Jun R . Mad. Mss.](#)  
[To Richard Rush. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To J. Q. Adams. 1 Mad. Mss.](#)  
[To Henry St. George Tucker. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[1818 - to Charles J. Ingersoll. Mad. Mss.](#)  
[To Jacob Gideon.](#)  
[To Mordecai M. Noah. Mad. Mss.](#)  
[To John Adams. Mad. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To John Quincy Adams. D. Of S. Mss. Misc. Lets.](#)  
[To James Monroe. Mad. Mss.](#)  
[1819 - to James Monroe. Mad. Mss.](#)  
[To James Monroe. 1](#)  
[To Richard Peters. Mad. Mss.](#)  
[To Robert Walsh. Mad. Mss.](#)  
[To Richard Rush. Mad. Mss.](#)  
[To J. Q. Adams. Mad. Mss.](#)  
[To Robert J. Evans. Mad. Mss.](#)  
[To Spencer Roane. Mad. Mss.](#)  
[To Edward Coles. 1 Chic. Hist. Soc. Mss.](#)

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1808-1819.

1808.  
Secretary of State.  
Feb. 1-14. Negotiating with Rose.  
To  
December. Negotiating with England, France and Spain.  
1809. March  
4. Inaugurated as President.  
April 19. Issues proclamation restoring intercourse with Great Britain.  
May 23. Announces to Congress repeal of British orders.  
July. Goes to Montpelier.  
July 31. Receives news of disapproval of Erskine's agreement.  
August. Returns to Washington.  
Aug. 9. Issues proclamation renewing embargo.  
Aug. 12. Returns to Montpelier.  
Oct. 1. Meets Jackson, Erskine's successor.  
Nov. 8. Dismisses Jackson.  
Nov. 29. Sends first annual message to Congress.  
1810.  
President.  
Jan. 3. Recommends increase of armament.  
May 1. Approves bill repealing non-intercourse act.  
July. At Montpelier.  
Oct. Returns to Washington.  
Oct. 27. Issues proclamation taking possession of West Florida.  
Nov. 2. Issues proclamation renewing intercourse with France.  
Dec. 5. Sends second annual message to Congress.  
1811.  
President.  
Jan. 3. Announces taking of West Florida to Congress.  
Feb. 21. Vetoes bill to incorporate Episcopal church in Alexandria.  
Feb. 28. Vetoes bill to set aside land for Baptist church.  
March. Dismisses Robert Smith as Secretary of State.  
Nov. 5. Sends third annual message to Congress.  
Dec. 23. Sends special message to Congress concerning Erie Canal.  
1812.  
President.  
March 9. Sends Henry correspondence to Congress.  
April 1. Recommends general embargo.  
May 18. Renominated for the Presidency.  
June 1. Sends war message to Congress.  
June 19. Issues proclamation of war.  
Nov. 4. Fourth annual message to Congress.  
1813.

- President.
- Feb. 24. Recommends prohibition of all trade in foreign bottoms.  
March 4. Inaugurated as President.  
May 23. Sends special message to Congress relative to Russian mediation.  
Aug. 9. Goes to Montpelier.  
Dec. 9. Sends fifth annual message to Congress.  
1814.
- President.
- May. At Montpelier.  
June 23-24. Consults cabinet about terms of peace.  
July 1. Cabinet decides on defences for Washington.  
Aug. 22. Receives word of advance of enemy on Washington.  
Aug. 23-24. With the troops.  
Aug. 24. Flees from Washington.  
Aug. 26. At Brookville, Md.  
Aug. 27. Returns to Washington.  
Aug. 29. Dismisses Armstrong.  
Sept. 1. Issues proclamation concerning capture of Washington.  
Sept. 29. Sixth annual message to Congress.  
Oct. 17. Announces that he favors United States Bank.  
1815.
- President.
- Jan. 30. Vetoes bank bill.  
Feb. 18. Sends treaty of peace to Congress.  
Dec. 5. Seventh annual message to Congress.  
1816.
- President.
- April 10. Signs bank bill.  
June-Oct. At Montpelier.  
Dec. 3. Eighth annual message to Congress.  
1817. Mar. 3. Vetoes bill for internal improvement.  
March 4. Retires from Presidency.  
Mar.-Dec. In retirement at Montpelier.  
June 27. Accepts membership in Society for Encouragement of Domestic Manufactures.  
1818. Jan.-Dec. In retirement at Montpelier.  
Jan. 28 Gives names of authors of numbers of the *Federalist*.  
May 12. Delivers address on agriculture.  
1819. Jan.-Dec. In retirement at Montpelier.  
June 15. Outlines plan for emancipation.  
Sept. 21. Discusses powers of general government and Supreme Court decision.

[\[Back to Table of Contents\]](#)

## THE WRITINGS OF JAMES MADISON.

### NEGOTIATIONS WITH MR. ROSE.

*Friday, 1<sup>st</sup> Feb<sup>Y</sup>*, 1808.

Mad. Mss. [1](#)

General object of interview.

Explain causes of Proclamation—? continuation of attack—by seamen detained—officers recalled—Ships in Harbors doing illegal things.

Grounds of prelim<sup>y</sup>. 1. Disavowal by L<sup>d</sup> G. due to G. B. even if war—2. General assurance and personal conviction.

Impossible NA for means of judging for ourselves see Mr. E. Object of procl<sup>n</sup>—precaution—not merely as to the Chesapeake.

2. Errors. 1. In supposing reparation object—which an item then only—2. Precaution vs. Chesapeake.

Disavowal—due to G. B.—even if war meant—honor, interest, principle so much against her—disavowed by L<sup>d</sup> Grenville—disavowal no reparation—shews a disposition only to repair—project of expl<sup>n</sup>—particulars and contemporary acts.

Mr. Rose—suggests idea of his friendly return with rep<sup>t</sup> of the diff<sup>y</sup>.

*J. M. reports this* to P., who, on consultation on Monday, decides vs. this idea, and prefers informal disclosure by R. of atonement and repeal of procl<sup>n</sup> to be contemporary acts.

*Tuesday, Feb<sup>Y</sup>*.

J. M. states to Mr. R. objection to adjournment of subject to G. B., which Mr. Rose admits—and in conversation as *between two private* Gent<sup>n</sup> enquires whether U. S. will agree to a mutual discharge from *public ships* of all *natural-born* subjects and Citizens, it appearing to be implied that this might contribute to diminish difficulties and prepare way for something further—willing to *wait* for answer.

*Wednesday, Feb<sup>Y</sup> 3.*

Idea of Cabinet that the mutual discharge not inadmissible, if extended to Merchant Vessels; considering the advantage to naturalized subjects, of being kept out of danger from being taken into the jurisdiction of their former Sovereign; and that Mr. R. be sounded as to his powers and dispositions.

### ***Thursday, Feb<sup>Y</sup> 4.***

Conversation of J. M. with Mr. Rose—explained himself on the subject of Tuesday's conversation, by signifying that his suggestion was a hasty thought, and that it was most consonant to his situation to limit the enquiry to the case of deserting subjects natural born. He was told this was already provided for by the rules prescribed to our Naval Commanders. Occasion was taken to express the desire of the U. States to remove all causes of danger to the harmony, &c., as well as that exemplified in affair of Chesapeake, which was evidently of a nature not likely to recur after disavowal, &c. He did not open himself as to any thing beyond the limit to which he reduced the enquiry, acquiescing generally in the desirableness of a general adjustment, &c. The objections to the delay of seeking further instructions, &c., was dwelt on by both, and ended in a frank and direct suggestion by J. M. to let the satisfaction, acceptance, and recall of proclamation, be executed on same day, and so as not to shew on the face of the proceeding a priority, leaving this to be assumed respectively, as might be agreeable. He, Mr. Rose, would take into consideration with best wishes, but was not sure that his instructions could bend to it. He held out the idea of exhibiting without editing the revoking proclamation, as an expedient to save him. He was told nothing would be admitted that would expose the Executive to appearance of having yielded to his preliminary; and it was remarked that Mr. Canning, if he had not supposed the Proclamation to be a retaliation, and that the aggression had been *discontinued*, which could not be during the detention of the men, would have approved this course at least. Mr. Rose glanced at idea of disclosing his terms, &c., through Mr. Erskine and Mr. Rob<sup>t</sup> Smith. He went away under an arrangement for another interview to-morrow, 12 o'clock.

### ***Feb<sup>Y</sup> 5Th.***

Conversation.

Mr. Rose appeared to have taken a view of the proposed contemporary signing and adjustment of the Proclamation, which required him to decline it definitely. On my restating it, he resumed the conversation, and agreed to see me in the evening at my house, in order to hold frank and informal communications and explanations.

### ***Evening Of Feb<sup>Y</sup> 5.***

He brought Mr. Erskine with him. The conversation was free. The tenor of a suitable proclamation disclosed, and the terms he meant to offer, viz: recall of Admiral Berkley, restoration of [the?] three men; and provision for families of the killed and wounded. The idea of restoration to the *same ship* was stated to him, which he seemed willing to favor; also punishment of Berkley, which he said would be difficult by his co-officers, and be in the result, perhaps, an obstacle to a permanent exclusion from actual employment. Agreed to see one another at 1 o'clock to-morrow, at office of State.



***Friday, Feb<sup>Y</sup> 6.***

Conversation.

Mr. Rose starts the idea of a disavowal on our part of conduct of Agents, &c., in encouraging and not discharging deserters—*natural-born* subjects. This was combated as going out of the case of the Chesapeake and leading to other subjects of complaint; and particularly as justifying a demand of British disavowal of—&c., &c. The difficulty, also, as to natural born, was stated, in cases of naturalization. He was reminded, too, that orders had been issued and circulated to officers against recruiting deserters, &c., which was amply sufficient. He retired under doubts as to the possibility of his satisfying his instructions without obtaining this point.

Monday, Feb<sup>Y</sup> 8th, appointed to meet again.

***Monday, Feb<sup>Y</sup> 8.***

Instead of the expected matter, Mr. Rose very soon introduced, as a point enjoined in his instructions, the necessity of some disavowal on the part of the U. States as to the conduct of their agents in encouraging, harbouring, and retaining, deserters, *natural-born* subjects of H. B. M.; as what had preceded the affair of the Chesapeake, and was but a reasonable satisfaction to his Majesty preparatory to the adjustment intended by him.

As this was a new and unlooked-for preliminary ultimatum, though it had been glanced at in a former conversation, when it was supposed to have been answered in a way putting it entirely aside, it was proposed to him to reduce it to paper, so that there might be no possible misconception, with a general intimation only that it would not be admitted into the adjustment, and that it would be impossible for the U. States to view natural-born subjects of G. Britain, who had been naturalized here, in any other light than as American Citizens whilst within American jurisdiction. Mr. Rose agreed to see me the next day, (Tuesday, Feb<sup>Y</sup> 9,) with his idea put into writing, to be informally read to me.

***Tuesday, Feb<sup>Y</sup> 9, 1808.***

Mr. Rose read from his paper, in substance, that with a view to remove impressions made by recent events on the mind of H. B. M., the U. States should disavow the conduct of their Agents in encouraging, harbouring, and *not discharging* natural-born deserters—a case different from not *surrendering*, which was not claimed.

He was reminded of the difficulty as to natural-born subjects naturalized by the U. States; that if impressions were to be removed on one side, so on the other, where they were much greater, from the course of indignities offered by British Ships in our harbours and on our coasts; that the proposal was not reciprocal in itself—a thing essential to the honor of the U. States, [here he remarked that this had not escaped him, reading a reservation to the U. States of their right to claim from G. Britain a like

disavowal; to which the reply was, that there was no reciprocity between an actual disavowal and a right to ask a disavowal;] and, finally, that it could not enter into the Chesapeake business, unless other things as much connected with it were also to be admitted.

Being myself much indisposed, the conversation was soon ended, with an understanding that I would take the orders of the President, and see him as soon as convenient.

***Sunday, Feb<sup>Y</sup> 14.***

This was the earliest that I had health enough to see Mr. Rose, who was invited to call at my house for the purpose. I preferred the irregularity, both as to time and place, to a delay, which was becoming very disagreeable on all sides, and was rendered to him, as he had indicated, peculiarly distressing, by his having two British Packets detained till he could say something on the subject of his mission.

Having previously obtained the sanction of the President, I repeated the insuperable objections to his proposal, (adding, in fact, that there had been no refusal to discharge deserters, the demand being always to surrender,) and, in place, suggested a mutual disavowal—1. As to receiving deserters into naval service. 2<sup>d</sup>. As to claiming a surrender of them. This would agree with the principles now maintained on both sides, would be reciprocal, and might be useful. He admitted that the surrender was not claimed, but that his instructions did not authorise any such general or separate arrangements being restricted to the case of the Chesapeake.

It was observed that this was at least as much connected with that as the case of the discharge; and it was signified that a mutual, general, and separate disavowal of this case alone would not be inadmissible, with a saving, by the form of expression, of the principle as to naturalized Citizens. This also was declined, as not within his instructions.

He was finally told, as had been on former occasions intimated, that it would be easy to write a letter on some pretext to Mr. Erskine, explaining the principles of the U. States as to Deserters; that if mere assurance of these principles was the object of his Government, that object would thus be attained as well as in his mode; if not that, but an expiatory act on the part of the U. States was the object, it was absolutely inadmissible.

He dwelt with expressions of great regret on the situation in which he found himself, tied down, as he was, by his instructions, and knowing, as he did, the impressions of his Government. To all which it was simply remarked that the attack on the Chesapeake was a detached, flagrant insult to the flag and Sovereignty of the U. States on the high seas, in face of the world; that the plain course was to repair that, according to usage public and private, and to the examples of his own Government; that reparation made, the way was open to any demands of redress on other points, if any existed, where it might be due to the redressing party, and a general example was the best mode of securing liberal satisfaction.

In course of this conversation, he mentioned, with an apology for omitting it before when he intended to do it, that a disavowal of Commodore Barron's denial that he had such men on board as were required made a part of his instructions.

After remarking that it was impossible in any view that that circumstance could be admitted, and that it was merely noticed for the sake of truth, which could never do harm where the manner did not imply something improper, I told him that Barron was responsible to his Government for his conduct in that instance; that his reply was wholly unbecoming his station; that it was probable, however, that he said what he believed to be true; and, indeed, was true, the demand of Humphreys being for deserters from other ships than that to which the men taken from the Chesapeake belonged. This he admitted, except as to one Jenkins Radford, stated to be a deserter from the Halifax. I told him that, even as to him, we had the authority of the British Consul at Norfolk that he was a deserter from a Merchantman. This he seemed not to be aware of, and said that if the fact was wrong, he could not found a proceeding on it. He retired with an intimation that he would revolve the subject and his instructions still further, and see me when I pleased to intimate, which was promised as soon as health permitted. His manner and concluding remarks left it uncertain what determination he would bring to the interview.

### ***Tuesday, Feb<sup>Y</sup> 16.***

Conversation.

Mr. Rose, in consequence of an offer to see him to-day, called about 2 o'clock. It appeared that he did not consider himself authorized to accede to either proposal for getting over the difficulty respecting the disavowal required from the U. States of the conduct of our agents in harbouring, encouraging, and not discharging deserters. He was reminded that this disavowal, as stated by him, was as much a departure from the specific case of the Chesapeake as the mutual disavowals proposed by me, being general as to deserters, and not restricted to those entering on board the Chesapeake. He seemed sensible of this, and manifested a disposition to make it rather more limited; but proposed nothing; nor did he revive the subject of disavowing Barron's answer; seeming to be prepared for abandoning further informal conversations, and leaving me to answer in form his note of the 26th ult. This was promised as soon as my health, and some urgent business, [meaning the despatch of the vessel waiting at New York to carry letters, &c., to France and G. Britain,] would permit; it being remarked to him that the hopes that an answer would have been rendered unnecessary had prevented me from particularly revolving even a suitable answer.

### ***Monday, Feb<sup>Y</sup> 22.***

M<sup>r</sup>. Rose having signified by a note last evening, a wish for an interview to-day, 2 oc. was named when he called for the purpose.

His object appeared to be to express his hopes that a failure of our negotiations, might be still consistent with a future adjustment, either here or in Eng<sup>d</sup> and to speak of the difficulty under which he should find himself in making known to his Gov<sup>t</sup> the points

on which the failure w<sup>d</sup> have taken place; as he could not give this explanation, after a refusal of his preliminary, with<sup>t</sup> showing that he had departed from his instructions. With these remarks he mingled expressions of much solicitude that no unfavorable inferences might be drawn from the obstacles arising from his instructions, and that he might be instrumental in promoting a removal of them, which he thought he could best do by personal communications at London.

It was observed to him, that without meaning to express more than an abstract opinion, it w<sup>d</sup> seem not difficult to let his Gov<sup>t</sup> understand the points on which the business failed, by intimating that there were sufficient indications that if the preliminary had been complied with or got over, the views entertained by the Gov<sup>t</sup> on those points w<sup>d</sup> have necessarily produced a failure. It was intimated also that the place most proper in itself for adjusting the matter was *here*, not in *G. B.* and that the propriety was strengthened by what had passed. If, in the first instance, London had been proposed, it was with a view to hasten the result.

Mutual observations were made pointing out the inconveniences of referring the subject to a settlement under new instructions: His attention was drawn to the experiments which had been made to avoid delay, and it was repeated to him that there was still a willingness to write a letter detached from & subject to an acceptance of the reparation, in which the principles & practice of the U. S. in the case of Deserters could be stated, with the addition now authorized, that an order had issued for discharging from the *pub.* ships all British subjects. It was remarked that could not be mentioned but in a certain way, such as such a letter w<sup>d</sup> admit, because the order was not the result of either legal obligation or of example; his Gov<sup>t</sup> instantly refusing to discharge Americans voluntarily accepting a bounty.

He manifested satisfaction at this course, & signified that it could not fail to make agreeable impressions & promote salutary objects. He was reminded that this was more than his instructions aimed at: and it was for him to decide how far it w<sup>d</sup> balance the objections to a departure from the letter of them.

He professed to be gratified with the spirit of the conversation but without any apparent change in the course he was to pursue, and retired with an understanding, that I w<sup>d</sup> see him at any time he might wish to resume it.

### ***Feby 25.***

M<sup>t</sup> Rose having yesterday asked an interview was afforded one to-day. He seemed to have in view to prevent any expectation that he would instead of the disavowal required as to deserters, accept the information proposed to be given of the principles & policy of this Gov<sup>t</sup> on that subject, by suggesting, that as this course would be inconsistent with his powers, he should not act with candor towards us in so doing. He re-iterated his regret that his powers were so limited, and his belief that the orders issued to discharge all British subjects from our public ships, would make great impression on his Gov<sup>t</sup>. Little was said in reply, further than repeating the inconveniences resulting from such an issue to his mission, and remarking on our disappo<sup>t</sup> at the tenor of his instructions, and the length we had prevailed on ourselves

to go in order to surmount the difficulties they occasioned. It was intimated as one of the inconvenient effects of the actual posture of the business, that the President was sending a message to Cong<sup>s</sup> recommending an extension of precautionary measures necessarily attended with expence &c.

***Points For Mr. Rose. Wednesday, [Feb<sup>Y</sup> 24.]***

Evils of degradation mutually to be shunned NA after acceding to ye mode of separating cases of impressment & of the Chesapeake, the demand of such preliminary the less looked for, so categorical & precise.

The recall of Procl<sup>n</sup> founded on disavowal &c &c.

What is disavowed?—An act of unauthorised officer—and principle of d<sup>o</sup>, an avowal never presumed—but the contrary.

What to be recalled? Act of Gov<sup>t</sup> itself, an act not of aggression or of reparation; but of precaution—and referring to wrongs prior to & wholly distinct from the affair of Chesapeake.

To revoke the proclamation in face of the world, und<sup>f</sup> such circumstances, would acknowledge it to be aggressive & w<sup>d</sup> originate a reparation on our part instead of receiving one—

A degradation in fact the worst of all evils, and which a nation determined never to be degraded, could never suffer to be imposed on it.

Do not wish to require cannot therefore perform, degrading conditions.

Unless therefore some new turn to the subject must proceed from oral to written communications. If a precise & categorical preliminary shuts the door ag<sup>st</sup> all chance and prospect, delay is fruitless.

But if door not shut, it will be agreeable to find that the consequences of a failure, are not suspended on an ultimatum of such a character.

The revocation of the Procl<sup>n</sup> impossible, with<sup>t</sup> extending the disavowal, and assurances, to the several cases which led to it and referred to in it, & many of them long lying before your Gov<sup>t</sup> without notice or promise of future security to the U. S. [1](#)

Tho' the time unexpected by the P—, no purpose, by hasty issue on a particular point not perfectly understood, to preclude amicable explanations, and which might possibly lead to a favorable result.

General and mutual reasons vs. war—interest, harmony &c., &c.

With this view, U. S. desired to settle everything.

Union of Impressments and Chesapeake favorable thereto, and facilitates latter.

Separation yielded, to the views taken of the subject by G. B. and to his Mission.

Surprize at; at splitting the case of Chesapeake—entirely statu quo. Talk NA  
Proclamation—precaution vs. other wrongs—Bradly—Whitby—Love—French ship  
burnt—Doug<sup>l</sup> seiz. of Norfk—Continental disobedience to Procl<sup>n</sup>.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State, February 8th, 1808.

D. Of S. Mss.  
Instr.

Sir,

Your letters and communications by Dr. Bullus were duly delivered on the NA day of NA. The same conveyance brought a copy of the sentence pronounced by the French prize Court in the case of the Horizon, giving a judicial effect to the Decree of Nov. 21, 1806, as expounded in the answer of Mr. Champagny to your letter of the NA.

Whilst the French Government did not avow or enforce a meaning of the Decree of Nov. 1806, in relation to the United States, extending its purview beyond the municipal limits, it could not in strictness be regarded as an infraction either of our neutral or conventional rights; and consequently did not authorize more than a demand of seasonable explanations of its doubtful import, or friendly expostulations with respect to the rigor and suddenness of its innovations.

The case is now essentially changed. A construction of the Decree is avowed and executed which violates as well the positive stipulations of the Convention of Sep. 30, 1800, as the incontestable principles of public law. And the President charges you to superadd, to whatever representations you may have previously made, a formal remonstrance in such terms as may be best calculated either to obtain a recall of the illegal measure, so far as it relates to the United States, or to have the effect of leaving in full force all the rights accruing to them from a failure to do so.

That the execution of local laws against foreign Nations on the high seas is a violation of the rights of the former and the freedom of the latter, will probably not be questioned. A contrary principle would in fact imply the same exclusive dominion over the entire ocean as is enjoyed within the limits of the local sovereignty, and a degradation of every other Nation from its common rights and equal rank.

If it be contended that the Decree, as a retaliation on the other belligerent, at the expense of neutral nations; is justified by a culpable acquiescence in the prior measures of that belligerent operating thro' neutrals, you will be able to deny such acquiescence, and to urge moreover that, on every supposition, the retaliating measure could not be justly enforced in relation to neutrals without allowing them at least a reasonable time for chusing between due measures against the prior wrong and an acquiescence in both. The copy of the representations to the British Government thro' its Minister here, on the subject of its orders of Jany. 1807, will at once disprove an acquiescence on the part of the United States, and explain the grounds on which the extension of the French Decree of Novr. 1806 is an object of just remonstrance.

The conduct of the French Government in giving this extended operation to its decree, and indeed in issuing one with such an apparent or doubtful import against the rights of the sea, is the more extraordinary inasmuch as the inability to enforce it on that

element exhibited the measure in the light of an empty menace, at the same time that it afforded pretexts to her enemy for several retaliations for which ample means are found in her naval superiority.

The accumulated dangers to which the illegal proceedings of the belligerent nations have subjected the commerce and navigation of the United States, have at length induced Congress to resort to an Embargo on our own vessels, as a measure best fitted for the crisis, being an effectual security for our mercantile property and mariners now at home and daily arriving, and at the same time neither a measure, nor just cause of war. Copies of this Act were soon after its passage, transmitted to Mr. Pinkney, with an authority to assure the British Government that it was to be viewed in this light; and that it was not meant to be the slightest impediment to amicable negotiations with foreign Governments. He was requested to avail himself of an opportunity of communicating to you and Mr. Erving this view of the subject, and I hope that you will have been thence enabled to present it to the French Government. Not relying however on that indirect opportunity, I send by this another copy of the Act, with an instruction from the President, that you make it the subject of such explanations as will guard against any misconception of the policy which led to it. It is strictly a measure of precaution required by the dangers incident to external commerce, and being indiscriminate in its terms and operation toward all nations, can give no just offence to any. The duration of the Act is not fixed by itself, and will consequently depend on a continuance or cessation of its causes in a degree sufficient in the judgment of the Legislature to induce or forbid its repeal. It may be hoped that the inconveniences felt from it by the belligerent nations may lead to a change of the conduct which imposed the inconveniences of it on ourselves. France herself will be a sufferer, and some of her allies far more so. It will be very agreeable to find in that consideration, and still more in her sense of justice, a sufficient motive to an early manifestation of the respect due to our commercial rights. The example would be worthy of the professions which she makes to the world on this subject.

February 18th. Since the above was written, I have been under a degree of indisposition which has suspended the proposed continuation of it, and which now will oblige me to be very brief; the more so, as the vessel has been some days detained, which was engaged for the special purpose of conveying public dispatches and private letters to Europe.

The delay has enabled me to inform you that Mr. Erskine a few days ago communicated by instructions from his government its late Decrees of Novr. 11, and those forming a sequel to them. The communication was accompanied with assurances that much regret was felt by his Britannic Majesty at the necessity which the conduct of his enemy had created for measures so embarrassing to neutral commerce, and that His Majesty would readily follow an example of relinquishing such a course, or even of making relaxations *pari passu* with his enemy.

Whether these intimations have any reference to the distinction between such parts of the French decree as operate municipally on shore, and such as operating on the high seas, violate the rights of neutrals, or to a distinction between the former restriction and the late extension of the Decree with respect to the United States, Mr. Erskine did



not seem authorized to say. The probability is that neither of these distinctions entered into the views of the British Cabinet. But it is certainly neither less the duty nor the true policy of the Emperor of the French so to vary his decree as to make it consistent with the rights of neutrals and the freedom of the seas, and particularly with his positive stipulations to the United States. This may be the more reasonably expected as nothing can be more clear, as has been already observed, than that the effect of the Decree, as far as it can be carried into effect, would not be sensibly diminished, by abolishing its operation beyond the limits of the territorial Sovereignty.

In remonstrating against the injustice and illegality of the French Decree, I am aware that you may be reminded of antecedent injuries to France and her allies thro' British violations of neutral commerce. The fact cannot be denied, and may be urged with great force, in our remonstrances against the orders to which Great Britain has given a retaliating character; since the French Decree might on the same ground, be pronounced a retaliation on the preceding conduct of Great Britain. But ought the legitimate commerce of neutrals to be thus the victim and the sport of belligerents contesting with each other the priority of their destructive innovations; and without leaving, either of them, to neutrals, even the opportunity or the time for disproving that culpable acquiescence which is made the pretext by both for the wrongs done to them? And I must repeat that apart from all questions of this nature the French Decree, or at least the illegal extensions of it to the United States remain chargeable with all the impolicy which has been pointed out.

I find by accounts from Hamburgh, Bremen, Holland, and Leghorn, that the trade and property of our Citizens have been much vexed by regulations subaltern to those of the Original Decree of Novr. 21st, 1806. How far the complaints are founded on proceedings violating our public rights, or on such as are unfriendly and inequitable towards our Citizens who have placed their property within those jurisdictions, you will be able to decide better than we can do at this distance; and the President refers to your own judgment the kind of representation to the French Government which those and other analagous cases may require.

Mr. Rose charged with a special mission to the United States for adjusting and making the satisfaction required for the outrage on the Chesapeake Frigate, has been about a month here. He opened his mission with a demand, preliminary to the negotiation, which was inadmissible. Much time and pains have been spent in informal experiments to overcome that difficulty at the threshold, and others known to lie within the negotiation itself. These experiments are giving way to formal and direct discussions, which do not under the instructions by which he professes to be restricted, promise any definitive and satisfactory result.

It was my purpose to have given greater extent to this communication, and particularly to have touched some other points in your last letters. But I find my health scarcely equal to the task already performed; and I am unwilling to prolong the detention of the vessel which has been ready for some time to depart with the numerous letters from our merchants to their correspondents, for carrying which she was in great measure employed. As she will return to L'Orient from Falmouth, where she will wait 8 or 10 days only, in order to bring back Lieut. Lewis the bearer of this, I

hope you will dispatch him in due time, and that he will bring from you communications equally ample and agreeable.

The inclosed copy of a letter from the Secretary of War to me, together with the papers spoken of in it, will enable you to reply to the Minister of War in answer to his letter of the 15th Sept. last, a copy of which you sent me.

I Have The Honor To Be &C.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY.

Department of State, February 19, 1808.

D. Of S. Mss.  
Instr.

Sir,

A vessel having been engaged to carry from the Port of New York public dispatches and mercantile letters to Europe, I avail myself of the opportunity of forwarding you a series of Gazettes which contain the proceedings of Congress and such current information, as will give you a view of our internal affairs. They will be put, with this letter, into the hands of Mr. Nourse a passenger in the Dispatch vessel, who will deliver them at London; and as the vessel, which will have previously touched at L'Orient, will after waiting 10 or 12 days at Falmouth, return to that port and thence to the United States, you will have an opportunity of sending thither any communications you may wish to make to Paris, as well as of transmitting to your Government such as may follow up your correspondence which at the present period will be the more acceptable, the more it be frequent and full.

My last which was committed to the British packet inclosed a copy of the Act of Embargo, and explained the policy of the measure. Among the considerations which inforded it was the probability of such decrees as were issued by the British Government on the 11th Novr, the language of the British Gazettes with other indications, having left little doubt that such were meditated. The appearance of these decrees, has had much effect in reconciling all descriptions among us to the Embargo, and in fixing in the friends of the measure, their attachment to its provident guardianship of our maritime interests.

Mr. Erskine communicated a few days ago, the several late decrees of his Government with expressions of the regret felt by His Britannic Majesty at the necessity imposed on him, for such an interference with neutral commerce, and assurances that his Majesty would readily follow the example, in case the Berlin decree should be rescinded, or would proceed *pari passu* with France in relaxing the rigor of their measures. Mr. Erskine was asked whether his Government distinguished between the operation of the French Decree municipally on land, and its operation on the high seas. On this point he was unable to answer; as he also was to an enquiry whether the late British decree had reference to the late extension of the French decree, with respect to the U. States. He seemed also, as is perhaps the case with his Government, to have taken very little into consideration the violations of neutral commerce, and thro' them, the vast injury to France, antecedent to the Berlin decree. It is probable that something further is to pass between us on the subject.

Mr. Rose has now been about a month in this City. He opened his mission with a demand of the repeal of the President's proclamation of July 2d, as an *indispensable preliminary* to the *negotiation* of the adjustment to which his Mission related. The time has hitherto been chiefly spent in informal experiments to overcome this difficulty at the threshold, which have led to a glimpse of other prerequisites to the

success of the negotiation as little looked for as they are inadmissible on the part of the United States. At present it would seem that the informal communications are at an end, and that a formal note given in by Mr. Rose sometime ago, stating his preliminary demand, is to receive a formal and written answer. The particular turn which the correspondence may take in its close, I am not yet authorized to state to you.

It was my purpose to have given greater extent to this letter; but I have been till within a day or two for nearly two weeks confined by an indisposition which unfitted me for business of any sort. And even now I sacrifice the consideration of health, to my anxiety to avoid a longer detention of the dispatch vessel which has been some time waiting for this, and for the communications destined to Genl. Armstrong.

I have the honor to be &c.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY.

Department of State, March 8th, 1808.

D. Of S. Mss.  
Instr.

Sir,

Having just learnt that the present Mail will arrive at New York in time for the British packet, I avail myself of the opportunity of forwarding your Commission and letters of credence, as successor to Mr. Monroe, in the Legation at London.

Since my last which went by Mr. Nourse in a dispatch vessel bound first to L'Orient and then to Falmouth, I have received your communications of the 23d Nov. and NA of Decr. These with a representation from Genl. Armstrong to the French Government on the subject of the Decree of Berlin as expounded and enforced in the case of the ship Horizon, were thought by the President to throw so much light on the course likely to be pursued by Great Britain and France in relation to the United States, that he had the documents confidentially laid before Congress. By an inadvertence, the documents were read in the Senate with unshut doors; and one of the family of Mr. Rose being, as is said, present, it is not improbable that your statement of the conversations with Mr. Canning will be reported to him; and possibly with such errors, as are incident to that mode of obtaining information. I mention this circumstance, that in case you should perceive any misimpression to have been made, you may take occasion to correct them.

The Embargo continues to take deeper root in the public sentiment, and in the measures of Congress. Several supplemental Acts for enforcing it have passed, and another is on its passage, for the same purpose. The modifications of the British orders, admitting a trade with her enemies in her own behalf, and subjecting neutrals to special licenses and to tribute, prove that retaliation is a cover for usurpation and monopoly and awaken feelings, sometimes stronger than interest itself, in stimulating perseverance in a remedial system.

Mr. Erskine has made a written communication on the subject of the British orders. I shall answer him as soon as the urgent business on hand will permit.

Mr. Rose will probably return in a short time, the Frigate in which he came being kept in waiting for him. His mission has not been successful, except in obtaining a separation of the general subject of impressments from the case of the Chesapeake. The way being opened to him by an acquiescence of the President in the mode of discussing the latter insisted on by the British Government, Mr. Rose disclosed the preliminary categorically required by his instructions, that the proclamation of July should be annulled, as the only condition on which he could "enter upon any negotiation for the adjustment with which he was charged." After various informal conferences and experiments, which did not lessen the apprehension from passages in Mr. Canning's letter to Mr. Monroe (interpreted as the passage relating to the proclamation was interpreted by the preliminary) that if this difficulty at the threshold

could have been parried, others of an insuperable nature would have grown out of the negotiation itself, the business has been put into the form of a regular correspondence. My answer to Mr. Rose's first communication was sent to him on the fifth instant. As soon as his reply is received, it is probable that the whole will be laid before Congress. And as Mr. Rose will, it is understood, depart immediately after the correspondence is closed, I shall have an opportunity by him of transmitting to you copies of it. In the mean time I can only observe that the operative impressions to be made on Congress by the correspondence will necessarily depend much on the tenor and tone of Mr. Rose's concluding letter, which will probably be pacific and even conciliatory.

With sentiments of high respect &c.

[\[Back to Table of Contents\]](#)

TO WILLIAM PINKNEY.

Department of State, April 4th, 1808.

D. Of S. Mss.  
Instr.

Sir,

My last letter was of March 22d and went under the care of Mr. Rose. I now forward printed copies of the correspondence with him on the subject of his Mission, and of the antecedent documents relating to the case of the Chesapeake. As soon as the voluminous residue of the communications made to Congress issues from the press, it shall also be forwarded. You will find that they include certain documents relating to France which were thought proper for the knowledge of Congress at the present Crisis.

To these communications I add copies of Mr. Erskine's letter to me on the subject of the British decrees of Novr. last, and of my answer. And that you may have a view of the ground which has been taken with respect to the French decree of Novr. 1806, and to the judicial exposition in the case of the Horizon giving it an illegal operation against the United States, I inclose copies of two letters to Genl. Armstrong on those subjects.

The President made to Congress a few days ago other communications relating to the present crisis with Great Britain and France, among which were Mr. Erskine's letter now inclosed, and a letter from Mr. Champagny to Genl. Armstrong, explaining the course meditated by the French Government with respect to the commerce of the U. States. These being excepted from the confidential character attached to the others have been published, and will be found among the printed inclosures. Your letter of Feby. 26, was included in the communication to Congress but not in the exception.

The conduct of the two great contending nations towards this Country as will now appear to it, and to the world, fully displays their mutual efforts to draw the United States into a war with their adversary. The efforts on both sides, are too little disguised to be worthy the discernment of either, and are addressed moreover, to motives which prove great ignorance of the character of the United States, and indeed of human nature.

From the posture in which Mr. Rose's final reply to the compromise proposed to him, placed the question of adjustment in the case of the Chesapeake, it remains with the British Government to resume it if adjustment be their object. Whether a tender of reparation will be made here, or to you, will also lie on that side. It will certainly be most becoming that Government under all circumstances to make the reparation here and this course might of right be insisted on by this Government. The President nevertheless, in the liberal spirit which always governs him, authorizes you to accept the reparation provided it be tendered spontaneously, be charged with no condition, unless it be that on the receipt of the Act of reparation here the proclamation of July 2nd shall be revoked; and provided the reparation shall add to the disavowal of the

attack on the Chesapeake, an express engagement that the seamen retained shall be immediately restored, and that the guilty officer shall experience an exemplary punishment. The reparation will be the more satisfactory, and not exceed a just expectation if the restoration of the seamen be made to the very ship from which they were wrested and if provision be made for the wounded survivors, and for the families of those who lost their lives by the attack.

I must repeat however that it is considered entirely proper that the reparation should be offered here, rather than in London, and it is only in the event of a decided repugnance in the British Government to make it thro' a functionary here, that you are to accept it there.

The answer to Mr. Erskine's letter on the British orders will furnish the grounds to be taken in your communications. If the Cabinet can be brought to view the orders in their true light a revocation of the whole of them cannot fail to take place, unless they mean to violate every maxim of justice, or are fixed in hostile purposes against the United States. In not regarding the orders indeed as Acts of hostility and in trusting for redress to the motives and means, to which they have appealed, the United States have given the most signal proofs of their love of peace, and of their desire to avoid an interruption of it with the British Nation.

Still, it is to be understood, that whilst the insult offered in the attack on the American frigate remains unexpiated, you are not to pledge or commit your Government to consider a recall of the orders as a ground on which a removal of the existing restrictions on the commerce of the United States with Great Britain, may be justly expected.

The two letters to Genl. Armstrong of 22nd May 1807, and Feby. 8th, 1808, are proofs of the sincerity and impartiality with which the President has proceeded in relation to the belligerent parties, and may perhaps assist you in repressing unjust suspicions imbibed by the British Cabinet. It would be happy for all parties, the belligerent as well as the U. States, if truth could, in this case, be made to prevail; and if the retaliating rivalship of the former against the latter could be converted into an emulation, as politic as it would be magnanimous in both, to take the lead in a fair, lawful, and conciliatory course towards a nation which has done no wrong to either. Should the experiment be made on either side it would probably be followed on the other; and it could never happen that the side first doing justice, would suffer on that account.

In the present state of our relations to Great Britain it would be premature to mark out the course to be pursued with respect to further negotiations on other topics than those above noticed. You are authorized however to continue your interpositions in behalf of our impressed or *detained* seamen, and in the event of a repeal of the British orders, and satisfactory pledges for repairing the aggression on the Chesapeake, to enter into informal arrangements for abolishing impressments altogether and mutually discontinuing to receive the seamen of each other into either military or merchant service, conformably to the instructions on this point transmitted by Mr. Purviance.



You will find by a passage in Mr. Rose's reply of March 17 that the British Government does not maintain the principle that the obligation of the United States extends beyond the *discharge* of deserters from their public service; and by an order of the Navy Department here, already carried into execution, of which a copy is inclosed, that it has lately been decided that no foreign seamen, whether deserters or not, shall serve on board our ships of war. The principles respectively manifested by these documents, ought to facilitate such an adjustment as is contended for by the United States.

It cannot yet be said how much longer the Session of Congress will be protracted. The two provisions of most importance remaining to be decided on are the augmentation of the Army, and the definition of the case or cases in which a repeal or relaxation of the Embargo, may, during a recess, be committed to the Executive.

I Have The Honor To Be &C.

[\[Back to Table of Contents\]](#)

TO WILLIAM PINKNEY.

Department of State, April 30, 1808.

D. Of S. Mss.  
Instr.

Sir,

My last was of the 4th inst, and went by a British packet from New York. I now forward a copy of it.

Congress ended their Session on the night of the 23 inst. The series of newspapers herewith sent affords a view of their proceedings subsequent to the communications last made to you. Some other points are included which throw light on the workings of public opinion and the State of public affairs.

You will find that the critical posture of our foreign relations has produced provisions of different kinds for our greater security; and particularly that no pains have been spared to stop every leak by which the effect of the Embargo laws might be diminished. I refer you also to the report made to the Senate, by a committee on the documents relating to the affair of the Chesapeake and on the letters of Mr. Champagny and Mr. Erskine; and indicating the spirit which may be expected to influence the future policy of the Country, if kept under the excitement resulting from the system now pursued against it.

You will observe at the same time, that whilst a determination is sufficiently evinced against a dishonorable acquiescence in the despotic Edicts enforced on the high seas, the United States are ready to resume their export trade as soon as the aggressions on it shall cease, and that in a hope that this might happen during the recess of Congress, the President is authorized, in such an event, to suspend in whole, or in part, the several Embargo laws.

The conditions on which the authority is to be exercised appeal equally to the justice and policy of the two great belligerent powers which are now emulating each other in a violation of both. The President counts on your endeavors to give to this appeal all the effect possible with the British Government. Genl. Armstrong will be doing the same with that of France. The relation in which a revocation of its unjust decrees by either, will place the United States to the other is obvious; and ought to be a motive to the measure, proportioned to the desire which has been manifested by each to produce collision between the United States and its adversary; and which must be equally felt by each, to avoid one with itself.

Should the French Government revoke so much of its decrees as violate our neutral rights, or give explanations and assurances having the like effect, and entitling it therefore to a removal of the Embargo as it applies to France, it will be impossible to view a perseverance of Great Britain in her retaliating orders, in any other light than that of war without even the pretext now assumed by her.

In order to entitle the British Government to a discontinuance of the Embargo as it applies to Great Britain, it is evident that all its decrees, as well those of Jany. 1807 as of Nov. 1807, ought to be rescinded as they apply to the United States, and this is the rather to be looked for, from the present administration, as it has so strenuously contended that the decrees of both dates were founded on the same principles and directed to the same object.

Should the British Government take this course you may authorize an expectation that the President will, within a reasonable time, give effect to the authority vested in him on the subject of the Embargo laws. Should the orders be rescinded in part only it must be left to his free judgment to decide on the case. In either event you will lose no time in transmitting the information to this Department and to Genl. Armstrong; and particularly in the event of such a course being taken by the British Government as will render a suspension of the Embargo certain or probable, it will be proper for you to make the communication by a Courier to Genl. Armstrong, to whom a correspondent instruction will be given, and to provide a special conveyance for it hither unless British arrangements shall present an opportunity equally certain and expeditious.

The suspension of the non-importation Act having expired without any renewal of the suspending power to the President, that Act is now and must continue in operation. The Senate proposed during the last days of the Session to revest such a power in the President, as a provision for a state of things which might warrant the exercise of it. In the House of Representatives the Bill was rejected by a large majority. The debate will best explain the grounds of the rejection. Whilst the wrongs which led to that measure continue, it is probable that the measure will be continued; especially as the idea gains force daily, that we are less unripe for manufacturing establishments than has been supposed, and that we are admonished by experience to lessen our dependence for supplies on foreign nations. There is no longer any ground to apprehend that this Act can be an obstacle to adjustments on other subjects; the right of the United States to make such regulations at any time being admitted, and the justice of them being derived from commercial discriminations actually enforced by Great Britain against the United States.

From the notification of Jany. communicated in your letter of Jany. 8th, it seems that every possible variety of blockade legal and illegal is to be exhausted against our commerce. I beg leave to refer you to my letter of the 3d June 1806 to your predecessor and its inclosure for the kind of answer suitable to such notifications.

Among the documents forwarded, are a few printed copies of the communications made to Congress as stated in my last.

The letters received from you and not yet acknowledged are under dates of the 8th Jany. and 2d February.

I Have The Honor To Be &C.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State, May 2nd, 1808.

D. Of S. Mss.  
Instr.

Sir,

Since my last letter of which Lt. Lewis was the bearer, I have received your several letters of 27 Decr, 22 Jany, 15 & 17 February, with their respective inclosures.

That of the 15th Jany. from Mr. Champagny to you has, as you will see by the papers herewith sent, produced all the sensations here, which the spirit and stile of it were calculated to excite in minds alive to the interests and honor of the nation. To present to the United States the alternative of bending to the views of France against her enemy, or of incurring a confiscation of all the property of their Citizens carried into the French prize Courts, implied that they were susceptible of impressions by which no independent and honorable nation can be guided; and to prejudge and pronounce for them the effect which the conduct of another nation ought to have on their Councils and course of proceeding, had the air at least of an assumed authority, not less irritating to the public feelings. In these lights the President makes it your duty to present to the French Government the contents of Mr. Champagny's letter; taking care, as your discretion will doubtless suggest, that whilst you make that Government sensible of the offensive tone employed you leave the way open for friendly and respectful explanations if there be a disposition to offer them; and for a decision here on any reply which may be of a different character.

On the subject of your letter of Feby. 15th and its inclosures, the sentiments of the President prescribe that the French Government be assured of the full justice he does to the manner in which the wishes of the Emperor are disclosed for an accession of the U. States to the War against England, as an inducement to which his interposition would be employed with Spain to obtain for them the Floridas. But that the United States having chosen as the basis of their policy a fair and sincere neutrality among the contending powers, they are disposed to adhere to it as long as their essential interests will permit; and are more especially disinclined to become a party to the complicated and general warfare which agitates another quarter of the Globe for the purpose of obtaining a separate and particular object, however interesting to them. It may be intimated at the same time, that in the event of such a crisis as will demand from the United States a precautionary occupation of the Floridas against the hostile designs of Great Britain, it will be recollected with satisfaction that the measure had been contemplated with approbation by His Imperial Majesty.

An immediate seizure of the Floridas, according to your suggestion, would not have his approbation, or perhaps even acquiescence, as may be inferred from the final explanation of Mr. Champagny, namely that it was in the case of an attack on those provinces by Great Britain, and then for their defence only, that the march of American troops into them would not be disagreeable to the Emperor.

Congress closed their Session on the 25 ult. For a general view of their proceedings, I refer to the series of Newspapers heretofore and now forwarded, and to other prints which are added. Among their Acts of Chief importance is that which vests in the President an authority to suspend in whole or in part the Embargo laws.

The conditions on which the suspending authority is to be exercised will engage your particular attention. They appeal equally to the justice and the policy of the two great belligerent powers now emulating each other in violation of both. The President counts on your best endeavors to give to this appeal all the effect possible with the French Government. Mr. Pinkney will be doing the same with that of Great Britain. The relation in which a recall of its retaliating decrees by either power, will place the United States to the other is obvious; and ought to be a motive to the measure proportioned to the desire which has been manifested by each, to produce collisions between the U. States and its adversary: and which must be equally felt by each to avoid one with itself.

Should wiser Councils or increasing distresses induce Great Britain to revoke her impolite [impolitic?] orders against neutral commerce, and thereby prepare the way for a removal of the Embargo as it applies to her, France could not persist in the illegal part of her decrees, if she does not mean to force a contest with the United States. On the other hand should she set the example of revocation Great Britain would be obliged, either by following it, to restore to France the full benefit of neutral trade which she needs, or by persevering in her obnoxious orders after the pretext for them had ceased, to render collisions with the United States inevitable. In every point of view therefore, it is so clearly the sound policy of France to rescind so much at least of her decrees as trespass on neutral rights, and particularly to be the first in taking the retrograde step, that it cannot be unreasonable to expect that it will be immediately taken.

The repeal of her decrees is the more to be expected, above all if Great Britain should repeal or be likely to repeal hers, as the plan of the original decree at Berlin did not extend to a violation of the freedom of the seas, and was restricted to a municipal operation nearly an entire year, notwithstanding the illegal British orders of Jany, 1807; and as a return of France to that restricted scope of her plan, would so immaterially diminish its operation against the British commerce, that operation being so completely in the power of France on land, and so little in her power on the high seas.

But altho' we cannot of right demand from France more than a repeal of so much of her decrees as violate the freedom of the seas, and a great point will be gained by a repeal of that part of them, yet as it may not have the effect of inducing a repeal of the whole illegal system of the British Government which may seek pretexts; or plead a necessity for counteracting the unprecedented and formidable mode of warfare practiced against her, it will be desirable that as little room as possible should be left for this remaining danger to the tranquil enjoyment of our commercial rights.

In whatever degree the French Government may be led to change its system, you will lose no time in transmitting the information to this Department and to Mr. Pinkney,

and by hired conveyances, if necessary. A correspondent instruction is given to Mr. Pinkney.

It is of the greatest importance that you should receive from each other the earliest notice of any relaxations, as each Government is under a pledge to follow such an example by the other. And it is not of less importance that the President or Congress should be acquainted with the facts, that the proceedings here may be accommodated to them.

That you may know the grounds on which the British orders of Novr. have been arraigned by this Government, I inclose a copy of the answer to Mr. Erskine's note communicating them; a copy of the note being also inclosed.

The other documents communicated will put you in full possession of the relations of the U. States with Great Britain, as resulting from the issue of our general negotiations, and from that of the Mission of Mr. Rose.

The letter from the King of Westphalia to the President having passed thro' your hands, the answer is herewith inclosed to be forwarded by you.

I learn from the Treasury that no delay arises in settling your ordinary accounts, but from that in receiving the Bankers accounts connected with them. Mr. Gallatin tells me that the accounts under the Louisiana Convention have not yet been taken up, but will be in a few days.

This dispatch is forwarded by Mr. Baker, who takes his passage from Baltimore, in a vessel engaged as was the Osage which sailed from New York, for the special purpose of public and mercantile correspondences with Europe. She will proceed in the first instance to L'Orient where she will leave Mr. Baker, and thence proceed with dispatches for Mr. Pinkney to Falmouth, where she will remain a few days to receive communications from him. She will then return to L'Orient, in order to bring back Mr. Baker with your communications.

I Have The Honor To Be &C.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY.

Department of State, July 18, 1808.

D. Of S. Mss.  
Instr.

Sir,

Your communications by Lt. Lewis were safely delivered on the evening of the 8th inst.

As it had been calculated that the interval between the return of Mr. Rose and the departure of Lt. Lewis would give sufficient time to the British Government to decide on the course required by the posture in which the affair of the Chesapeake was left, its silence to you on that subject, could not fail to excite the particular attention of the President; and the appearance is rendered the more unfavorable by the like silence, as we learn from Mr. Erskine, of the dispatches brought to him by the Packet which left England and arrived at New York at nearly the same times with the Osage. I have intimated to Mr. Erskine the impressions made by this reserve, without however, concealing our hope that the delay does not imply a final purpose of withholding reparation, and that the next communications from London will be of a different import. They must at least entertain the real views of the British Government on this interesting subject.

There was certainly no just ground for Mr. Canning to expect any particular communications from you on the arrival of the Osage; unless they should have grown out of such accounts from France as would second our demands of justice from Great Britain, particularly the revocation of her orders in Council. And in imparting to him what you did from that quarter, every proof of candor was given which the occasion admitted. If Mr. Canning was disappointed because he did not receive fresh complaints against the orders in Council, he ought to have recollected that you had sufficiently dwelt on their offensive features in the first instance; and that as he had chosen to make the formal communication of them to this Government thro' another channel, it was thro' that channel rather than thro' you that answers to it would be most regularly given. But it cannot be supposed that his disappointment was in the least produced by your reserve on this topic, as indeed is clearly shown by his disinclination to listen to your suggestions with regard to it. It must have proceeded as you seem to have understood from some expectation of proposals having for their basis or their object, arrangements adverse to the enemies of G. Britain, or favorable to herself; an expectation contrary, surely, to all reason and probability under the accumulated injustice which the United States are suffering from British measures, and forming of itself, an additional insult to their just and honorable feelings. A very little reflection ought to have taught the British Cabinet, that no nation which either respects itself or consults the rule of prudence, will ever purchase redress from one of its aggressors by gratifying his animosity against another aggressor; and least of all when a suspicion is authorized that redress is insidiously withheld lest the example should be followed. The communications and instructions forwarded by Mr. Purviance who was a passenger in the St. Michael will enable you to bring the British

Government to a fair issue on the subject of its orders. If it has nothing more in view than it is willing to avow, it cannot refuse to concur in an arrangement rescinding on her part the orders in Council, and on ours, the Embargo. If France should concur in a like arrangement, the state of things will be restored which is the alleged object of the orders. If France does not concur the orders will be better enforced by the continuance of the Embargo against her than they are by the British fleet and cruizers, and in the mean time all the benefits of our trade will be thrown into the lap of Great Britain. It will be difficult therefore to conceive any motive in Great Britain to reject the offer which you will have made, other than the hope of inducing on the part of France, a perseverance in her irritating policy towards the United States, and on the part of the latter, hostile resentments against it.

If the British Government should have elected the more wise and more worthy course of meeting the overture of the President in the spirit which dictated it, it is to be hoped that measures will have been taken in concert with you, and thro' its Minister here, for hastening as much as possible the renewal of the intercourse which the orders and the Embargo have suspended; and thereby smoothing the way for other salutary adjustments.

It appears that the British Government not satisfied with the general blockade by her orders of Nov. 11th, has superadded a particular blockade, or rather a diplomatic notification of an intended one of Copenhagen and *the other ports* in the Island of Zealand; that is to say, a strict and legal blockade of the whole Island. The Island cannot be much less than two hundred miles in its outline, and is described as abounding in inlets. It is not probable, therefore, if it be possible, that a blockade within the true definition should be carried into effect. And as all defective blockades whether so in the disproportion of force to the object, or in the mode of notification, will authorize fair claims of indemnification, it is the more necessary that guarded answers should be given, in such cases as heretofore suggested.

Since the British order of NA evidently inviting our Citizens to violate the laws of their Country, by patronizing on the high seas their vessels destitute of Registers and other necessary papers, and therefore necessarily smugglers if not pirates, the circular letter of Mr. Huskisson has made its appearance in which the United States are named as alone within the purview of the order. A more disorganizing and dishonorable experiment is perhaps not to be found in the annals of modern transactions. It is aggravated too by every circumstance that could make it reproachful. It is levelled against a nation towards which friendship is professed, as well as against a law the justice and validity of which is not contested; and it sets the odious example, in the face of the world, directly in opposition to all the principles which the British Government has been proclaiming to it. What becomes of the charge against the United States for receiving British subjects who leave their own Country contrary to their allegiance? What would be the charge against them, if they were by proclamation to invite British subjects, those too expressly and particularly prohibited from leaving their Country, to elude the prohibition; or to tempt by interested inducements a smuggling violation or evasion of laws, on which Great Britain founds so material a part of her national policy? In the midst of so many more important topics of dissatisfaction, this may not be worth a formal representation; but it will not



be amiss to let that Government understand the light in which the proceeding is regarded by this. I have already touched on it to Mr. Erskine, with an intimation that I should not omit it in my observations to you.

The French decree, said to have been issued at Bayonne has not yet reached this Country. Such a decree, at such a time, has a serious aspect on the relations of the two Countries, and will form a heavy item in our demands of redress. It is much to be regretted at the same time that any of our vessels by neglecting to return home, and conforming to the arbitrary regulations of one belligerent, should expose themselves to the arbitrary proceedings of another. So strong and general an indignation seems particularly to prevail here against the Americans in Europe who are trading under British licenses, and thereby sacrificing as far as they can the Independence of their Country, as well as frustrating the laws which were intended to guard American vessels and mariners from the dangers incident to foreign Commerce, that their continuance in that career ought to be frowned upon, and their return home promoted in every proper manner. It appears by information from our Consul at Tangier that great numbers of our vessels are engaged in a trade between Great Britain and Spanish ports under licenses from the former, and that the experiment proves as unsuccessful as it is dishonorable; the greater part of them being either arrested in port, or by French & Spanuh Crisizers.

For a view of our internal situation I refer you to the information to be collected from the Newspapers and other publications herewith forwarded. They sufficiently explain the spirit and sentiments of the nation with respect to the British and French Edicts, the Embargo, the unexpiated outrage on the Frigate Chesapeake and domestic manufactures; and are little flattering to the hopes, if such have been indulged, that the people of the United States were more ready to sacrifice the national honor and national rights than to acquiesce in a temporary abridgment of their interests or enjoyments.

As it is extremely important, and the President is particularly anxious that the Communications to Congress on the meeting which takes place the first Monday in Nov. should embrace the fullest and most authentic state of our foreign affairs, I must request your particular exertions to enable the present dispatch vessel to return in due time with all the materials you can contribute for that purpose.

The letters received from you not yet acknowledged are of Feby 22 & 23—March 15, April 24, 25 & 26 & 27th—May 3d, 9, 10 & 12th.

I Have The Honor To Be  
With Great Respect And Consideration, &C.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

Department of State, July 22, 1808.

D. Of S. Mss.  
Instr.

Sir,

Your dispatches by Lt. Lewis were delivered on the 8th inst.

It is regretted that the interval between his arrival and the date of your letter to Mr. Champagny, during which I presume some verbal intercommunication must have taken place, had produced no indication of a favorable change in the views of the French Government with respect to its decrees; and still more that instead of an early and favorable answer to your letter, it should have been followed by such a decree as is reported to have been issued on the 22d April at Bayonne. The decree has not yet reached the United States; and therefore its precise import cannot be ascertained. But if it should be, as it is represented, a sweeping stroke at all American vessels on the high seas, it will not only extend our demands of reparation, but is rendered the more ominous with respect to the temper and views of the Emperor towards the United States, by the date of the measure.

The arrival of Mr. Baker with my letter of May 2nd, of which a copy is herewith sent, will have enabled you to resume the subject of the Decrees with the fairest opportunity that could be given to the French Government for a change of the unjust and unwise course which has been pursued; and I assure myself that you will not have failed to turn the communications with which you are furnished to the best account. If France does not wish to throw the United States into the War against her for which it is impossible to find a rational or plausible inducement, she ought not to hesitate a moment, in revoking at least so much of her decrees as violate the rights of the sea, and furnish to her adversary the pretext for his retaliating measures. It would seem as if the Imperial Cabinet had never paid sufficient attention to the smallness of the sacrifice which a repeal of that portion of its system would involve, if an Act of justice is to be called a sacrifice.

The information by the return of the Osage from England, is not more satisfactory than that from France. Nothing was said on the subject of the Chesapeake, nor anything done or promised as to the orders in Council. It is probable that further accounts from the United States were waited for, and that the arrival of the St. Michael will have led to a manifestation of the real views of that Government, on those and other subjects. In the mean time it cannot be doubted that hopes were cherished there of some events in this Country favorable to the policy of the orders, and particularly that the offensive language and proceedings of France, would bring on a hostile resistance from the United States; in which case the British Government would be able to mould every thing to its satisfaction. There is much reason to believe that if the British Government should not concur in a mutual abolition of the orders and of the Embargo, it will result from an unwillingness to set an example which might be followed, and might consequently put an end to the irritating career of her

enemy on which the insidious calculation is built. Might not use be made of this view of the matter, in those frank and friendly conversations which sometimes best admit topics of a delicate nature, and in which pride and prejudice can be best managed without descending from the necessary level? In every view it is evidently proper, as far as respect to the National honor will allow, to avoid a stile of procedure which might co-operate with the policy of the British Govt, by stimulating the passions of the French.

In an interview which Genl. Turreau asked about a month ago, he complained of the disposition here, as indicated by certain publications, (such as the circular letter of Mr. Burwell and the report of the Committee of the Senate, both of which will be seen by you) to put France *au même ligne* with Great Britain in aggressions on the United States, insisting that the latter must at least be regarded as the prior as well as the greater wrong doer. He dwelt at the same time on the disposition of his Government to cultivate friendship with this, and added that he was particularly charged to receive any communications or explanations it might be disposed to make, which would evince a corresponding disposition; wishing it, however, to be understood, that he had no allusion to any propositions tending even to an alliance, or any positive arrangements between the two Countries. After this preface, he expatiated on the exclusion of England from the continent of Europe, which would soon be completed by the issue of the Swedish War; and the probability, as an effect of that state of things, and of what was passing in Spain, that her attention would be turned to this continent, to South America, as a Commercial substitute for her loss, and to North America, which could so easily give facilities or obstructions to her revolutionary plans.

It was observed to him, that without discussing the priority of the wrongs we had suffered from the belligerents, they were of sufficient amount from both, to justify the complaints made on our part; that it afforded pleasure nevertheless to find by his assurances that his Government was in so friendly a disposition towards the United States, and that he might be assured that proofs of theirs would keep a reasonable pace with such as might be found in the conduct of his Government towards them; that with respect to declarations or propositions we had none to make different from the explanations which had been from time to time given of our fair neutrality, and of the justice and redress to which we were entitled, particularly in relation to the French Decrees. His observations with respect to the policy of England, resulting from the State of things in Europe, were allowed their full weight and it was equally admitted that the United States would become peculiarly important to G. Britain, from such a change in her system, but a continuance of their neutrality became for the same reason of the greater importance to France and Spain; the more so, as the disposition of the Spanish provinces to look to the auspices of the United States, was so well understood. He was left under the impression, however, that the principles and policy of the United States would sufficiently restrain them from becoming parties against any nation whose just and friendly conduct should leave them to their pacific cause.

I have no doubt that the language he held with respect to manifestations of our friendship was the version made by his prudence of the propositions contained in your letter by Capt. Haley, and that his remarks on the subject of S<sup>o</sup>. America grew out of

the views given latterly in the Newspapers of the interest G. Britain had in making Spanish America the primary object of her operations. His remarks however shew the light in which the subject strikes a French mind, and it is not improbable, especially if the condition of Spain should second the purpose, that you will be able to turn the co-operation which the United States could afford towards a revolution in South America, into a motive to guard against it by a compliance with their reasonable expectations.

In all the conversations which have been held with the French Legation here it has appeared that much juster views are taken by it, of the true interest of France in relation to the United States, than have prevailed in the French Government, and I think it probable that their correspondence has imparted those views. Of late much solicitude seems to have been felt by Genl. Turreau to promote a change in the tone of language as well as of measures, employed towards the United States. As the most likely mode of succeeding in it, Mr. Petrie is about to take, if he can find, a passage to France, where he will be able by personal intercourse, to make impressions not otherwise communicable. . . . [1](#)

With Great Respect, &C.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY.

Department of State, January 3, 1809.

D. Of S. Mss.  
Instr.

Sir,

Availing myself as heretofore of a British packet from New York, I forward a continuation of the proceedings of Congress, as they will be seen in the prints herewith inclosed, adding at the same time a copy of my last letter which was transmitted thro' the favor of Mr. Erskine along with some of his dispatches by way of New Brunswick.

You will observe that in pursuance of the resolutions of the House of Representatives not to submit to the Foreign Edicts against our commerce, and to provide further for the security of the Country, a Bill is on its passage, for raising immediately a volunteer force of 50,000 men. This added to other preparations, has induced Mr. Erskine to make it the subject of conversation, in which he alluded to his duty of communicating measures of that character to his Government, and the usage of their being accompanied with such explanations as the Government here might think proper to make on the occasion. He was reminded that we had seen at different times and in different quarters, augmentations of British force in our neighbourhood, without any intimation of its object, or that it had no reference to the United States. But that there was, nevertheless, no hesitation in saying to him, that however desirous the United States might be of preserving peace, the situation in which they found themselves made it their obvious and indispensable duty to be prepared for War; that the perseverance of his Government and that of France in their respective Edicts, especially after the communications which had been made to them and the removal of the very pretexts for such aggressions indicated a spirit of hostility against which it would be the most culpable neglect not to provide; and finally that it would be frankly avowed as was indeed to be inferred from the sentiments expressed by the Legislature, that the time might not be distant when a longer adherence to those Edicts would give them the overt character, as they had long had the real effect of War, and impose on the United States the obligation of vindicating their honor and their rights by other means than had thus far been resorted to. With these observations were mingled explicit assurances of the solicitude of this Country to avoid such an extremity, and of the satisfaction that would be afforded, by any change in the conduct of the belligerent Governments and particularly of his own, which would lay the foundation for amicable adjustment. He signified that it did not lie with him to do more than to give information to his Government leaving to that the inferences and decisions proper to be formed. He expressed, however, his wishes and hopes that any hostile result might be avoided; and alluded, as he had repeatedly done on preceding occasions to the documents explaining what had passed between this Government and France, and to the effect of the proposed non intercourse Act, in sinking the non-importation Act, and the proclamation of July 1807, pointed against G Britain alone, into regulations common to her and her Enemy, as furnishing grounds to which he

could not undertake to say that his Government might not be disposed to give a favorable attention.

I have given you this sketch as at once apprizing you of the communication which will of course be made to Mr. Canning, and assisting you in any conversations with him which may ensue.

The impatience under the Embargo, more particularly in Massachusetts, is becoming extremely acute under the artificial excitements given to it; and a preference of war within a very limited period is every where gaining ground. Were it not for the chance of belligerent relaxations, under the influence of the known dispositions and determinations here, and of events in Europe, it is probable that letters of Marque and reprisal would at once be issued. For the present it seems to be in view, to provide for an extra Session of Congress in the Month of May, with an understanding that War will then be the proper course, if no immediate change abroad shall render it unnecessary. What other measures, provisional or positive, may be connected with or added to this extra call of Congress, I do not venture now to anticipate; the less so as the public mind is in a state too impressible to shew in its present temper, what its bias may become in the progress of the Session. It is not improbable that a time would be immediately fixed, at which hostilities should be commenced against the persevering aggression or aggressions, but for the apprehension that the menacing alternative presented by that course might be an obstacle with pride to relaxations not otherwise inadmissible.

I Have The Honor To Be &C

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY.

Department of State, February 10th 1809.

D. Of S. Mss.  
Instr.

Sir,

I forward by the British Packet about to sail from New York, the printed proceedings of Congress continued from my last communications which bore date on the 3d January.

From these and the antecedent indications, you will deduce the general spirit which actuates the Legislative Councils, under the perplexities incident to the unexampled state of things forced on the United States by the injustice of the belligerent nations.

What particular course may result from the several propositions now depending, cannot with certainty be pronounced; but it may be reasonably presumed that the resolution of the House of Representatives so nearly unanimous, not to submit to the foreign Edicts against our neutral commerce, will be kept in view; and consequently that if our Commercial property be again committed to the ocean, the measure will be accompanied with such regulations as will shew that it is not meant as an acquiescence in those Edicts, but as an appeal to the interest of the aggressors, in a mode less inconvenient to our own interest.

It is equally to be presumed that if the resumed exercise of our rights of navigation on the high seas should be followed by the depredations threatened by an adherence of the belligerents to their respective Edicts, the next resort on the part of the United States will be, to an assertion of those rights by force of Arms, against the persevering aggressor or aggressors.

It may be inferred from the language held by the British Minister here, that an avowal of such a determination in the form even of an Executive opinion, would probably be regarded by his Government as a ground on which it might revoke its orders in Council, consistently with the retaliating principle on which they are alleged to be founded. It must be observed, however, 1st that no authoritative avowal could be made but by the branch of Government charged with the question of War; not to mention that the avowal itself might possibly be construed into a menace, opposing a greater obstacle to a change of policy than the Embargo was represented to be; and 2d that it appears from the condition originally required by the present Cabinet, and repeated by Mr. Canning in his last letter to you of Novemr. 22, that nothing short of an unequivocal repeal of the French decrees, and consequently no course whatever of this Government, not actually producing that effect, will render a repeal of the British orders consistent with the policy which relates to that subject.

Should a policy so destitute of even a shadow of justice or consideration, be relinquished and an expression of the opinion of the Executive branch of our Government be deemed a ground for revoking the British Orders, you will be free to

declare that opinion to be, that in case these orders should be revoked, and the Decrees of France continued in force, hostilities on the part of the United States will ensue against the latter, taking care not to attach to the opinion of the Executive any weight inconsistent with the Constitutional limits of his authority.

Whilst it is thought proper to furnish you with these explanations and observations, I am instructed at the same time, to remind you that in the actual posture of things between the two countries, particularly as resulting from the nature of the answer of Mr. Canning of Sept. 23 to the reasonable, candid and conciliatory proposition conveyed in your letter to him of August NA, it evidently lies with the British Government to resume discussions on the subject of revoking the Orders in Council. It is hoped that in so plain a case, that obligation will be felt. And it is only on a contrary manifestation, that it will be eligible for you to bring the subject into conversation; in doing which, you will not fail to let it be understood as a new and irresistible proof of the desire of the United States to avoid extremities between the two Nations, and to establish that complete reconciliation, towards which an adjustment of that particular difficulty would be so important a step. It is proper to add, that as the pledge of an Executive opinion in such a case, is of an unusual and very delicate character, it will be a reasonable and indispensable preliminary to its being stated in writing, that a satisfactory assurance be given that it will not be without the expected effect.

You will notice that among the measures proposed to be combined with a repeal of the Embargo laws, is a non-intercourse with Great Britain and France, and an exclusion of all armed vessels whatever from our waters. The effect of the first will be to continue the Embargo, so far as it prohibits a *direct* exportation to the two principal offenders; and to discontinue the importation now permitted, of the productions and manufactures of those Countries, thereby merging for the time, the existing non-importation Act. An effect of the other will be to merge, in like manner, for the time, the exclusion of British ships of war, as a measure unfavorably distinguished between Great Britain and other belligerents. The latter effect may perhaps facilitate amicable arrangements on some of the points in question with that nation. The former will keep in force an appeal to its interest, against a perseverance in the orders in Council; inasmuch as it subjects the supplies from the United States to the expence and delay of double voyages, shuts our markets against her manufactures, and stimulates and establishes permanent substitutes of our own.

You will notice also the Message of the President communicating for publication, your correspondence with Mr. Canning on the subject of conversations preceding your letter to him of August. The message states the cause of the communication. This foreign appeal thro' the press, to the people against their own Government, has kindled the greatest indignation everywhere; the more so, as the time and place selected, leave no doubt that the object was to foster the discontents breaking out in the State of Massachusetts. But for the difficulty of obtaining from the printer the source from which Mr. Canning's letter was furnished, and an unwillingness to multiply topics of irritation, it is not improbable that the insult would have been taken up by Congress, in some such manner as the case of Palm, the Austrian Ambassador, in the year 1719<sup>1</sup> was treated by the British Parliament. Much animadversion also has



fallen on the outrageous doctrine still maintained by him, that Great Britain has a retaliating right against our commerce, until the French Decrees, altho' a dead letter, be unequivocally abandoned; as well as on the subterfuge which he applies to the charge of stating to the House of Commons, that no remonstrance or communication had been received from this Government against the orders in Council as if it had been possible for a single hearer to suppose, that he did not mean to affirm that no such remonstrance had been received at all, the sole question of any importance; but merely to distinguish between the receipt of it thro' you, and thro' Mr. Erskine, a circumstance of no importance whatever. The resort also to newspaper paragraphs and general rumors as to vessels to be dispatched from this Country with instructions to you, as an explanation of his departure from a regular course of proceeding adopted by himself, is very unworthy the dignity and candor, not to say sincerity, belonging to his station.

The Union is not yet arrived, and has not been heard of since her landing Lt. Gibbon.

I shall write again by the Pacific, a dispatch vessel which will sail from New York in a short time. Before we transmit our communications allotted for that conveyance, it is very desirable that we should receive yours by the Union; and also have the result of the existing deliberations of Congress particularly on the time for repealing the Embargo, and the measures to be connected with the repeal. A vessel, the Mentor, is also engaged at New York, for conveying dispatches to France, and will sail at the same time for L'Orient.

As Congress are to meet again as early as the 4th Monday in May, and with a view to take measures adapted to the then state of things, I need not urge on you the importance of hastening to us every information which may be useful to their deliberations.

I Have The Honor To Remain &C.

[\[Back to Table of Contents\]](#)

## FIRST INAUGURAL ADDRESS.

Unwilling to depart from examples of the most revered authority, I avail myself of the occasion now presented to express the profound impression made on me by the call of my country to the station to the duties of which I am about to pledge myself by the most solemn of sanctions. So distinguished a mark of confidence, proceeding from the deliberate and tranquil suffrage of a free and virtuous nation, would under any circumstances have commanded my gratitude and devotion, as well as filled me with an awful sense of the trust to be assumed. Under the various circumstances which give peculiar solemnity to the existing period, I feel that both the honor and the responsibility allotted to me are inexpressibly enhanced.

The present situation of the world is indeed without a parallel, and that of our own country full of difficulties. The pressure of these, too, is the more severely felt because they have fallen upon us at a moment when the national prosperity being at a height not before attained, the contrast resulting from the change has been rendered the more striking. Under the benign influence of our republican institutions, and the maintenance of peace with all nations whilst so many of them were engaged in bloody and wasteful wars, the fruits of a just policy were enjoyed in an unrivaled growth of our faculties and resources. Proofs of this were seen in the improvements of agriculture, in the successful enterprises of commerce, in the progress of manufactures and useful arts, in the increase of the public revenue and the use made of it in reducing the public debt, and in the valuable works and establishments everywhere multiplying over the face of our land.

It is a precious reflection that the transition from this prosperous condition of our country to the scene which has for some time been distressing us is not chargeable on any unwarrantable views, nor, as I trust, on any involuntary errors in the public councils. Indulging no passions which trespass on the rights or the repose of other nations, it has been the true glory of the United States to cultivate peace by observing justice, and to entitle themselves to the respect of the nations at war by fulfilling their neutral obligations with the most scrupulous impartiality. If there be candor in the world, the truth of these assertions will not be questioned; posterity at least will do justice to them.

This unexceptionable course could not avail against the injustice and violence of the belligerent powers. In their rage against each other, or impelled by more direct motives, principles of retaliation have been introduced equally contrary to universal reason and acknowledged law. How long their arbitrary edicts will be continued in spite of the demonstrations that not even a pretext for them has been given by the United States, and of the fair and liberal attempt to induce a revocation of them, can not be anticipated. Assuring myself that under every vicissitude the determined spirit and united councils of the nation will be safeguards to its honor and its essential interests, I repair to the post assigned me with no other discouragement than what springs from my own inadequacy to its high duties. If I do not sink under the weight of this deep conviction it is because I find some support in a consciousness of the

purposes and a confidence in the principles which I bring with me into this arduous service.

To cherish peace and friendly intercourse with all nations having correspondent dispositions; to maintain sincere neutrality toward belligerent nations; to prefer in all cases amicable discussion and reasonable accommodation of differences to a decision of them by an appeal to arms; to exclude foreign intrigues and foreign partialities, so degrading to all countries and so baneful to free ones; to foster a spirit of independence too just to invade the rights of others, too proud to surrender our own, too liberal to indulge unworthy prejudices ourselves and too elevated not to look down upon them in others; to hold the union of the States as the basis of their peace and happiness; to support the Constitution, which is the cement of the Union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the States and to the people as equally incorporated with and essential to the success of the general system; to avoid the slightest interference with the rights of conscience or the functions of religion, so wisely exempted from civil jurisdiction; to preserve in their full energy the other salutary provisions in behalf of private and personal rights, and of the freedom of the press; to observe economy in public expenditures; to liberate the public resources by an honorable discharge of the public debts; to keep within the requisite limits a standing military force, always remembering that an armed and trained militia is the firmest bulwark of republics—that without standing armies their liberty can never be in danger, nor with large ones safe; to promote by authorized means improvements friendly to agriculture, to manufactures, and to external as well as internal commerce; to favor in like manner the advancement of science and the diffusion of information as the best aliment to true liberty; to carry on the benevolent plans which have been so meritoriously applied to the conversion of our aboriginal neighbors from the degradation and wretchedness of savage life to a participation of the improvements of which the human mind and manners are susceptible in a civilized state;—as far as sentiments and intentions such as these can aid the fulfillment of my duty, they will be a resource which can not fail me.

It is my good fortune, moreover, to have the path in which I am to tread lighted by examples of illustrious services successfully rendered in the most trying difficulties by those who have marched before me. Of those of my immediate predecessor it might least become me here to speak. I may, however, be pardoned for not suppressing the sympathy with which my heart is full in the rich reward he enjoys in the benedictions of a beloved country, gratefully bestowed for exalted talents zealously devoted through a long career to the advancement of its highest interest and happiness.

But the source to which I look for the aids which alone can supply my deficiencies is in the well-tried intelligence and virtue of my fellow-citizens, and in the counsels of those representing them in the other departments associated in the care of the national interests. In these my confidence will under every difficulty be best placed, next to that which we have all been encouraged to feel in the guardianship and guidance of that Almighty Being whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising Republic, and to whom we are

bound to address our devout gratitude for the past, as well as our fervent supplications and best hopes for the future.

March 4, 1809.

[\[Back to Table of Contents\]](#)

## PROCLAMATION.

Whereas it is provided by the eleventh section of the act of Congress entitled “An act to interdict the commercial intercourse between the United States and Great Britain and France and their dependencies, and for other purposes,” that “in case either France or Great Britain shall so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States” the President is authorized to declare the same by proclamation, after which the trade suspended by the said act and by an act laying an embargo on all ships and vessels in the ports and harbors of the United States and the several acts supplementary thereto may be renewed with the nation so doing; and

Whereas the Honorable David Montague Erskine, His Britannic Majesty’s envoy extraordinary and minister plenipotentiary, has, by the order and in the name of his Sovereign, declared to this Government that the British orders in council of January and November, 1807, will have been withdrawn as respects the United States on the 10th day of June next:1

Now, therefore, I, James Madison, President of the United States, do hereby proclaim that the orders in council aforesaid will have been withdrawn on the said 10th day of June next, after which day the trade of the United States with Great Britain, as suspended by the act of Congress above mentioned and an act laying an embargo on all ships and vessels in the ports and harbors of the United States and the several acts supplementary thereto, may be renewed.

Given under my hand and the seal of the United States at Washington, the 19th day of April, 1809, and of the Independence of the United States the thirty-third.

[seal]

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Washington, Ap<sup>l</sup>. 24, 1809.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup> your favor of the 19th. You will see in the newspapers the result of the advances made by G. B. Attempts were made to give shapes to the arrangement implying inconsistency and blame on our part. They were, however, met in a proper manner, and readily abandoned, leaving these charges in their full force, as they now bear on the other side. The B. Cabinet must have changed its course under a full conviction that an adjustment with this country had become essential; and it is not improbable that this policy may direct the ensuing negotiation, mingling with it, at the same time, the hope that it may embroil us with France. To this use, it may be expected, the Federalists will endeavor to turn what is already done, at the coming session of Cong<sup>s</sup>. The steps deemed proper to give the proceeding a contrary turn will not be omitted. And if France be not bereft of common sense, or be not predetermined on war with us, she will certainly not play into the hand of her enemy. Besides the general motive to follow the example of G. B. she cannot be insensible of the dangerous tendency of prolonging the commercial sufferings of her Allies, particularly Russia, all of them already weary of such a state of things, after the pretext for enforcing it shall have ceased. She must be equally aware of the importance of our relations to Spanish America, which must now become the great object of Napoleon's pride and ambition. Should he repeal his decrees with a view to this object, the most probable source of conflict will be in his extending the principle on which he required a *prohibition* of the Trade with S<sup>t</sup> Domingo to the case of the Spanish Colonies. Nor is it improbable that he may couple such a requisition with an offer to cede the Floridas, which would present a dilemma not very pleasant.

Accept my sincerest affection & highest esteem.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, May 1, 1809.

Mad. Mss.

Dear Sir,—

I am just favored with yours of the 27th. Young Gelston is here, preparing to take his passage for France as bearer and expositor of despatches, in the Syren, sloop of war, which is waiting for him at Baltimore. He leaves this to-morrow morning. Mr. Gallatin has had a conversation with Turreau at his residence, near Baltimore. He professes to be confident that his Gov<sup>t</sup>. will consider England broken down by the example she has given in repealing her orders, and that the F. decrees will be repealed as a matter of course. His communications by the Syren will, if he be sincere, press the policy of an immediate repeal. No official acc<sup>ts</sup>. have been received from the French letters of Marque arrived at Boston. The difficulty most likely to threaten our relations with France lies in the effort she may make to render us in some way subservient to the reduction of Spanh. America; particularly by withholding our commerce. This apprehension is corroborated by the language of Turreau. He alluded to his conversations with you relating to Cuba, on which he builds jealousies which he did not conceal. Cuba will, without doubt, be a cardinal object with Napoleon.

The spirit which England will bring into the ulterior negotiations must differ much from that which influenced former Treaties, if it can be moulded to our just views; and we must be prepared to meet it with a prudent adherence to our essential interests. It is possible, however, that the school of adversity may have taught her the policy of substituting for her arrogant pretensions somewhat of a conciliating moderation towards the U. S. Judging from the tone lately used, a change of that sort would be the less wonderful. If she can be brought to a fair estimate of her real interest, it seems very practicable to surmount the obstacles which have hitherto kept us at variance, and, until surmounted, must continue to do so. The case of impressments, hitherto the great obstacle, seems to admit most easily of an adjustment, on grounds mutually advantageous.

Y<sup>rs</sup>. with affectionate respects.

It is understood that the Election in the State of N. York has issued very favorably.

[\[Back to Table of Contents\]](#)

## TO MARQUIS DE LAFAYETTE. 1

Washington May 1, 1809.

My dear Sir

It is a real mortification to me that another favorable opportunity has occurred without my being able to add a word to what you know on the state of your land affairs in the hands of M<sup>r</sup>. Duplantier. I have not rec<sup>d</sup>. a line from him, since He stated the difficulty which had presented itself in the completion of a part of his locations, and the advice of M<sup>r</sup>. Gallatin relating to it was transmitted to him. I wish he may have written to you through some other channel. As soon as I hear from him I shall endeavor to let you hear from me.

I inclose a paper containing the arrangement concluded with G. Britain on the subject of her orders in council. Gen<sup>l</sup>. Armstrong is supplied with a copy of them, and will expect from France a revocation of her decrees, in conformity with the recitals on which they are founded, as well as with the considerations of justice, of friendship, and as we conceive of her true interest. It will be a source of deep regret if our dispositions to restore commercial intercourse and maintain in every respect the most fair, and friendly relations consistent with our neutral character, should be met by perseverance in a system, which must necessarily place the U. S. in a very obvious & painful dilemma. I indulge a hope that more favorable councils will prevail.

This will be handed to you by M<sup>r</sup>. Gelston a worthy & respectable young man, son of the collector at the Port of New York, also of respectability & worth. M<sup>r</sup>. G. was formerly in M<sup>r</sup>. Monroe's family at Paris. He is now charged with despatches from the Dept. of State to Gen<sup>l</sup>. Armstrong.

Accept my dear Sir assurances of my sincerest friendship and best wishes.



[\[Back to Table of Contents\]](#)

## MESSAGE TO THE SPECIAL SESSION OF CONGRESS.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

On this first occasion of meeting you it affords me much satisfaction to be able to communicate the commencement of a favorable change in our foreign relations, the critical state of which induced a session of Congress at this early period.

In consequence of the provisions of the act interdicting commercial intercourse with Great Britain and France, our ministers at London and Paris were without delay instructed to let it be understood by the French and British Governments that the authority vested in the Executive to renew commercial intercourse with their respective nations would be exercised in the case specified by that act.

Soon after these instructions were dispatched it was found that the British Government, anticipating from early proceedings of Congress at their last session the state of our laws, which has had the effect of placing the two belligerent powers on a footing of equal restrictions, and relying on the conciliatory disposition of the United States, had transmitted to their legation here provisional instructions not only to offer satisfaction for the attack on the frigate *Chesapeake*, and to make known the determination of His Britannic Majesty to send an envoy extraordinary with powers to conclude a treaty on all the points between the two countries, but, moreover, to signify his willingness in the meantime to withdraw his orders in council, in the persuasion that the intercourse with Great Britain would be renewed on the part of the United States.

These steps of the British Government led to the correspondence and the proclamation now laid before you, by virtue of which the commerce between the two countries will be renewable after the 10th day of June next.

Whilst I take pleasure in doing justice to the councils of His Britannic Majesty, which, no longer adhering to the policy which made an abandonment by France of her decrees a prerequisite to a revocation of the British orders, have substituted the amicable course which has issued thus happily, I can not do less than refer to the proposal heretofore made on the part of the United States, embracing a like restoration of the suspended commerce, as a proof of the spirit of accommodation which has at no time been intermitted, and to the result which now calls for our congratulations, as corroborating the principles by which the public councils have been guided during a period of the most trying embarrassments.

The discontinuance of the British orders as they respect the United States having been thus arranged, a communication of the event has been forwarded in one of our public vessels to our minister plenipotentiary at Paris, with instructions to avail himself of the important addition thereby made to the considerations which press on the justice

of the French Government a revocation of its decrees or such a modification of them as that they shall cease to violate the neutral commerce of the United States.

The revision of our commercial laws proper to adapt them to the arrangement which has taken place with Great Britain will doubtless engage the early attention of Congress. It will be worthy at the same time of their just and provident care to make such further alterations in the laws as will more especially protect and foster the several branches of manufacture which have been recently instituted or extended by the laudable exertions of our citizens.

Under the existing aspect of our affairs I have thought it not inconsistent with a just precaution to have the gunboats, with the exception of those at New Orleans, placed in a situation incurring no expense beyond that requisite for their preservation and conveniency for future service, and to have the crews of those at New Orleans reduced to the number required for their navigation and safety.

I have thought also that our citizens detached in quotas of militia amounting to 100,000 under the act of March, 1808, might not improperly be relieved from the state in which they were held for immediate service. A discharge of them has been accordingly directed.

The progress made in raising and organizing the additional military force, for which provision was made by the act of April, 1808, together with the disposition of the troops, will appear by a report which the Secretary of War is preparing, and which will be laid before you.

Of the additional frigates required by an act of the last session to be fitted for actual service, two are in readiness, one nearly so, and the fourth is expected to be ready in the month of July. A report which the Secretary of the Navy is preparing on the subject, to be laid before Congress, will shew at the same time the progress made in officering and manning these ships. It will shew also the degree in which the provisions of the act relating to the other public armed ships have been carried into execution.

It will rest with the judgment of Congress to decide how far the change in our external prospects may authorize any modifications of the laws relating to the army and navy establishments.

The works of defence for our seaport towns and harbors have proceeded with as much activity as the season of the year and other circumstances would admit. It is necessary, however, to state that, the appropriations hitherto made being found to be deficient, a further provision will claim the early consideration of Congress.

The whole of the 8 per cent stock remaining due by the United States, amounting to \$5,300,000, had been reimbursed on the last day of the year 1808; and on the 1st day of April last the sum in the Treasury exceeded \$9,500,000. This, together with the receipts of the current year on account of former revenue bonds, will probably be nearly if not altogether sufficient to defray the expenses of the year. But the

suspension of exports and the consequent decrease of importations during the last twelve months will necessarily cause a great diminution in the receipts of the year 1810. After that year, should our foreign relations be undisturbed, the revenue will again be more than commensurate to all the expenditures.

Aware of the inconveniences of a protracted session at the present season of the year, I forbear to call the attention of the Legislature to any matters not particularly urgent. It remains, therefore, only to assure you of the fidelity and alacrity with which I shall cooperate for the welfare and happiness of our country, and to pray that it may experience a continuance of the divine blessings by which it has been so signally favored.

May 23, 1809.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Washington, May 30, 1809.

Mad. Mss.

Dear Sir,—

Your favor of the 22d did not come to hand till the day before yesterday.

It will give me pleasure to take the place of Mr. Barnes in the note to the Bank; the more so as it will, it seems, be a relief to the old gentleman's pecuniary anxieties. I will have an early communication with him on the subject. I wish the original arrangement had taken the shape now proposed, and hope that you will make free use of my services if they can at any time or in any way be made convenient to your arrangements of money, or other matters.

The new-fangled policy of the federal party, you will have noticed, has made a considerable figure in the newspapers. Some of the Editors are resuming the old cant, and the others will doubtless soon follow the example. Nothing could exceed the folly of supposing that the principles and opinions manifested in our foreign discussions were not, in the main at least, common to us; unless it be the folly of supposing that such shallow hypocrisy could deceive any one. The truth is, the sudden and unlooked-for turn of the B. Cabinet has thrown the party entirely off the centre. They have at present no settled plan. There is reason to believe that the leaders are sound towards England, and much less disposed than heretofore to render our interests subservient to hers. Expressions have been used by one, at least, of the Essex Cabinet, whether sincerely or insidiously may not be absolutely certain, from which it is inferred that a disposition exists in that quarter not even to continue the non-intercourse act ag<sup>st</sup> France. Certain it is, that the desire of war with her is no longer manifested; that the deficiency of the English markets excites a keen appetite for a trade with the Continent; and that a real uneasiness is felt lest the negotiations with G. B. should end in sacrifices on our part, which they have been reproaching the Administration for not being ready to make. As one proof of their present feelings, the federal leaders shew a marked alienation from Erskine. The Elections in Mass<sup>ts</sup>, as well as in N. H. and N. Y., have issued unfavorably. But the smallness of the majority, and the overstrained exertions it has required, seem to depress rather than flatter the successful party. No confidence is felt in the permanency of the triumph.

Not a line has been received of late from any one of our foreign agents. All that is known is, therefore, to be gathered from the ordinary and fallacious channels.

Accept my sincerest respects & attachment.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Washington, June 20, 1809.

Mad. Mss.

Dear Sir,—

Yours of the 16<sup>th</sup> came to hand yesterday. I hope you have not made any sacrifice of any sort to the scruple which has superseded my arrangem<sup>t</sup>. with M<sup>r</sup>. Barnes. The execution of it would have been equally accorded with my disposition and my conveniency.

The Gazette of yesterday contains the mode pursued for reanimating confidence in the pledge of the B. Gov<sup>t</sup> given by M<sup>r</sup> Erskine in his arrangement with this Gov<sup>t</sup>. The puzzle created by the order of April struck every one. 1 E. assures us that his Gov<sup>t</sup> was under such impressions as to the views of this, that not the slightest expectation existed of our fairly meeting its overtures, and that the last order was considered as a seasonable mitigation of the tendency of a failure of the experiment. This explanation seems as extraordinary as the alternatives it shews. The fresh declarations of Mr. E. seem to have quieted the distrust, which was becoming pretty strong; but has not destroyed the effect of the ill grace stamped on the British retreat, and of the commercial rigor evinced by the new and insidious duties stated in the newspapers. It may be expected, I think, that the B. Gov<sup>t</sup> will fulfil what its Minister has stipulated; and that if it means to be trickish, it will frustrate the proposed negotiation, and then say their orders were not permanently repealed, but only withdrawn, *in the mean time*.

The only question likely now to agitate Cong<sup>s</sup> will be on the Bill which opens our ports to *French* as well as B. *ships of war*. The Senate have passed it *unanimously*. Whether the Feds were sincere, or wished the debate, &c., to take place in the H. of R, remains to be seen.

Y<sup>Rs</sup> Truly

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Montpellier, Aug. 3, 1809.

Mad. Mss.

Dear Sir,—

Herewith you will receive a packet, which being wrapt up in a large one for me, from the Dep<sup>t</sup> of State, was taken out of the mail yesterday, and not observed before the rider had set out.

I find myself under the mortifying necessity of setting out to-morrow morning for Washington. The intricate state of our affairs with England, produced by the mixture of fraud and folly in her late conduct, and the important questions to be decided as to the legal effect of the failure of the arrangement of April on our commercial relations with her, are thought by the Heads of Dep<sup>t</sup> to require that I should join them.<sup>1</sup> The main question is, whether the non-intercourse act, as continued at the last session, comes into force ag<sup>st</sup> England, thereby putting her on the same footing with France.

You will see by the instructions to Erskine, as published by Canning, that the latter was as much determined that there should be no adjustment as the former was that there should be one. There must, however, have been other instructions, comprehending the case of the Chesapeake, and other communications from Canning accompanying the British orders of Ap<sup>l</sup> 26, as referred to in Erskine's quieting declaration last made to Mr. Smith. I believe, also, that Erskine's letter to Canning, not disclosed by the latter, will not warrant his ascribing to Erskine the statement of conversations with Mr. G[allatin], Mr. S[mith], and myself. Pinkney will also disavow what Canning has put into his mouth.

I presume, from letters which reached me yesterday, that Mr. Smith has communications from Paris as late as the 10 or 12 of June; whether by the return of Mr. Coles or another conveyance is uncertain. The disavowal in England reached Paris the day after the arrival of the arrangem<sup>t</sup> transmitted by Mr. Gelston. Our affairs with France had taken no decided turn; owing, as *alleged*, to the absence and occupation of the Emperor. The return of Gelston will probably put us in possession of a final estimate.

Accept my sincerest respect & attach<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO MRS. MADISON.

Washington, August (?), 1809.[1](#)

My Dearest,—

We reached the end of our journey yesterday at one o'clock, without interruption of any sort on the road. Mr. Coles had been here some time, and one, if not two, of the expected despatch vessels of England had just arrived, and Mr. Gelston, after a short passage from France, entered Washington about the moment I did. You may guess, therefore, the volumes of papers before us. I am but just dipping into them, and have seen no one as yet, except Mrs. Smith for a few minutes last evening. What number of days I may be detained here it is impossible to say. The period, you may be sure, will be shortened as much as possible. Everything around and within reminds me that you are absent, and makes me anxious to quit this solitude. I hope in my next to be able to say when I may have this gratification, perhaps also to say something of the intelligence just brought us. I send the paper of this morning, which has something on the subject, and I hope the communications of Gelston will be found more favorable than is stated. Those from England can scarcely be favorable when such men hold the reins. Mr. and Mrs. Erskine are here. His successor had not sailed on the 20th of June.

God bless you, and be assured of my constant affection.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Aug. 16, 1809.

Mad. Mss.

Dear Sir,—

I got home from my trip to Washington on Saturday last, having remained there three days only.<sup>1</sup> You will have seen in the Procl<sup>n</sup> issued the result of our consultation on the effect of what has passed on our commercial relation with G. B. The enforcement of the non-intercourse act ag<sup>st</sup> her will probably be criticized by some friends, and generally assailed by our adversaries, on the ground that the power given to the Ex., being special, was exhausted by the first exercise of it; and that the power having put out of force the laws to which it related, could, under no possible construction, restore their operation. In opposition to this reasoning, it was considered that the act of the last session continuing the non-intercourse no otherwise excepted G. B. than by a proviso that it should not affect any trade which had been or might be permitted, in conformity with the section of the original act authorising a proclamation in favor of the nation revoking its Edicts; and that the proclamation in favor of G. B. was not conformable to that section. It was not so in substance, because the indispensable prerequisite, a repeal of the Orders in Council, did not take place. It was not so even in form; the law requiring a past and not a future fact to be proclaimed, and the proclamation, on its face, pointing to a future, not to a past fact. This difficulty was felt at the time of issuing the first proclamation; but it yielded to the impossibility of otherwise obtaining, without great delay, the coveted trade with G. B. and an example that might be followed by France; to the idea that the mode in which the repeal, though future, of the orders and of the law, was coupled by the proclamation, might, on the occurrence of the former, give a constructive validity to the latter; and to the opportunity afforded by an intervening session of Cong<sup>s</sup> for curing any defect in the proceeding. In one respect, it would have been clearly proper for Congress to have interposed its authority, as was frequently intimated to members; that is, to provide for the contingency, not so much of a disavowal by G. B. which was never suspected, as of her not receiving the act of her Minister till after the 10th of June. Congress, however, never could be brought to attend to the subject, although it was pressed by several members, I believe, certainly by Gardenier,<sup>1</sup> on the general ground, that the Procl<sup>n</sup>, however acceptable, was not in a form, nor under the circumstances, contemplated by law. In some of the instructions given by Mr. Gallatin's circular, a liberty has been taken having no plea but manifest necessity, and as such will be before Congress.

Erskine is in a ticklish situation with his Gov<sup>t</sup>. I suspect he will not be able to defend himself against the charge of exceeding his instructions, notwithstanding the appeal he makes to sundry others not published. But he will make out a strong case ag<sup>st</sup> Canning, and be able to avail himself much of the absurdity and evident inadmissibility of the articles disregarded by him. He can plead, also, that the difference between his arrangem<sup>t</sup> and the spontaneous orders of Ap<sup>l</sup> 26 is too slight to



justify the disavowal of him. This difference seems, indeed, to limit its importance to the case of Holland, and to consist in the direct trade admitted by the arrangement, and an indirect one through the adjoining ports required by the orders. To give importance to this distinction, the Ministry must avow, what, if they were not shameless, they never w<sup>d</sup> avow, that their object is not to retaliate injury to an enemy; but to prevent the legitimate trade of the U. S. from interfering with the London smugglers of sugar and coffee.

We are looking out for M<sup>r</sup>. and M<sup>rs</sup>. Gallatin every day. Untill they arrive, and we learn also the periods of your being at and absent from Home, we do not venture to fix a time for our proposed visit to Monticello.

Accept my most affectionate respects.

Capt: Coles has been with us since Sunday. I refer to him for the state of our foreign affairs, with which he is especially acquainted, to say more than I cou'd well put on paper.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Montpellier, Sep<sup>tr</sup> 11, 1809.

Mad. Mss.

Dear Sir,—

I send herewith a few papers which have come to my hands, along with those addressed to myself.

Jackson, according to a note sent from Annapolis, to M<sup>r</sup>. Smith, was to be in Washington on Friday evening last. The letters from M<sup>r</sup> Pinkney, brought by him, were dated June 23, and merely rehearsed a conversation with Canning; from which it would seem that C readily admitted that his second condition (Colonial trade) had no connection with the subject, and that it was not to be expected the U. States would accede to the 3<sup>d</sup>, (G. B. to execute our laws.)<sup>1</sup> Why, then, make them ultimata? or if not ultimata, why reject the arrangem<sup>t</sup> of E. for not including them? For as to the first article, if he does not fly from his language to P., the continuance of the non-intercourse against France cannot be denied to be a substantial fulfilment of it. From this view of the matter, it might be inferred that Jackson comes with a real olive in his hand. But besides the general slipperiness of his superior, some ideas fell from him in his conversation with P. justifying distrust of his views.

The bearer of this is M<sup>r</sup>. Palmer, a young man, respectable I believe, of New York. He is very remarkable as a linguist, and for the most part self-taught. He is perhaps the only American, never out of his own Country, who has dipt as much into the Chinese.

The letter herewith for Capt: Coles, was to have gone by the last mail. If no earlier conveyance sh<sup>d</sup>. offer I beg the favor of its being sent to the post office in time for the next. Be assured always of my affectionate respects.

As we wish not to be from home, in case any of our friends from Monticello should indulge us with a visit, be so good as to drop us notice of the time.

I have mustered up the weather journals, and w<sup>d</sup>. send them by the present opp<sup>y</sup> but that they w<sup>d</sup>. encumber too much. The fall of water I find has been noted for not more than 7 or 8 years. The other items much longer.

[\[Back to Table of Contents\]](#)

## TO ROBERT SMITH.

Montpellier, Sep<sup>r</sup>. 15, 1809.

D. Of S. Mss.  
Misc. Lets.

Dear Sir,

I have rec<sup>d</sup>. yours of the 11<sup>th</sup>. with the papers to which it refers. The determination of Jackson to withhold even informal intimations of his authorized communications previous to the ceremony of his reception, and his apparent patience under the delay of this preliminary, are sufficient proofs that the instructions are not of a nature to produce a conciliatory effect, and much less to change the present commercial relations of the two countries. He can have no motive therefore to hasten a disclosure of them, and a very ardent one to suspend unwelcome propositions, which if not changed by his Gov<sup>t</sup>. may as well be made hereafter; and which if changed under the influence of events, will not, in that case, have betrayed the temporizing policy by which it is governed. If it were not our real desire to bring about a reconciliation on just grounds, it might not be amiss, to lay him as soon as possible under the necessity of coming out with the explanation of his errand, and thereby turning the pride of his Gov<sup>t</sup>. more & more ag<sup>st</sup> the course which justice prescribes. But as reconciliation is our real object, it may suit us as well as the other party, to allow some opportunity for re-consideration; altho' I am aware that in so doing, our dispositions may be misinterpreted by the ignorant, and misrepresented by the wicked. Viewing the subject in this light I think it will be most becoming, as it will certainly be most convenient to myself, not to change the intended time of my return to Washington. You may therefore, if you think proper, let M<sup>r</sup>. Erskine understand that I shall probably be in Washington ab<sup>t</sup>. the first of October; or possibly a few days sooner or later, as circumstances may induce. As Jackson has not manifested any solicitude on this point, & has no personal accomodation at stake, there is the less occasion to add any thing to what you have already signified to him, unless indeed it were in some very incidental way. From the character of the man, and the temper of his superiors, any thing beyond that politeness which explains itself, and is due to ourselves, is more likely to foster insolence than to excite liberality or good will. I return herewith the last letter from Gen<sup>l</sup>. Turreau. He must know that the request relating to the disposition of the crew of the Cerbeau (?) can not be granted; and that no proceedings with respect to the vessel can take place, but in pursuance of the law of nations, or of the leges loci. Accept my affectionate respects.

[\[Back to Table of Contents\]](#)

## TO MRS. MADISON.1

Yours of the 1st instant my dearest gives me much happiness but it cannot be complete till I have you again with me. Let me know the moment you can of the time you will set out that I may make arrangements for paying the Dr. &c. My tob has been sold in Ricd but unfortunately the bills are not yet come on & are on N. York at 60 days so that some recognition will be necessary. I did not expect you would receive much from your Tenants. Dont forget to do something as to insuring the buildings. Your question as to Spain & England is puzzling, as one gets into ill humor it is possible the other may change her countenance. If a general war takes place in Europe Spain will probably be less disposed to insult us & England less sparing of her insults whether a war will be forced by either is more than can be foreseen. It certainly will not if they consult their interest. The power of deciding questions of war & providing measures that will make or meet it is with Congress & that is always our answer to Newspapers. Madam T[urreau] is here the General not. Your friends are all well except Capt T[ingey] who has been in extreme danger but is mending. Mrs T also has been unwell. I enclose a letter from Payne & one from Mrs R. Miss P. postscript makes my mouth water. Cousin Isaac's would too, if he had ever had the taste which I have had.

Your Own  
Affec

J. M.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON. 1

Washington, Nov<sup>r</sup> 6, 1809.

Dear Sir,—

I received your letter from Eppington. I had not heard that either the Attorney General or the Governor of Illinois meant to resign.

Inclosed are several letters for you, received from France by the return of the Wasp. You will see the propriety of my adding one to myself from M<sup>r</sup>. Short, to be returned after perusal. Our information from Paris, of the 19th of September, gives no countenance to the rumoured renewal of hostilities in Austria. The delay of peace in form alone keeps alive such rumours. But why should such an event flatter the hopes of G. Britain? According to all the lessons of experience, it would quickly be followed by a more compleat prostration of her Ally. Armstrong had forwarded to the French Court the measure taken here in consequence of the disavowal of Erskine's arrangement, but there had not been time for an answer. The answer to the previous communication had been, let England annul her illegal blockade of France, and the Berlin decree will be revoked; let her then revoke her orders of November, and the Milan decree falls, of course. This state of the question between the two powers would promise some good, if it were ascertained that by the blockade of France previous to the Berlin decree was meant that of May, extending from the Elbe to Brest, or any other specific act. It is to be feared that there is an intentional obscurity, or that an *express* and general renunciation of the British practice is made the condition. From G. Britain we have only newspaper intelligence. The change in the Ministry seems likely to make bad worse, unless we are to look for some favorable change in the extremity to which things must rapidly proceed under the quackeries and corruptions of an administration headed by such a being as Perceval. Jackson is proving himself a worthy instrument of his patron, Canning. We shall proceed with a circumspect attention to all the circumstances mingled in our affairs, but with a confidence, at the same time, in a just sensibility of the nation to the respect due to it.

[\[Back to Table of Contents\]](#)

## FIRST ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

November 29, 1809.

At the period of our last meeting I had the satisfaction of communicating an adjustment with one of the principal belligerent nations, highly important in itself, and still more so as presaging a more extended accommodation. It is with deep concern I am now to inform you that the favorable prospect has been overclouded by a refusal of the British Government to abide by the act of its minister plenipotentiary, and by its ensuing policy toward the United States as seen through the communications of the minister sent to replace him.

Whatever pleas may be urged for a disavowal of engagements formed by diplomatic functionaries in cases where by the terms of the engagements a mutual ratification is reserved, or where notice at the time may have been given of a departure from instructions, or in extraordinary cases essentially violating the principles of equity, a disavowal could not have been apprehended in a case where no such notice or violation existed, where no such ratification was reserved, and more especially where, as is now in proof, an engagement to be executed without any such ratification was contemplated by the instructions given, and where it had with good faith been carried into immediate execution on the part of the United States.

These considerations not having restrained the British Government from disavowing the arrangement by virtue of which its orders in council were to be revoked, and the event authorizing the renewal of commercial intercourse having thus not taken place, it necessarily became a question of equal urgency and importance whether the act prohibiting that intercourse was not to be considered as remaining in legal force. This question being, after due deliberation, determined in the affirmative, a proclamation to that effect was issued. It could not but happen, however, that a return to this state of things from that which had followed an execution of the arrangement by the United States would involve difficulties. With a view to diminish these as much as possible, the instructions from the Secretary of the Treasury now laid before you were transmitted to the collectors of the several ports. If in permitting British vessels to depart without giving bonds not to proceed to their own ports it should appear that the tenor of legal authority has not been strictly pursued, it is to be ascribed to the anxious desire which was felt that no individuals should be injured by so unforeseen an occurrence; and I rely on the regard of Congress for the equitable interests of our own citizens to adopt whatever further provisions may be found requisite for a general remission of penalties involuntarily incurred.

The recall of the disavowed minister having been followed by the appointment of a successor, hopes were indulged that the new mission would contribute to alleviate the

disappointment which had been produced, and to remove the causes which had so long embarrassed the good understanding of the two nations. It could not be doubted that it would at least be charged with conciliatory explanations of the step which had been taken and with proposals to be substituted for the rejected arrangement. Reasonable and universal as this expectation was, it also has not been fulfilled. From the first official disclosures of the new minister it was found that he had received no authority to enter into explanations relative to either branch of the arrangement disavowed nor any authority to substitute proposals as to that branch which concerned the British orders in council, and, finally, that his proposals with respect to the other branch, the attack on the frigate *Chesapeake*, were founded on a presumption repeatedly declared to be inadmissible by the United States, that the first step toward adjustment was due from them, the proposals at the same time omitting even a reference to the officer answerable for the murderous aggression, and asserting a claim not less contrary to the British laws and British practice than to the principles and obligations of the United States.

The correspondence between the Department of State and this minister will show how unessentially the features presented in its commencement have been varied in its progress. It will show also that, forgetting the respect due to all governments, he did not refrain from imputations on this, which required that no further communications should be received from him. The necessity of this step will be made known to His Britannic Majesty through the minister plenipotentiary of the United States in London; and it would indicate a want of the confidence due to a Government which so well understands and exacts what becomes foreign ministers near it not to infer that the misconduct of its own representative will be viewed in the same light in which it has been regarded here. The British Government will learn at the same time that a ready attention will be given to communications through any channel which may be substituted. It will be happy if the change in this respect should be accompanied by a favorable revision of the unfriendly policy which has been so long pursued toward the United States.

With France, the other belligerent, whose trespasses on our commercial rights have long been the subject of our just remonstrances, the posture of our relations does not correspond with the measures taken on the part of the United States to effect a favorable change. The result of the several communications made to her Government, in pursuance of the authorities vested by Congress in the Executive, is contained in the correspondence of our minister at Paris now laid before you.

By some of the other belligerents, although professing just and amicable dispositions, injuries materially affecting our commerce have not been duly controlled or repressed. In these cases the interpositions deemed proper on our part have not been omitted. But it well deserves the consideration of the legislature how far both the safety and the honor of the American flag may be consulted, by adequate provisions against that collusive prostitution of it by individuals unworthy of the American name which has so much favored the real or pretended suspicions under which the honest commerce of their fellow-citizens has suffered.

In relation to the powers on the coast of Barbary, nothing has occurred which is not of a nature rather to inspire confidence than distrust as to the continuance of the existing amity. With our Indian neighbors, the just and benevolent system continued toward them has also preserved peace, and is more and more advancing habits favorable to their civilization and happiness.

From a statement which will be made by the Secretary of War it will be seen that the fortifications on our maritime frontier are in many of the ports completed, affording the defense which was contemplated, and that a further time will be required to render complete the works in the harbor of New York and in some other places. By the enlargement of the works and the employment of a greater number of hands at the public armories the supply of small arms of an improving quality appears to be annually increasing at a rate that, with those made on private contract, may be expected to go far toward providing for the public exigency.

The act of Congress providing for the equipment of our vessels of war having been fully carried into execution, I refer to the statement of the Secretary of the Navy for the information which may be proper on that subject. To that statement is added a view of the transfers of appropriations authorized by the act of the session preceding the last and of the grounds on which the transfers were made.

Whatever may be the course of your deliberations on the subject of our military establishments, I should fail in my duty in not recommending to your serious attention the importance of giving to our militia, the great bulwark of our security and resource of our power, an organization the best adapted to eventual situations for which the United States ought to be prepared.

The sums which had been previously accumulated in the Treasury, together with the receipts during the year ending on the 30th of September last (and amounting to more than \$9,000,000), have enabled us to fulfill all our engagements and to defray the current expenses of Government without recurring to any loan. But the insecurity of our commerce and the consequent diminution of the public revenue will probably produce a deficiency in the receipts of the ensuing year, for which and for other details I refer to the statements which will be transmitted from the Treasury.

In the state which has been presented of our affairs with the great parties to a disastrous and protracted war, carried on in a mode equally injurious and unjust to the United States as a neutral nation, the wisdom of the National Legislature will be again summoned to the important decision on the alternatives before them. That these will be met in a spirit worthy the councils of a nation conscious both of its rectitude and of its rights, and careful as well of its honor as of its peace, I have an entire confidence; and that the result will be stamped by a unanimity becoming the occasion, and be supported by every portion of our citizens with a patriotism enlightened and invigorated by experience, ought as little to be doubted.

In the midst of the wrongs and vexations experienced from external causes there is much room for congratulation on the prosperity and happiness flowing from our situation at home. The blessing of health has never been more universal. The fruits of



the seasons, though in particular articles and districts short of their usual redundancy, are more than sufficient for our wants and our comforts. The face of our country everywhere presents the evidence of laudable enterprise, of extensive capital, and of durable improvement. In a cultivation of the materials and the extension of useful manufactures, more especially in the general application to household fabrics, we behold a rapid diminution of our dependence on foreign supplies. Nor is it unworthy of reflection that this revolution in our pursuits and habits is in no slight degree a consequence of those impolitic and arbitrary edicts by which the contending nations, in endeavoring each of them to obstruct our trade with the other, have so far abridged our means of procuring the productions and manufactures of which our own are now taking the place.

Recollecting always that for every advantage which may contribute to distinguish our lot from that to which others are doomed by the unhappy spirit of the times we are indebted to that Divine Providence whose goodness has been so remarkably extended to this rising nation, it becomes us to cherish a devout gratitude, and to implore from the same omnipotent source a blessing on the consultations and measures about to be undertaken for the welfare of our beloved country.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

To The Senate And House Of Representatives Of The United States:

January 3, 1810.

The act authorizing a detachment of 100,000 men from the militia will expire on the 30th of March next. Its early revival is recommended, in order that timely steps may be taken for arrangements such as the act contemplated.

Without interfering with the modifications rendered necessary by the defects or the inefficacy of the laws restrictive of commerce and navigation, or with the policy of disallowing to foreign armed vessels the use of our waters, it falls within my duty to recommend also that, in addition to the precautionary measure authorized by that act and to the regular troops for completing the legal establishment of which enlistments are renewed, every necessary provision may be made for a volunteer force of 20,000 men, to be enlisted for a short period and held in a state of organization and readiness for actual service at the shortest warning.

I submit to the consideration to Congress, moreover, the expediency of such a classification and organization of the militia as will best insure prompt and successive aids from that source, adequate to emergencies which may call for them.

It will rest with them also to determine how far further provision may be expedient for putting into actual service, if necessary, any part of the naval armament not now employed.

At a period presenting features in the conduct of foreign powers toward the United States which impose on them the necessity of precautionary measures involving expense, it is a happy consideration that such is the solid state of the public credit that reliance may be justly placed on any legal provision that may be made for resorting to it in a convenient form and to an adequate amount.

[\[Back to Table of Contents\]](#)

## TO GEORGE JOY. 1

Washington, Jan 17th, 1810.

D. Of S. Mss.

Dear Sir,—

I have rec<sup>d</sup> your favor of the 10th. Your anxiety that our Country may be kept out of the vortex of war, is honorable to your judgment as a Patriot, & to your feelings as a man. The same anxiety is, I sincerely believe, felt by the great body of the nation, & by its Public councils; most assuredly by the Executive Branch of them. But the question may be decided for us, by actual hostilities ag<sup>st</sup>. us or by proceedings leaving no choice but between absolute disgrace & resistance by force. May not also, manifestations of patience under injuries & indignities be carried so far as to invite this very dilemma?

I devoutly wish that the same disposition to cultivate peace by means of justice, which exists here, predominated elsewhere, particularly in G. B. But how can this be supposed, whilst she persists in proceedings, which comprize the essence of hostility; whilst she violates towards us rules, which she enforces ag<sup>st</sup>. us in her own favor; more particularly whilst we see her converting the late reconciliation thro one of the Ministers, into a source of fresh difficulties & animosities thro another. For in this light must be viewed her disavowal of Mr. Erskine, and the impressions made thro his successor. Had the disavowal been deemed essential to her interests, a worse plaister could not have been devised for the wound necessarily inflicted here. But was the disavowal essential to her interests? was it material to them, taking for the test, her own spontaneous change of system, and her own official language? By the former I refer to her orders of April, restricting their original orders ag<sup>st</sup> neutrals, to a trade with France & Holland; by the latter to the conversation of Mr. Canning with Mr. P., in which he abandons as he could not but do, two of the conditions which had been contemplated; & admits that a non-intercourse law here ag<sup>st</sup>. Holland was not a sine qua non. So that the arrangement of Mr. E. was disavowed essentially for want of a pledge that our non-intercourse would be continued ag<sup>st</sup>. France & her dominions. But why disavow absolutely, why at all, on this account? The law was known to be in force ag<sup>st</sup>. France at the time of the arrangement. It was morally certain that if put in force ag<sup>st</sup> F whilst she was pleading the British orders, it would not be withdrawn if she should persist in her Decrees after being deprived of this plea. And there would be no fair ground to suppose, that the condition w<sup>d</sup>. not be pledged & stipulated, if required, as soon as the Requisite Authorities here should be together. The disavowal is the more extraordinary, as the arrangement was to be respected till the 20th of July, and therefore with the addition of four or five weeks only would have afforded an opportunity of knowing the sense of this Gov<sup>t</sup>., and of supplying all that was wanted to satisfy the British Ultimatum. This course was so obvious, and that pursued so opposite, that we are compelled to look to other motives for an explanation, & to include among these, a disinclination to put an end to differences from which such advantages are extracted by British Commerce & British Cruisers.

Notwithstanding all these grounds of discontent & discouragement, we are ready as the B. Gov<sup>t</sup>. knows, to join in any new experiment, and thro either our diplomatic channel there or hers here, for a cordial and comprehensive adjustment of matters between the two countries.

Let reparation be made for the acknowledged wrong committed in the case of the Chesapeak, a reparation so cheap to the wrong-doer, yet so material to the honor of the injured party; & let the orders in Council, already repealed as to the avowed object of retaliation; be repealed also as an expedient for substituting an illicit commerce, in place of that to which neutrals have as such, an incontestable right. The way will then be open for negotiation at large; And if the B. Gov<sup>t</sup> would bring into it the same temper as she would find in us; and the same disposition to insist on nothing inconsistent with the rule of doing as she would, or rather as she *will* be done by, the result could not fail to be happy for both.

Permit me to remark that you are under a mistake in supposing that the Treaty concluded by Mess<sup>r</sup>. M. & P. was rejected because it did not provide that free ships should make free goods. It never was required nor expected that such a stipulation should be inserted. As to deserting Seamen, you will find that G. B. practises ag<sup>st</sup> us the principles we assert ag<sup>st</sup> her, and in fact goes further; that we have always been ready to enter into a convention on that subject founded on reciprocity; and that the documents long since in print shew, that we are willing, on the subject of impressment, to put an end to it, by an arrangement, which most certainly would be better for the British Navy, than that offensive resource; and which might be so managed as to leave both parties at liberty to retain their own ideas of right. Let me add that the acceptance of that Treaty would have very little changed the actual situation of things with G. B. The orders in Council w<sup>d</sup>. not have been prevented, but rather placed on stronger ground; the case of the Chesape, the same as it is; so also, the case of impressments, of factitious blockades &c all as at present pregnant sources of contention and ill humour.

From this view of the subject, I cannot but persuade myself that you will concur in opinion, that if unfortunately, the calamity you so benevolently dread should visit this hitherto favored Country, the fault will not lye where you would not wish it to lye.

Accept Assurances Of My Esteem & Friendship

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY. 1

Jan'y 20, 1810.

Dear Sir,—

I received some days ago a letter of the 10th instant from Doctor Logan, containing observations on the posture and prospect of our foreign relations. Before the answer was out of my hands, I received another dated four days after, in which he merely informed me that he should embark for England in about eight days, with an offer to take charge of any communications for you. As his first letter did not glance at any such intention, it must be presumed to have been very suddenly formed. And as his last is silent as to the object of the trip, this is left to conjecture. From the anxiety expressed in his first letter for the preservation of peace with England, which appeared to him to be in peculiar danger, and from his known benevolence and zeal on the subject, it may reasonably be supposed that his views relate, in some form or other, to a mitigation of the hostile tendencies which distress him; and that his silence may proceed from a wish to give no handle for animadversions of any sort on the step taken by him.

You will receive from the Secretary of State, unless, indeed, opportunity fail through the shortness of the notice, such communications and observations as may be thought useful to you. You will find that the perplexity of our situation is amply displayed by the diversity of opinions and prolixity of discussion in Congress. Few are desirous of war; and few are reconciled to submission; yet the frustration of intermediate courses seems to have left scarce an escape from that dilemma. The fate of Mr. Macon's Bill, 1 as it is called, is not certain. It will probably pass the House of Representatives, and, for aught I know, may be concurred in by the Senate. If retaliated by G. Britain, it will operate as a non-importation act, and throw exports into the circuit of the non-intercourse act. If not retaliated, it may be felt by the British navigation, and, thro' that interest, by the Government, since the execution of the law which relates to the ship, and not to the merchandize, cannot be evaded. With respect to the E. Indies, the proposed regulation will have the effect of compelling the admission of a direct and *exclusive* trade for our vessels, or a relinquishment of this market for India goods, farther than they can be smuggled into it. It just appears that a proposition has been made in the House of Representatives to employ our ships of war in convoys, and to permit merchantmen to arm. However plausible the arguments for this experiment, its tendency to hostile collisions is so evident, that I think its success improbable. As a mode of going into war, it does not seem likely to be generally approved, if war was the object. The military preparations which have been recommended, and are under consideration, are what they profess to be, measures of precaution. They are not only justified, but dictated by the uncertainty attending the course which G. Britain may take, or, rather, by the unyielding and unamicable traits in her Cabinet and her countenance. Measures of that sort are also the more adapted to our situation, as, in the event of accommodation with G. Britain, they may possibly be wanted in another

quarter. The long debates on the Resolution of Mr. Giles,<sup>1</sup> on the subject of Mr. Jackson, have terminated in affirmative votes, by large majorities. This, with the refusal of the Executive to hold communication with him, it is supposed, will produce a crisis in the British policy towards the United States; to which the representations of the angry Minister will doubtless be calculated to give an unfavorable turn. Should this happen, our precautionary views will have been the more seasonable. It is most probable, however, that instead of expressing resentment by open war, it will appear in more extended depredations on our commerce; in declining to replace Mr. Jackson; and, perhaps, in the course observed with respect to you, in meeting which your own judgment will be the best guide. Should a change in the composition or calculations of the Cabinet give a favorable turn to its policy towards this country, it is desirable that no time may be lost in allowing it its effect. With this view, you will be reminded of the *several* authorities you retain to meet in negotiation, and of the instructions by which they are to be exercised; it being always understood, that with the exception of some arrangement touching the orders in Council, reparation for the insult on the Chesapeake must precede a general negotiation on the questions between the two countries. At present, nothing precise can be said as to the condition on our part for the repeal of the orders in Council; the existing authority in the Executive to pledge one being expirable with the non-intercourse act, and no other pledge being provided for. As it is our anxious desire, however, if the British Government should adopt just and conciliatory views, that nothing may be omitted that can shew our readiness to second them, you may offer a general assurance that, as in the case of the Embargo and the non-intercourse acts, any similar power with which the Executive may be clothed will be exercised in the same spirit. You will doubtless be somewhat surprised to find among the communications to Congress, and in print, too, the confidential conversations with Mr. Canning, reserved from such a use by your own request.<sup>1</sup> It was, in fact, impossible to resist the pointed call for them, without giving umbrage to some, and opportunity for injurious inferences to others. The difficulty was increased by the connection between those and other communications necessarily falling within the scope of the rule of compliance in such cases. Finally, there did not appear to be any thing in the conversations which could warrant British complaint of their disclosure, or widen the space between you and the British Ministry.

As it may not be amiss that you should know the sentiments which I had expressed to Doctor Logan, and which, though an answer to his letter written previous to the notification of his intended trip, he will of course carry with him, I enclose a copy of the answer.

The file of newspapers from the Department of State will give you the debates on the case of Jackson. I enclose, however, a speech I have just looked over, in a pamphlet form. Although liable to very obvious criticisms of several sorts, it has presented a better analysis of some parts of the subject than I have observed in any of the speeches.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, Ap<sup>l</sup> 23, 1810.

Mad. Mss.

Dear Sir

Yours of the 16th, has been rec<sup>d</sup>. It is not improbable that there will be an early occasion to send for public purposes, a ship to G. B. & France: & that Norfolk will be the port of Departure. I recommend therefore that your plow be lodged there as soon as may be, with the proper instructions to your Agent. It may not be amiss to include in those a discretion to forward the plow to any other port if he sh<sup>d</sup> learn in time, that another is substituted for Norfolk. Cong<sup>s</sup>. remain in the unhinged state which has latterly marked their proceedings; with the exception only that a majority in the H. of R. have stuck together so far as to pass a Bill providing for a conditional repeal by either of the Bellig<sup>ts</sup>. of their Edicts; laying in the mean time, an addition 50 Per C<sup>t</sup>. to the present duties on imports from G. B. and France. What the Senate will do with the Bill is rendered utterly uncertain by the policy which seems to prevail in that Branch. Our last authentic information from G. B. is of the 28, Feb<sup>y</sup>, & from France of the 2d of Feb<sup>y</sup>. The information in both cases, has an aspect rather promising; but far from being definite; and subsequent acc<sup>ts</sup>., thro. the ordinary channels, do not favor a reliance on general professions or appearances. Bonaparte, seems not to have yet attended to the distinction between the external & internal character of his Decrees; and to be bending his augmented faculties for annihilating British Commerce with the Cont<sup>t</sup>. with which our corrupt traders have confounded the Am<sup>n</sup>. flag. And it will be a hard matter for Wellesley, sh<sup>d</sup>. he be well disposed, to drag his Anti-American Colleagues into a change of policy; supported as they will be by the speeches and proceedings of Cong<sup>s</sup>. From those the inference will be that one party prefers submission of our trade to British regulation, and the other confesses the imposs<sup>ibty</sup> of resisting it. Without a change of Ministry, of which there is some prospect, it w<sup>d</sup>. be imprudent to count on any radical change of policy. For the moment, I understand that the Merch<sup>ts</sup> will not avail themselves of the unshackled trade they have been contending for; a voluntary Embargo being produced by the certainty of a glutted Market in England, and the apprehension of Brit Blockades and French confiscations. The experiment about to be made will probably open too late the eyes of the people, to the expediency & efficacy of the means which they have suffered to be taken out of the hands of the Gov<sup>t</sup>., and to be incapacitated for future use. The Merinos are not yet heard of. Be assured of my constant & aff<sup>e</sup>. respects.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY. 1

Washington, May 23d, 1810.

Dear Sir,—

You will learn from the Department of State, as you must have anticipated, our surprise that the answer of Lord Wellesley to your very just and able view of the case of Jackson corresponded so little with the impressions of that Minister manifested in your first interviews with him. The date of the answer best explains the change; as it shows that time was taken for obtaining intelligence from this Country, and adapting the policy of the answer to the position taken by the advocates of Jackson. And it must have happened that the intelligence prevailing at that date was of the sort most likely to mislead. The elections which have since taken place in the Eastern States, and which have been materially influenced by the affair of Jackson, and the spirit of party connected with it, are the strongest of proofs that the measure of the Executive coincided with the feelings of the Nation. In every point of view, the answer is unworthy of the source from which it comes.

From the manner in which the vacancy left by Jackson is provided for, it is inferred that a sacrifice is meant of the respect belonging to this Government, either to the pride of the British Government, or to the feelings of those who have taken side with it against their own. On either supposition, it is necessary to counteract the ignoble purpose. You will accordingly find that on ascertaining the substitution of a Chargé to be an intentional degradation of the diplomatic intercourse on the part of Great Britain, it is deemed proper that no higher functionary should represent the United States at London. I sincerely wish, on every account, that the views of the British Government, in this instance, may not be such as are denoted by appearances, or that, on finding the tendency of them, they may be changed. However the fact may turn out, you will, of course, not lose sight of the expediency of mingling in every step you take as much of moderation, and even of conciliation, as can be justifiable; and will, in particular, if the present despatches should find you in actual negotiation, be governed by the result of it in determining the question of your devolving your trust on a Secretary of Legation.

The act of Congress, transmitted from the Department of State, will inform you of the footing on which our relations to the belligerent powers were finally placed. The experiment now to be made, of a commerce with both, unrestricted by our laws, has resulted from causes which you will collect from the debates and from your own reflections. The new form of appeal to the policy of Great Britain and France, on the subject of the Decrees and Orders, will most engage your attention. However feeble it may appear, it is possible that one or other of those powers may allow it more effect than was produced by the overtures heretofore tried. As far as pride may have influenced the reception of these, it will be the less in the way, as the law in its present form may be regarded by each of the parties, if it so pleases, not as a coercion or a



threat to itself, but a promise of attack on the other. Great Britain, indeed, may conceive that she has now a compleat interest in perpetuating the actual state of things, which gives her the full enjoyment of our trade, and enables her to cut it off with every other part of the world; at the same time that it increases the chance of such resentments in France at the inequality as may lead to hostilities with the United States. But, on the other hand, this very inequality, which France would confirm by a state of hostilities with the United States, may become a motive with her to turn the tables on G. Britain, by compelling her either to revoke her orders, or to lose the commerce of this country. An apprehension that France may take this politic course would be a rational motive with the British Government to get the start of her. Nor is this the only apprehension that merits attention. Among the inducements to the experiment of an unrestricted commerce now made, were two which contributed essentially to the majority of votes in its favor; first, a general hope, favoured by daily accounts from England, that an adjustment of differences there, and thence in France, would render the measure safe and proper; second, a willingness in not a few to teach the advocates for an open trade, under actual circumstances, the folly as well as degradation of their policy. At the next meeting of Congress, it will be found, according to present appearances, that instead of an adjustment with either of the belligerents, there is an increased obstinacy in both; and that the inconveniences of the embargo and non-intercourse have been exchanged for the greater sacrifices, as well as disgrace, resulting from a submission to the predatory systems in force. It will not be wonderful, therefore, if the passive spirit which marked the late session of Congress should at the next meeting be roused to the opposite point; more especially as the tone of the nation has never been as low as that of its Representatives, and as it is rising already under the losses sustained by our commerce in the Continental ports, and by the fall of prices in our produce at home, under a limitation of the market to G. Britain. Cotton, I perceive, is down at 10 or 11 cents in Georgia. The great mass of Tobacco is in a similar situation. And the effect must soon be general, with the exception of a few articles which do not at present glut the British demand. Whether considerations like these will make any favorable impression on the British Cabinet, you will be the first to know. Whatever confidence I may have in the justness of them, I must forget all that has past before I can indulge very favorable expectations. Every new occasion seems to countenance the belief that there lurks in the British Cabinet a hostile feeling towards this Country, which will never be eradicated during the present reign; nor overruled, whilst it exists, but by some dreadful pressure from external or internal causes.

With respect to the French Government, we are taught by experience to be equally distrustful. It will have, however, the same opportunity presented to it, with the British Government, of comparing the actual state of things with that which would be produced by a repeal of its Decrees, and it is not easy to find any plausible motive to continue the former, as preferable to the latter. A worse state of things than the actual one could not exist for France, unless her preference be for a state of war. If she be sincere, either in her late propositions relative to a chronological revocation of illegal Edicts against neutrals, or to a pledge from the United States not to submit to those of Great Britain, she ought at once to embrace the arrangement held out by Congress, the renewal of a non-intercourse with Great Britain being the very species of resistance most analogous to her professed views.

I propose to commit this to the care of Mr. Parish, who is about embarking at Philadelphia for England; and finding that I have missed a day in my computation of the opportunity, I must abruptly conclude, with assurances of my great esteem, &c.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.1

Washington, May 25, 1810.

Dear Sir,—

I have duly received your favor of the 13th. The general idea of disposing of the supernumerary Merino Rams for the public benefit had occurred to me. The mode you propose for the purpose seems well calculated for it. But as it will be most proper, as you suggest, to let our views be developed to the public by the execution of them, there will be time for further consideration. When the sheep came into my hands, they were so infected with the scab that I found it necessary, in order to quicken and ensure their cure, to apply the mercurial ointment. I hope they are already well. One of the ewes has just dropt a ewe lamb, which is also doing well. I expect my overseer every day to conduct them to Orange. As he will have a wagon with him, the trip, I hope, may be so managed as to avoid injury to his charge.

A former National Intelligencer will have given you our last communications from G. Britain. That of this morning exhibits our prospects on the side of France. The late confiscations by Bonaparte comprise robbery, theft, and breach of trust, and exceed in turpitude any of his enormities not wasting human blood. This scene on the continent, and the effect of English monopoly on the value of our produce, are breaking the charm attached to what is called free trade, foolishly by some, and wickedly by others. We are hourly looking for the “John Adams.” There is a *possibility* that the negotiations on foot at Paris may vary our prospects there. The chance would be better, perhaps, if the last act of Congress were in the hands of Armstrong; which puts our trade on the worst possible footing for France but, at the same time, puts it in the option of her to revive the non-intercourse against England. There is a *possibility*, also, that the views of the latter may be somewhat affected by the recent elections; it being pretty certain that the change in the tone of Wellesley from that first manifested to Pinkney was, in part, at least, produced by the intermediate intelligence from the United States, which flattered a fallacious reliance on the British party here.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, June 22, 1810.

Mad. Mss.

Dear Sir,

I enclose an authentication of the blood of our Merinos, as translated from the Original by M<sup>f</sup>. Graham: also a state of the charges incident to their passage, &c. The half falling to your share, of course, may be left for any convenient occasion of being replaced. You need not trouble yourself to remit it hither.

On the first publication of the despatches by the John Adams,<sup>1</sup> so strong a feeling was produced by Armstrong's picture of the French robbery, that the attitude in which England was placed by the correspondence between P. & Wellesley was overlooked. The public attention is beginning to fix itself on the proof it affords that the original sin ag<sup>st</sup>. Neutrals lies with G. B. & that whilst she acknowledges it, she persists in it.

I am preparing for a departure from this place immediately after the 4<sup>th</sup>. July. Having been deprived of the Spring visit to my Farm, I wish to commence the sooner the full recess. Be assured of my highest & most affec<sup>e</sup>. esteem.

Have you rec<sup>d</sup>. a copy of Coopers (the Pen<sup>a</sup> Judge) masterly opinion<sup>1</sup> on the question whether the sentence of a foreign Admiralty Court in a prize Cause be conclusive evidence in a suit here between the Underwriter & Insured? It is a most *thorough*, investigation, and irrefragable disproof of the B. Doctrine on the subject, as adopted by a decision of the Supreme Court of the U. S. If you are without a copy, I will provide & forward one.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpelier, July 17, 1810.

Mad. Mss.

Dear Sir,

Among the papers relating to the Convention of 1787, communicated to you, that copies in your hands might double the security ag<sup>st</sup> destructive casualties, was a delineation of Hamilton's plan of a Constitution in his writing.<sup>2</sup> On looking for it among the Debates &c, which were returned to me, this particular paper does not appear.<sup>3</sup> I conclude therefore that it had not then been copied, or was at the time in some separate situation. I am very sorry to trouble you on such a subject, but being under an engagement to furnish a Copy of that project, I must ask the favor of you to see whether it be not among your papers, & if so, to forward it by the mail.

I reached home on Wednesday last, and have since been somewhat indisposed. My fever has left me and if as I hope, it was the effect of fatigue only, I consider myself as again well. I am not however, without sensations which make me apprehensive that if the bile was not the sole cause, it was a partial one, & that it has not yet been entirely removed. Be assured of my affectionate respects & best wishes

[\[Back to Table of Contents\]](#)

## TO ROBERT SMITH.

Montpelier, July 17, 1810.

D. Of S. Mss.  
Misc. Lets.

Dear Sir,

The letter from Gov<sup>t</sup>. Holmes,1 with that from M<sup>t</sup>. Lowry & copy of the answer, which were inclosed to me, are now returned.

I think Gov<sup>t</sup>. Holmes should be encouraged in keeping a wakeful eye to occurrences & appearances in W. Florida, and in transmitting information concerning them. It will be well for him also to be attentive to the means of having his militia in a state for any service that may be called for. In the event either of foreign interference with W. F. or of internal convulsions, more especially if threatening the neighboring tranquility, it will be proper to take care of the rights & interests of the U. S. by every measure within the limits of the Ex. authority. Will it not be advisable to apprize Gov<sup>t</sup>. H. confidentially, of the course adopted as to W. F. and to have his co-operation in diffusing the impressions we wish to be made there?

The anecdote related by M<sup>t</sup>. L.1 is interesting in several respects. I take it for granted that the papers to be sent him from the Dep<sup>t</sup> of State will be adapted to the unsettled state of things in Caracas; yet I do not recollect to have rec<sup>d</sup>. for signature any commission varied from the ordinary consular form. Accept my respects & friendly wishes,

[\[Back to Table of Contents\]](#)

TO ROBERT SMITH.

Montpelier July 26th, 1810.

D. Of S. Mss.  
Misc. Lets.

Dear Sir

I return herewith the letters from Vanderhorst, & Bernaben. It would have been better if Lowrey had more carefully concealed his destination. The case of the Spanish Goods landed from the French privateer, must be decided by the result of the judicial inquiry into the character of the latter. If equipped from our jurisdiction, the capture gives claim to restitution. If not so equipped, the law as it stands in relation to prize goods brought into the U. S. must decide on the course to be pursued. It would seem proper to transmit the representation of Bernaben, to the collector & the District Attorney, with a request to the latter to do what may be right in the cases.

I find by a letter from the Secretary of the Navy, that another insult to our national Flag, has been offered by a British Commander. I have desired him to communicate to you the circumstances of the case; on which you will please to found whatever instructions to M<sup>r</sup>. Pinkney, they may render proper.

Accept my respects & best wishes.

[\[Back to Table of Contents\]](#)

## TO JOHN QUINCY ADAMS.

Washington Oct<sup>r</sup>. 16th 1810.

Mad. Mss.

Dear Sir

Previous to my return to his City, I received a letter from Mrs. Adams, your highly respectable mother, communicating your anxiety to leave a situation<sup>1</sup> rendered insupportable by the ruinous expences found to be inseparable from it, and taking it for granted that you had written or would write to the Secretary of State to the same effect. The answer to her was, that as it was not the intention of the Executive to expose you to unreasonable sacrifices, it could not withhold a permission to retire from them, and that you would be so informed from the Department of State. You will accordingly receive a letter of leave, and a blank Commission, providing for the care of our affairs, till a successor may be appointed. As no communication of your wishes, however, has yet been received from yourself, I cannot but hope, that the peculiar urgency manifested in the letter of Mrs. Adams was rather hers, than yours; or that you have found the means of reconciling yourself to a continuance in your station. Besides that confidence in the value of your services which led to the call upon them, there are considerations which you will readily appreciate, bearing against a sudden return, from a short mission; the occasion for which has been made the subject of so much lucubration. Among them, is the difficulty of shielding the step against unfavorable conjectures as to its cause in the mind of the Emperor; and the evil might become the greater, from the possibility of a protracted intermission, if not entire discontinuance, of a representation of the U. S. at S<sup>t</sup> Petersburg, corresponding with the grade of the Russian Minister here. It will for this reason, be particularly expedient, in case you should make immediate use of the document sent you, to spare no pains, in guarding against a misconstruction of your departure, and in preparing the Russian Government for a delay in filling the vacancy; which may be unavoidable, notwithstanding the purpose of preventing it. As far as assurances of unabated friendship here, can be of aid to you, they may be given with every emphasis which the sincerity of these sentiments can warrant.

I will add that whilst I do not disguise my wish that the continuance of your valuable services, may be found not inconsistent with your other and undeniable duties; I cannot, on the other hand, wish that the latter should be sacrificed, beyond a reasonable measure; and within that measure, I am entirely persuaded that your patriotism will cheerfully make the sacrifice.

Accept my sincere respects and friendly wishes



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington Oct<sup>r</sup> 19, 1810.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. your favor of the 15th. All we know of the step taken by France towards a reconciliation with us, is thro the English papers sent by Mr. Pinkney, who had not himself rec<sup>d</sup> any information on the subject from Gen<sup>l</sup> A. nor held any conversation with the B. Ministry on it, at the date of his last letters. We hope from the step, the advantage at least of having but one contest on our hands at a time. If G. B. repeals her orders, without discontinuing her mock-blockades, we shall be at issue with her on ground strong in law, in the opinion of the world, and even in her own concessions. And I do not believe that Cong<sup>s</sup>. will be disposed, or permitted by the Nation, to a tame submission; the less so as it would be not only perfidious to the other belligerent, but irreconcilable with an honorable neutrality. The Crisis in W. Florida, as you will see, has come home to our feelings and our interests. It presents at the same time serious questions, as to the Authority of the Executive, and the adequacy of the existing laws of the U. S. for territorial administration. And the near approach of Cong<sup>s</sup> might subject any intermediate interposition of the Ex. to the charge of being premature & disrespectful, if not of being illegal. Still there is great weight in the considerations, that the Country to the Perdido, being our own, may be fairly taken possession of, if it can be done without violence, above all if there be danger of its passing into the hands of a third & dangerous party. The successful party at Baton Rouge have not yet made any communication or invitation to this Gov<sup>t</sup>. They certainly will call in either our Aid or that of G. B., whose conduct at the Caraccas gives notice of her propensity to fish in troubled waters. From present appearances, our occupancy of W. F. would be resented by Spain, by England, & by France, and bring on not a triangular, but quadrangular contest. The Vacancy in the Judiciary is not without a puzzle in supplying it. Lincoln,<sup>1</sup> obviously, is the first presented to our choice, but I believe he will be inflexible in declining it. Granger is *working hard* for it. His talents are as you state, a strong recommendation; but it is unfortunate that the only legal evidence of them known to the public displays his Yazooism; and on this as well as some other acc<sup>ts</sup> the more particularly offensive to the Southern half of the Nation. His bodily infirmity with its effect on his mental stability is an unfavorable circumstance also. On the other hand, it may be difficult to find a successor free from objections, of equal force. Neither Morton, nor Bacon, nor Story have yet been brought forward, And I believe Blake will not be a candidate. I have never lost sight of Mr. Jefferson of Richmond. Lee I presume returns Bourdeaux. Jarvis is making a visit to the U. S. but apparently with an intention to return to Lisbon. All the other consulships worthy of him are held by persons who manifest no disposition to part with their berths. My overseer G. Gooch is just setting out with the Algerine Rams, Two of them, I have directed him to forward to Monticello. I beg you to accept whichever of them you may prefer, and let Capt: Isaac Coles have the other. Of the 8 sent from Algiers, one was slaughtered on the passage, and a Wether substituted. Another was not of the large tail family; but a very large handsome sheep with 4

horns. His fleece is heavy, but like the others coarse. I send him to Virg<sup>a</sup>. with the others, tho' at a loss what to have done with him there. Two of the large tails I have disposed of here, one to Claiborne for the benefit of the Orleans meat Market. I send also by this opp<sup>y</sup>. six Marino Ewes, two of them rec<sup>d</sup>. from Jarvis, & the rest purchased here out of his late shipment. I have purchased also the Ewe lamb, which had been destined for Hooe of Alexand<sup>a</sup>. Finding that the arrangements necessary for the original pair, would provide for a small flock, I have been tempted to make this addition to them, as a fund of pure Marino blood, worth attending to. The Ewes will stand me in at \$175 a piece.

Accept my affectionate respects

[\[Back to Table of Contents\]](#)

## PROCLAMATION.

Whereas the territory south of the Mississippi Territory and eastward of the river Mississippi, and extending to the river Perdido,<sup>1</sup> of which possession was not delivered to the United States in pursuance of the treaty concluded at Paris on the 30th April, 1803, has at all times, as is well known, been considered and claimed by them as being within the colony of Louisiana conveyed by the said treaty in the same extent that it had in the hands of Spain and that it had when France originally possessed it; and

Whereas the acquiescence of the United States in the temporary continuance of the said territory under the Spanish authority was not the result of any distrust of their title, as has been particularly evinced by the general tenor of their laws and by the distinction made in the application of those laws between that territory and foreign countries, but was occasioned by their conciliatory views and by a confidence in the justice of their cause and in the success of candid discussion and amicable negotiation with a just and friendly power; and

Whereas a satisfactory adjustment, too long delayed, without the fault of the United States, has for some time been entirely suspended by events over which they had no control; and

Whereas a crisis has at length arrived subversive of the order of things under the Spanish authorities, whereby a failure of the United States to take the said territory into its possession may lead to events ultimately contravening the views of both parties, whilst in the meantime the tranquility and security of our adjoining territories are endangered and new facilities given to violations of our revenue and commercial laws and of those prohibiting the introduction of slaves;

Considering, moreover, that under these peculiar and imperative circumstances a forbearance on the part of the United States to occupy the territory in question, and thereby guard against the confusions and contingencies which threaten it, might be construed into a dereliction of their title or an insensibility to the importance of the stake; considering that in the hands of the United States it will not cease to be a subject of fair and friendly negotiation and adjustment; considering, finally, that the acts of Congress, though contemplating a present possession by a foreign authority, have contemplated also an eventual possession of the said territory by the United States, and are accordingly so framed as in that case to extend in their operation to the same:

Now be it known that I, James Madison, President of the United States of America, in pursuance of these weighty and urgent considerations, have deemed it right and requisite that possession should be taken of the said territory in the name and behalf of the United States. William C. C. Claiborne, governor of the Orleans Territory, of which the said Territory is to be taken as part, will accordingly proceed to execute the same and to exercise over the said Territory the authorities and functions legally

appertaining to his office; and the good people inhabiting the same are invited and enjoined to pay due respect to him in that character, to be obedient to the laws, to maintain order, to cherish harmony, and in every manner to conduct themselves as peaceable citizens, under full assurance that they will be protected in the enjoyment of their liberty, property, and religion.

In testimony &c.,

(October 27, 1810.)

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.1

(Private.)

Washington Oct<sup>r</sup> 29, 1810.

Dear Sir

.....

You will learn from the Dept. of State that altho' no direct authentication of the repeal of the F. decrees has been rec<sup>d</sup>. from you, a proclamation issues1 on the ground furnished by your correspondence with M<sup>r</sup>. Pinkney. It is to be hoped that France will do what she is understood to be pledged for, & in a measure that will produce no jealousy or embarrassment here. We hope in particular that the sequestred property will have been restored; without which the Ex. may be charged w<sup>th</sup>. violating their own instructions to you on that point. Whether that instruction was not itself a departure from the law, & must not have been set aside in case the repeal of the decrees had arrived, with a knowledge that F. had made no satisfactory provision as to sequestrations, are questions which it w<sup>d</sup>. be well to have no occasion to decide. The course which G. B. will take, is left by Wellesley's pledge, a matter of conjecture. It is not improbable that the orders in C. will be revoked & the sham blockade be so managed if possible, as to irritate France ag<sup>st</sup>. our non-resistance, without irritating this Country to the resisting point. It seems on the whole that we shall be at issue with G. B. on the ground of such blockades, and it is for us, a strong ground.

You will see also the step that has been produced by the posture of things in W. Florida. If France is wise she will neither dislike it herself, nor promote resentment of it in any other quarter. She ought in fact, if guided by prudence & good information, to patronize at once, a general separation of S. America from Old Spain. This event is already decided, and the sole question with F. is whether it is to take place under her auspices, or those of G. B. The latter, whether with or without the privity of the expiring authority at Cadiz, is taking her measures with reference to that event; and in the mean time, is extorting commercial privileges as to the recompense of her interposition. In this particular her avarice is defeating her interest. For it not only invites F. to outbid her; but throws in seeds of discord which will take effect, the moment peace or safety is felt by the party of whom the advantage is taken. The contrary policy of the old Fr. Gov<sup>t</sup>. in its commercial Treaty with the U. S. at the epoch of their Independence, was founded in a far better knowledge of human nature, and of the permanent interest of its nation. It merits the consideration of France also, that in proportion as she discourages, in any way, a free intercourse of the U. S. with their revolutionary neighbours, she favors the exclusive commerce of her rival with them; as she has hitherto favor'd it with Europe, by her decrees ag<sup>st</sup>. our intercourse with it. As she seems to be recovering from the one folly, it may be hoped she will not fall into the other.

The ship sent on this occasion will afford you & your family good accommodations, if you should be decided ag<sup>st</sup>. prolonging your important services at Paris, and a Winter passage should not be an insuperable objection.

Accept dear Sir assurances of my great esteem and most friendly wishes.

[\[Back to Table of Contents\]](#)

## TO WILLIAM PINKNEY. 1

Washington, October 30, 1810.

Dear Sir,—

Your letter of August 13 [14] was duly received. Its observations on the letter and conduct of Lord Wellesley are an interesting comment on both. The light in which the letter was seen by many in this Country was doubtless such as gave to its features an exaggerated deformity. But it was the natural effect of its contrast to the general expectation founded on the tenor of your private letter to Mr. Smith, and on the circumstances, which, in the case of Jackson, seemed to preclude the least delay in repairing the insults committed by him. It is true, also, that the letter, when viewed in its most favorable light, is an unworthy attempt to spare a false pride on one side at the expence of just feelings on the other, and is in every respect infinitely below the elevation of character assumed by the British Government, and even to that ascribed to Lord Wellesley. It betrays the consciousness of a debt, with a wish to discharge it in false coin. Had the letter been of earlier date, and accompanied by the prompt appointment of a successor to Jackson, its aspect would have been much softened. But every thing was rendered as offensive as possible by evasions and delays, which admit no explanation without supposing a double game, by which they were to cheat us into a reliance on fair promises, whilst they were playing into the hands of partizans here, who were turning the delays into a triumph over their own Government. This consideration had its weight in the decision last communicated, with respect to your continuance at London, or return to the United States.

The personal sensibilities which your letter expresses are far greater than I can have merited by manifestations of esteem and confidence which it would have been unjust to withhold. As a proof of your partiality, they ought not, on that account, to excite less of a return. As little ought your readiness to retire from your station, from the honorable motives which govern you, to be viewed in any other light than as a proof of the value which attaches itself to your qualifications and services. It is not to be denied that a good deal of dissatisfaction has issued through the press against some of your intercourse with the British Government. But this could have the less influence on the Executive mind, as the dissatisfaction, where not the mere indulgence of habitual censure, is evidently the result of an honest misconstruction of some things, and an ignorance of others, neither of which can be lasting. I have little doubt that if your sentiments and conduct could be seen through media not before the public, a very different note would have been heard; and as little, that the exhibitions likely to grow out of the questions and discussions in which you are at present engaged will more than restore the ground taken from you.

The sole question on which your return depends, therefore, is whether the conduct of the Government where you are may not render your longer stay incompatible with the honor of the United States. The last letter of the Secretary of State has so placed the

subject for your determination, in which the fullest confidence is felt. Waiving other depending subjects, not of recent date, a review of the course pursued in relation to Jackson and a successor excites a mixture of indignation and contempt, which ought not to be more lightly expressed than by your *immediately* substituting a Secretary of Legation for the grade you hold; unless the step be absolutely forbidden by the weighty consideration which has been stated to you, and which coincides with the sound policy to which you allude, of putting an adversary compleatly in the wrong. The prevailing opinion here is, that this has been already abundantly done.

Besides the public irritation produced by the persevering insolence of Jackson in his long stay, and his conduct during it, there has been a constant heart-burning on the subject of the Chesapeake, and a deep and settled indignation on the score of impressments, which can never be extinguished without a liberal atonement for the former, and a systematic amendment of the latter.

You have been already informed that the Proclamation would issue giving effect to the late act of Congress, on the ground of the Duke de Cadore's letter to Gen<sup>l</sup> Armstrong, which states an *actual* repeal of the French Decrees. The letter of W. to you is a promise only, and that in a very questionable shape; the more so, as G. Britain is known to have founded her retaliating pretensions on the *unprecedented mode* of warfare against her; evidently meaning the exclusion of her trade from the Continent. Even the blockade of May, 1806, rests on the same foundation. These considerations, with the obnoxious exercise of her sham blockades in the moment of our call for their repeal, backed by the example of France, discourage the hope that she contemplates a reconciliation with us. I sincerely wish your next communications may furnish evidence of a more favorable disposition.

It will not escape your notice, and is not undeserving that of the British Government, that the non-intercourse, as now to be revived, will have the effect of giving a monopoly of our exportations to G. Britain to our own vessels, in exclusion of hers; whereas, in its old form, G. Britain obtained a substantial monopoly for hers through the entrepots of N. Scotia, E. Florida, &c. She cannot, therefore, deprive our vessels, which may now carry our exports directly to G. Britain, of this monopoly, without refusing the exports altogether, or forcing them into difficult and expensive channels, with the prospect of a counteracting interposition of Congress, should the latter experiment be resorted to. Nothing would be necessary to defeat this experiment but to prohibit, as was heretofore contemplated, the export of our productions to the neighboring ports belonging to Great Britain or her friends.

The course adopted here towards West Florida will be made known by the Secretary of State. The occupancy of the Territory as far as the Perdido was called for by the crisis there, and is understood to be within the authority of the Executive. East Florida, also, is of great importance to the United States, and it is not probable that Congress will let it pass into any new hands. It is to be hoped G. Britain will not entangle herself with us by seizing it, either with or without the privity of her allies in Cadiz. The position of Cuba gives the United States so deep an interest in the destiny, even, of that Island, that although they might be an inactive, they could not be a satisfied spectator at its falling under any European Government, which might make a



fulcrum of that position against the commerce and security of the United States. With respect to Spanish America generally, you will find that G. Britain is engaged in the most eager, and, if without the concurrence of the Spanish authority at Cadiz, the most reproachful grasp of political influence and commercial preference. In turning a provident attention to the new world, as she loses ground in the old, her wisdom is to be commended, if regulated by justice and good faith; nor is her pursuit of commercial preferences, if not seconded by insidious and slanderous means against our competitions, as are said to be employed, to be tested by any other standard than her own interest. A sound judgment of this does not seem to have been consulted in the specimen given in the Treaty at Caraccas, by which a preference in trade over all other nations is extorted from the temporary fears and necessities of the Revolutionary Spaniards. The policy of the French Government at the epoch of our Independence, in renouncing every stipulation against the equal privileges of all other nations in our trade, was dictated by a much better knowledge of human nature, and of the stable interest of France.

The elections for the next Congress are nearly over. The result is another warning against a reliance on the strength of a British Party, if the British Government be still under a delusion on that subject. Should France effectually adhere to the ground of a just and conciliatory policy, and G. Britain bring the United States to issue on her paper blockades; so strong is this ground in right of opinion here, and even in the commitment of all the great leaders of her party here, that G. Britain will scarce have an advocate left.

[\[Back to Table of Contents\]](#)

## SECOND ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, December 5, 1810.

The embarrassments which have prevailed in our foreign relations, and so much employed the deliberations of Congress, make it a primary duty in meeting you to communicate whatever may have occurred in that branch of our national affairs.

The act of the last session of Congress concerning the commercial intercourse between the United States and Great Britain and France and their dependencies having invited in a new form a termination of their edicts against our neutral commerce, copies of the act were immediately forwarded to our ministers at London and Paris, with a view that its object might be within the early attention of the French and British Governments.

By the communication received through our minister at Paris it appeared that a knowledge of the act by the French Government was followed by a declaration that the Berlin and Milan decrees were revoked, and would cease to have effect on the 1st day of November ensuing. These being the only known edicts of France within the description of the act, and the revocation of them being such that they ceased at that date to violate our neutral commerce, the fact, as prescribed by law, was announced by a proclamation bearing date the 2d day of November.

It would have well accorded with the conciliatory views indicated by this proceeding on the part of France to have extended them to all the grounds of just complaint which now remain unadjusted with the United States. It was particularly anticipated that, as a further evidence of just dispositions toward them, restoration would have been immediately made of the property of our citizens seized under a misapplication of the principle of reprisals combined with a misconstruction of a law of the United States. This expectation has not been fulfilled.

From the British Government no communication on the subject of the act has been received. To a communication from our minister at London of a revocation by the French Government of its Berlin and Milan decrees it was answered that the British system would be relinquished as soon as the repeal of the French decrees should have actually taken effect and the commerce of neutral nations have been restored to the condition in which it stood previously to the promulgation of those decrees. This pledge, although it does not necessarily import, does not exclude the intention of relinquishing, along with the orders in council, the practice of those novel blockades which have a like effect of interrupting our neutral commerce, and this further justice to the United States is the rather to be looked for, inasmuch as the blockades in question, being not more contrary to the established law of nations than inconsistent

with the rules of blockade formally recognized by Great Britain herself, could have no alleged basis other than the plea of retaliation alleged as the basis of the orders in council. Under the modification of the original orders of November, 1807, into the orders of April, 1809, there is, indeed, scarcely a nominal distinction between the orders and the blockades. One of those illegitimate blockades, bearing date in May, 1806, having been expressly avowed to be still unrescinded, and to be in effect comprehended in the orders in council, was too distinctly brought within the purview of the act of Congress not to be comprehended in the explanation of the requisites to a compliance with it. The British Government was accordingly apprised by our minister near it that such was the light in which the subject was to be regarded.

On the other important subjects depending between the United States and that Government no progress has been made from which an early and satisfactory result can be relied on.

In this new posture of our relations with those powers the consideration of Congress will be properly turned to a removal of doubts which may occur in the exposition, and of difficulties in the execution, of the act above cited.

The commerce of the United States with the north of Europe, heretofore much vexed by licentious cruisers, particularly under the Danish flag, has latterly been visited with fresh and extensive depredations. The measures pursued in behalf of our injured citizens not having obtained justice for them, a further and more formal interposition with the Danish Government is contemplated. The principles which have been maintained by that Government in relation to neutral commerce, and the friendly professions of His Danish Majesty toward the United States, are valuable pledges in favor of a successful issue.

Among the events growing out of the state of the Spanish Monarchy, our attention was imperiously attracted to the change developing itself in that portion of West Florida which, though of right appertaining to the United States, had remained in the possession of Spain awaiting the result of negotiations for its actual delivery to them. The Spanish authority was subverted and a situation produced exposing the country to ulterior events which might essentially affect the rights and welfare of the Union. In such a conjuncture I did not delay the interposition required for the occupancy of the territory west of the river Perdido, to which the title of the United States extends, and to which the laws provided for the Territory of Orleans are applicable. With this view, the proclamation of which a copy is laid before you was confided to the governor of that Territory to be carried into effect. The legality and necessity of the course pursued assure me of the favorable light in which it will present itself to the Legislature, and of the promptitude with which they will supply whatever provisions may be due to the essential rights and equitable interests of the people thus brought into the bosom of the American family.

Our amity with the powers of Barbary, with the exception of a recent occurrence at Tunis, of which an explanation is just received, appears to have been uninterrupted and to have become more firmly established.

With the Indian tribes also the peace and friendship of the United States are found to be so eligible that the general disposition to preserve both continues to gain strength.

I feel particular satisfaction in remarking that an interior view of our country presents us with grateful proofs of its substantial and increasing prosperity. To a thriving agriculture and the improvements related to it is added a highly interesting extension of useful manufactures, the combined product of professional occupations and of household industry. Such indeed is the experience of economy as well as of policy in these substitutes for supplies heretofore obtained by foreign commerce that in a national view the change is justly regarded as of itself more than a recompense for those privations and losses resulting from foreign injustice which furnished the general impulse required for its accomplishment. How far it may be expedient to guard the infancy of this improvement in the distribution of labor by regulations of the commercial tariff is a subject which can not fail to suggest itself to your patriotic reflections.

It will rest with the consideration of Congress also whether a provident as well as fair encouragement would not be given to our navigation by such regulations as would place it on a level of competition with foreign vessels, particularly in transporting the important and bulky productions of our own soil. The failure of equality and reciprocity in the existing regulations on this subject operates in our ports as a premium to foreign competitors, and the inconvenience must increase as these may be multiplied under more favorable circumstances by the more than countervailing encouragements now given them by the laws of their respective countries.

Whilst it is universally admitted that a well-instructed people alone can be permanently a free people, and whilst it is evident that the means of diffusing and improving useful knowledge form so small a proportion of the expenditures for national purposes, I can not presume it to be unseasonable to invite your attention to the advantages of superadding to the means of education provided by the several States a seminary of learning instituted by the National Legislature within the limits of their exclusive jurisdiction, the expense of which might be defrayed or reimbursed out of the vacant grounds which have accrued to the nation within those limits.

Such an institution, though local in its legal character, would be universal in its beneficial effects. By enlightening the opinions, by expanding the patriotism, and by assimilating the principles, the sentiments, and the manners of those who might resort to this temple of science, to be redistributed in due time through every part of the community, sources of jealousy and prejudice would be diminished, the features of national character would be multiplied, and greater extent given to social harmony. But, above all, a well-constituted seminary in the center of the nation is recommended by the consideration that the additional instruction emanating from it would contribute not less to strengthen the foundations than to adorn the structure of our free and happy system of government.

Among the commercial abuses still committed under the American flag, and leaving in force my former reference to that subject, it appears that American citizens are instrumental in carrying on a traffic in enslaved Africans, equally in violation of the

laws of humanity and in defiance to those of their own country. The same just and benevolent motives which produced the interdiction in force against this criminal conduct will doubtless be felt by Congress in devising further means of suppressing the evil.

In the midst of uncertainties necessarily connected with the great interests of the United States, prudence requires a continuance of our defensive and precautionary arrangement. The Secretary of War and Secretary of the Navy will submit the statements and estimates which may aid Congress in their ensuing provisions for the land and naval forces. The statements of the latter will include a view of the transfers of appropriations in the naval expenditures and the grounds on which they were made.

The fortifications for the defense of our maritime frontier have been prosecuted according to the plan laid down in 1808. The works, with some exceptions, are completed and furnished with ordnance. Those for the security of the city of New York, though far advanced toward completion, will require a further time and appropriation. This is the case with a few others, either not completed or in need of repairs.

The improvements in quality and quantity made in the manufacture of cannon and small arms, both at the public armories and private factories, warrant additional confidence in the competency of these resources for supplying the public exigencies.

These preparations for arming the militia having thus far provided for one of the objects contemplated by the power vested in Congress with respect to that great bulwark of the public safety, it is for their consideration whether further provisions are not requisite for the other contemplated objects of organization and discipline. To give to this great mass of physical and moral force the efficiency which it merits, and is capable of receiving, it is indispensable that they should be instructed and practiced in the rules by which they are to be governed. Toward an accomplishment of this important work I recommend for the consideration of Congress the expediency of instituting a system which shall in the first instance call into the field at the public expense and for a given time certain portions of the commissioned and non-commissioned officers. The instruction and discipline thus acquired would gradually diffuse through the entire body of the militia that practical knowledge and promptitude for active service which are the great ends to be pursued. Experience has left no doubt either of the necessity or of the efficacy of competent military skill in those portions of an army in fitting it for the final duties which it may have to perform.

The Corps of Engineers, with the Military Academy, are entitled to the early attention of Congress. The buildings at the seat fixed by law for the present Academy are so far in decay as not to afford the necessary accommodation. But a revision of the law is recommended, principally with a view to a more enlarged cultivation and diffusion of the advantages of such institutions, by providing professorships for all the necessary branches of military instruction, and by the establishment of an additional academy at the seat of Government or elsewhere. The means by which war, as well for defense as for offense, are now carried on render these schools of the more scientific operations

an indispensable part of every adequate system. Even among nations whose large standing armies and frequent wars afford every other opportunity of instruction these establishments are found to be indispensable for the due attainment of the branches of military science which require a regular course of study and experiment. In a government happily without the other opportunities seminaries where the elementary principles of the art of war can be taught without actual war, and without the expense of extensive and standing armies, have the precious advantage of uniting an essential preparation against external danger with a scrupulous regard to internal safety. In no other way, probably, can a provision of equal efficacy for the public defence be made at so little expense or more consistently with the public liberty.

The receipts into the Treasury during the year ending on the 30th of September last (and amounting to more than \$8,500,000) have exceeded the current expenses of the Government, including the interest on the public debt. For the purpose of reimbursing at the end of the year \$3,750,000 of the principal, a loan, as authorized by law, had been negotiated to that amount, but has since been reduced to \$2,750,000, the reduction being permitted by the state of the Treasury, in which there will be a balance remaining at the end of the year estimated at \$2,000,000. For the probable receipts of the next year and other details I refer to statements which will be transmitted from the Treasury, and which will enable you to judge what further provisions may be necessary for the ensuing years.

Reserving for future occasions in the course of the session whatever other communications may claim your attention, I close the present by expressing my reliance, under the blessing of Divine Providence, on the judgment and patriotism which will guide your measures at a period particularly calling for united councils and inflexible exertions for the welfare of our country, and by assuring you of the fidelity and alacrity with which my co-operation will be afforded.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

### To The Senate And House Of Representatives Of The United States:

Washington, January 3, 1811.

I communicate to Congress, in confidence, a letter of the 2d of December from Governor Folch, of West Florida, to the Secretary of State, and another of the same date from the same to John McKee.

I communicate in like manner a letter from the British chargé d'affaires to the Secretary of State, with the answer of the latter. Although the letter can not have been written in consequence of any instruction from the British Government founded on the late order for taking possession of the portion of West Florida well known to be claimed by the United States; although no communication has ever been made by that Government to this of any stipulation with Spain contemplating an interposition which might so materially affect the United States, and although no call can have been made by Spain in the present instance for the fulfillment of any such subsisting engagement, yet the spirit and scope of the document, with the accredited source from which it proceeds, required that it should not be withheld from the consideration of Congress.

Taking into view the tenor of these several communications, the posture of things with which they are connected, the intimate relation of the country adjoining the United States eastward of the river Perdido to their security and tranquillity, and the peculiar interest they otherwise have in its destiny, I recommend to the consideration of Congress the seasonableness of a declaration that the United States could not see without serious inquietude any part of a neighboring territory in which they have in different respects so deep and so just a concern pass from the hands of Spain into those of any other foreign power.

I recommend to their consideration also the expediency of authorizing the Executive to take temporary possession of any part or parts of the said Territory, in pursuance of arrangements which may be desired by the Spanish authorities, and for making provision for the government of the same during such possession.

The wisdom of Congress will at the same time determine how far it may be expedient to provide for the event of a subversion of the Spanish authorities within the Territory in question, and an apprehended occupancy thereof by any other foreign power.

[\[Back to Table of Contents\]](#)

## VETO MESSAGES.

### To The House Of Representatives Of The United States:

February 21, 1811.

Having examined and considered the bill entitled “An Act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia,” I now return the bill to the House of Representatives, in which it originated, with the following objections:

*Because* the bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions, and violates in particular the article of the Constitution of the United States which declares that “Congress shall make no law respecting a religious establishment.” The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the minister of the same, so that no change could be made therein by the particular society or by the general church of which it is a member, and whose authority it recognizes. This particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration. Nor can it be considered that the articles thus established are to be taken as the descriptive criteria only of the corporate identity of the society, inasmuch as this identity must depend on other characteristics, as the regulations established are generally unessential and alterable according to the principles and canons by which churches of that denomination govern themselves, and as the injunctions and prohibitions contained in the regulations would be enforced by the penal consequences applicable to a violation of them according to the local law.

*Because* the bill vests in the said incorporated church an authority to provide for the support of the poor and the education of poor children of the same, an authority which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty.



[\[Back to Table of Contents\]](#)

## To The House Of Representatives Of The United States:

February 28, 1811.

Having examined and considered the bill entitled “An act for the relief of Richard Tervin, William Coleman, Edwin Lewis, Samuel Mims, Joseph Wilson, and the Baptist Church at Salem Meeting House, in the Mississippi Territory,” I now return the same to the House of Representatives, in which it originated, with the following objection:

*Because* the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that “Congress shall make no law respecting a religious establishment.”

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, Mar. 18, 1811.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. yours inclosing two letters improperly addressed to you.

A sketch, in manuscript was brought by yesterday's mail from N. York, saying that a vessel just arrived, stated that the Prince Regent had appointed his Cabinet; that Lord Holland was prime Minister, Grenville Secretary of State, Moira Commander in Chief &c, and that a new Parliament was to be called. Whether these details be correct or not, it is highly probable that some material change in the general policy of the Government, in relation to this Country as well as in other respects, will result from the change of the men in power. Nor is it improbable that a repeal of the Orders in Council will be accompanied by a removal in some form or other, of the other condition required by the Act of May last. Still the attachment to maritime usurpations on public law, and the jealousy of our growing commerce, are sources from which serious difficulties must continue to flow, unless controuled by the distress of the Nation, or by a magnanimity not to be expected even from the personification of Fox in Lord Holland. Grenville is known to be very high in his notions of British rights on the Ocean; but he has never contended for more, on the subject of blockades than that cruising squadrons, creating a manifest danger in entering particular ports, was equivalent to a stationary force, having the same effect. His principle however tho' construable into an important restriction of that modern practice, may be expanded so as to cover this abuse. It is, as you remark difficult to understand the meaning of Bonaparte towards us. There is little doubt, that his want of money, and his ignorance of commerce have had a material influence. He has also distrusted the stability & efficacy of our pledge to renew the non-intercourse ag<sup>st</sup>. G. B. and has wished to execute his in a manner that would keep pace only with the execution of ours; and at the same time leave no interval for the operation of the British orders, without a counter operation in either his or our measures. In all this, his folly is obvious. Distrust on one side produces & authorizes it on the other; and must defeat every arrangement between parties at a distance from each other or which is to have a future or a continued execution. On the whole our prospects are far from being very flattering; yet a better chance seems to exist than, with the exception of the adjustment with Erskine, has presented itself, for closing the scene of rivalry in plundering & insulting us, & turning it into a competition for our commerce & friendship.

In the midst of other perplexities, foreign & internal. a source has been opened very near me, and where co-operation ag<sup>st</sup>. them was to have been rightfully expected, from personal obligations, as well as public duty. I find also that the appointment of Warden1 is to draw forth the keenest resentments of Armstrong. I have no doubt however that the ground on which we stand is sufficiently firm to support us with the Nation, ag<sup>st</sup> individual efforts of any sort, or from any quarter.

Be assured always of my highest esteem and sincerest attachment.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

March 31, 1811.

Chic. Hist. Soc.  
Mss.

Dear Sir,

I have the pleasure this moment of receiving yours of the 29th. <sup>1</sup> I am particularly glad to find that you will be able to set out at so early a day for Washington. To the advantage of preventing an inconvenient chasm in the public business, will be added the opportunity of a provident attention to the accommodations required by your establishment here. The House occupied by Mr. Smith is the best in the place, and I believe is not yet out of reach. He means also to dispose of certain portions of his furniture which might suit your purpose. These considerations taken together recommend strongly that you should not wait for the receipt of your commission, but consider what has passed between us, as sufficient ground for a communication to the council. The actual receipt of the commission cannot be a necessary preliminary. As well as I recollect I did not receive mine, as Secretary of State till it was handed to me on the spot, by Mr. Jefferson. In case of appointments at a great distance, it might be extremely inconvenient for any other course to be observed. It is the more desirable that you should not wait for your commission, as I find that it will be tuesday morning before its date will be consistent with the understanding & arrangement here, & that your arrival would of consequence be thrown forward till the beginning of the next week. I might indeed, as the law authorizes, provide an interim Functionary, for the current business requiring his signature, & not admitting delay; but there are objections to this resort where it can be avoided. I hope therefore you will find no difficulty in the mode of anticipation recommended; the more especially as your communication to the council may be delayed till tuesday morning the time proposed for your setting out, and at which time your commission will have been formally consummated, & ready to be delivered.

Accept assurances of my sincere esteem & friendship

[\[Back to Table of Contents\]](#)

## MEMORANDUM AS TO ROBERT SMITH.1

Mad. Mss.

(April, 1811).

Having seen in the Aurora of the 5th inst. [April, 1811], & since copied into other Gazettes, an explanation which the Editor says he was authorized to make “of the rupture which has taken place between Mr. Madison, and Mr. R. Smith” I have thought it proper, whilst the circumstances are fresh in remembrance, to preserve them in the following memorandum:

On the — day of March Mr. S. called on me, as was common, on some point of official business. In the conversation, he alluded to the account in the Newspapers of the dismissal of Mr. Pickering by Mr. Adams, as just published for the first time by the former. Altho’ the manner of Mr. S. did not denote any purpose beyond the ordinary conversation incident to such a topic, it happened to be the very day on which I meant to have sent for him in order to communicate the necessity of making a change in the head of the Department of State. Dropping therefore the case of Mr. Pickering, and breaking its apparent relation to his own by the interposition of other subjects, I intimated that in coming over, he had anticipated my intention of sending for him, with a view to a conversation, which would be as candid & explicit on my part as it was in some respects delicate and disagreeable in itself. After remarking that I had delayed the execution of my purpose for some time after I had formed it, in order that my communication might have the character of being not the result of any sudden impulse, but of a deliberate regard to public considerations and official duty, I proceeded to state to him, that it had long been felt, and had at length become notorious, that the administration of the Executive Department laboured under a want of the harmony & unity, which were equally essential to its energy and its success; that I did not refer to the evil as infecting our Cabinet consultations, where there had always been an apparent cordiality, even a sufficient concurrence of opinion; but as shewing itself in language and conduct out of doors, counteracting what had been understood within to be the course of the administration, and the interest of the Public; that truth obliged me to add, that this practice, as brought to my view, was exclusively chargeable on him; and that he had not only counteracted what had been the result of consultations apparently approved by himself, but had included myself in representations calculated to diminish confidence in the administration committed to me. He expressed surprise that I should have yielded to such impressions, declared that he had given no cause for them; observing that it was not to be conceived that a motive could be felt by him, to be otherwise than friendly personally, as well as to the credit of my administration. I told him that I had long resisted such impressions, well knowing that my conduct to him had merited a very different return. But that they were the result of facts and circumstances brought to my knowledge from so many sources and with so many corroborations, that it was impossible to shut my mind against them. I assured him that I had struggled ag<sup>st</sup>. the belief as long as I could; that it was painful as well as difficult for me to suppose, that conscious as he must be of the friendship he had experienced in my nomination of him to the Department of State, and in the constant aids I had given him, in discharging its duties, he should

privately set himself ag<sup>st</sup>. me in any respect; but that what had harassed my feelings in a degree equalled by no occurrence in a long political life, was the reflection that there were among those most nearly connected with him, a number of individuals whom I had always felt a gratification in classing among the best of my friends political & personal, & for whom I felt the highest esteem & sincerest affection; and that the idea of distressing them was most severely so to myself. He repeated his solemn denial of unfriendly conduct in any way towards me, or having done any thing tending to obstruct or embarrass the administration; that on the contrary, he had been always personally my friend, and had contributed, as far as he could to the credit & support of the administration: What motive could he have to be otherwise, being himself a member of it, and having neither pretensions nor expectations of any higher sort? What could have given rise to the unfavorable sentiments I had expressed, he was at a loss even to conjecture. I told him I was aware of the awkwardness of my situation, in being obliged to refer to information and evidence which had come to me in ways not permitting me to name to him the sources; but I could assure him that the sources were such as made it my duty not to disregard them; and that unquestionably, he would himself, in my situation yield to the accumulated statements which had their effect on me. In what instances had he set himself ag<sup>st</sup>. me, or against measures espoused by the administration? I reminded him of a conversation with Mr. — reported by the latter, in which he had indulged himself in disparaging remarks on my official character, & that of others in the Cabinet; on the general course of my Policy, which he signified he disapproved; and in which he had communicated certain Cabinet proceedings, some of which were of so confidential a nature that the gentleman did not consider himself at liberty to repeat them. I had taken occasion before to drop him a hint that such a conversation had been given out, observing at the time, that I did it not because I lent an ear to it, but that it might suggest circumspection. He slighted then the report as proceeding from a source not likely to be listened to; and now repeated the denial of the conversation, with an allusion to a report from the same source, as to a conversation with another member of the Cabinet, where it appeared, that no interview could have taken place. I admitted that if this had been a solitary case, it would have been entirely dismissed from my recollection; but this was far from being the fact, altho' I could not equally enter into a specification of other cases. For examples in which he had counteracted what he had not himself disapproved in the Cabinet, I referred to the Bills called Macon's bills, and the non-intercourse bill, on the consultations on which he appeared to concur in their expediency; that he well knew the former, in its outline, at least, had originated in the difficulty of finding measures that would prevent what Congress had solemnly protested ag<sup>st</sup>., to wit, a compleat submission to the belligerent Edicts; that the measure was considered as better than nothing, which seemed to be the alternative, and as part only of whatever else might in the progress of the business be found attainable; and that he neither objected to what was done in the Cabinet, (the time & place for the purpose,) nor offered any thing in the place of it; yet it was well understood that his conversations & conduct out of doors, had been entirely of a counteracting nature; that it was generally believed that he was in an unfriendly disposition personally and officially; and that, altho' in conversations with different individuals he might not hold the same unfavorable language, yet with those of a certain temper, it was no secret that he was very free in the use of it; and had gone so far as to avow a disapprobation of the whole policy of commercial restrictions, from

the Embargo throughout. I intimated to him also that it was a complaint among our friends in Cong<sup>s</sup> that the Federalists frequently quoted him for communications from our Ministers abroad, which were unknown to others, the disclosures being sometimes such as to be deemed confidential, and to be turned ag<sup>st</sup> the administration. I glanced also at the report of his conversation with Mr. Morier, in which he (Mr. S) had expressed his disapprobation of the whole course of policy observed by the U. States towards G. B. All these facts he repelled by a repetition of what he had before said. With respect to his motives for dissatisfaction, I acknowledged that I had been, for the reasons given by him, much puzzled to divine any natural ones, without looking deeper into human nature than I was willing to do; and it was on this account that I had so long resisted the impression which had at length been made on me; that instead of having any just motives to become an adversary, I knew, and he must be conscious, that in my confidential intercourse with him, in my kindness in general, and, above all, in the labor I had taken upon myself in behalf of his official duties, and for his credit, as well as that of the administration, I ought to have found an opposite return. On this subject as well as every other, I told him, I meant as I ought to be entirely frank, and must therefore say, that it was an imperious consideration for a change in the Departm<sup>t</sup>. of State, that whatever talents he might possess, he did not as he must have found by experience, possess those adapted to his station; that this had thrown the business more into my hands than was proper, or consistent with my own duties; that as long as I considered him in the light I once did, I had cheerfully given him my aid, but that it was too much to be expected under actual circumstances, and that moreover, the increase of the public business had put it out of my power to do his share as well as my own; and that indeed throughout it was not done as well as might have been by a mind appropriated thereto. I observed that I could appeal to himself for the fact that the business of the Dep<sup>t</sup>. had not been conducted in the systematic and punctual manner which was necessary, particularly in the foreign correspondence, and that I had become daily more dissatisfied with it. He did not admit that complaint was well founded; intimating that I had a particular way of thinking on this subject, and that his conduct of the business would fully justify itself on examination. I told him he could not but be in a great error; reminding him of the condition in which his correspondence, more particularly, was brought to me; which was almost always so crude & inadequate, that I was in the more important cases generally obliged to write them anew myself, under the disadvantage sometimes of retaining, thro' delicacy some mixture of his draft; that he must recollect that in the cases of Erskine & Jackson, the correspondence on his part had in a manner, fallen entirely on my hands. I reminded him also of important failures to make seasonable communications to our foreign Agents; particularizing the case of neglecting, tho' repeatedly desired, to make known to our Minister at Paris, as was done to our Minister at London, that in case the letter of the Duke de Cadore of Aug. 5, to Gen<sup>l</sup>. Armstrong as reaching us through English newspapers, should be officially confirmed, it would be the ground of a Proclamation as authorized by the Act of May, 1810, and the case of not keeping Mr. Shaler at the Havanna, duly informed of the state of our foreign relations, in consequence of which, as appeared by Mr. Shaler's letters, he was unable to pursue the object of his mission with advantage. I observed that if he had transmitted at once, in multiplied copies, & thro' different channels, the same information for the French Gov<sup>t</sup>. as to the B. Gov<sup>t</sup>. as to the light in which the letter of the D. de Cadore was viewed, it might, by removing uncertainty & distrust as to the course here, have

prevented the delay & embarrassment resulting from the course there. The impression made by these remarks was shewn rather by his manner, than his comment which was limited to a general disclaimer of the justness of them; & to allusions to a report that he had expressed to Mr. — Ingersoll lately in Washington, a disapprobation of the Proclamation putting in force the non-importation act ag<sup>st</sup>. G. B. which he denied to be fact, & said that he had sought out that gentleman, and had obtained from him a satisfactory explanation.

In this stage of the conversation, but in what particular connection is not recollected, it was noticed as a mark of his disinclination to co-operate in promoting measures for the better fulfilling of the Executive trust, that altho' the Act of Congr<sup>s</sup> at the session preceding that just closed, relating to our diplomatic establishment, & of course particularly affecting his dep<sup>t</sup>, had been found so very inconvenient, and it had been so often suggested to him; as desirable that some active member of Congress, should be apprized of the expediency of amending or repealing the act, yet no such hint had been ever given, till at length I had availed myself of an opportunity of explaining the matter to a member of the Senate, who readily introduced it to the Senate, but too late in the session to receive an effectual attention. He signified that he had not been in the habit of proceeding in such a way with business belonging to the Legislature, and seemed to disapprove or doubt the propriety of it. I remarked that where the intention was honest & the object useful, the conveniency of facilitating business in that way was so obvious that it had been practised under every past administration, & w<sup>d</sup>. be so under every future one; that Executive experience w<sup>d</sup>. frequently furnish hints & lights for the Legislature; that nothing was more common than for members of Cong<sup>s</sup>. to apply for them; and that in fact, such communications, in cases not calling for formal messages, were indispensable to the advantageous conduct of the public business. A resort to formal messages on every occasion where executive information might be useful, was liable to obvious objections. He made no particular reply, but did not seem to acquiesce. Returning to the necessity of harmony & unity in the Executive Councils, in providing for which I expressed a disposition to wound feelings any where as little as possible, he said he had himself regretted my situation, in reference to the want of cordiality among members of the Cabinet, declaring, at the same time, that whilst he was aware of intrigues & hostilities carried on ag<sup>st</sup>. himself, he had abstained from everything of that sort ag<sup>st</sup>. others, disdaining, at all times, to stoop to such practices. I told him it was unnecessary to repeat observations which I had already made; that such was the state of things that a remedy had become essential in the view of the most considerate friends of the administration, and that I wished for the reasons given, to make it as lenient as would answer the purpose. It had occurred to me that he might not be disinclined to serve his Country in a foreign mission, and that St. Petersburg, where there was a vacancy, might be an eligible as it certainly was an important situation. London more so, he remarked quickly. For London, I replied, another arrangement was thought of; adding, with a view to repress miscalculations, that it was a place of discussions & negotiations, calling for appropriate talents & habits of business. He said he had for a considerable time entertained thoughts of retiring from the Department of State, and had looked towards a vacancy on the Bench of the Supreme Court, likely to be produced ere long, by death in Baltimore (alluding to Judge Chase). I observed that in that event it might be found most proper to seek a successor elsewhere, intimating also that he had been



long out of the practice & study of the law, and that the Senate would probably be hard to please in such a case. He made light of that consideration, with an expression of confidence in his standing there, which led me to remark that he was not aware how much room there was for a different estimate, that he had assuredly lost ground extremely with the members of both Houses of Congress, in so much that the prevailing sentiment, as brought to my knowledge in the most direct manner, and from some quarters not unfriendly to himself, called for some arrangement that would at least vary the composition of the Cabinet. He ascribed unfavorable impressions ag<sup>st</sup> him as far as they might exist to intrigues & calumnies; signifying that there was however a body of firm friends personal & political, who would not desert him whatever course things might take. I did not admit that any considerable body of the Republicans, would in any event, take side ag<sup>st</sup> the administration, that on the contrary, many on whom he might perhaps count, had become dissatisfied with the course he had pursued; that it was not so much therefore the consideration alluded to by him, which weighed with me, tho' not without weight especially at the present crisis in Maryland, (the approaching elections of Senatorial Electors,) as the one I had before mentioned namely the personal friends common to both of us, that made me desirous of smoothing the change become necessary, by proposing a Mission to Russia, which I sincerely wished him to accept. I remarked that the services there tho' neither difficult nor laborious, might be important; that the station was respectable, and that it was desirable to find a minister whose political grade here had been such as would satisfy the expectations of the Emperor, and whose private resources would also aid his salary in bearing the expensiveness of that Metropolis & Court. He admitted an inclination towards a trip to Europe as more eligible than his situation here; and, after a few uninteresting observations, concurred in the measure with a mutual understanding that the appointment would be postponed for some days, till he could wind up the business of his Department, and prepare for his departure from Washington. I observed that as the 1st of April, closed a quarter it might be a convenient epoch, for the date of his Commission, in which he acquiesced. He said he supposed there would be no impropriety in letting it be known that the mission was on foot; none at all. After a short pause, May I say that the appointment is offered to me. I have no objection, it being of course understood that it is to take place on the 1st of April; and that you will let me be at liberty as many days previous as may be convenient, to take overt measures for supplying the vacancy, which he promised. The conversation closed with his proposal that it should be considered as entirely confidential, & my acquiescence in it.

From his conversations & conduct for several days, in his office & elsewhere, it was not doubted that he persisted in his intention to accept the Mission, and was making preparations accordingly. Circumstances soon however began to denote & strengthen doubts, particularly his declining, after accepting my invitation, to dine with a party, including the Russian Legation; and as I did not hear from him as was expected and the 1st of April approached I sent for him.

On his arrival, I told him my object, and that I had, according to the understanding between us, caused a Commission to be made out for him. He said he was himself on the point of coming over to me, with the view of returning into my hands his Commission of Secretary of State, (handing it to me at the same time) and to inform

me that he had determined to decline the other which had been proffered to him. However disposed he might have been to accept it under other circumstances, it was impossible he could do so under such as would give it the appearance of a mere expedient to get rid of him as Secretary of State. He had learned from Baltimore that a removal of him was believed to have been determined on, under the influence of intrigues ag<sup>st</sup> him, and that this intention was known even to federal members of Congress, as was evinced by their language on their return home, that the same impression existed elsewhere; that he had, in fact, rec<sup>d</sup>. letters from his friends not only in Baltimore, but in Penn<sup>a</sup> & N. York, advising him by no means to make himself a party to the transaction by accepting the Russian Mission, which would be regarded as a mere cover for his removal. I told him I could not be answerable for the reports or assertions that might be propagated; that the course I had pursued was the one deemed proper in the circumstances which had resulted from that pursued by him, and had been as delicate and favorable to him as could be reconciled with what I owed to the Public & to myself; that in tendering him the Commission for Russia, I wished him to accept it for the reasons explained to him; that what the Federalists said on the occasion, must have grown out of the conversations which had, as was well known, been frequent & free among the friends of the administration, on the necessity of a change in the Department of State. I availed myself of this turn of the conversation, to allude anew to the reports & complaints, that the Federalists were the first to get from him information of our foreign Affairs; and to its being understood that he had told Mr. Morier that the whole policy of the Government towards G. B. had been contrary to his opinion & advice. This he denied. I assured him there was full evidence that Morier had said so; that this was known to and believed by sundry members of Cong<sup>s</sup>, and had contributed, with other causes, to strengthen the current running ag<sup>st</sup> him. I reminded him of the official letter from Mr. Morier to him, complaining of the non-intercourse being enforced against G. B. during the actual conduct of France in which he (M) referred to a conversation in which he (S.) admitted that G. B. had a right to complain; I told him I had been surprised, when he communicated the letter to me, to find no apparent intention of a formal disavowal of that circumstance till I had pressed it on him as material to himself in case the correspondence should be brought before the public or Congress; and that I did not approve of the course finally taken by him, of getting Morier to withdraw the letter and substitute another omitting the passage; a course less eligible than the one I had suggested, of a written disavowal, as Morier's communications to his Gov<sup>t</sup>. might correspond with his first letter, and might find their way to the public thro' a Call for papers by the British Parliament, in which case the statement would be without his contradiction. These I observed were disagreeable topics, and I willingly turned from them, to repeat to him, that with a wish to consult the sensibility of common friends, I had been ready to give him in exchange for an office which he professed no longer to relish, a foreign Mission which in itself did not appear to be unacceptable to him; and that it was still in his option, & would remain so for a short time longer, if he wished to deliberate further on the subject. He said he had made up his mind, & meant to be understood as having given his final answer to the proposal. He recurred to the aspect it wore of an indirect removal of him from the department of State, and to the allegation of intrigues ag<sup>st</sup> him, which had been mistaken for a loss of Confidence with the public & with Cong<sup>s</sup>; regretted the tendency of what was taking place to injure the Republican cause, observing again that he should be supported by a Body

of friends, and that he knew he could stand on good ground in justifying himself to his Country. I assured him that neither my sentiments nor conduct in relation to him were in the least the effect of intrigues, to which I should never listen, but of the facts & considerations I had unfolded to him; that I did not doubt the friendship for him of a number of respectable & weighty characters, but it was not less true, however disagreeable it might be to dwell on the circumstance, that with the Public, as well as among the members of Cong<sup>s</sup> in both Houses, the tide was setting strongly & extensively ag<sup>st</sup> him; that I regretted as much as himself a tendency in any occurrence to impair harmony among the Republicans, more especially at this time & in this State, but that I believed this was not likely to be much the case; conceiving that the administration rested on ground as solid as at any preceding period; & that for myself, I was entirely confident that what I had done in relation to him, could be justified not only to the public, if it should become there necessary, but even to the most partial of his personal friends; that I c<sup>d</sup> have no personal objection therefore to any step he might take which would call the public attention to it. He said it was not his wish, however confident he might be of the ground on which he stood, to introduce any public discussion. The conversation being at an end, he took his leave with a cold formality, and I did not see him afterwards.

On reading over the above, I recollect nothing worth mentioning which is omitted; unless it be thought an exception, that in some stage of the conversation I alluded to the pretty general opposition made by his brother in the Senate to the measures proposed or supposed to be approved, by the Executive, and its effect in strengthening the presumption with many of a like spirit in the Secretary of State; explicitly declaring, at the same time, that however I might be sometimes disappointed at the part taken by his brother, or regret it on account of his talents & his weight, I had always considered myself bound to suppose him actuated by a just respect for the independence of his station & his character; and that as he stood in no official connection with the Executive rendering him anywise responsible for his political conduct, I had never permitted myself to complain of it.

J. M.

April, 1811.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Mad. Mss.

W. May 3, 1811.

Dear Sir

I have rec<sup>d</sup>. yours of the 24 Ap<sup>l</sup> and return the letter inclosed in it; after having made the communication intended for Mr. Gallatin. Your expostulations with Duane could not be improved; but he gives proofs of a want of candor, as well as of temperance, that will probably repel advice, however rational or friendly. The great fulcrum of his attacks on Mr. Gallatin is Erskine's statement of his favorable dispositions toward England; and these attacks he obstinately reiterates and amplifies, notwithstanding the public & solemn denial of Mr. G: whilst Mr. Smith & myself, tho' included in a like statement, under which we have both remained silent, have not been reproached on that account, and Mr. S. is become an object even of favor. A like want of candor is seen in the comments of the Aurora, on the putative explanation of the rupture between Mr. S. & myself. Of the alledged points of difference, the main one, viz: the non-intercourse, it appears as his opinion on my side; yet he takes the other side generally without alluding to the exception; and of late, restricts his comments to Macon's bills, or smothers the "non-intercourse" under an &c, or confounds the measure with the manner of its execution. Again, Whilst he admits occasionally that the non-intercourse, or rather non-importation now in force, is the best and the only adequate resort ag<sup>st</sup>. the aggressions of G. B. he continues his abuse on the Government, for abandoning the interests & rights of the Nation. I have always regarded Duane, & still regard him as a sincere friend of liberty, and as ready to make every sacrifice to its cause, but that of his passions. Of these he appears to be compleatly a slave.

Our expected frigate is not yet arrived from Europe; nor is there any acc<sup>t</sup>. of the departure either of Pinkney or Foster from G. B. The last account from P. was of Mar. 13, when he was packing up for his passage in the Frigate. Whether the delays, proceed from the approach of the Equinox, the posture of the Regency, or a wish to learn the result of things in Congress, or from some other cause, is unknown. From the jumble of acc<sup>ts</sup>. from France, it is probable, that the repeal of the Decrees is professedly adhered to; and that an exchange of the productions of the U. S. & F. with an exception of certain articles, is permitted by the Municipal laws, under vexatious precautions ag<sup>st</sup> British forgeries & American collusions; and perhaps under some distrust of the views of this Government.

Accept my high esteem & best affections.

[\[Back to Table of Contents\]](#)

## TO THE INHABITANTS OF THE TOWN OF NEW HAVEN.

Mad. Mss.

I have rec<sup>d</sup>, fellow Citizens, the petition which you have addressed to me, representing the inconveniences experienced from the existing non-importation law, and soliciting that the National Legislature may be speedily convened.

It is known to all that the Commerce of the U. S. has, for a considerable period, been greatly abridged & annoyed by Edicts of the Belligerent powers; each professing retaliation only on the other; but both violating the clearest rights of the U. S. as a neutral nation. In this extraordinary state of things, the Legislature, willing to avoid a resort to war, more especially during the concurrent aggressions of two great Powers, themselves at war, the one with the other, and determined on the other hand ag<sup>st</sup>. an unqualified acquiescence, have endeavored by successive and varied regulations affecting the commerce of the parties, to make it their interest to be just.

In the Act of Congress out of which the existing non-importation has grown, the state of Commerce was no otherwise qualified than by a provision, that in case either of the Belligerents should revoke its unlawful Edicts, and the other should fail to do the same, our ports should be shut to the vessels & Merchandize of the latter. This provision which, like our previous offers, repelled the very pretext set up by each, that its Edicts ag<sup>st</sup>. our trade with the other, was required by our acquiescence in like Edicts of the other, was equally presented to the attention of both. In consequence of the communication the French Government declared that its Decrees were revoked. As the British Government had expressed reluctance in issuing its orders, and repeatedly signified a wish to find in the example of its adversary an occasion for putting an end to them, the expectation was the more confident that the occasion would be promptly embraced. This was not done; and the period allowed for the purpose having elapsed, our ports became shut to British Ships and merchandize. Whether the conduct of the French Government has been, and will be such as to satisfy the authorized expectations of the U. States; or whether the British Government may have opened, or will open the way for the Executive removal of the restrictions on British commerce with the U. States, which it continues in its power to do, by revoking its own unlawful restrictions on our commerce, is to be ascertained by further information, which will be received & employed by the Executive with the strict impartiality, which has been invariably maintained towards the two Belligerents.

Whatever may be the inconveniences resulting in the mean time, from the non-importation Act, it was not to have been supposed, that whilst it falls within the necessary power, and Practice of regulating our commercial intercourse with foreign Countries, according to circumstances, the act would be regarded as not warranted by the Constitution; or that whilst it was a partial restriction only, and had for its object, an entire freedom of our commerce, by a liberation of it from foreign restrictions unlawfully imposed, it could be viewed as destroying commerce; and least of all that a likeness could be seen between a law enacted by the representatives of the Country, with a view to the interest of the Country, and Acts of a Government in which the

Country was not represented, framed with a view to the interest of another Country at the expence of this.

If appeals to the justice of the Belligerents, through their interests, involve privations on our part also, it ought to be recollected that this is an effect inseperable from every resort by which one nation can right itself ag<sup>st</sup>. the injustice of others.

If sacrifices made for the sake of the whole, result more to some than to other districts or descriptions of Citizens, this also is an effect which tho' always to be regretted, can never be entirely avoided. Whether the appeal be to the sword, or to interruptions or modifications of customary intercourse, an equal operation on every part of the Community can never happen. Nor would an unqualified acquiescence in belligerent restrictions on our Commerce, if that could be reconciled with what the Nation owes to itself, be less unequal in its effect on different local situations & interests.

In estimating the particular measure which has been adopted by the National Councils, it may be reasonably expected therefore, from the candor of enlightened Citizens, that with the peculiarity of the public situation, they will be impressed also with the difficulty of selecting the course most satisfactory, and best suited to diminish its evils or shorten their duration; that they will keep in mind that a resort to war must involve necessary restrictions on commerce; and that were no measure whatever opposed to the Belligerent Acts against our Commerce, it would not only remain under the severe restrictions now imposed by foreign hands, but new motives would be given for prolonging and invigorating them.

These observations are not meant to anticipate the policy which the Legislature may henceforward find best adapted to support the honor or promote the interest of the Nation; or to prejudge questions relative to particular changes which may be pointed out by experience, or be called for by the state of our foreign relations. Neither do they imply any predetermination as to the measure of convening the Legislature, which it will be a duty to adopt or decline as our national affairs may appear to require. The view of our situation presented to your patriotic reflections, has been suggested by that contained in your address; And it will have its desired effect, if it recalls your attention to the peculiar embarrassments with which the National Councils have had to contend, and enforces the importance of manifesting that union of all in supporting the measures of the Constituted Authorities whilst actually in force, which is as necessary to their effect at home and abroad, as it is consistent with the right and with the legitimate modes, of seeking a revisal of them. In the mode which the Town of New Haven has employed I witness with satisfaction, that in exercising the right of freemen, the obligation of Citizens has not been forgotten; and that it affords a pledge and an example which I am far from undervaluing.

I tender you my respects and my friendly wishes.

Washington, May 24, 1811.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington June 7, 1811.

Mad. Mss.

Dear Sir

I return the letter from you to Duane, on the subject of Mr. Gallatin he seems to be incorrigible. If I am not misinformed, his eyes are opening to the conduct & character of Mr. S. with respect to both of which he has suffered himself to be misled partly by his own passions, partly by those who took advantage of them. You see the new shapes our foreign relations are taking. The occurrence between Rogers & the British ship of war, not unlikely to bring on repetitions, will probably end in an open rupture, or a better understanding, as the calculations of the B. Gov<sup>t</sup>. may prompt or dissuade from war.<sup>1</sup> Among the items in these will be the temper here, as reported by its partizans. The state of parties in Mass<sup>ts</sup>. is in this view important, especially as it will attract particular notice by its effects in degrading Pickering, who has made himself so conspicuous in the British service.<sup>2</sup> On the other hand much impatience is shewing itself in the East<sup>n</sup>. States, under the non-importation. The little embarrassment which occurs in procuring returns for the apples & onions sent from Connecticut to the W. Indies, is generating remonstrances as in the case of the Embargo. I have been obliged to answer one from N. Haven headed by Hillhouse, which they have not yet published. The protracted delay of the Essex still leaves us a prey to the ignorance & interested falsehoods which fill our newspapers. It would seem that G. B. is determined ag<sup>st</sup>. repealing her orders, and that Bonaparte is equally so on the destruction of her commerce, to which he readily sacrifices his own commerce with the U. S. As to the blockade of England, (the decree to which alone the Act of Cong<sup>s</sup> & the Proclamation have reference) there is no evidence of its being continued in force. All the Official evidence is on the other side. And yet by a confusion of ideas or artifice of language, the appearance is kept up that the ground of the non-importation has failed, and that it is consequently a wrong to G. B. After all, we must remain somewhat in the dark till we hear more on the subject; probably till the return of the vessel that carried to France the Act of Cong<sup>s</sup>. putting in force the non-importation, for w<sup>ch</sup> Bonap<sup>e</sup>. seems to be waiting. After a severe drought, we have had a copious rain. I hope you have shared it & that it will have aided the Wheatfields in their conflict with the Hessian fly. Be assured of my constant & truest affection.

[\[Back to Table of Contents\]](#)

## THIRD ANNUAL MESSAGE.

Washington, November 5, 1811.



[\[Back to Table of Contents\]](#)

## Fellow-Citizens Of The Senate And Of The House Of Representatives:

In calling you together sooner than a separation from your homes would otherwise have been required I yielded to considerations drawn from the posture of our foreign affairs, and in fixing the present for the time of your meeting regard was had to the probability of further developments of the policy of the belligerent powers toward this country which might the more unite the national councils in the measures to be pursued.

At the close of the last session of Congress it was hoped that the successive confirmations of the extinction of the French decrees, so far as they violated our neutral commerce, would have induced the Government of Great Britain to repeal its orders in council, and thereby authorize a removal of the existing obstructions to her commerce with the United States.

Instead of this reasonable step toward satisfaction and friendship between the two nations, the orders were, at a moment when least to have been expected, put into more rigorous execution; and it was communicated through the British envoy just arrived that whilst the revocation of the edicts of France, as officially made known to the British Government, was denied to have taken place, it was an indispensable condition of the repeal of the British orders that commerce should be restored to a footing that would admit the productions and manufactures of Great Britain, when owned by neutrals, into markets shut against them by her enemy, the United States being given to understand that in the meantime a continuance of their non-importation act would lead to measures of retaliation.

At a later date it has indeed appeared that a communication to the British Government of fresh evidence of the repeal of the French decrees against our neutral trade was followed by an intimation that it had been transmitted to the British plenipotentiary here in order that it might receive full consideration in the depending discussions. This communication appears not to have been received; but the transmission of it hither, instead of founding on it an actual repeal of the orders or assurances that the repeal would ensue, will not permit us to rely on any effective change in the British cabinet. To be ready to meet with cordiality satisfactory proofs of such a change, and to proceed in the meantime in adapting our measures to the views which have been disclosed through that minister will best consult our whole duty.

In the unfriendly spirit of those disclosures indemnity and redress for other wrongs have continued to be withheld, and our coasts and the mouths of our harbors have again witnessed scenes not less derogatory to the dearest of our national rights than vexatious to the regular course of our trade.

Among the occurrences produced by the conduct of British ships of war hovering on our coasts was an encounter between one of them and the American frigate commanded by Captain Rodgers, rendered unavoidable on the part of the latter by a

fire commenced without cause by the former, whose commander is therefore alone chargeable with the blood unfortunately shed in maintaining the honor of the American flag. The proceedings of a court of inquiry requested by Captain Rodgers are communicated, together with the correspondence relating to the occurrence, between the Secretary of State and His Britannic Majesty's envoy. To these are added the several correspondences which have passed on the subject of the British orders in council, and to both the correspondence relating to the Floridas, in which Congress will be made acquainted with the interposition which the Government of Great Britain has thought proper to make against the proceeding of the United States.

The justice and fairness which have been evinced on the part of the United States toward France, both before and since the revocation of her decrees, authorized an expectation that her Government would have followed up that measure by all such others as were due to our reasonable claims, as well as dictated by its amicable professions. No proof, however, is yet given of an intention to repair the other wrongs done to the United States, and particularly to restore the great amount of American property seized and condemned under edicts which, though not affecting our neutral relations, and therefore not entering into questions between the United States and other belligerents, were nevertheless founded in such unjust principles that the reparation ought to have been prompt and ample.

In addition to this and other demands of strict right on that nation, the United States have much reason to be dissatisfied with the rigorous and unexpected restrictions to which their trade with the French dominion has been subjected, and which, if not discontinued, will require at least corresponding restrictions on importations from France into the United States.

On all those subjects our minister plenipotentiary lately sent to Paris has carried with him the necessary instructions, the result of which will be communicated to you, and, by ascertaining the ulterior policy of the French Government toward the United States, will enable you to adapt to it that of the United States toward France.

Our other foreign relations remain without unfavorable changes. With Russia they are on the best footing of friendship. The ports of Sweden have afforded proofs of friendly dispositions toward our commerce in the councils of that nation also, and the information from our special minister to Denmark shews that the mission had been attended with valuable effects to our citizens, whose property had been so extensively violated and endangered by cruisers under the Danish flag.

Under the ominous indications which commanded attention it became a duty to exert the means committed to the executive department in providing for the general security. The works of defense on our maritime frontier have accordingly been prosecuted with an activity leaving little to be added for the completion of the most important ones, and, as particularly suited for co-operation in emergencies, a portion of the gunboats have in particular harbors been ordered into use. The ships of war before in commission, with the addition of a frigate, have been chiefly employed as a cruising guard to the rights of our coast, and such a disposition has been made of our land forces as was thought to promise the services most appropriate and important. In

this disposition is included a force consisting of regulars and militia, embodied in the Indiana Territory and marched toward our northwestern frontier. This measure was made requisite by several murders and depredations committed by Indians, but more especially by the menacing preparations and aspect of a combination of them on the Wabash, under the influence and direction of a fanatic of the Shawanese tribe. With these exceptions the Indian tribes retain their peaceable dispositions toward us, and their usual pursuits.

I must now add that the period is arrived which claims from the legislative guardians of the national rights a system of more ample provisions for maintaining them. Notwithstanding the scrupulous justice, the protracted moderation, and the multiplied efforts on the part of the United States to substitute for the accumulating dangers to the peace of the two countries all the mutual advantages of re-established friendship and confidence, we have seen that the British cabinet perseveres not only in withholding a remedy for other wrongs, so long and so loudly calling for it, but in the execution, brought home to the threshold of our territory, of measures which under existing circumstances have the character as well as the effect of war on our lawful commerce.

With this evidence of hostile inflexibility in trampling on rights which no independent nation can relinquish, Congress will feel the duty of putting the United States into an armor and an attitude demanded by the crisis, and corresponding with the national spirit and expectations.

I recommend, accordingly, that adequate provision be made for filling the ranks and prolonging the enlistments of the regular troops; for an auxiliary force to be engaged for a more limited term; for the acceptance of volunteer corps, whose patriotic ardor may court a participation in urgent services; for detachments as they may be wanted of other portions of the militia, and for such a preparation of the great body as will proportion its usefulness to its intrinsic capacities. Nor can the occasion fail to remind you of the importance of those military seminaries which in every event will form a valuable and frugal part of our military establishment.

The manufacture of cannon and small arms has proceeded with due success, and the stock and resources of all the necessary munitions are adequate to emergencies. It will not be inexpedient, however, for Congress to authorize an enlargement of them.

Your attention will of course be drawn to such provisions on the subject of our naval force as may be required for the services to which it may be best adapted. I submit to Congress the seasonableness also of an authority to augment the stock of such materials as are imperishable in their nature, or may not at once be attainable.

In contemplating the scenes which distinguish this momentous epoch, and estimating their claims to our attention, it is impossible to overlook those developing themselves among the great communities which occupy the southern portion of our own hemisphere and extend into our neighborhood. An enlarged philanthropy and an enlightened forecast concur in imposing on the national councils an obligation to take a deep interest in their destinies, to cherish reciprocal sentiments of good will, to

regard the progress of events, and not to be unprepared for whatever order of things may be ultimately established.

Under another aspect of our situation the early attention of Congress will be due to the expediency of further guards against evasions and infractions of our commercial laws. The practice of smuggling, which is odious everywhere, and particularly criminal in free governments, where, the laws being made by all for the good of all, a fraud is committed on every individual as well as on the state, attains its utmost guilt when it blends with a pursuit of ignominious gain a treacherous subserviency, in the transgressors, to a foreign policy adverse to that of their own country. It is then that the virtuous indignation of the public should be enabled to manifest itself through the regular animadversions of the most competent laws.

To secure greater respect to our mercantile flag, and to the honest interests which it covers, it is expedient also that it be made punishable in our citizens to accept licenses from foreign governments for a trade unlawfully interdicted by them to other American citizens, or to trade under false colors or papers of any sort.

A prohibition is equally called for against the acceptance by our citizens of special licenses to be used in a trade with the United States, and against the admission into particular ports of the United States of vessels from foreign countries authorized to trade with particular ports only.

Although other subjects will press more immediately on your deliberations, a portion of them can not but be well bestowed on the just and sound policy of securing to our manufactures the success they have attained, and are still attaining, in some degree, under the impulse of causes not permanent, and to our navigation, the fair extent of which is at present abridged by the unequal regulations of foreign governments.

Besides the reasonableness of saving our manufacturers from sacrifices which a change of circumstances might bring on them, the national interest requires that, with respect to such articles at least as belong to our defense and our primary wants, we should not be left in unnecessary dependence on external supplies. And whilst foreign governments adhere to the existing discriminations in their ports against our navigation, and an equality or lesser discrimination is enjoyed by their navigation in our ports, the effect can not be mistaken, because it has been seriously felt by our shipping interests; and in proportion as this takes place the advantages of an independent conveyance of our products to foreign markets and of a growing body of mariners trained by their occupations for the service of their country in times of danger must be diminished.

The receipts into the Treasury during the year ending on the 30th of September last have exceeded \$13,500,000, and have enabled us to defray the current expenses, including the interest on the public debt, and to reimburse more than \$5,000,000 of the principal without recurring to the loan authorized by the act of the last session. The temporary loan obtained in the latter end of the year 1810 has also been reimbursed, and is not included in that amount.

The decrease of revenue arising from the situation of our commerce, and the extraordinary expenses which have and may become necessary, must be taken into view in making commensurate provisions for the ensuing year; and I recommend to your consideration the propriety of insuring a sufficiency of annual revenue at least to defray the ordinary expenses of Government, and to pay the interest on the public debt, including that on new loans which may be authorized.

I cannot close this communication without expressing my deep sense of the crisis in which you are assembled, my confidence in a wise and honorable result to your deliberations, and assurances of the faithful zeal with which my cooperating duties will be discharged, invoking at the same time the blessing of Heaven on our beloved country and on all the means that may be employed in vindicating its rights and advancing its welfare.

[\[Back to Table of Contents\]](#)

TO J. Q. ADAMS.

(Private.)

Mad. Mass.

Washington Nov<sup>r</sup> 15, 1811.

Dear Sir

I have received your several favors of Feb<sup>y</sup> 8, Ap<sup>l</sup> 19, June 3,1 and Aug. 17, all of them in triplicates or duplicates.

I need not say how agreeable it would have been to me, and I am persuaded satisfactory to the public, if your inclination & circumstances had favored the new allotment of your services. Being ignorant of the obstacle arising from the particular state of your family, and inferring from considerations known to you, that such an exchange might not be unwelcome, I had proceeded so far in anticipating a decision different from that which took place in your mind, as to hold out the station at S<sup>t</sup> Petersburg to another. It has happened that no disappointment of any sort ensued to your contemplated successor. But I ought not to omit, that I did not so far lose sight of the possibility that you might be induced to decline the new appointment, as not to have meditated a provision for that event which w<sup>d</sup>. have probably deprived it of its embarrassments. In the present state of things, I have only to wish that your diplomatic situation may continue to be less incommodious than it was at first found; and that opportunities of rendering it useful to your Country may equal her confidence in the fidelity and ability which you will apply to them.

Count Pahlen has just delivered his letter of leave, in pursuance of the order of the Emperor which translates him to Rio Janeiro. His excellent dispositions, and amicable deportment, have justly rendered him so highly & universally agreeable here, that we take for granted that no doubt on that point can have been among the reasons of his sovereign for this change of his destination.

You will receive by this conveyance from the Department of State, the late communications to Congress, including the adjustment of the rusty and corrosive affair of the Chesapeake.1 The pretension of G. B. which requires us as neutral nation to assert ag<sup>st</sup>. one belligerent an obligation to open its markets to the products of the other, shews a predetermination to make her orders in Council codurable with the war, for she cannot be unaware that nothing but a termination of the war if even that, will fulfill the condition annexed to their repeal. The question to be decided, therefore, by Congress, according to present appearances, simply is, whether all the trade to which the orders are and shall be applied, is to be abandoned, or the hostile operation of them, be hostilely resisted. The apparent disposition is certainly not in favor of the first alternative, though it is more than probable, that if the second should be adopted, the execution of it will be put off till the close of the Session approaches; with the exception perhaps of a licence to our Merchantmen to arm in self-defence, which can scarcely fail to bring on war in its full extent unless such an evidence of the

disposition of the U. S. to prefer war to submission should arrest the cause for it. The reparation made for the attack on the American frigate Chesapeake, takes one splinter out of our wounds; but besides the provoking tardiness of the remedy, the moment finally chosen deprives it of much of its effect, by giving it the appearance of a mere anadyne to the excitements in Cong<sup>s</sup>. & the nation produced by the cotemporary disclosures.

It will afford you pleasure to know that the aggregate of our Crops was never greater than for the present year. The grain part of them is particularly abundant.

I tender you assurances of my great esteem and friendly respects.

[\[Back to Table of Contents\]](#)

## TO JOEL BARLOW. 1

(Private.)

Mad. Mss.

Washington Nov<sup>r</sup> 17, 1811.

Dear Sir

You will receive by this conveyance the proper communications from the Dep<sup>t</sup>. of State. You will see in them, the ground now avowed for the B. Orders in Council. It must render them codurable with the war; for nothing but a termination of it will re-open the continental market to British products. Nor is it probable that peace will do it in its former extent. The pretension which requires the U. S. as a neutral power to assert an obligation on one belligerent, to favor, by its internal regulations, the manufactures of another, is a fitter subject for ridicule than refutation. It accordingly has no countenance here even among the most devoted champions of G. B. Whether some of them, by arming themselves with simulated facts & sophistical distinctions, may not be emboldened to turn out in her defence, will soon be seen. Nothing has yet passed in Cong<sup>s</sup>. disclosing the sense of that Body, with respect to the moment & manner of meeting the conduct of G. B. in its present hostile shape. A disposition appears to enter at once on preparations, which will probably be put in force or not, as the effect of them on the British Councils, shall be ascertained in the course of the session. In the mean time it is not improbable that the merchant vessels may be permitted to arm for self-defence. This can scarcely fail to bring on maritime reprisals; and to end in the full extent of war, unless a change in the British system should arrest the career of events. All proceedings however relating to G. Britain, will be much influenced by the conduct of France not only as it relates to a violation of our neutral rights; but of our national ones also, and to justice for the past as well as for the future and that too not only in cases strictly French, but in those in Naples & elsewhere indirectly so. Altho' in our discussions with G. B. we have been justified in viewing the repeal of the French Decrees as sufficiently substantiated to require a fulfilment of the pledge to repeal the orders in Council; yet the manner in which the F. Gov<sup>t</sup>. has managed the repeal of the decrees, and evaded a correction of other outrages, has mingled with the conciliatory tendency of the repeal, as much of irritation and disgust as possible. And these sentiments are not a little strengthened by the sarcastic comments on that management, with which we are constantly pelted in our discussions with the B. Gov<sup>t</sup>. and for which the F. Gov<sup>t</sup>. ought to be ashamed to furnish the occasion. In fact without a systematic change from an appearance of crafty contrivance, and insatiate cupidity, for an open manly, & upright dealing with a nation whose example demands it, it is impossible that good will can exist; and that the ill-will which her policy aims at directing against her enemy, should not, by her folly and iniquity, be drawn off against herself. The late licentiousness of the F. privateers in the Baltic, the ruinous transmission of their cases to Paris, and the countenance said to be there given to such abuses, are kindling a fresh flame here; And if a remedy be not applied, & our merchantmen should arm, hostile collisions will as readily take place with one nation as the other. Were it not that our frigates would be in danger of



rencounters with British ships of superior force in that quarter, there could be no scruple at sending thither some of them, with orders to suppress by force the French and Danish depredations. I am aware that a pretext for these has been sought in the practice of our vessels in accepting British Convoy; but have they not in many instances at least been driven to this irregular step by the greater irregularities practised ag<sup>st</sup>. them? We await the return of the Constitution not without a hope of finding the good effect of your remonstrances in a radical change of the French policy towards this Country.

The reparation for the outrage on the Chesapeake frigate, which you will find in the correspondence between Mr. Foster and Mr. Monroe, tho' in a stile & extent sufficiently admissible under actual circumstances, has been so timed as to lose its conciliatory effect, by wearing the appearance of a diplomatic ruse. Those who value it most, do so on the calculation that Mr. F. is authorized to go forward in the road from which he has removed the stumbling-block. In this they allow their wishes to mislead their judgments.

From a late communication of Mr. Russell, to the Secretary of State it appears that the F. Emperor has very wisely made up his mind for the Independence of Spanish America; and for the possession of E. as well as W. Florida by the U. S. It is to be hoped that no unworthy attempt will be made to extract money from the occasion: 1. because it is incompatible with the assumed idea that Sp: Am<sup>a</sup> must be independent. 2. because, without our occupancy, that of G. B. would be interposed. 3. & essentially, because the pecuniary value of the territory is due from Spain to the U. S. You ought to know that there is good reason to believe that an agent (Keene) for certain grasping land Jobbers of N. Orleans & possibly elsewhere, has been treating with the Cortes for the vacant lands in E. Florida, and it may be counted on that equal art & avarice will mingle themselves with every opportunity for corrupt speculations.

Hitherto the Continental Colonies of S. America have masked their views of independence, under a nominal adherence to Ferdinand, as the head of the whole empire, in contradistinction to the Cortes governing the European part of it only. Venezuela however has thrown off this mask, has communicated to us its declaration of Independence, and solicits our acknowledging it by receiving a Pub. Minister &c. Mexico, according to our intelligence, w<sup>ch</sup> is difficult & obscure, is still in the struggle between the revolutionary & royal parties.

In what manner G. B. will proceed in the case of Venezuela, & other districts following its example does not yet appear. Whilst Ferdinand was acknowledged, it was less difficult to steer between the Cortes and the Colonies. It will require more dexterity to reconcile her political connections with the former, and her commercial views towards the latter. If our information from Cadiz be not very erroneous, she is doing us all the mischief there which her influence can effect. What her conduct may be in the event of our taking possession of E. Florida, cannot yet be said. The game she will play with Cuba, may more readily be conjectured. But like most of her others it may in the end be a losing one.

You will receive from the Dep<sup>t</sup>. of State a set of Newspapers, & will see the pub. countenance as reflected in that Mirror. I add one or two which happen to be at hand, and to contain some things worth perusal.

Accept my great esteem & most friendly respects.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

To The Senate And House Of Representatives Of The United States:

Washington, *December 23*, 1811.

I communicate to Congress copies of an act of the legislature of New York relating to a canal from the Great Lakes to Hudson River. In making the communication I consult the respect due to that State, in whose behalf the commissioners appointed by the act have placed it in my hands for the purpose.

The utility of canal navigation is universally admitted. It is no less certain that scarcely any country offers more extensive opportunities for that branch of improvements than the United States, and none, perhaps, inducements equally persuasive to make the most of them. The particular undertaking contemplated by the State of New York, which marks an honorable spirit of enterprise and comprises objects of national as well as more limited importance, will recall the attention of Congress to the signal advantages to be derived to the United States from a general system of internal communication and conveyance, and suggest to their consideration whatever steps may be proper on their part toward its introduction and accomplishment. As some of those advantages have an intimate connection with the arrangements and exertions for the general security, it is at a period calling for those that the merits of such a system will be seen in the strongest lights.

[\[Back to Table of Contents\]](#)

## TO THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH CAROLINA.

I have rec<sup>d</sup> fellow Citizens your address, transmitted on the 22 of December, 1811.<sup>1</sup>

Mad. Mss.

Under the circumstances which impose on the National Councils, the duty of resorting to other means for obtaining respect to the national rights, than a continuation of the unavailing appeals to the justice of the aggressors, it is an animating consideration that the great body of the Nation appear to be united, in the convictions & feelings which you have expressed.

Our Country faithful to the principles which it professed & studious of the blessings of peace, omitted no pacific effort to engage the Belligerents to abandon their anti-neutral systems; persevering in the authorized expectation that if the example should be given by either, it would be followed by the other. When the repeal of the French Edicts, therefore, was officially declared, it was reasonably inferred that the occasion would be seized by G. Britain to demonstrate the sincerity of her professions, and to remove the obstructions to our commercial intercourse with her which had resulted from the obstructions of our commerce with her adversary. Far from making good the pledge to proceed even step by step with France, in returning to a respect for our neutral rights, her Government contended for formalities in the French proceeding, not observed even in her own practice; and disputed an evidence of facts, which any other than a reluctant party would have promptly embraced; untill, forced into a distrust of these pretexts for adhering to her orders she has at length made it a condition of their repeal, that the markets shut by her Enemy, shall be opened to her productions and manufactures; a condition, which being equally beyond our right to demand, and our means to effect, involves a continuance of the system levelled against our lawful trade, during a war itself of indefinite duration.

The alternative thus presented to the American Nation is rallying it to a vindication of its violated rights, and it would be injustice to its character to doubt that its energy and perseverance, when rendered necessary, will be proportioned to the justice and moderation, by which that necessity ought to have been prevented.

Acquiescence in the practice and pretensions of the British Gov<sup>t</sup>. is forbidden by every view that can be taken of the subject. It would be a voluntary surrender of the persons and property of our Citizens sailing under the neutral guaranty of an Independent flag. It would recolonize our commerce by subjecting it to a foreign Authority; with the sole difference that the regulations of it formerly were made by Acts of Parliament and now, by orders in Council. And whatever benefits might be reaped by particular portions of the Community, whose products are favored by contingent demands, but whose patriotism will not the less make a common cause with every other portion, experience warns us of the fatal tendencies of a commerce unrestricted with G. B., and restricted by her pleasure and policy elsewhere. Whilst the limited Market would continue overcharged with our exports, the disproportionate

imports from it, would drain from us the precious metals, endanger our monied Institutions; arrest our internal improvements, and would strangle in the cradle, the manufactures which promise so vigorous a growth. Nor would the evil be confined to our commerce, our agriculture, or our manufactures. The Ship owners & Shipbuilders and mariners must be equally sufferers. Should the regulating power submitted to afford no new preferences to British Navigation, those derived from existing laws & orders would exclude American vessels from the carriage of the products of their own Country, from its own ports. Finally, an acquiescence in the regulation of our Commerce, by the Belligerent having the command of the sea, would be the surest method of perpetuating its destructive Edicts. In a state of things so favorable to its interests, and so flattering to its power, the motives to a change would cease, if a change were otherwise likely to take place.

It is with a just discernment therefore that you have regarded a dereliction of our National rights as not less ruinous than dishonorable; and, with an exemplary patriotism that you have unanimously resolved to co-operate in maintaining them.

Washington Jan<sup>y</sup>. 8th 1812.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, Feb<sup>y</sup>. 7, 1812.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. several letters from you which not requiring special answers, I now beg leave to acknowledge in the lump. I have delayed it in the hope that I might add something on our public affairs not uninteresting. If there be any thing at present of this character it will be found in the inclosed paper from N. York. We have no late official information from Europe; but all that we see from G. B. indicates an adherence to her mad policy towards the U. S. The Newspapers give you a sufficient insight into the measures of Congress. With a view to enable the Executive to step at once into Canada they have provided after two months delay, for a regular force<sup>1</sup> requiring 12 to raise it, and after 3 months for a volunteer force, on terms not likely to raise it at all for that object. The mixture of good & bad, avowed & disguised motives accounting for these things is curious eno<sup>t</sup> but not to be explained in the compass of a letter. Among other jobbs on my hands is the case of Wilkinson.<sup>2</sup> His defence fills 6 or 700 pages of the most colossal paper. The minutes of the Court, oral written & printed testimony, are all in proportion. A month has not yet carried me thro<sup>t</sup> the whole.

We have had of late a hard winter & much Ice which still lies on the water in view. The reiteration of Earthquakes continues to be reported from various quarters. They have slightly reached the State of N. Y. and been severely felt W. and S. Westwardly. There was one here this morning at 5 or 6 minutes after 4 o<sup>t</sup>C. It was rather stronger than any preceding one, & lasted several minutes; with sensible tho<sup>t</sup> very slight repetitions throughout the succeeding hour.

Be assured of my best affections.

[\[Back to Table of Contents\]](#)

TO JOEL BARLOW.

Washington Feb<sup>y</sup>. 24, 1812.

Mad. Mss.

Dear Sir,—

Mr. Morris delivered yesterday morning the dispatches committed to him, including your letters to me.

The reasons for hastening the departure of the vessel now ordered to France, will not permit the Sec<sup>y</sup>. of State to do much more than acknowledge the receipt of your communications. The instructions you wish relative to the question of a Commercial Treaty with F. at this time, as well as the requisite terms, should such an one be admissible, will be subjects of due consideration and early communication.

I see with pleasure the auspicious attentions which have distinguished your intercourse with the F. Gov<sup>t</sup>., and the convincing views presented, on your part, of the commercial policy which it ought to adopt towards the U. S. From these sources encouragement is drawn. In other respects the prospect suggests distrust rather than expectation. The delay in answering your note, the vagueness of the answer when given; the refusal to sign the contents of the paper presented by you, even in the ordinary & unexceptionable form proposed; and the substitution of a verbal for a written notification of the orders to the Custom Houses, &c &c, by which our merchants were to be invited to the F. Market, are circumstances which necessarily attract serious notice. The reserve manifested on the subject of the paper alluded to is the more remarkable as a written sanction to it would have so little committed them. Beyond a freedom of the French ports to the products of the U. S. under all the existing limitations & incumbrances, it pledged nothing more than a melioration of formalities as to ownership and origin; leaving Colonial produce on the old footing of special licences. The liberation of the remaining Ships & Cargoes could surely have created no difficulty, if any real purpose of friendship or good faith be entertained. It would seem therefore that the objection must have lain against the clause forbidding captures & seizures, for other cause than forged papers. The recent condemnations in the Baltic cases, and the avowal of the F. Consul in Denmark that all vessels, *whithersoever* bound, with Colonial produce were within the orders to capture, favor this conjecture; and if it be the true one, adjustment is hopeless; and the consequences obvious. I do not forget that your understanding of all these particulars was better than mine can be, and that my constructions may be merely colorable. I wish this may be the case, but we find so little of explicit dealing or substantial redress mingled with the compliments and encouragements which cost nothing because they may mean nothing, that suspicions are unavoidable; and if they be erroneous, the fault does not lie with those who entertain them.

From the scanty attention I can now give to the subject of a commercial Treaty with F. I am at a loss for the necessity of it, or the motives of F. to set it on foot, if it be not

meant to gain time, and be guided by events. 1 On our side we have nothing to stipulate, which is not secured to her, as long as she merits it, by our general system which leaves our exports & imports free, without any duties on the former, and with moderate ones on the latter. It is on her side that changes & securities are necessary to a friendly reciprocity; and these will for the present be satisfactory to us in the form of stable regulations fairly executed. Among them a reduced tarif favoring *all* our great Staples, and a transit thro' F. ports to inland markets, are indispensable to a continued admission of F. staples. The system of licences must be abolished, if not by F. by us. The neglect of the subject by Cong<sup>s</sup>. is remarkable, but the event cannot be doubtful. Such a mode of commerce corrupts one class of Citizens and disgusts all the rest; & when the trade licensed is in foreign, not native articles, the evil preponderates still more over the profit. The F. Gov<sup>t</sup>. seems to have taken up a radical error with regard to the commercial interests of the two Countries. It overrates our desire of her commodities. The present footing of the commerce is intolerable to the U. S. and it will be prohibited, if no essential change takes place. At all times it will be a barter of food & raw materials for superfluities, in great part; and altogether so (with the temporary exception of colonial re-exports) as long as a balance in money is prevented by the existing policy of France, and a return of useful fabrics by the war. Why might not certificates of origin from F. Consuls, or still better of direct shipments from our ports, take the place of licenses. The advantages of the change are numerous & obvious. Mr. Gallatin promises to say something to Mr. Lee on this head.

I am concerned that the prospect of indemnity for the Rambouillet and other spoliations is so discouraging as to have led to the idea of seeking it thro' King Joseph. Were there no other objection than the effect on the public mind here, this would be an insuperable one. The gratification of the sufferers by the result would be lost in the general feeling ag<sup>st</sup> the measure. But Joseph is not yet *settled* on the Spanish Throne; When so, defacto, he will be *sovereign* neither de facto, nor de jure, of any Spanish part of this Continent; the whole of which, if it had not on other accounts a right to separate from the peninsula, would derive it from the usurpation of Joseph. So evident is it that he can never be K<sup>g</sup> of a Spanish Province, either by conquest or consent, that the Independence of all of them, is avowedly favored by the policy which rules him. Nor would a purchase under Joseph, place us an inch nearer our object. He could give us neither right, nor possession; and we should be obliged to acquire the latter by means which a grant from him would be more likely to embarrass than promote. I hope therefore that the French Government will be brought to feel the obligation & the necessity of repairing the wrongs, the flagrant wrongs in question, either by payments from the Treasury or negotiable substitutes. Without one or other or some fair equivalent there can be neither cordiality nor confidence here; nor any restraint from self redress in any justifiable mode of effecting it; nor any formal Treaty on any subject. With Justice on this subject, formal stipulations on others might be combinable.

As the Hornet had reached F. before the sailing of the Constitution, and the latter had not a very short passage, we shall soon look for further communications from you. I hope they will correspond equally with your patriotic exertions, and the public calculations. If they do not exhibit the conduct of the F. Gov<sup>t</sup>. in better colors than it



has yet assumed, there will be but one sentiment in this country, & I need not say what that will be.

Be assured of my affectionate esteem.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Washington, Mar. 6, 1812.

Mad. Mss.

Dear Sir,—

I return the letter from Foronda inclosed in yours of the 19<sup>th</sup>. Feb<sup>y</sup>. I find I shall not be able to read his lucubrations in print. The letter from Dr. Guantt[?] is in the hands of the Sec<sup>y</sup>. of war, and will not be unheeded; but the course the nominations have taken makes it doubtful whether the wishes in behalf of his son can be fulfilled. You will see that Cong<sup>s</sup>., or rather the H. of R<sup>s</sup>., have got down the dose of taxes. 1 It is the strongest proof they could give that they do not mean to flinch from the contest to which the mad conduct of G. B. drives them. Her perseverance in this seems to be sufficiently attested by the language of L<sup>d</sup>. Liverpoole & Mr. Perceval in their parliamentary comments on the Regent's message. The information from F. is pretty justly described in the paragraph inserted in the Nat<sup>l</sup>. Intelligencer after the arrival of the Constitution. The prints herewith inclosed are forwarded to you at the request of Thom<sup>s</sup> Gimbrede, (of N. York,) the author.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

To The Senate And House Of Representatives Of The United States:

March 9, 1812.

I lay before Congress copies of certain documents which remain in the Department of State.<sup>1</sup> They prove that at a recent period, whilst the United States, notwithstanding the wrongs sustained by them, ceased not to observe the laws of peace and neutrality toward Great Britain, and in the midst of amicable professions and negotiations on the part of the British Government, through its public minister here, a secret agent of that Government was employed in certain States, more especially at the seat of government in Massachusetts, in fomenting disaffection to the constituted authorities of the nation, and in intrigues with the disaffected, for the purpose of bringing about resistance to the laws, and eventually, in concert with a British force, of destroying the Union and forming the eastern part thereof into a political connection with Great Britain.

In addition to the effect which the discovery of such a procedure ought to have on the public councils, it will not fail to render more dear to the hearts of all good citizens that happy union of these States which, under Divine Providence, is the guaranty of their liberties, their safety, their tranquillity, and their prosperity.

[\[Back to Table of Contents\]](#)

## TO JONATHAN DAYTON.

[March 17, 1812.]

Chic. Hist. Soc.  
Mss.

In the latter end of the year 1808, and spring of 1809, two anonymous letters were addressed, one to the Hon Secy. of State, the other to the P. of the U. S.<sup>1</sup> They related to a projected severance of the Union, brought to the knowledge of the writer, which was to be undertaken in case of a rupture with G. B. under the managem<sup>t</sup>. of men of high standing; but was obviated for the time by the accomodation settled with Mr. Erskine. The writer justly estimating the importance of bringing to pub. view the guilty associates, signified his intention to resume his disclosures, sh<sup>d</sup> a future occasion call for them; and to give such evidences of their machinations as w<sup>d</sup> be conclusive. Such an occasion is formed by existing circumstances. The British designs ag<sup>st</sup> our Union have been happily detected & exposed: But no evidence is produced, having like effect as to domestic plotters; who in the event of war, may be expected to avail themselves of that advantage, in seizing any favorable moment for renewing their machinations. As the motives to the communications & purposes alluded to are doubtless unchanged & as to the want of name & dates to the letters conveying them, is supplied by the handwriting, & post marks, this note may recall the subject to the writer, at a moment singularly critical. A Com<sup>e</sup>. of investigation, under the title of Com<sup>e</sup>. of For relations, having been app<sup>d</sup>. by the H. of Rep<sup>s</sup>. any name & proofs, or the sources of them may be either pointed out to that body, or otherwise made known as may be thought proper.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington April 3, 1812.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your favor of the 26th, and have made to the members of the Cabinet the communication you suggest with respect to your printed Memoir on the Batture. I learn from the Department of State that some books were rec<sup>d</sup>. for you, and duly forwarded. What they were was not ascertained or remembered. If they do not on their arrival correspond with your expectation, let me know, & further enquiry will be made. Meantime there is in my possession, a very large packet, addressed to you, which is probably a Continuation of Humboldts draughts, or other Maps. It was accompanied by no letter to me, and being unfit for the mail, waits for the patronage of some trusty traveller, bound in the stage towards Monticello. A late arrival from G. B. brings dates subsequent to the maturity of the Prince Regent's authority. It appears that Percival, &c. are to retain their places, and that they prefer war with us, to a repeal of their Orders in Council. We have nothing left therefore, but to make ready for it. As a step to it an embargo for 60 days was recommended to Cong<sup>s</sup> on Wednesday, and agreed to in the H. of Rep<sup>s</sup>. by about 70 to 40. 1 The Bill was before the Senate yesterday, who adjourned about 4 or 5 o'Clock without a decision. Whether this result was produced by the rule which arms a single member with a veto ag<sup>st</sup>. a decision in one day on a bill, or foretells a rejection of the Bill I have not yet heard. The temper of that body is known to be equivocal. Such a measure, even for a limited and short time, is always liable to adverse as well as favorable considerations; and its operations at this moment, will add fuel to party discontent, and interested clamor. But it is a rational & provident measure, and will be relished by a greater portion of the Nation, than an omission of it. If it could have been taken sooner and for a period of 3 or 4 months, it might have enlisted an alarm of the B. Cabinet, for their Peninsular System on the side of Concessions to us; and w<sup>d</sup>. have shaken their obstinacy, if to be shaken at all; the successes on that Theatre being evidently their hold on the P. Reg<sup>t</sup>. and the hold of both on the vanity & prejudices of the Nation. Whether if adopted for 60 days, it may beget apprehensions of a protraction, and thence lead to admissible overtures, before the sword is stained with blood, cannot be foreknown with certainty. Such an effect is not to be counted upon. You will observe that Liverpool was Sec<sup>y</sup>. for the Foreign Dep<sup>t</sup>. ad interim, & that Castlereagh is the definitive successor of Wellesley. The resignation of this last, who has rec<sup>d</sup>. no other app<sup>t</sup>. is a little mysterious. There is some reason for believing that he is at variance with Percival, or that he distrusts the stability of the existing Cabinet, and courts an alliance with the Grenville party, as likely to overset it. If none of that party desert their colours, the calculation cannot be a very bad one; especially in case of war with the U. S., in addition to the distress of Br trade & manufactures, and the inflammation in Ireland; to say nothing of possible reverses in Spain & Portugal, which alone would cut up the Percival ascendancy by the roots. From France we hear nothing. The delay of the Hornet is inexplicable, but on the reproachful supposition that the F. Gov<sup>t</sup>. is

waiting for the final turn of things at London, before it takes its course, which justice alone ought to prescribe towards us. If this be found to be its game, it will impair the value of concessions if made, and give to a refusal of them, consequences it may little dream of.

Be assured of my constant and sincerest attachment.

I understand the Embargo will pass the Senate to-day, and possibly with an extension of the period to 75 or 90 days.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, Ap<sup>l</sup> 24, 1812.

Mad. Mss.

Dear Sir,—

I have just rec<sup>d</sup>. your favor of the 17th. The same mail brings me the “Proceedings of the Gov<sup>t</sup>. of the U. S. relative to the Batture,” for which you will accept my thanks.

I had not supposed that so great a proportion of produce, particularly of Wheat & flour, was still in the hands of the farmers. In Penn<sup>a</sup>. it was known to be the case. In N. Y. almost the whole of the last crop, is in the Country, though chiefly in the hands of the Merchants & Millers. The measure of the Embargo was made a difficult one, both as to its duration & its date, by the conflict of opinions here, and of local interests elsewhere; and to these causes are to be added, that invariable opposition, open with some & covert with others, which have perplexed & impeded the whole course of our public measures. You will have noticed that the Embargo as recommended to Cong<sup>s</sup>. was limited to 60 days. Its extension to 90 proceeded from the united votes of those who wished to make it a negotiating instead of a war measure, of those who wished to put off the day of war as long as possible, if ultimately to be met, & of those whose mercantile constituents had ships abroad, which would be favored in their chance of getting safely home. Some also who wished & hoped to anticipate the expiration of the terms, calculated on the ostensible postponement of the war question as a ruse ag<sup>st</sup> the Enemy. At present great differences of opinion exist, as to the time & form of entering into hostilities; whether at a very early or later day, or not before the end of the 90 days, and whether by a general declaration, or by a commencement with letters of M. & Reprisal. The question is also to be brought forward for an adjournment for 15 or 18 days. Whatever may be the decision on all these points, it can scarcely be doubted that patience in the holders of Wheat & flour at least, will secure them good prices; Such is the scarcity all over Europe, and the dependence of the W. Indies on our supplies. Mr. Maury writes me, on the 21st of March, that flour had suddenly risen to 16½ dollars, and a further rise looked for. And it is foreseen, that in a State of War, the Spanish & Portuguese flags & papers real or counterfeit, will afford a neutral cover to our produce as far as wanted, in ports in the favor of G. B. Licences therefore on our part will not be necessary; which tho’ in some respects mitigating the evils of war, are so pregnant with abuses of the worst sort, as to be liable in others to strong objections. As managed by the belligerents of Europe they are sources of the most iniquitous & detestable practices.

The Hornet still loiters. A letter from Barlow to Granger, fills us with serious apprehensions, that he is burning his fingers with matters which will work great embarrassment & mischief here; and which his instructions could not have suggested. [1](#) In E. Florida, Mathews has been playing a strange comedy, in the face of

common sense, as well as of his instructions.<sup>1</sup> His extravagances place us in the most distressing dilemma.

Always & Affe<sup>Y</sup>. Yrs.



[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Washington May 25, 1812.

Mad. Mss.

Dear Sir,—

The inclosed letters came under cover to me, by the Hornet. France has done nothing towards adjusting our differences with her. It is understood that the B. & M. Decrees are not in force ag<sup>st</sup>. the U. S. and no contravention of them can be established ag<sup>st</sup> her. On the contrary positive cases rebut the allegation. Still the manner of the F. Gov<sup>t</sup>. betrays the design of leaving G. B. a pretext for enforcing her O. in C. And in all other respects, the grounds of our complaints remain the same. The utmost address has been played off on Mr. Barlow's wishes & hopes; in much that at the Departure of the Hornet which had been so long detained for a final answer without its being obtained, he looked to the return of the Wasp which had just arrived, without despair of making her the Bearer of some satisfactory arrangement. Our calculations differ widely. In the mean time, the business is become more than ever puzzling. To go to war with Eng<sup>d</sup> and not with France arms the federalists with new matter, and divides the Republicans some of whom with the Quids make a display of impartiality. To go to war ag<sup>st</sup> both, presents a thousand difficulties, above all, that of shutting all the ports of the Continent of Europe ag<sup>st</sup> our Cruisers who can do little without the use of them. It is pretty certain also, that it would not gain over the Federalists, who w<sup>d</sup>. turn all those difficulties ag<sup>st</sup> the Administration. 1 The only consideration of weight in favor of this triangular war as it is called, is that it might hasten thro' a peace with G. B. or F. a termination, for a while at least, of the obstinate questions now depending with both.

But even this advantage is not certain. For a prolongation of such a war might be viewed by both Bellig<sup>ts</sup>. as desirable, with as little reason for the opinion, as has prevailed in the past conduct of both.

Affectionate respects

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

To The Senate And House Of Representatives Of The United States:

Washington, June 1, 1812.<sup>1</sup>

I communicate to Congress certain documents, being a continuation of those heretofore laid before them on the subject of our affairs with Great Britain.

Without going back beyond the renewal in 1803 of the war in which Great Britain is engaged, and omitting unrepaired wrongs of inferior magnitude, the conduct of her Government presents a series of acts hostile to the United States as an independent and neutral nation.

British cruisers have been in the continued practice of violating the American flag on the great highway of nations, and of seizing and carrying off persons sailing under it, not in the exercise of a belligerent right founded on the law of nations against an enemy, but of a municipal prerogative over British subjects. British jurisdiction is thus extended to neutral vessels in a situation where no laws can operate but the law of nations and the laws of the country to which the vessels belong, and a self-redress is assumed which, if British subjects were wrongfully detained and alone concerned, is that substitution of force for a resort to the responsible sovereign which falls within the definition of war. Could the seizure of British subjects in such cases be regarded as within the exercise of a belligerent right, the acknowledged laws of war, which forbid an article of captured property to be adjudged without a regular investigation before a competent tribunal, would imperiously demand the fairest trial where the sacred rights of persons were at issue. In place of such a trial these rights are subjected to the will of every petty commander.

The practice, hence, is so far from affecting British subjects alone that, under the pretext of searching for these, thousands of American citizens, under the safeguard of public law and of their national flag, have been torn from their country and from everything dear to them; have been dragged on board ships of war of a foreign nation and exposed, under the severities of their discipline, to be exiled to the most distant and deadly climes, to risk their lives in the battles of their oppressors, and to be the melancholy instruments of taking away those of their own brethren.

Against this crying enormity, which Great Britain would be so prompt to avenge if committed against herself, the United States have in vain exhausted remonstrances and expostulations, and that no proof might be wanting of their conciliatory dispositions, and no pretext left for a continuance of the practice, the British Government was formally assured of the readiness of the United States to enter into arrangements such as could not be rejected if the recovery of British subjects were the real and the sole object. The communication passed without effect.

British cruisers have been in the practice also of violating the rights and the peace of our coasts. They hover over and harass our entering and departing commerce. To the most insulting pretensions they have added the most lawless proceedings in our very harbors, and have wantonly spilt American blood within the sanctuary of our territorial jurisdiction. The principles and rules enforced by that nation, when a neutral nation, against armed vessels of belligerents hovering near her coasts and disturbing her commerce are well known. When called on, nevertheless, by the United States to punish the greater offenses committed by her own vessels, her Government has bestowed on their commanders additional marks of honor and confidence.

Under pretended blockades, without the presence of an adequate force and sometimes without the practicability of applying one, our commerce has been plundered in every sea, the great staples of our country have been cut off from their legitimate markets, and a destructive blow aimed at our agricultural and maritime interests. In aggravation of these predatory measures they have been considered as in force from the dates of their notification, a retrospective effect being thus added, as has been done in other important cases, to the unlawfulness of the course pursued. And to render the outrage the more signal these mock blockades have been reiterated and enforced in the face of official communications from the British Government declaring as the true definition of a legal blockade “that particular ports must be actually invested and previous warning given to vessels bound to them not to enter.”

Not content with these occasional expedients for laying waste our neutral trade, the cabinet of Britain resorted at length to the sweeping system of blockades, under the name of orders in council, which has been molded and managed as might best suit its political views, its commercial jealousies, or the avidity of British cruisers.

To our remonstrances against the complicated and transcendent injustice of this innovation the first reply was that the orders were reluctantly adopted by Great Britain as a necessary retaliation on decrees of her enemy proclaiming a general blockade of the British Isles at a time when the naval force of that enemy dared not issue from his own ports. She was reminded without effect that her own prior blockades, unsupported by an adequate naval force actually applied and continued, were a bar to this plea; that executed edicts against millions of our property could not be retaliation on edicts confessedly impossible to be executed; that retaliation, to be just, should fall on the party setting the guilty example, not on an innocent party which was not even chargeable with an acquiescence in it.

When deprived of this flimsy veil for a prohibition of our trade with her enemy by the repeal of his prohibition of our trade with Great Britain, her cabinet, instead of a corresponding repeal or a practical discontinuance of its orders, formally avowed a determination to persist in them against the United States until the markets of her enemy should be laid open to British products, thus asserting an obligation on a neutral power to require one belligerent to encourage by its internal regulations the trade of another belligerent, contradicting her own practice toward all nations, in peace as well as in war, and betraying the insincerity of those professions which inculcated a belief that, having resorted to her orders with regret, she was anxious to find an occasion for putting an end to them.

Abandoning still more all respect for the neutral rights of the United States and for its own consistency, the British Government now demands as prerequisites to a repeal of its orders as they relate to the United States that a formality should be observed in the repeal of the French decrees nowise necessary to their termination nor exemplified by British usage, and that the French repeal, besides including that portion of the decrees which operates within a territorial jurisdiction, as well as that which operates on the high seas, against the commerce of the United States should not be a single and special repeal in relation to the United States, but should be extended to whatever other neutral nations unconnected with them may be affected by those decrees. And as an additional insult, they are called on for a formal disavowal of conditions and pretensions advanced by the French Government for which the United States are so far from having made themselves responsible that, in official explanations which have been published to the world, and in a correspondence of the American minister at London with the British minister for foreign affairs such a responsibility was explicitly and emphatically disclaimed.

It has become, indeed, sufficiently certain that the commerce of the United States is to be sacrificed, not as interfering with the belligerent rights of Great Britain; not as supplying the wants of her enemies, which she herself supplies; but as interfering with the monopoly which she covets for her own commerce and navigation. She carries on a war against the lawful commerce of a friend that she may the better carry on a commerce with an enemy — a commerce polluted by the forgeries and perjuries which are for the most part the only passports by which it can succeed.

Anxious to make every experiment short of the last resort of injured nations, the United States have withheld from Great Britain, under successive modifications, the benefits of a free intercourse with their market, the loss of which could not but outweigh the profits accruing from her restrictions of our commerce with other nations. And to entitle these experiments to the more favorable consideration they were so framed as to enable her to place her adversary under the exclusive operation of them. To these appeals her Government has been equally inflexible, as if willing to make sacrifices of every sort rather than yield to the claims of justice or renounce the errors of a false pride. Nay, so far were the attempts carried to overcome the attachment of the British cabinet to its unjust edicts that it received every encouragement within the competency of the executive branch of our Government to expect that a repeal of them would be followed by a war between the United States and France, unless the French edicts should also be repealed. Even this communication, although silencing forever the plea of a disposition in the United States to acquiesce in those edicts originally the sole plea for them, received no attention.

If no other proof existed of a predetermination of the British Government against a repeal of its orders, it might be found in the correspondence of the minister plenipotentiary of the United States at London and the British secretary for foreign affairs in 1810, on the question whether the blockade of May, 1806, was considered as in force or as not in force. It had been ascertained that the French Government, which urged this blockade as the ground of its Berlin decree, was willing in the event of its removal, to repeal that decree, which, being followed by alternate repeals of the

other offensive edicts, might abolish the whole system on both sides. This inviting opportunity for accomplishing an object so important to the United States, and professed so often to be the desire of both the belligerents, was made known to the British Government. As that Government admits that an actual application of an adequate force is necessary to the existence of a legal blockade, and it was notorious that if such a force had ever been applied its long discontinuance had annulled the blockade in question, there could be no sufficient objection on the part of Great Britain to a formal revocation of it, and no imaginable objection to a declaration of the fact that the blockade did not exist. The declaration would have been consistent with her avowed principles of blockade, and would have enabled the United States to demand from France the pledged repeal of her decrees, either with success, in which case the way would have been opened for a general repeal of the belligerent edicts, or without success, in which case the United States would have been justified in turning their measures exclusively against France. The British Government would, however, neither rescind the blockade nor declare its nonexistence, nor permit its non-existence to be inferred and affirmed by the American plenipotentiary. On the contrary, by representing the blockade to be comprehended in the orders in council, the United States were compelled so to regard it in their subsequent proceedings.

There was a period when a favorable change in the policy of the British cabinet was justly considered as established. The minister plenipotentiary of His Britannic Majesty here proposed an adjustment of the differences more immediately endangering the harmony of the two countries. The proposition was accepted with the promptitude and cordiality corresponding with the invariable professions of this Government. A foundation appeared to be laid for a sincere and lasting reconciliation. The prospect, however, quickly vanished. The whole proceeding was disavowed by the British Government without any explanations which could at that time repress the belief that the disavowal proceeded from a spirit of hostility to the commercial rights and prosperity of the United States; and it has since come into proof that at the very moment when the public minister was holding the language of friendship and inspiring confidence in the sincerity of the negotiation with which he was charged a secret agent of his Government was employed in intrigues having for their object a subversion of our Government and a dismemberment of our happy union.

In reviewing the conduct of Great Britain toward the United States our attention is necessarily drawn to the warfare just renewed by the savages on one of our extensive frontiers—a warfare which is known to spare neither age nor sex and to be distinguished by features peculiarly shocking to humanity. It is difficult to account for the activity and combinations which have for some time been developing themselves among tribes in constant intercourse with British traders and garrisons without connecting their hostility with that influence and without recollecting the authenticated examples of such interpositions heretofore furnished by the officers and agents of that Government.

Such is the spectacle of injuries and indignities which have been heaped on our country, and such the crisis which its unexampled forbearance and conciliatory efforts have not been able to avert. It might at least have been expected that an enlightened nation, if less urged by moral obligations or invited by friendly dispositions on the

part of the United States, would have found its true interest alone a sufficient motive to respect their rights and their tranquillity on the high seas; that an enlarged policy would have favored that free and general circulation of commerce in which the British nation is at all times interested, and which in times of war is the best alleviation of its calamities to herself as well as to other belligerents; and more especially that the British cabinet would not, for the sake of a precarious and surreptitious intercourse with hostile markets, have persevered in a course of measures which necessarily put at hazard the invaluable market of a great and growing country, disposed to cultivate the mutual advantages of an active commerce.

Other counsels have prevailed. Our moderation and conciliation have had no other effect than to encourage perseverance and to enlarge pretensions. We behold our seafaring citizens still the daily victims of lawless violence, committed on the great common and highway of nations, even within sight of the country which owes them protection. We behold our vessels, freighted with the products of our soil and industry, or returning with the honest proceeds of them, wrested from their lawful destinations, confiscated by prize courts no longer the organs of public law but the instruments of arbitrary edicts, and their unfortunate crews dispersed and lost, or forced or inveigled in British ports into British fleets, whilst arguments are employed in support of these aggressions which have no foundation but in a principle equally supporting a claim to regulate our external commerce in all cases whatsoever.

We behold, in fine, on the side of Great Britain, a state of war against the United States, and on the side of the United States a state of peace toward Great Britain.

Whether the United States shall continue passive under these progressive usurpations and these accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty Disposer of Events, avoiding all connections which might entangle it in the contest or views of other powers, and preserving a constant readiness to concur in an honorable re-establishment of peace and friendship, is a solemn question which the Constitution wisely confides to the legislative department of the Government. In recommending it to their early deliberations I am happy in the assurance that the decision will be worthy the enlightened and patriotic councils of a virtuous, a free, and a powerful nation.

Having presented this view of the relations of the United States with Great Britain and of the solemn alternative growing out of them, I proceed to remark that the communications last made to Congress on the subject of our relations with France will have shewn that since the revocation of her decrees, as they violated the neutral rights of the United States, her Government has authorized illegal captures by its privateers and public ships, and that other outrages have been practised on our vessels and our citizens. It will have been seen also that no indemnity had been provided or satisfactorily pledged for the extensive spoliations committed under the violent and retrospective orders of the French Government against the property of our citizens seized within the jurisdiction of France. I abstain at this time from recommending to the consideration of Congress definitive measures with respect to that nation, in the expectation that the result of unclosed discussions between our minister

plenipotentiary at Paris and the French Government will speedily enable Congress to decide with greater advantage on the course due to the rights, the interests, and the honor of our country.

[\[Back to Table of Contents\]](#)

## PROCLAMATION.

Whereas the Congress of the United States, by virtue of the constituted authority vested in them, have declared by their act bearing date the 18th day of the present month that war exists between the United Kingdom of Great Britain and Ireland and the dependencies thereof and the United States of America and their Territories:

Now, therefore, I, James Madison, President of the United States of America, do hereby proclaim the same to all whom it may concern; and I do specially enjoin on all persons holding offices, civil or military, under the authority of the United States that they be vigilant and zealous in discharging the duties respectively incident thereto; and I do moreover exhort all the good people of the United States, as they love their country, as they value the precious heritage derived from the virtue and valor of their fathers, as they feel the wrongs which have forced on them the last resort of injured nations, and as they consult the best means under the blessing of Divine Providence of abridging its calamities, that they exert themselves in preserving order, in promoting concord, in maintaining the authority and efficacy of the laws, and in supporting and invigorating all the measures which may be adopted by the constituted authorities for obtaining a speedy, a just, and an honorable peace.

In testimony, etc.

Done etc. the 19th day of June, 1812, etc.



[\[Back to Table of Contents\]](#)

## INSTRUCTIONS FOR PRIVATEERS.1

D. Of S. Mss.

### INSTRUCTIONS.

To Capt: — Commander Of The Private Armed — Called The  
—:

For the private armed vessels of the U. States

1. The tenor of your Commission and of the act of Cong<sup>s</sup> entitled “An act, &c. &c. a copy of which is hereto annexed, will be kept constantly in your view. By The high seas referred to in your Commission, you will understand generally, to extend to low water mark; But with the exception of the space within one league or three miles of the shore of countries at peace both with G. B. and with the U. S. you may, nevertheless execute your commission within that distance of the shore of a nation at war with G. B. and even on the waters within the jurisdiction of such nation, if permitted so to do.
2. You are to pay the strictest regard to the rights of neutral powers, & the usages of Civilized nations; and in all your proceedings towards neutral vessels, you are to give them as little molestation or interruption as will consist with the right of ascertaining their neutral character, and of detaining and bringing them in for regular adjudication in the proper cases. You are particularly to avoid even the appearance of using force or seduction with a view to deprive such vessels of their crews, or of their passengers, other than persons in the military service of the enemy.
3. Towards enemy vessels & their crews, you are to proceed, in exercising the rights of war, with all the justice & humanity which characterize the nation of which you are members.
4. The Master & one or more of the principal persons belonging to captured vessels, are to be sent, as soon after the capture as may be, to the Judge or Judges of the proper court in the U. S. to be examined upon oath, touching the interest or property of the captured vessel & her lading; and at the same time are to be delivered to the Judge or Judges, all passes, Charter-parties, bills of lading, invoices, letters & other documents & writings found on board; the s papers to be proved by the affidavit of the Commander of the capturing vessel or some other person present at the capture, to be produced as they were rec<sup>d</sup> without fraud, addition, subduction or embezzlement.

[\[Back to Table of Contents\]](#)

TO —

Washington July 25, 1812.

Mad. Mss.

Sir,—

I have rec<sup>d</sup>. the address from “The Convention of Republican Delegates from the several Counties of the State of New Jersey,” explaining the sentiments entertained, at this crisis, by that portion of my Constituents. The sentiments are worthy the character of Citizens, who know the value of the National rights at stake in the present contest; and who are willing to do justice to the sincere & persevering efforts which have been employed to obtain respect to them without a resort to arms.

The conduct of the nation ag<sup>st</sup> whom this resort has been proclaimed left no choice but between that & the greater evil of a surrender of our Sovereignty on the Element, on which all nations have equal rights, and in the free use of which, the U. S. as a nation whose agriculture & commerce are so closely allied, have an essential interest.

The appeal to force in opposition to the force so long continued against us, had become the more urgent, as every endeavor short of it, had not only been fruitless; but had been followed by fresh usurpations & oppressions. The intolerable outrages committed ag<sup>st</sup> the crews of our vessels which at one time were the result of alledged searches for deserters from British Ships of War, had grown into a like pretension, first as to all British Seamen, and next, as to all British subjects; with the invariable practice of seizing on all neutral seamen of every Nation, and on all such of our own seamen as British officers interested in the abuse might please to demand.

The blockading orders in Council, commencing on the plea of retaliating injuries indirectly done to G. Britain, through the direct operation of French Decrees ag<sup>st</sup>. the trade of the U. S. with her, and on a professed disposition to proceed step by step with France in revoking them, have been since bottomed on pretensions more & more extended and arbitrary; till at length it is openly avowed, as indispensable to a repeal of the Orders as they affect the U. States, that the French Decrees, be repealed as they affect G. Britain directly, and all other neutrals, as well as the U. States. To this extraordinary avowal is superadded abundant evidence that the real object of the orders is, not to restore freedom to the American Commerce with G. B. which could indeed be little interrupted by the decrees of France, but to destroy our lawful commerce, as interfering with her own unlawful commerce with her enemies. The only foundation of this attempt to banish the American flag from the highway of Nations, or to render it wholly subservient to the commercial views of the B. Gov<sup>t</sup>. is the absurd and exploded doctrine that the ocean not less than the land is susceptible of occupancy & dominion; that this dominion is in the hands of G. Britain; and that her laws, not the law of nations, which is ours as well as hers, are to regulate our maritime intercourse with the rest of the world.

When the U. S. assumed & established their rank among the Nations of the Earth, they assumed & established a common Sovereignty on the high seas, as well as an exclusive sovereignty within their territorial limits. The one is as essential as the other to their Character as an Independent Nation. However conceding they may have been on controvertible points, or forbearing under casual and limited injuries, they can never submit to wrongs irreparable in their kind, enormous in their amount, and indefinite in their duration; and which are avowed and justified on principles degrading the U. States from the rank of a sovereign & independent Power. In attaining this high rank, and the inestimable blessings attached to it, no part of the American people, had a more meritorious share than the people of N. Jersey. From none therefore may more reasonably be expected a patriotic zeal in maintaining by the sword the unquestionable & unalienable rights acquired by it; and which it is found can no otherwise be maintained.

[\[Back to Table of Contents\]](#)

## TO HENRY DEARBORN.1

Washington, Aug. 9<sup>th</sup> 1812.

Mad. Mss.

Dear Sir,—

The last of your favors which I have to acknowledge is that of the 3d Ult: from Boston. I am glad to find that you are again at Albany; where your presence will aid much in doing all that can be done for the reputation of the campaign. The lapse of time and the unproductiveness of the laws contemplating a regular force, and volunteers for an entire year & under federal commissions, compel us to moderate some of our expectations. It was much to have been desired that simultaneous invasions of Canada at several points, particularly in relation to Malden and Montreal, might have secured the great object of bringing all Upper Canada, and the channels communicating with the Indians, under our command; with ulterior prospects towards Quebec flattering to our arms. This systematic operation having been frustrated, it only remains to pursue the course that will diminish the disappointment as much as possible. Hull,1 as you will have learnt, is preparing a force for the attack of Malden; and that he may descend towards Niagara, with greater effect and be the more secure ag<sup>st</sup> Indian dangers, a reinforcement of 1,500 men is ordered which will be promptly supplied by the overflowing zeal of the detached militia of Ohio & Kentucky. We hope that your arrangements with Gov<sup>r</sup>. Tomkins will have provided an effective co-operation for subduing the hostile force opposite ours at Niagara; and preparing the way for taking possession of the Country at the other extremity of Lake Ontario. In these events we shall have in our hand not only all the most valuable parts of the Upper province, but the important command of the Lakes. It appears that Hull was making an effort to overpower the British force on Lake Erie, his success in which will be critically useful in several respects.

In addition to these measures, it is essential, notwithstanding the advance of the season, and the difficulties thrown in our way, that the expedition ag<sup>st</sup> Montreal should be forwarded by all the means in your power. The number of regulars that can be procured for it cannot even yet be ascertained; but it is sufficiently ascertained that an extensive auxiliary force will be wanted; and it is nearly as certain that this will not be furnished by the Volunteer Act of Feb<sup>y</sup> unless a sudden ardor overcoming the objections to it, should be inspired by the vicinity of the object and the previous conquests. The last resource therefore on which we are to depend, is that portion of the detached & other Militia which may be within reach, will comply with the call, and voluntarily unite with their officers in rejecting geographical limits to their patriotism. To this resource I hope you will turn your full attention, with a view to the immediate steps proper to be taken to enable it to supply the deficit of regulars & volunteers; with respect to the latter of which as far as they are within a practicable distance, the number known here to be in readiness is very inconsiderable. From the Vermont & New Hampshire Militia favorable expectations are indulged, the State authorities being well disposed to promote the service. As to Mass<sup>ts</sup> & Connecticut,

even, notwithstanding the obstructions created by the Gov<sup>rs</sup> it is not yet decided that the spirit of some of the detached & other corps may not give effect to your requisitions. Should an adequate force be attainable from the whole or part of the sources referred to, you will be the best judge how far a demonstration towards Quebec will be proper in aid of the measures ag<sup>st</sup>. Montreal, which if we can take by means of any sort we shall find the means of holding. Sh<sup>d</sup>. it be found impracticable to take it this campaign, will it be possible to occupy any other post that will cut off the intercourse with the Indians thro' the Ottowas river?

You will have noticed the arrival of a Dispatch vessel from the B. Gov<sup>t</sup>.. Nothing is disclosed from that quarter that ought in the slightest degree to slacken our military exertions.

The Sec<sup>y</sup>. of State is on a visit to his farm where he will leave his family. On his return, which will take place in a few days, I propose a like respite. I find myself much worn down, and in need of an antidote to the accumulating bile of which I am sensible; and which I have never escaped in August on tide water.

[\[Back to Table of Contents\]](#)

TO JOEL BARLOW.

Washington August 11, 1812.

Mad. Mss.

Dear Sir,—

As I write on short notice and in cypher, I must be very brief.

The conduct of the F. Gov<sup>t</sup>, explained in yours of the —1 on the subject of the decree of April 1811, will be an everlasting reproach to it. It is the more shameful, as, departing from the declaration to Gen<sup>l</sup>. Armstrong, of which the enforcement of the non-importation was the affect, the revoking decree assumes this as the cause, and itself as the effect; and thus transfers to this Gov<sup>t</sup> the inconsistency of its author.

The decree of April, may nevertheless be used by G. B. as a pretext for revoking her orders; notwithstanding the contrary language of L<sup>d</sup> Castlereagh in Parl<sup>t</sup>. An authentic, tho' informal communication has just arrived in a despatch vessel from G. B. importing that the orders were to be revoked on the 1st of Aug<sup>st</sup>, subject to renewal if required by the conduct of F. & the U. S. particularly, if the non-importation act should not be forthwith rescinded on the arrival of the act of revocation. As this pledge was given before the declaration of war was known, it may not be adhered to. It is not improbable however that it was hurried off, as a chance for preventing an apprehended war; and the same dislike to the war may possibly produce advances for terminating it, which if the terms be admissible, will be readily embraced.

In the event of a pacification with G. B. the full tide of indignation with which the public mind here is boiling will be directed ag<sup>st</sup>. France, if not obviated by a due reparation of her wrongs. War will be called for by the Nation almost una voce. Even without a peace with England, the further refusal or prevarications of F. on the subject of redress may be expected to produce measures of hostility ag<sup>st</sup>. her at the ensuing session of Cong<sup>s</sup>. This result is the more probable, as the general exasperation will coincide with the calculations of not a few, that a double war, is the shortest road to peace.

I have been the more disposed to furnish you with these prospects, that you may turn them to account, if possible, in prosecuting your discussions with the F. Gov<sup>t</sup>. and be not unprepared to retire from them altogether, on a sudden notice so to do. Your return home, may possibly be directed even before the meeting of Cong<sup>s</sup>. if the intermediate information should continue to present the French conduct in the provoking light in which it has hitherto appeared.

The Sec<sup>y</sup>. of State is absent. But you will receive from Mr. Graham, the usual supply of current intelligence, to which I refer you. I have not time to write to Gen<sup>l</sup>. Fayette. With my best regards to him, tell him that Cong<sup>s</sup>. rose with<sup>t</sup> deciding as to the validity of the remaining locations near P<sup>t</sup> Coupee.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington Aug. 17, 1812.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup> yours of the 10th, and return as you request, the letter of Mr. Higginbotham. He will probably have understood from Col: Monroe that the Consulate of Lisbon is the object of numerous & respectable candidates.

The seditious opposition in Mass & Con<sup>t</sup>. with the intrigues elsewhere insidiously co-operating with it, have so clogged the wheels of the war that I fear the campaign will not accomplish the object of it. With the most united efforts, in stimulating volunteers, they would have probably fallen much short of the number required by the deficiency of regular enlistments. But under the discouragements substituted, and the little attraction contained in the volunteer Act, the two classes together, leave us dependent for every primary operation, on militia, either as volunteers or draughts for six months. We are nevertheless doing as well as we can, in securing the maritime frontier, and in providing for an effective penetration into Upper Canada. It would probably have been best, if it had been practicable in time, to have concentrated a force which could have seized on Montreal, & thus at one stroke, have secured the upper Province, and cut off the sap that nourished Indian hostilities. But this could not be attempted, without sacrificing the Western & N. W. Frontier, threatened with an inundation of savages under the influence of the British establishment near Detroit. Another reason for the expedition of Hull was that the unanimity and ardor of Kentucky & Ohio, promised the requisite force at once for that service, whilst it was too distant from the other points to be assailed. We just learn, but from what cause remains to be known, that the important post of Machilimackinac has fallen into the hands of the Enemy. If the reinforcement of about 2000 ordered from the Ohio, and on the way to Hull, should not enable him to take Malden, and awe the savages emboldened by the British success, his situation will be very ineligible. It is hoped that he will either be strong eno<sup>'</sup> as he has cannon & mortars, to reduce that Fort, or to leave a force that will justify him in passing on towards the other end of Lake Erie, and place the British troops there, between him, and those embodied under arrangements of Dearborn & Tomkins at Niagara, for the purpose of occupying the central part of Upper Canada. In the mean time the preparations ag<sup>st</sup> Montreal are going on, and perhaps may furnish a feint towards it, that may conspire with the other plan. I find that Kingston at the East End of L. Ontario is an object with Gen<sup>l</sup> D. The multiplication of these offensive measures has grown out of the defensive precautions for the Frontiers of N. York.

We have no information from England since the war was known there, or even, seriously suspected, by the public. I think it not improbable that the sudden change in relation to the Orders in Council, first in yielding to a qualified suspension, & then a repeal, was the effect of apprehensions in the Cabinet that the deliberations of Cong<sup>s</sup>.

would have that issue, and that the Ministry could not stand ag<sup>st</sup> the popular torrent ag<sup>st</sup> the Orders in Council, swelled as it would be by the addition of a war with the U. S. to the pressure of the non-importation Act. What course will be taken when the declaration here, shall be known, is uncertain, both in reference to the American shipments instituted under the repeal of the Orders, and to the question between vindictive efforts for pushing the war ag<sup>st</sup> us, and early advances for terminating it. A very informal & as it has turned out erroneous communication of the intended change in the Orders, was hurried over, evidently with a view to prevent a declaration of war, if it should arrive in time. And the communication was accompanied by a proposal from the *local* authorities at Halifax sanctioned by Foster, to suspend hostilities both at sea & on land. The late message of Prevost to Dearborn, noticed in the Newspapers has this for its object. The insuperable objections to a concurrence of the Executive in the project are obvious. Without alluding to others, drawn from a limited authority, & from the effect on patriotic ardor, The advantage over us in captures w<sup>d</sup>. be past, before it could take effect. As we do not apprehend invasion by land, and preparations on each side were to be unrestrained, nothing could be gained by us, whilst arrangements & reinforcements adverse to Hull might be decisive; and on every supposition the Indians w<sup>d</sup>. continue to be active ag<sup>st</sup>. our frontiers, the more so in consequence of the fall of Machilimackinac. Nothing but triumphant operations on the Theatre which forms their connection with the Enemy will controul their bloody inroads.

I have been indulging my hopes of getting away from this place, in the course of the present week. It is quite possible however that my stay here may be indispensable. As yet I have less of bilious sensations than I could have expected.

Your two letters to Kosciuzco have been duly attended to.

Affectionately Yours,



[\[Back to Table of Contents\]](#)

TO S. SPRING.

Montpellier, Sept. 6<sup>th</sup>, 1812.

Mad. Mss.

Rev<sup>D</sup>. Sir,—

I have received your favor of Aug 26. I recollect our Collegiate friendship with the same impressions which it gives me pleasure to find you still retain. Nor have I forgotten the pleasant hours that passed between us, at a much later day under my own roof.

We all feel the weight of the times; and it is to be regretted that all cannot unite in the measures opposed to them. If it were proper for me, it might not be agreeable to you, to discuss the subject, But I will not conceal the surprize and the pain I feel at declarations from any portion of the American people that measures resulting from the National will constitutionally pronounced, and carrying with them the most solemn sanctions, are not to be pursued into effect, without the hazard of civil war. This is surely not the legitimate course. Neither is it the language on other occasions, heard from the same quarter; nor a course consistent with the duration or efficacy of any Government.1

Permit me to express equal surprise, that this extraordinary opposition to the war declared against Great Britain, is most emphatically rested on an alliance or a connection with France; presumed to exist, or be intended, in the face of demonstrations to the contrary, with which the slightest degree of candor ought to be satisfied.

Without entering into comparisons between different districts of the Union, with respect to the suffering which led to the war, or the objects at stake in it; it is clear that every district felt more or less the evils which produced it, and is more or less deeply interested in the success of it. It is equally certain that the way to make it both short and successful, would be to convince the Enemy that he has to contend with the whole and not a part of the Nation. Can it be doubted that if, under the pressure added by the war to that previously felt by G. B. her Government declines an accommodation on terms dictated by justice and compatible with, or rather conducive to her interest, it will be owing to calculations drawn from our internal divisions. If she be disposed to such an accommodation, it will be evinced in due time, to the most prejudiced and misinformed, that the earliest and fairest opportunities, are not withheld.

I need scarcely remark that this is a letter, altogether *private* and written in confidence that it will be so received.

Mrs M. acknowledges your kind enquiry after her health. Hers and mine are at present both tolerably good. We hope that yours has been entirely reestablished.

## Accept Our Friendly Respects

[\[Back to Table of Contents\]](#)

## TO WILLIAM DEARBORN.

Washington October 7, 1812.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your favor of Sep<sup>r</sup> 30. I am glad to find that you have succeeded in producing such apprehensions at Montreal as to prevent reinforcements from that quarter to the posts above. It would have been fortunate if you could have derived such Militia & Volunteer aids from Vermont & Eastward of it, as might have substantially have a like controul on Prevost, and thereby have augmented the regular force ordered to Niagara. Appearances denote a better spirit or rather perhaps a better use of it, in the Eastern Quarter; but it may be too late & too distant to answer immediate purposes; unless indeed the Volunteers of Maine, and the Militia Volunteers of N. H. should be, in sufficient numbers and forwardness to prevent descents on our maritime frontier by a show towards Nova Scotia which would excite defensive attention at Halifax. The advance of the season, would I presume, render a measure of that sort unavailing at Quebec. Yet *there* is undubitably the Sensorium, to which projects of alarm may be most successfully addressed, when not too palpably chimerical. You will receive from the War Office, the last information from Harrison. He has a prospect of doing something towards retrieving the campaign. The promptitude and numbers of the force under his command, will at least save the military character of that part of the nation; will satisfy G. B. that the tendency of defeat is to rouse not depress the American Spirit, & will stamp deep on the Indian mind, the little security they have in British protection. As Harrison seems to be making sure of food for his army, & the measures taken promise seasonable supplies of other necessaries, I see nothing to prevent his reaching Detroit early in this month. And if the great exertions on foot to give him cannon should not fail, it may be hoped he will not only be in possession of that place, but of Malden also; and proceed towards a still more effectual co-operation with the forces at Niagara. Nor do we despair of his success, should the cannon not reach him in time, if the B. Garrisons be such as are represented & he can carry with him the force he has in view; since he will be able to proceed with a very impressive portion, & leave sufficient investments & precautions behind. The artillery sent from this place had travelled nearly to Pittsburg at a rate which promised a good chance for its reaching Detroit before November, if not by the 20th of this month. As Hull's army was lost, it is to be regretted that the misfortune did not take place a little earlier; and allow more time, of course, for repairing it, within the present season. This regret is particularly applicable to the Great Lakes. What is now doing for the command of them proves what may be done. And the same means would have been used in the 1<sup>st</sup> instance if the easy conquest of them by land held out to us, had not misled our calculation. The command of y<sup>e</sup>. Lakes, by a superior force on the Water, ought to have been a fundamental point in the national policy from the moment the peace took place. Whatever may be the future situation of Canada, it ought to be maintained, without regard to expence. We have more means for the purpose & can better afford the expence than G. B. Without

the ascendancy over those waters we can never have it over the savages, nor be able to secure such posts as Makinaw. With this ascendancy we command the Indians, can controul the companies trading with them; and hold Canada, whilst in Foreign hands, as a hostage for peace & justice.

I do not wonder you are oppressed with labor, as well from the extent of your command rendered necessary by the mutual relations between its objects, As from the deficiency of General Officers; and particularly the difficulty and delay in bringing the Staff Department even into its present state. The effect of these circumstances in burdening you with details, has been severely felt here, in throwing them where they as little belonged. To carry on the war with due advantage; more effectual inducements at least must be put into the hands of recruiting Officers. The volunteer system must be essentially improved; the use of the Militia secured to the constitutional authority; and an addition made to the Gen<sup>l</sup>. Officers both Divisions & Brigades. It will be equally essential, to discriminate better the functions of the several Staff Departments, and to have heads of them in immediate contact with the war department. Experience enforces these truths; and nothing but that will ever sufficiently inculcate them. We have nothing important from abroad but what is in the Newspapers.

Health & success with friendly respects

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington Oct<sup>r</sup> 14, 1812.

Mad. Mss.

Dear Sir

I rec<sup>d</sup> your favor of the 2d, inclosing the letter from Mr. Meigs. The place he wishes has been long allotted to Mr. Mansfield, who preferred it to that of the Surveyorship held by him, and who has just obtained the exchange; and a Commission for the place vacated, has just been sent to Mr. Meigs, who was long ago recommended for it; and who it was understood wished it. It is the more probable that it will be acceptable to him, as he has connections in the W. Country, particularly the Gov<sup>r</sup> of Ohio.

I see so little chance of being able to peruse the lucubrations of Faronde you were so good as to send me, that I replace them, for the present at least in your hands.

The last intelligence from the Westward left a military crisis near Fort Defiance. Winchester with about half the army, was encamped within 3 miles of the encampment of about 300 British troops with some field pieces & a body of Indians stated at 2000 or 2500. It is probable they were destined ag<sup>st</sup>. Fort Wayne, with the general view of finding employment for our forces on their way to Detroit, until the Season should be spent, or Brock could send troops from below. Of our affairs at Niagara & the neighbourhood of Montreal, it is difficult to judge, the force of the Enemy being imperfectly known, & that under General Dearborn, depending so much on circumstances. Our best hopes for the campaign rest on Harrison; and if no disaster, always to be feared from Indian combats, befall him, there is a probability that he will regain Detroit, and perhaps do more. He has a force of 8 or 10,000 men at least, enthusiastically confiding in him, and a prospect of adequate supplies of every sort, unless it be Cannon, which tho' on the way, may possibly encounter fatal delays. This article however he appears not to make a sine qua non; nor will it be wanted for Detroit, if it be true as is reported that every piece has been withdrawn by the British.

The latest acc<sup>ts</sup> from Europe are in the Newspapers. The ideas of which Foster & Russel are put in possession will soon draw from the B. Gov<sup>t</sup> some evidence of their views as to peace. From France we hear nothing; and shall probably meet Cong<sup>s</sup>. under the perplexity of that situation.

The current Elections bring the popularity of the War or of the Administration, or both, to the Experimentum crucis. In this State the issue is not favorable, tho' less otherwise than would appear. In the Congressional Districts the Republicans I believe, have not lost ground at all, notwithstanding the auxiliaries to federalism. In the State Legislature, they will be in a minority on a joint vote. Penn<sup>a</sup>., altho' admitted to be shaken, is represented to be safe. New Jersey is doubtful at least. The same is the case with New Hampshire. North Carolina also is reported to be in considerable vibration. The other States remain pretty decided on one hand or on the other.

You will be amused with the little work of the Author of several humorous publications, Irvine<sup>1</sup> of N. York. It sinks occasionally into low & local phrases, and some times forgets Allegorical character. But is in general good painting on substantial Canvas.

Affec<sup>E</sup> Respects.

[\[Back to Table of Contents\]](#)

## FOURTH ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, November 4, 1812.

On our present meeting it is my first duty to invite your attention to the providential favors which our country has experienced in the unusual degree of health dispensed to its inhabitants, and in the rich abundance with which the earth has rewarded the labors bestowed on it. In the successful cultivation of other branches of industry, and in the progress of general improvement favorable to the national prosperity, there is just occasion also for our mutual congratulations and thankfulness.

With these blessings are necessarily mingled the pressures and vicissitudes incident to the state of war into which the United States have been forced by the perseverance of a foreign power in its system of injustice and aggression.

Previous to its declaration it was deemed proper, as a measure of precaution and forecast, that a considerable force should be placed in the Michigan Territory with a general view to its security, and, in the event of war, to such operations in the uppermost Canada as would intercept the hostile influence of Great Britain over the savages, obtain the command of the lake on which that part of Canada borders, and maintain coöperating relations with such forces as might be most conveniently employed against other parts. Brigadier-General Hull was charged with this provisional service, having under his command a body of troops composed of regulars and of volunteers from the State of Ohio. Having reached his destination after his knowledge of the war, and possessing discretionary authority to act offensively, he passed into the neighboring territory of the enemy with a prospect of easy and victorious progress. The expedition, nevertheless, terminated unfortunately, not only in a retreat to the town and fort of Detroit, but in the surrender of both and of the gallant corps commanded by that officer. The causes of this painful reverse will be investigated by a military tribunal.

A distinguishing feature in the operations which preceded and followed this adverse event is the use made by the enemy of the merciless savages under their influence. Whilst the benevolent policy of the United States invariably recommended peace and promoted civilization among that wretched portion of the human race, and was making exertions to dissuade them from taking either side in the war, the enemy has not scrupled to call to his aid their ruthless ferocity, armed with the horror of those instruments of carnage and torture which are known to spare neither age nor sex. In this outrage against the laws of honorable war and against the feelings sacred to humanity the British commanders can not resort to a plea of retaliation, for it is committed in the face of our example. They can not mitigate it by calling it a self-defense against men in arms, for it embraces the most shocking butcheries of

defenseless families. Nor can it be pretended that they are not answerable for the atrocities perpetrated, since the savages are employed with a knowledge, and even with menaces, that their fury could not be controlled. Such is the spectacle which the deputed authorities of a nation boasting its religion and morality have not been restrained from presenting to an enlightened age.

The misfortune at Detroit was not, however, without a consoling effect. It was followed by signal proofs that the national spirit rises according to the pressure on it. The loss of an important post and of the brave men surrendered with it inspired everywhere new ardor and determination. In the States and districts least remote it was no sooner known than every citizen was ready to fly with his arms at once to protect his brethren against the blood-thirsty savages let loose by the enemy on an extensive frontier, and to convert a partial calamity into a course of invigorated efforts. This patriotic zeal, which it was necessary rather to limit than excite, has embodied an ample force from the States of Kentucky and Ohio and from parts of Pennsylvania and Virginia. It is placed, with the addition of a few regulars, under the command of Brigadier-General Harrison, who possesses the entire confidence of his fellow-soldiers, among whom are citizens, some of them volunteers in the ranks, not less distinguished by their political stations than by their personal merits.

The greater portion of this force is proceeding on its destination toward the Michigan Territory, having succeeded in relieving an important frontier post, and in several incidental operations against hostile tribes of savages, rendered indispensable by the subserviency into which they had been seduced by the enemy—a seduction the more cruel as it could not fail to impose a necessity of precautionary severities against those who yielded to it.

At a recent date an attack was made on a post of the enemy near Niagara by a detachment of the regular and other forces under the command of Major-General Van Rensselaer, of the militia of the State of New York. The attack, it appears, was ordered in compliance with the ardor of the troops, who executed it with distinguished gallantry, and were for a time victorious; but not receiving the expected support, they were compelled to yield to reinforcements of British regulars and savages. Our loss has been considerable, and is deeply to be lamented. That of the enemy, less ascertained, will be the more felt, as it includes among the killed the commanding general, who was also the governor of the Province, and was sustained by veteran troops from unexperienced soldiers, who must daily improve in the duties of the field.

Our expectation of gaining the command of the Lakes by the invasion of Canada from Detroit having been disappointed, measures were instantly taken to provide on them a naval force superior to that of the enemy. From the talents and activity of the officer charged with this object everything that can be done may be expected. Should the present season not admit of complete success, the progress made will insure for the next a naval ascendancy where it is essential to our permanent peace with and control over the savages.

Among the incidents to the measures of the war I am constrained to advert to the refusal of the governors of Massachusetts and Connecticut to furnish the required



detachments of militia toward the defense of the maritime frontier. The refusal was founded on a novel and unfortunate exposition of the provisions of the Constitution relating to the militia. The correspondences which will be laid before you contain the requisite information on the subject. It is obvious that if the authority of the United States to call into service and command the militia for the public defense can be thus frustrated, even in a state of declared war and of course under apprehensions of invasion preceding war, they are not one nation for the purpose most of all requiring it, and that the public safety may have no other resource than in those large and permanent military establishments which are forbidden by the principles of our free government, and against the necessity of which the militia were meant to be a constitutional bulwark.

On the coasts and on the ocean the war has been as successful as circumstances inseparable from its early stages could promise. Our public ships and private cruisers, by their activity, and, where there was occasion, by their intrepidity, have made the enemy sensible of the difference between a reciprocity of captures and the long confinement of them to their side. Our trade, with little exception, has safely reached our ports, having been much favored in it by the course pursued by a squadron of our frigates under the command of Commodore Rodgers, and in the instance in which skill and bravery were more particularly tried with those of the enemy the American flag had an auspicious triumph. The frigate *Constitution*, commanded by Captain Hull, after a close and short engagement completely disabled and captured a British frigate, gaining for that officer and all on board a praise which can not be too liberally bestowed, not merely for the victory actually achieved, but for that prompt and cool exertion of commanding talents which, giving to courage its highest character, and to the force applied its full effect, proved that more could have been done in a contest requiring more.

Anxious to abridge the evils from which a state of war can not be exempt, I lost no time after it was declared in conveying to the British Government the terms on which its progress might be arrested, without awaiting the delays of a formal and final pacification, and our chargé d'affaires at London was at the same time authorized to agree to an armistice founded upon them. These terms required that the orders in council should be repealed as they affected the United States, without a revival of blockades violating acknowledged rules, and that there should be an immediate discharge of American seamen from British ships, and a stop to impressment from American ships, with an understanding that an exclusion of the seamen of each nation from the ships of the other should be stipulated, and that the armistice should be improved into a definite and comprehensive adjustment of depending controversies. Although a repeal of the orders susceptible of explanations meeting the views of this Government had taken place before this pacific advance was communicated to that of Great Britain, the advance was declined from an avowed repugnance to a suspension of the practice of impressments during the armistice, and without any intimation that the arrangement proposed with respect to seamen would be accepted. Whether the subsequent communications from this Government, affording an occasion for reconsidering the subject on the part of Great Britain, will be viewed in a more favorable light or received in a more accommodating spirit remains to be known. It

would be unwise to relax our measures in any respect on a presumption of such a result.

The documents from the Department of State which relate to this subject will give a view also of the propositions for an armistice which have been received here, one of them from the authorities at Halifax and in Canada, the other from the British Government itself through Admiral Warren, and of the grounds on which neither of them could be accepted.

Our affairs with France retain the posture which they held at my last communications to you. Notwithstanding the authorized expectations of an early as well as favorable issue to the discussions on foot, these have been procrastinated to the latest date. The only intervening occurrence meriting attention is the promulgation of a French decree purporting to be a definitive repeal to the Berlin and Milan decrees. This proceeding, although made the ground of the repeal of the British orders in council, is rendered by the time and manner of it liable to many objections.

The final communications from our special minister to Denmark afford further proofs of the good effects of his mission, and of the amicable disposition of the Danish Government. From Russia we have the satisfaction to receive assurances of continued friendship, and that it will not be affected by the rupture between the United States and Great Britain. Sweden also professes sentiments favorable to the subsisting harmony.

With the Barbary Powers, excepting that of Algiers, our affairs remain on the ordinary footing. The consul-general residing with that Regency has suddenly and without cause been banished, together with all the American citizens found there. Whether this was the transitory effect of capricious despotism or the first act of predetermined hostility is not ascertained. Precautions were taken by the consul on the latter supposition.

The Indian tribes not under foreign instigations remain at peace, and receive the civilizing attentions which have proved so beneficial to them.

With a view to that vigorous prosecution of the war to which our national faculties are adequate, the attention of Congress will be particularly drawn to the insufficiency of existing provisions for filling up the military establishment. Such is the happy condition of our country, arising from the facility of subsistence and the high wages for every species of occupation, that notwithstanding the augmented inducements provided at the last session, a partial success only has attended the recruiting service. The deficiency has been necessarily supplied during the campaign by other than regular troops, with all the inconveniences and expense incident to them. The remedy lies in establishing more favorably for the private soldier the proportion between this recompense and the term of his enlistment, and it is a subject which can not too soon or too seriously be taken into consideration.

The same insufficiency has been experienced in the provisions for volunteers made by an act of the last session. The recompense for the service required in this case is still

less attractive than in the other, and although patriotism alone has sent into the field some valuable corps of that description, those alone who can afford the sacrifice can be reasonably expected to yield to that impulse.

It will merit consideration also whether as auxiliary to the security of our frontier corps may not be advantageously organized with a restriction of their services to particular districts convenient to them, and whether the local and occasional services of mariners and others in the seaport towns under a similar organization would not be a provident addition to the means of their defense.

I recommend a provision for an increase of the general officers of the Army, the deficiency of which has been illustrated by the number and distance of separate commands which the course of the war and the advantage of the service have required.

And I cannot press too strongly on the earliest attention of the Legislature the importance of the reorganization of the staff establishment with a view to render more distinct and definite the relations and responsibilities of its several departments. That there is room for improvements which will materially promote both economy and success in what appertains to the Army and the war is equally inculcated by the examples of other countries and by the experience of our own.

A revision of the militia laws for the purpose of rendering them more systematic and better adapting them to emergencies of the war is at this time particularly desirable.

Of the additional ships authorized to be fitted for service, two will be shortly ready to sail, a third is under repair, and delay will be avoided in the repair of the residue. Of the appropriations for the purchase of materials for shipbuilding, the greater part has been applied to that object and the purchase will be continued with the balance.

The enterprising spirit which has characterized our naval force and its success, both in restraining insults and depredations on our coasts and in reprisals on the enemy, will not fail to recommend an enlargement of it.

There being reason to believe that the act prohibiting the acceptance of British licences is not a sufficient guard against the use of them, for purposes favorable to the interests and views of the enemy, further provisions on that subject are highly important. Nor is it less so that penal enactments should be provided for cases of corrupt and perfidious intercourse with the enemy, not amounting to treason nor yet embraced by any statutory provisions.

A considerable number of American vessels which were in England when the revocation of the orders in council took place were laden with British manufactures under the erroneous impression that the nonimportation act would immediately cease to operate, and have arrived in the United States. It did not appear proper to exercise on unforeseen cases of such magnitude the ordinary powers vested in the Treasury Department to mitigate forfeitures without previously affording to Congress an opportunity of making on the subject such provision as they may think proper. In their

decision they will doubtless equally consult what is due to equitable considerations and to the public interest.

The receipts into the Treasury during the year ending on the 30th of September last have exceeded \$16,500,000, which have been sufficient to defray all the demands on the Treasury to that day, including a necessary reimbursement of near three millions of the principal of the public debt. In these receipts is included a sum of near \$5,850,000, received on account of the loans authorized by the acts of the last session; the whole sum actually obtained on loan amounts to \$11,000,000, the residue of which, being receivable subsequent to the 30th of September last, will, together with the current revenue, enable us to defray all the expenses of this year.

The duties on the late unexpected importations of British manufactures will render the revenue of the ensuing year more productive than could have been anticipated.

The situation of our country, fellow-citizens, is not without its difficulties, though it abounds in animating considerations, of which the view here presented of our pecuniary resources is an example. With more than one nation we have serious and unsettled controversies, and with one, powerful in the means and habits of war, we are at war. The spirit and strength of the nation are nevertheless equal to the support of all its rights, and to carry it through all its trials. They can be met in that confidence. Above all, we have the inestimable consolation of knowing that the war in which we are actually engaged is a war neither of ambition nor of vainglory; that it is waged not in violation of the rights of others, but in the maintenance of our own; that it was preceded by a patience without example under wrongs accumulating without end, and that it was finally not declared until every hope of averting it was extinguished by the transfer of the British scepter into new hands clinging to former councils, and until declarations were reiterated to the last hour, through the British envoy here, that the hostile edicts against our commercial rights and our maritime independence would not be revoked; nay, that they could not be revoked without violating the obligations of Great Britain to other powers, as well as to her own interests. To have shrunk under such circumstances from manly resistance would have been a degradation blasting our best and proudest hopes; it would have struck us from the high rank where the virtuous struggles of our fathers had placed us, and have betrayed the magnificent legacy which we hold in trust for future generations. It would have acknowledged that on the element which forms three-fourths of the globe we inhabit, and where all independent nations have equal and common rights, the American people were not an independent people, but colonists and vassals. It was at this moment and with such an alternative that war was chosen. The nation felt the necessity of it, and called for it. The appeal was accordingly made, in a just cause, to the Just and All-powerful Being who holds in His hand the chain of events and the destiny of nations. It remains only that, faithful to ourselves, entangled in no connections with the views of other powers, and ever ready to accept peace from the hand of justice, we prosecute the war with united counsels and with the ample faculties of the nation until peace be so obtained and as the only means under the Divine blessing of speedily obtaining it.

[\[Back to Table of Contents\]](#)

## TO JONAS GALUSHA.1

Washington, November 30, 1812.

Mad. Mss.

Sir

I have rec<sup>d</sup>. your letter of the 7th instant communicating a Resolution of the General Assembly of Vermont, pledging their co-operation with the General Gov<sup>t</sup> & with the Nation, in the present contest with a Foreign Power. Had this Contest originated in causes, appealing with a less indiscriminate force to the common interests & honorable feelings of every portion of our fellow Citizens, that respect for the will of the majority, regularly proclaimed, which is the vital principle of our free Constitution, would have imposed on all, the sacred duty which is thus laudably recognised by the State of Vermont; and the discharge of which is enforced by the powerful consideration, that nothing can more contribute to prolong the contest and embarrass the attainment of its just objects, than the encouragement afforded to the hopes of the Enemy, by appearances of discord & discontent among ourselves.

In doing justice to the patriotism which dictated the Resolution transmitted, I take a pleasure in remarking that it is heightened by the particular exposure of Vermont to the pressure which the war necessarily brings with it, and in assuring myself that proportionate exertions of her Citizens will add new lustre to their character. In the war which made us an Independent Nation their valor had a conspicuous share. In a war which maintains the rights and attributes of Independence on the Ocean, where they are not less the gift of nature and of nature's God than on the land, the same zeal & perseverance may be confidently expected from the same pride of liberty & love of Country.

Accept the assurances of my high respect & best wishes.

[\[Back to Table of Contents\]](#)

TO WILLIAM EUSTIS.1

Dec<sup>r</sup> 4, 1812.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your letter of yesterday with the impressions w<sup>ch</sup>. could not but result from your purpose of retiring from an Office so nearly related to that which has been entrusted to me, in which your services have been coeval with mine, & in which I have witnessed the zeal and constancy of your exertions for the public good under difficulties peculiarly arduous & trying. In bearing this testimony, I indulge my own feelings as well as pay a tribute which is so justly due.

I take the liberty of adding a hope that it will not be inconsistent with your arrangements, to continue your official attentions untill they can be replaced by a successor.

I thank you for the kind wishes you have expressed, and I offer the best of mine for your welfare & happiness.

[\[Back to Table of Contents\]](#)

TO PAUL HAMILTON.1

December 31, 1812.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your letter of yesterday, signifying your purpose to retire from the Dep<sup>t</sup>. which has been under your care.

On an occasion which is to terminate the relation in w<sup>ch</sup>. it placed us, I cannot satisfy my own feelings, or the tribute due to your patriotic merits & private virtues, without bearing testimony to the faithful zeal, the uniform exertions, and unimpeachable integrity, with which you have discharged that important trust; and without expressing the value I have always placed on that personal intercourse, the pleasure of which I am now to lose.

With these recollections & impressions I tender you assurances of my affect<sup>e</sup> esteem, and of my sincerest wishes for your welfare & happiness.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

To The Senate And House Of Representatives Of The United States:

February 24, 1813.

I lay before Congress copies of a proclamation of the British lieutenant-governor of the island of Bermuda,<sup>1</sup> which has appeared under circumstances leaving no doubt of its authenticity. It recites a British order in council of the 26th of October last, providing for the supply of the British West Indies and other colonial possessions by a trade under special licenses, and is accompanied by a circular instruction to the colonial governors which confines licensed importations from ports of the United States to the ports of the Eastern States exclusively.

The Government of Great Britain had already introduced into her commerce during war a system which, at once violating the rights of other nations and resting on a mass of forgery and perjury unknown to other times, was making an unfortunate progress in undermining those principles of morality and religion which are the best foundation of national happiness.

The policy now proclaimed to the world introduces into her modes of warfare a system equally distinguished by the deformity of its features and the depravity of its character, having for its object to dissolve the ties of allegiance and the sentiments of loyalty in the adversary nation, and to seduce and separate its component parts the one from the other.

The general tendency of these demoralizing and disorganizing contrivances will be reprobated by the civilized and Christian world, and the insulting attempt on the virtue, the honor, the patriotism, and the fidelity of our brethren of the Eastern States will not fail to call forth all their indignation and resentment, and to attach more and more all the States to that happy Union and Constitution against which such insidious and malignant artifices are directed.

The better to guard, nevertheless, against the effect of individual cupidity and treachery and to turn the corrupt projects of the enemy against himself, I recommend to the consideration of Congress the expediency of an effectual prohibition of any trade whatever by citizens or inhabitants of the United States under special licenses, whether relating to persons or ports, and in aid thereof a prohibition of all exportations from the United States, in foreign bottoms, few of which are actually employed, whilst multiplying counterfeits of their flags and papers are covering and encouraging the navigation of the enemy.



[\[Back to Table of Contents\]](#)

## SECOND INAUGURAL ADDRESS. 1

About to add the solemnity of an oath to the obligations imposed by a second call to the station in which my country heretofore placed me, I find in the presence of this respectable assembly an opportunity of publicly repeating my profound sense of so distinguished a confidence and of the responsibility united with it. The impressions on me are strengthened by such an evidence that my faithful endeavors to discharge my arduous duties have been favorably estimated, and by a consideration of the momentous period at which the trust has been renewed. From the weight and magnitude now belonging to it I should be compelled to shrink if I had less reliance on the support of an enlightened and generous people, and felt less deeply a conviction that the war with a powerful nation, which forms so prominent a feature in our situation, is stamped with that justice which invites the smiles of Heaven on the means of conducting it to a successful termination.

May we not cherish this sentiment without presumption when we reflect on the characters by which this war is distinguished?

It was not declared on the part of the United States until it had been long made on them, in reality though not in name; until arguments and expostulations had been exhausted; until a positive declaration had been received that the wrongs provoking it would not be discontinued; nor until this last appeal could no longer be delayed without breaking down the spirit of the nation, destroying all confidence in itself and in its political institutions, and either perpetuating a state of disgraceful suffering or regaining by more costly sacrifices and more severe struggles our lost rank and respect among independent powers.

On the issue of the war are staked our national sovereignty on the high seas and the security of an important class of citizens, whose occupations give the proper value to those of every other class. Not to contend for such a stake is to surrender our equality with other powers on the element common to all and to violate the sacred title which every member of the society has to its protection. I need not call into view the unlawfulness of the practice by which our mariners are forced at the will of every cruising officer from their own vessels into foreign ones, nor paint the outrages inseparable from it. The proofs are in the records of each successive Administration of our Government, and the cruel sufferings of that portion of the American people have found their way to every bosom not dead to the sympathies of human nature.

As the war was just in its origin and necessary and noble in its objects, we can reflect with a proud satisfaction that in carrying it on no principle of justice or honor, no usage of civilized nations, no precept of courtesy or humanity, have been infringed. The war has been waged on our part with scrupulous regard to all these obligations, and in a spirit of liberality which was never surpassed.

How little has been the effect of this example on the conduct of the enemy!

They have retained as prisoners of war citizens of the United States not liable to be so considered under the usages of war.

They have refused to consider as prisoners of war, and threatened to punish as traitors and deserters, persons emigrating without restraint to the United States, incorporated by naturalization into our political family, and fighting under the authority of their adopted country in open and honorable war for the maintenance of its rights and safety. Such is the avowed purpose of a Government which is in the practice of naturalizing by thousands citizens of other countries, and not only of permitting but compelling them to fight its battles against their native country.

They have not, it is true, taken into their own hands the hatchet and the knife, devoted to indiscriminate massacre, but they have let loose the savages armed with these cruel instruments; have allured them into their service, and carried them to battle by their sides, eager to glut their savage thirst with the blood of the vanquished and to finish the work of torture and death on maimed and defenseless captives. And, what was never before seen, British commanders have extorted victory over the unconquerable valor of our troops by presenting to the sympathy of their chief captives awaiting massacre from their savage associates.

And now we find them, in further contempt of the modes of honorable warfare, supplying the place of a conquering force, by attempts to disorganize our political society, to dismember our confederated Republic. Happily, like others, these will recoil on the authors; but they mark the degenerate counsels from which they emanate: and if they did not belong to a series of unexampled inconsistencies, might excite the greater wonder, as proceeding from a Government which founded the very war in which it has been so long engaged, on a charge against the disorganizing and insurrectional policy of its adversary.

To render the justice of the war on our part the more conspicuous, the reluctance to commence it was followed by the earliest and strongest manifestations of a disposition to arrest its progress. The sword was scarcely out of the scabbard, before the enemy was apprized of the reasonable terms on which it would be resheathed. Still more precise advances were repeated, and have been received in a spirit forbidding every reliance not placed on the military resources of the nation.

These resources are amply sufficient to bring the war to an honorable issue. Our nation is, in number, more than half that of the British isles. It is composed of a brave, a free, a virtuous, and an intelligent people. Our country abounds in the necessaries, the arts, and the comforts of life. A general prosperity is visible in the public countenance. The means employed by the British Cabinet to undermine it, have recoiled on themselves; have given to our national faculties a more rapid development; and draining or diverting the precious metals from British circulation and British vaults, have poured them into those of the United States. It is a propitious consideration, that an unavoidable war should have found this seasonable facility for the contributions required to support it. When the public voice called for war, all knew and still know, that without them it could not be carried on through the period which it might last; and the patriotism, the good sense, and the manly spirit of our

fellow-citizens, are pledges for the cheerfulness with which they will bear each his share of the common burden. To render the war short, and its success sure, animated, and systematic exertions alone are necessary; and the success of our arms now may long preserve our country from the necessity of another resort to them. Already have the gallant exploits of our naval heroes proved to the world our inherent capacity to maintain our rights on one element. If the reputation of our arms has been thrown under clouds on the other, presaging flashes of heroic enterprise assure us that nothing is wanting to correspondent triumphs there also, but the discipline and habits which are in daily progress.

March 4, 1813.

[\[Back to Table of Contents\]](#)

## TO DAVID HUMPHREYS.

Mad. Mss.

Washington, Mar. 23, 1813.

Dear Sir

I have rec<sup>d</sup> your letter of the 19th Ulti: Mr. Perkins who was to have been the bearer, has not yet arrived, unless, as is possible, he may have done so, and had his communications with the Patent Office, without my knowing it.

Altho' it is neither usual nor often eligible, to enter into political explanations on such an occasion as the present, I am induced by the frank & friendly tenor of your remarks, to express (under the reserves which you will infer) my regret that you should be able to cite a prevailing opinion that "an alliance with France and a systematic exclusion of Commerce" were within the views of the Administration.

To say nothing of the extreme improbability of such a policy on the first point, it is not easy to conceive a more formal disavowal of it, than has been repeatedly made & published both by my predecessor & myself, particularly in the Messages relating to the war, which emphatically impugn political alliances or conventions with any foreign power. In full conformity with these disavowals, is the letter from Mr. Barlow to Mr. Monroe lately published, from which it must be necessarily inferred that he was forbidden to enter into any arrangement with France beyond the subjects of indemnity & commerce. With such strong presumptions & decisive proofs before the public, it is impossible that a purpose in this Government of allying itself with that of France, can be seriously believed by any intelligent individual not in a temper to reject a witness even from the dead.

As to a systematic exclusion of commerce, a belief of it, is still more incomprehensible. Temporary abridgements or suspensions of it, must have for their object its permanent freedom, as interruptions of peace, have for their object, a re-establishment of peace on improved foundations. In such a light only can the restrictive measures applied to our commerce be rationally viewed. The avowed object of them, in fact, was to liberate our commerce from foreign restrictions equally obnoxious to all parties. Whether the means were well applied or not, may be made a question. The object itself never can. How is it possible that any man in his senses should attempt or wish to annihilate the foreign commerce of such a Country as this; or that such a policy should be supported by that portion of the Country, which thinks itself, as much more interested in commerce than the other portion, as the cargoes of ships are more valuable than their freight?

Viewing the topics which have so much agitated the public mind, in the light here presented, I have never allowed myself to believe that the Union was in danger, or that a dissolution of it could be desired, unless by a few individuals, if such there be, in desperate situations or of unbridled passions. In addition to the thousand affinities belonging to every part of the Nation, every part has an interest as deep as it is

obvious, in maintaining the bond which keeps the whole together; and the Eastern part certainly not less than any other. Looking to the immediate & *commercial* effect of a dissolution, it is clear that the Eastern part would be the greatest loser, by such an event; and not likely therefore deliberately to rush into it; especially when it takes into view, the groundlessness of the suspicions which alone could suggest so dreadful an alternative; and the turn which would probably grow out of it, to the relations with Europe. The great road of profitable intercourse for New England, even with old England, lies through the Wheat, the Cotton & the Tobacco fields, of her Southern & Western confederates. On what basis could N. E. & O. E. form commercial stipulations. On all the great articles they would be in direct rivalship. The real source of our Revolution was the commercial jealousy of G. B. towards that part of her then Colonies. If there be links of common interest between the two Countries, they w<sup>d</sup>. connect the S. & not the N. States, with that part of Europe. Accept my friendly respects.

I this moment receive your favor of the 20<sup>th</sup>, with the paper headed "Navy."

[\[Back to Table of Contents\]](#)

## TO JOHN NICHOLAS.

Mad. Mss.

Washington, April 2d, 1813.

Dear Sir

Your favor of the 11th March came duly to hand and I feel myself obliged by the friendly spirit of the observations it contains. The circumstances under which the war commenced on our part require that it should be reviewed with a liberality above the ordinary rules and dispositions indulged in such cases. It had become impossible to avoid or even delay war, at a moment when we were not prepared for it, and when it was certain that effective preparations would not take place, whilst the question of war was undecided. Another feature was, the discord and variety of opinions and views in the public councils, of which sufficient evidence has been seen, in the public debates and proceedings; and of which much more is known than ever has been published. The Calculations of the Ex. were that it would be best to open the war with a force of a kind and amount that would be soon procured, & that might strike an important blow, before the Enemy, who was known to disbelieve the approach of such an event, could be reinforced. These calculations were defeated, as you observe by mixing, and substituting preparations necessarily producing fatal delays; and in some respects thwarting each other. At this moment, notwithstanding the additional stimuli, it is not certain that the regular force exceeds that which was in the first instance recommended, which would have been more an overmatch for the then strength of the enemy, than the force voted, if realized, would be for his present strength; and which could have been easily augmented as fast as might be necessary to maintain conquered ground, or meet reinforcements from Europe or elsewhere. The failure of our calculations, with respect to the expedition under Hull, needs no comment. The worst of it was that we were misled by a reliance authorized by himself, on its securing to us the command of the Lakes. The decisive importance of this advantage has always been well understood; but until the first prospect ceased, other means of attaining it were repressed by certain difficulties in carrying them into effect. These means have since been pushed with alacrity; and we hope will enable us to open the campaign in relation to Canada, with a retort of the success which the last turned against us. With the command of L. Ontario, the treasonable commerce at which you point, will probably be found too hazardous to be prosecuted. I have furnished you hints however, for the consideration of the proper Departments.

We are at present occupied with the Mediation of Russia.<sup>1</sup> That is the only power in Europe which can command respect from both France and England; and at this moment it is in its zenith. We shall endeavour to turn this mediation to the best account, in promoting a just peace. We are encouraged in this policy by the known friendship of the Emperor Alexander to this country; and by the probability that the greater affinity between the Baltic and American ideas of maritime law, than between those of the former and of G. B. will render his interposition as favorable as will be consistent with the character assumed by him.

Accept &c.

[\[Back to Table of Contents\]](#)

## MESSAGE TO THE SPECIAL SESSION OF CONGRESS.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, May 25, 1813.

At an early day after the close of the last session of Congress an offer was formally communicated from His Imperial Majesty the Emperor of Russia of his mediation, as the common friend of the United States and Great Britain, for the purpose of facilitating a peace between them. The high character of the Emperor Alexander being a satisfactory pledge for the sincerity and impartiality of his offer, it was immediately accepted, and as a further proof of the disposition on the part of the United States to meet their adversary in honorable experiments for terminating the war it was determined to avoid intermediate delays incident to the distance of the parties by a definitive provision for the contemplated negotiation. Three of our eminent citizens were accordingly commissioned with the requisite powers to conclude a treaty of peace with persons clothed with like powers on the part of Great Britain. They are authorized also to enter into such conventional regulations of the commerce between the two countries as may be mutually advantageous. The two envoys who were in the United States at the time of their appointment have proceeded to join their colleague already at St. Petersburg.

The envoys have received another commission authorizing them to conclude with Russia a treaty of commerce with a view to strengthen the amicable relations and improve the beneficial intercourse between the two countries.

The issue of this friendly interposition of the Russian Emperor and this pacific manifestation on the part of the United States time only can decide. That the sentiments of Great Britain toward that Sovereign will have procured an acceptance of his offered mediation must be presumed. That no adequate motives exist to prefer a continuance of war with the United States to the terms on which they are willing to close it is certain. The British cabinet also must be sensible that, with respect to the important question of impressment, on which the war so essentially turns, a search for or seizure of British persons or property on board neutral vessels on the high seas is not a belligerent right derived from the law of nations, and it is obvious that no visit or search or use of force for any purpose on board the vessels of one independent power on the high seas can in war or peace be sanctioned by the laws or authority of another power. It is equally obvious that, for the purpose of preserving to each State its seafaring members, by excluding them from the vessels of the other, the mode heretofore proposed by the United States and now enacted by them as an article of municipal policy, can not for a moment be compared with the mode practiced by Great Britain without a conviction of its title to preference, inasmuch as the latter leaves the discrimination between the mariners of the two nations to officers exposed by unavoidable bias as well as by a defect of evidence to a wrong decision, under



circumstances precluding for the most part the enforcement of controlling penalties, and where a wrong decision, besides the irreparable violation of the sacred rights of persons, might frustrate the plans and profits of entire voyages; whereas the mode assumed by the United States guards with studied fairness and efficacy against errors in such cases and avoids the effect of casual errors on the safety of navigation and the success of mercantile expeditions.

If the reasonableness of expectations drawn from these considerations could guarantee their fulfillment a just peace would not be distant. But it becomes the wisdom of the National Legislature to keep in mind the true policy, or rather the indispensable obligation, of adapting its measures to the supposition that the only course to that happy event is in the vigorous employment of the resources of war. And painful as the reflection is, this duty is particularly enforced by the spirit and manner in which the war continues to be waged by the enemy, who, uninfluenced by the unvaried examples of humanity set them, are adding to the savage fury of it on one frontier a system of plunder and conflagration on the other, equally forbidden by respect for national character and by the established rules of civilized warfare.

As an encouragement to persevering and invigorated exertions to bring the contest to a happy result, I have the satisfaction of being able to appeal to the auspicious progress of our arms, both by land and on the water.

In continuation of the brilliant achievements of our infant Navy, a signal triumph has been gained by Captain Lawrence and his companions in the *Hornet* sloop of war, which destroyed a British sloop of war, with a celerity so unexampled, and with a slaughter of the enemy so disproportionate to the loss in the *Hornet*, as to claim for the conquerors the highest praise, and the full recompense provided by Congress in preceding cases. Our public ships of war in general, as well as the private armed vessels, have continued also their activity and success against the commerce of the enemy, and, by their vigilance and address, have greatly frustrated the efforts of the hostile squadrons distributed along our coasts, to intercept them in returning into port, and resuming their cruises.

The augmentation of our Naval force, as authorized at the last session of Congress, is in progress. On the Lakes our superiority is near at hand, where it is not already established.

The events of the campaign, so far as they are known to us, furnish matter of congratulation, and show that, under a wise organization and efficient direction, the Army is destined to a glory not less brilliant than that which already encircles the Navy. The attack and capture of York is, in that quarter, a presage of future and greater victories; while, on the western frontier, the issue of the late siege of Fort Meigs leaves us nothing to regret but a single act of inconsiderate valor.

The provisions last made for filling the ranks, and enlarging the staff of the Army, have had the best effects. It will be for the consideration of Congress, whether other provisions, depending on their authority, may not still further improve the Military Establishment and the means of defence.

The sudden death of the distinguished citizen who represented the United States in France, without any special arrangements by him for such a contingency, has left us without the expected sequel to his last communications: nor has the French Government taken any measures for bringing the depending negotiations to a conclusion, through its representative in the United States. This failure adds to delays before so unreasonably spun out. A successor to our deceased Minister has been appointed, and is ready to proceed on his mission: the course which he will pursue in fulfilling it, is that prescribed by a steady regard to the true interests of the United States, which equally avoids an abandonment of their just demands, and a connexion of their fortunes with the systems of other Powers.

The receipts in the Treasury, from the 1st of October to the 31st day of March last, including the sums received on account of Treasury notes, and of the loans authorized by the acts of the last and preceding sessions of Congress, have amounted to fifteen millions four hundred and twelve thousand dollars. The expenditures during the same period amounted to fifteen millions nine hundred and twenty thousand dollars, and left in the Treasury, on the 1st of April, the sum of one million eight hundred and fifty-seven thousand dollars. The loan of sixteen millions of dollars, authorized by the act of the 8th of February last, has been contracted for. Of that sum more than a million of dollars has been paid into the Treasury, prior to the 1st of April, and formed a part of the receipts as above stated. The remainder of that loan, amounting to near fifteen millions of dollars, with the sum of five millions of dollars authorized to be issued in Treasury notes, and the estimated receipts from the customs and the sales of public lands, amounting to nine millions three hundred thousand dollars, and making in the whole twenty-nine millions three hundred thousand dollars to be received during the last nine months of the present year, will be necessary to meet the expenditures already authorized, and the engagements contracted in relation to the public debt. These engagements amount during that period to ten millions five hundred thousand dollars, which, with near one million for the civil, miscellaneous, and diplomatic expenses, both foreign and domestic, and seventeen millions eight hundred thousand dollars for the military and naval expenditures, including the ships of war building and to be built, will leave a sum in the Treasury at the end of the present year equal to that on the first of April last. A part of this sum may be considered as a resource for defraying any extraordinary expenses already authorized by law, beyond the sums above estimated; and a further resource for any emergency may be found in the sum of one million of dollars, the loan of which to the United States has been authorized by the State of Pennsylvania, but which has not yet been brought into effect.

This view of our finances, whilst it shows that due provision has been made for the expenses of the current year, shows, at the same time, by the limited amount of the actual revenue, and the dependence on loans, the necessity of providing more adequately for the future supplies of the Treasury. This can be best done by a well digested system of internal revenue, in aid of existing sources; which will have the effect, both of abridging the amount of necessary loans, and on that account, as well as by placing the public credit on a more satisfactory basis, of improving the terms on which loans may be obtained. The loan of sixteen millions was not contracted for at a less interest than about seven and a half per cent., and, although other causes may

have had an agency, it cannot be doubted, that, with the advantage of a more extended and less precarious revenue, a lower rate of interest might have sufficed. A longer postponement of this advantage could not fail to have a still greater influence on future loans.

In recommending to the National Legislature this resort to additional taxes, I feel great satisfaction in the assurance, that our constituents, who have already displayed so much zeal and firmness in the cause of their country, will cheerfully give any other proof of their patriotism which it calls for. Happily, no people, with local and transitory exceptions, never to be wholly avoided, are more able than the people of the United States to spare for the public wants a portion of their private means, whether regard be had to the ordinary profits of industry, or the ordinary price of subsistence in our country, compared with those in any other. And in no case could stronger reasons be felt for yielding the requisite contributions. By rendering the public resources certain, and commensurate to the public exigencies, the constituted authorities will be able to prosecute the war the more rapidly to its proper issue; every hostile hope, founded on a calculated failure of our resources, will be cut off; and by adding to the evidence of bravery and skill, in combats on the ocean and the land, an alacrity in supplying the treasure necessary to give them their fullest effect, and demonstrating to the world the public energy which our political institutions combine, with the personal liberty distinguishing them, the best security will be provided against future enterprises on the rights or the peace of the nation.

The contest in which the United States are engaged, appeals for its support to every motive that can animate an uncorrupted and enlightened people; to the love of country; to the pride of liberty; to an emulation of the glorious founders of their independence, by a successful vindication of its violated attributes; to the gratitude and sympathy which demand security from the most degrading wrongs of a class of citizens, who have proved themselves so worthy of the protection of their country, by their heroic zeal in its defence; and, finally, to the sacred obligation of transmitting entire, to future generations, that precious patrimony of national rights and independence which is held in trust by the present, from the goodness of Divine Providence.

Being aware of the inconveniences to which a protracted session, at this season, would be liable, I limit the present communication to objects of primary importance. In special messages which may ensue, regard will be had to the same consideration.

[\[Back to Table of Contents\]](#)

## TO THE SENATE OF THE UNITED STATES. 1

Mad. Mss.

I have rec<sup>d</sup>. from the Committee appointed by the resolution of the Senate of the [14] day of [June] a copy of that resolution, which authorizes the Committee to confer with the P. on the subject of the nomination made by him of a Min: Plenipo. to Sweden.

Conceiving it to be my duty to decline the proposed conference with the Committee, & it being uncertain when it may be convenient to explain to the Committee & thro' them, to the Senate, the grounds of my so doing, I think it proper to address the explanation directly to the Senate.

Without entering into a general review of the relations, in which the constitution has placed the several departments of the Gov<sup>t</sup> to each other, it will suffice to remark.

That the Executive & Senate in the cases of appointments to Office & of Treaties, are to be considered as independent of and co-ordinate with each other. If they agree the appointments or treaties are made. If the Senate disagree they fail. If the Senate wish information previous to their final decision, the practice, keeping in view the constitutional relations of the Senate & the Executive has been either to request the Executive to furnish it, or to refer the subject to a committee of their body to communicate either formally or informally with the head of the proper Department.

The appointment of a Committee of the Senate to confer immediately with the Executive himself appears to lose sight of the co-ordinate relation between the Executive & the Senate which the Constitution has established, & which ought therefore to be maintained.

The relation between the Senate & House of Representatives in whom legislative power is concurrently vested, is sufficiently analogous to illustrate that between the Executive & senate in making appointments & treaties. The two houses are in like manner independent of & co-ordinate with each other; and the invariable practice of each in appointing Committees of conference & consultation is to commission them to confer not with the co-ordinate Body itself, but with a Committee of that Body. And although both branches of the Legislature may be too numerous to hold conveniently a conference with committees were they to be appointed by either to confer with the entire Body of the other, it may be fairly presumed that if the whole number of either branch were not too large for the purpose, the objection to such a conference, being ag<sup>st</sup> the principle, as derogating from the co-ordinate relations of the two Houses, would retain all its force.

I add only that I am entirely persuaded of the purity of the intentions of the Senate, in the course they have pursued on this occasion, & with which my view of the subject makes it my duty not to accord; & that they will be cheerfully furnished with all the suitable information in possession of the Executive, in any mode deemed consistent with the principles of the Constitution, and the settled practice under it.

Washington July 6 1813.

[\[Back to Table of Contents\]](#)

## TO ALBERT GALLATIN.

Washington, Aug 2, 1813.

Mad. Mss.

Dear Sir—

You will learn from the Sec<sup>y</sup> of State the painful manner in which the Senate have mutilated the Mission to S<sup>t</sup> Petersburg.<sup>1</sup> But the course & circumstances of the proceeding require more of explanation than may fall within his scope, and more indeed, than can well be conveyed on paper.

Previously to sending in the nomination of the Envoys, there was no indication, that, if the popularity of the object did not prevent opposition, it would extend beyond a portion of the Senate essentially short of a majority. And there is reason to believe that if a preliminary *2attempt to embarrass the subject* had been decided on at the proper time, *and before out-door means could be interposed*, the desired & expected result would have been secured. Liberality however yielded to an adjournment of the question, *and the opportunity afforded by it was industriously improved*. The first step was, after formally ascertaining the arrangement under which you were included in the Mission, *to obtain a vote* declaring an incompatibility (without specifying whether Constitutional or otherwise) between the domestic & diplomatic app<sup>ts</sup>. The tendency of this proposition *to comprehend as many and to commit as much as possible, is obvious*. It would seem notwithstanding that the vote of incompatibility was *concurring in by some who regarded it* not as an obstacle to an ultimate concurrence in the nomination, but rather as a protest throwing the whole responsibility upon the Executive. The next step was to *communicate this opinion of the Senate to me, with a view either to extort a compliance, or to unite against the nomination all, or as many as possible, who had concurred* in the vote of incompatibility. In this stage of the business it was the confident opinion of the supporters of the nomination that *inflexibility on the part of the Ex would ensure a majority for it and their unanimous & urgent advice as well on general grounds, as on that particular calculation, not to yield to the irregular views of the adverse party*. The event proved that the final *purposes of certain individuals on whom the turning of the scale depended, had been miscounted*. It is not easy to express the mixed feelings produced by the disappointment, *or the painfulness of my own in particular*. It was at first suggested from some friendly sources, as most advisable in such a posture of things to *send in a renomination founded on a vacancy in the Secretaryship of the Treasury*; and under certain points of view *this expedient had its recommendations*. They were met however by difficulties & considerations not to be got over. 1. *The ground taken by the Executive did not admit a compliance with the condition imposed by the Senate, without a palpable inconsistency*. 2. Those who had approved & urged *this ground* could not *brook the idea of putting their opponents ostensibly in the right & themselves in the wrong*. 3. It was calculated, that the mediation, if accepted by G. B. would be over, & the envoys on their way home, before the decision of the Senate could reach S<sup>t</sup> Petersburg<sup>g</sup>. and that this last w<sup>d</sup>. certainly be the case sh<sup>d</sup>. the mediation

be rejected *as was becoming more & more probable especially considering the prospects on the Continent, &, as seems now to be put beyond doubt, by a late communication from Beasley at London.* Nor were these the only views of the subject. It was apprehended by some of the *best disposed & best informed of the Senate* that a *renomination would not secure the object.* As it had become certain that the *open & secret adversaries* together amounted to a *formidable number* who would be doubly gratified by a double triumph, it was suspected that after succeeding in getting the *Treasury vacated*, it would be a *prerequisite to a confirmation of the other app* that the *vacancy should be actually filled* in order to *prevent its being kept open for your return*, which might be *looked for within the term of six months*; and that with this view a *resolution might be obtained* declaring the inconsistency of a *protracted vacancy with the public service & the incompatibility of the two offices held by the Secretary of the Navy to be used* in like manner with the *first resolution, as a motive, or pretext for embarrassing & if possible getting rid of the renomination.* It is certain that some who had *intimated an intended change of their votes*, in case the *Treasury Dep<sup>t</sup>. should be vacated*, had in view that the *vacancy should be forthwith filled & even that a nomination to it should go in with the renomination.* Whether a *majority would have gone such lengths is uncertain*; but *strong symptoms* existed of a *temper in the Body capable of going very great lengths.* And apart from all other considerations it would have been impossible even if it had been *intended to make & fill a vacancy in the Treas<sup>y</sup> Dep<sup>t</sup>* that the *consent of the Senate* in the other case could be *purchased by a pledge* to that effect. Besides the *degradation of the Ex.*, it would have introduced a *species of barter of the most fatal tendency.*

I have given you this summary that you may understand the true character of a *proceeding which has given us so much concern.* I will add to it two observations only, 1. that the *Senate by resting their negative on the opinion of official incompatibility tacitly acknowledge a personal fitness & so far defeat their own hostility:* 2. that the *whole proceeding according to every friendly opinion, will have the effect of giving you a stronger hold on the confidence & support of the Nation.* Judging from the *effect as already known* this cannot fail to be the case.

I have just recovered strength eno', after a severe & tedious attack of bilious fever, to bear a journey to the Mountains whither I am about setting out. The Physicians prescribe it as essential to my thorough recovery, & security ag<sup>st</sup>. a relapse at the present season. For recent occurrences & the general state of affairs, I refer to the official communications going by this conveyance. If it were less inconvenient to me, to lengthen my letter, I should recollect that I send it, without expecting that it will find you at Petersburg, should it happen not to be intercepted on its passage.

Accept my affectionate esteem & best wishes.

[\[Back to Table of Contents\]](#)

## TO HENRY DEARBORN.

Washington, Aug<sup>t</sup> 8th, 1813.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. yours of the 24th July.<sup>1</sup> As my esteem and regard have undergone no change, I wish you to be apprized that such was the state of things, and such the turn they were taking, that the retirement which is the subject of your letter, was pressed by your best personal friends.

It was my purpose to have written to you on the occasion, but it was made impossible by a severe illness, from which I am now barely eno' recovered for a journey to the Mountains, prescribed by my Physicians as indispensable. It would have been entirely agreeable to me, if as I took for granted was to be the case, you had executed your original intention of providing for your health, by exchanging the sickliness of Niagara for some eligible spot, And I sincerely lament every pain to which you have been subsequently exposed from whatever circumstance it has proceeded. How far the investigation you refer to would be regular, I am not prepared to say. You have seen the Motion in the House of Representatives comprehending such an object; and the prospect held out of resuming the subject at another session. I am persuaded that you will not lose in any respect by the effect of time and truth.

Accept my respects & best wishes.



[\[Back to Table of Contents\]](#)

## TO ISAAC SHELBY. 1

Montpelier, Aug. 12, 1813.

Mad. Mss.

Dear Sir

I rec<sup>d</sup>. your favor of the 18th July a few days only before I left Washington, which was on the 9th instant. If any doubt had ever existed of the patriotism or bravery of the Citizens of Kentucky, it would have been turned into an admiration of both by the tests to which the war has put them. Nor could any who are acquainted with your history and character, wish the military services of your fellow Citizens to be under better direction than yours. How far a call on you and them, according to the provision made by your Legislature, will take place, must depend on the wants of Gen<sup>l</sup> Harrison who will be regulated in his applications for succour by his own prospects on L. Erie, & by the operations on & below L. Ontario, which must have a considerable bearing on his. We do not despond tho' we ought not to be too sanguine, that the effect of our naval preparations on the several Lakes, and the proper use of the forces assembled on & convenient to them, will soon relieve the distant militia & volunteers from much of the demands which the course of the war on our inland frontier has made on them. Should it happen otherwise it is consoling to know that such resorts exist as those to which your letter contains so favorable an example.

[\[Back to Table of Contents\]](#)

## TO JOHN GRAHAM.

Montpelier, Aug<sup>t</sup> 28th, 1813.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. your favor of the 26th. I cannot recollect off-hand, very much about the letter from Turreau to R. Smith, of which a translation is printed at Georgetown.<sup>1</sup> My general impression is that it was considered at the time as highly exceptionable in several passages; that it was noticed that T. by a ruse diplomatique, which distinguished between the existing & preceding administrations, and assumed the air of a private instead of an Official paper, had attempted to cover & pass off here a rudeness which might be rec<sup>d</sup>. as a proof of his energetic zeal, by his own Gov<sup>t</sup>. and that unless T. preferred taking back the paper, a proper notice of its offensiveness ought to be taken; it being of course left to R. S. to manage the business with T. A further appeal to my memory, may give more precision to these circumstances, and may recover others from the oblivion into which they have fallen. The case will probably be the same with you. If you can pronounce with certainty from your own knowledge, or the information of Mr. Smith that the letter was taken back by T. (a thing not very unusual in such cases, and of which there have been examples with other foreign Ministers, British,<sup>1</sup> if I mistake not, as well as French<sup>2</sup> ) it may be well perhaps that the fact sh<sup>d</sup>. be noticed in the Newspaper. An antidote in some form, to the mischievous intent of the publication seems due to the crisis chosen for it. If no answer were given to the letter, which the records will test, that alone would be animadversion, in one of its modes, of no inconsiderable force. It is unfortunate that the individual possessing the fullest knowledge of all circumstances, cannot be resorted to. If he has himself conveyed the paper to the printer, as you conjecture, it is another evidence of the folly which has marked his career; since the position which he occupied and the address of the paper to him as “une lettre simple,” w<sup>d</sup>. assign to him more particularly any reproach of want of sensibility to its offensive contents; For he will hardly pretend that he was controuled in the expression of it. The time for doing that was the time when he mustered the whole of that & every other species of denunciation ag<sup>st</sup>. the object of his tormenting passions. If the original of the French letter was returned to T. without a copy having been taken, as may be inferred from the sending of a translation to the Printer, and your translation is not found in the Office, the translation sent must have been yours; and the public will decide between the Clerks in the Depar<sup>t</sup>. and the then head of it. It is sufficiently known that he carry<sup>d</sup> with him out of it, copies of other papers which he wished to possess, with a view to eventual publicity.

If the date of the translated letter be correctly published, the letter must have been rec<sup>d</sup>. before the rejection of Erskine’s arrangement was known, and at a period when a reconciliation with England was considered as certain. This consideration might properly have had weight, in disposing the Cabinet to bear with less impatience an exceptionable tone from a French Minister, whose feelings on such an event, w<sup>d</sup>. naturally mingle themselves with his complaints on other subjects, some of which,

particularly the apathy of the Am<sup>n</sup>. Gov<sup>t</sup>. with respect to the French ship burnt near the shore of N. C., it was not very easy to meet in a satisfactory manner.

I am very sorry to hear of the indisposition of Col. Monroe. I hope it will be found to justify the term *slight* which you apply to it. My own health has greatly improved since my arrival here; but I have not been without several slight returns of fever which are chargeable rather on the remnant of the influenza than the cause from which I suffered in Washington. I am now pretty well recovered from the last return which took place a few days ago. Accept with my respects my best wishes for your health & welfare.

[\[Back to Table of Contents\]](#)

## TO WILLIAM WIRT. 1

Montpelier, Sept<sup>r</sup> 30th, 1813.

Dear Sir,—

I have been several weeks in possession of your favor of the 29th of August. As it appeared that you were on an excursion from Richmond, perhaps behind the mountains, I have not been in a hurry to acknowledge it. From the present advance of the season, I infer your probable return to that place.

From whatever motives information such as that in your letter might proceed, it ought not to be unwelcome. The friendly ones by which I well know you were governed entitle it to my sincere thanks, which I pray you to accept.

I have not been unaware of the disappointment and discontent gaining ground with respect to the war on Canada, or of the use to which they were turned against the Administration. I have not been less aware that success alone would put an end to them. This is the test by which public opinion decides more or less in all cases, and most of all, perhaps, in that of military events, where there is the least opportunity of judging by any other. No stimulus, therefore, has been wanting to the exertions necessary to render our arms successful in the quarter where they have failed.

How far these exertions will prevail remains to be seen; and how far past failure is to be ascribed to the difficulties incident to the first stages of a war commenced as the present necessarily was; to the personal faults of those entrusted with command; to the course pursued by the National Legislature; or to mismanagements by the Executive Department, must be left to those who will decide impartially, and on fuller information than may now exist.

Without meaning to throw undue blame elsewhere, or to shun whatever blame may be justly chargeable on the Executive, I will, in the confidence with which we both write, intimate the plan for giving effect to the war, originally entertained by that branch of the Government. As it was obvious that advantage ought to be taken of our chusing the time for commencing, or rather retorting, hostilities, and of the pains taken to make the British Government believe that they were not to be resorted to by the United States; and as it was foreseen that there would be great delay, if not impossibility, in raising a large army for a long term of service, it was thought best to limit our first attempts to such a force as might be obtained in a short time, and be sufficient to reduce Canada, from Montreal upwards, before the enemy would be prepared to resist its progress; trusting to the impression to be made by success, and to the time that would be afforded, for such an augmentation of the durable force as would be able to extend as well as secure our conquests. With these views, it was recommended to Congress to provide immediately and effectually for completing the existing establishment of 10,000 men; to provide for a like number to be enlisted for a

shorter term of 2 or 3 years; and for volunteers, of whom an adequate number, as was represented, would be readily furnished by the enthusiasm of the frontiers of New York and Vermont. With this arrangement was combined the expedition conducted by Hull against the upper and weaker part of the Province.

Of the issue of this part of the plan, and its distressing consequences, it is needless to speak. The other part, not coinciding with the ideas adopted by Congress, was not brought to an experiment. It was there thought best to commence with the addition of 25,000 regulars to the existing establishment of 10,000. And to the delays in passing the laws for this purpose; to the deficiency in the bounty and pay allowed recruits; to the necessity of selecting 1,000 officers, to be drawn from every part of the Union; and to the difficulty, not to say impossibility, of procuring, at a crisis of such scarcity, supplies for such an army, and of distributing them over such a surface in the worst season of the year; may reasonably be ascribed the loss of the first year of the land war. It unfortunately happened, also, that the first provision of the two vital Departments, the Commissary's and Quarter Master's, was so inadequate, that the War office, otherwise overcharged, was obliged for some time to perform the functions of both. It was only after repeated failures and a lapse of months that a Commissary General could be obtained on the terms offered by the law. Nor ought it to be omitted that the recommendation of a greater number of General Officers, though complied with at the last session of Congress, was rejected in the first instance. The same may be remarked as to two auxiliary appointments in the War office, now substantially provided for under other names in the organization of the military establishment. The utter inexperience of nearly all the new officers was an inconvenience of the most serious kind, but inseparable, as it always must be, from a Country among whose blessings it is to have long intervals of peace, and to be without those large standing armies which even in peace are fitted for war.

These observations will be allowed less weight in the present than in the first year of the war. But they will justly mitigate the lateness, to say nothing of the thinness of the ranks notwithstanding the augmented inducements to enlist, attending the operations by which the character of the campaign is to be decided. My anxiety for the result is great, but not unmingled with hopes that it will furnish topics better than the past on which the Censorious adversaries and criticising friends of the Administration are to be met.

Accept, dear Sir, the assurances of my regard.

[\[Back to Table of Contents\]](#)

## FIFTH ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, December 7, 1813.

In meeting you at the present interesting conjuncture it would have been highly satisfactory if I could have communicated a favorable result to the mission charged with negotiations for restoring peace. It was a just expectation, from the respect due to the distinguished Sovereign who had invited them by his offer of mediation, from the readiness with which the invitation was accepted on the part of the United States, and from the pledge to be found in an act of their Legislature for the liberality which their plenipotentiaries would carry into the negotiations, that no time would be lost by the British Government in embracing the experiment for hastening a stop to the effusion of blood. A prompt and cordial acceptance of the mediation on that side was the less to be doubted, as it was of a nature not to submit rights or pretensions on either side to the decisions of an umpire, but to afford merely an opportunity, honorable and desirable to both, for discussing and, if possible, adjusting them for the interest of both.

The British cabinet, either mistaking our desire of peace for a dread of British power or misled by other fallacious calculations, has disappointed this reasonable anticipation. No communications from our envoys having reached us, no information on the subject has been received from that source; but it is known that the mediation was declined in the first instance, and there is no evidence, notwithstanding the lapse of time, that a change of disposition in the British councils has taken place or is to be expected.

Under such circumstances a nation proud of its rights and conscious of its strength has no choice but an exertion of the one in support of the other.

To this determination the best encouragement is derived from the success with which it has pleased the Almighty to bless our arms both on the land and on the water.

Whilst proofs have been continued of the enterprise and skill of our cruisers, public and private, on the ocean, and a new trophy gained in the capture of a British by an American vessel of war, after an action giving celebrity to the name of the victorious commander, the great inland waters on which the enemy were also to be encountered have presented achievements of our naval arms as brilliant in their character as they have been important in their consequences.

On Lake Erie, the squadron under command of Captain Perry having met the British squadron of superior force, a sanguinary conflict ended in the capture of the whole. The conduct of that officer, adroit as it was daring, and which was so well seconded

by his comrades, justly entitles them to the admiration and gratitude of their country, and will fill an early page in its naval annals with a victory never surpassed in luster, however much it may have been in magnitude.

On Lake Ontario the caution of the British commander, favored by contingencies, frustrated the efforts of the American commander to bring on a decisive action. Captain Chauncey was able, however, to establish an ascendancy on that important theater, and to prove by the manner in which he effected everything possible that opportunities only were wanted for a more shining display of his own talents and the gallantry of those under his command.

The success on Lake Erie having opened a passage to the territory of the enemy, the officer commanding the Northwestern army transferred the war thither, and rapidly pursuing the hostile troops, fleeing with their savage associates, forced a general action, which quickly terminated in the capture of the British and dispersion of the savage force.

This result is signally honorable to Major-General Harrison, by whose military talents it was prepared; to Colonel Johnson and his mounted volunteers, whose impetuous onset gave a decisive blow to the ranks of the enemy, and to the spirit of the volunteer militia, equally brave and patriotic, who bore an interesting part in the scene; more especially to the chief magistrate of Kentucky, at the head of them, whose heroism signalized in the war which established the independence of his country, sought at an advanced age a share in hardships and battles for maintaining its rights and its safety.

The effect of these successes has been to rescue the inhabitants of Michigan from their oppressions, aggravated by gross infractions of the capitulation which subjected them to a foreign power; to alienate the savages of numerous tribes from the enemy, by whom they were disappointed and abandoned, and to relieve an extensive region of country from a merciless warfare which desolated its frontiers and imposed on its citizens the most harassing services.

In consequence of our naval superiority on Lake Ontario and the opportunity afforded by it for concentrating our forces by water, operations which had been provisionally planned were set on foot against the possessions of the enemy on the St. Lawrence. Such, however, was the delay produced in the first instance by adverse weather of unusual violence and continuance and such the circumstances attending the final movements of the army, that the prospect, at one time so favorable, was not realized.

The cruelty of the enemy in enlisting the savages into a war with a nation desirous of mutual emulation in mitigating its calamities, has not been confined to any one quarter. Wherever they could be turned against us, no exertions to effect it have been spared. On our Southwestern border, the Creek tribes, who, yielding to our persevering endeavors, were gradually acquiring more civilized habits, became the unfortunate victims of seduction. A war in that quarter has been the consequence, infuriated by a bloody fanaticism recently propagated among them. It was necessary to crush such a war before it could spread among the contiguous tribes, and before it could favor enterprises of the enemy into that vicinity. With this view, a force was

called into the service of the United States from the State of Georgia and Tennessee, which, with the nearest regular troops, and other corps from the Mississippi Territory, might not only chastise the savages into present peace, but make a lasting impression on their fears.

The progress of the expedition, as far as is yet known, corresponds with the martial zeal with which it was espoused; and the best hopes of a satisfactory issue are authorized by the complete success with which a well planned enterprise was executed against a body of hostile savages, by a detachment of the volunteer militia of Tennessee, under the gallant command of General Coffee; and by a still more important victory over a larger body of them, gained under the immediate command of Major General Jackson, an officer equally distinguished for his patriotism and his military talents.

The systematic perseverance of the enemy in courting the aid of the savages in all quarters, had the natural effect of kindling their ordinary propensity to war into a passion, which, even among those best disposed towards the United States, was ready, if not employed on our side, to be turned against us. A departure from our protracted forbearance to accept the services tendered by them, has thus been forced upon us. But, in yielding to it, the retaliation has been mitigated as much as possible, both in its extent and in its character, stopping far short of the example of the enemy, who owe the advantages they have occasionally gained in battle, chiefly to the number of their savage associates; and who have not controlled them either from their usual practice of indiscriminate massacre on defenceless inhabitants, or from scenes of carnage without a parallel, on prisoners to the British arms, guarded by all the laws of humanity and honorable war. For these enormities the enemy are equally responsible, whether with the power to prevent them, they want the will, or, with the knowledge of the want of power, they still avail themselves of such instruments. In other respects, the enemy are pursuing a course which threatens consequences most afflicting to humanity.

A standing law of Great Britain naturalizes, as is well known, all aliens complying with conditions limited to a shorter period than those required by the United States; and naturalized subjects are, in war, employed by her Government in common with native subjects. In a contiguous British province, regulations promulgated since the commencement of the war, compel citizens of the United States being there under certain circumstances to bear arms; whilst, of the native emigrants from the United States, who compose much of the population of the province, a number have actually borne arms against the United States within their limits; some of whom, after having done so, have become prisoners of war, and are now in our possession. The British commander in that province, nevertheless, with the sanction, it appears, of his Government, thought proper to select from American prisoners of war, and send to Great Britain for trial as criminals, a number of individuals, who had emigrated from the British dominions long prior to the state of war between the two nations, who had incorporated themselves into our political society, in the modes recognised by the law and the practice of Great Britain, and who were made prisoners of war, under the banners of their adopted country, fighting for its rights and its safety.



The protection due to these citizens requiring an effectual interposition in their behalf, a like number of British prisoners of war were put into confinement, with a notification that they would experience whatever violence might be committed on the American prisoners of war sent to Great Britain.

It was hoped that this necessary consequence of the step unadvisedly taken on the part of Great Britain would have led her Government to reflect on the inconsistencies of its conduct, and that a sympathy with the British, if not with the American sufferers, would have arrested the cruel career opened by its example.

This was unhappily not the case. In violation both of consistency and humanity, American officers and non-commissioned officers, in double the number of the British soldiers confined here, were ordered into close confinement, with formal notice that, in the event of a retaliation for the death which might be inflicted on the prisoners of war sent to Great Britain for trial, the officers so confined would be put to death also. It was notified, at the same time, that the commanders of the British fleets and armies on our coasts are instructed, in the same event, to proceed with a destructive severity against our towns and their inhabitants.

That no doubt might be left with the enemy of our adherence to the retaliatory resort imposed on us, a correspondent number of British officers, prisoners of war in our hands, were immediately put into close confinement, to abide the fate of those confined by the enemy; and the British Government has been apprized of the determination of this Government, to retaliate any other proceedings against us, contrary to the legitimate modes of warfare.

It is as fortunate for the United States that they have it in their power to meet the enemy in this deplorable contest, as it is honorable to them that they do not join in it but under the most imperious obligations, and with the humane purpose of effectuating a return to the established usages of war.

The views of the French Government on the subjects which have been so long committed to negotiation have received no elucidation since the close of your late session. The Minister Plenipotentiary of the United States at Paris had not been enabled, by proper opportunities, to press the objects of his mission, as prescribed by his instructions.

The militia being always to be regarded as the great bulwark of defence and security for free States, and the Constitution having wisely committed to the national authority a use of that force, as the best provision against an unsafe Military Establishment, as well as a resource peculiarly adapted to a country having the extent and the exposure of the United States, I recommend to Congress a revision of the militia laws, for the purpose of securing more effectually the services of all detachments called into the employment, and placed under the Government of the United States.

It will deserve the consideration of Congress, also, whether, among other improvements in the militia laws, justice does not require a regulation, under due

precautions, for defraying the expense incident to the first assembling, as well as the subsequent movements, of detachments called into the national service.

To give to our vessels of war, public and private, the requisite advantage in their cruises, it is of much importance that they should have, both for themselves and their prizes, the use of the ports and markets of friendly Powers. With this view, I recommend to Congress the expediency of such legal provisions as may supply the defects or remove the doubts of the Executive authority to allow to the cruisers of other Powers at war with enemies of the United States, such use of the American ports as may correspond with the privileges allowed by such Powers to American cruisers.

During the year ending on the 30th of September last, the receipts into the Treasury have exceeded thirty-seven millions and a half of dollars, of which near twenty-four millions were the produce of loans. After meeting all the demands for the public service, there remained in the Treasury, on that day, near seven millions of dollars. Under the authority contained in the act of the 2d of August last, for borrowing seven millions and a half of dollars, that sum has been obtained on terms more favorable to the United States than those of the preceding loan made during the present year. Further sums to a considerable amount will be necessary to be obtained in the same way during the ensuing year; and, from the increased capital of the country, from the fidelity with which the public engagements have been kept, and the public credit maintained, it may be expected, on good grounds, that the necessary pecuniary supplies will not be wanting.

The expenses of the current year, from the multiplied operations falling within it, have necessarily been extensive. But, on a just estimate of the campaign, in which the mass of them has been incurred, the cost will not be found disproportionate to the advantages which have been gained. The campaign has, indeed, in its latter stages, in one quarter, been less favorable than was expected; but, in addition to the importance of our naval success, the progress of the campaign has been filled with incidents highly honorable to the American arms.

The attacks of the enemy on Craney Island, on Fort Meigs, on Sacketts Harbor, and on Sandusky have been vigorously and successfully repulsed; nor have they in any case succeeded on either frontier excepting when directed against the peaceable dwellings of individuals or villages unprepared or undefended.

On the other hand, the movements of the American Army have been followed by the reduction of York, and of Forts George, Erie, and Malden; by the recovery of Detroit and the extinction of the Indian war in the West, and by the occupancy or command of a large portion of Upper Canada. Battles have also been fought on the borders of the St. Lawrence, which, though not accomplishing their entire objects, reflect honor on the discipline and prowess of our soldiery, the best auguries of eventual victory. In the same scale are to be placed the late successes in the South over one of the most powerful, which had become one of the most hostile also, of the Indian tribes.

It would be improper to close this communication without expressing a thankfulness in which all ought to unite for the numerous blessings with which our beloved country

continues to be favored; for the abundance which overspreads our land, and the prevailing health of its inhabitants; for the preservation of our internal tranquillity, and the stability of our free institutions, and, above all, for the light of divine truth and the protection of every man's conscience in the enjoyment of it. And although among our blessings we can not number an exemption from the evils of war, yet these will never be regarded as the greatest of evils by the friends of liberty and of the rights of nations. Our country has before preferred them to the degraded condition which was the alternative when the sword was drawn in the cause which gave birth to our national independence, and none who contemplate the magnitude and feel the value of that glorious event will shrink from a struggle to maintain the high and happy ground on which it placed the American people.

With all good citizens the justice and necessity of resisting wrongs and usurpations no longer to be borne will sufficiently outweigh the privations and sacrifices inseparable from a state of war. But it is a reflection, moreover, peculiarly consoling, that, whilst wars are generally aggravated by their baneful effects on the internal improvements and permanent prosperity of the nations engaged in them, such is the favored situation of the United States that the calamities of the contest into which they have been compelled to enter are mitigated by improvements and advantages of which the contest itself is the source.

If the war has increased the interruptions of our commerce, it has at the same time cherished and multiplied our manufactures so as to make us independent of all other countries for the more essential branches for which we ought to be dependent on none, and is even rapidly giving them an extent which will create additional staples in our future intercourse with foreign markets.

If much treasure has been expended, no inconsiderable portion of it has been applied to objects durable in their value and necessary to our permanent safety.

If the war has exposed us to increased spoliations on the ocean and to predatory incursions on the land, it has developed the national means of retaliating the former and of providing protection against the latter, demonstrating to all that every blow aimed at our maritime independence is an impulse accelerating the growth of our maritime power.

By diffusing through the mass of the nation the elements of military discipline and instruction; by augmenting and distributing warlike preparations applicable to future use; by evincing the zeal and valor with which they will be employed and the cheerfulness with which every necessary burden will be borne, a greater respect for our rights and a longer duration of our future peace are promised than could be expected without these proofs of the national character and resources.

The war has proved moreover that our free Government, like other free governments, though slow in its early movements, acquires in its progress a force proportioned to its freedom, and that the union of these States, the guardian of the freedom and safety of all and of each, is strengthened by every occasion that puts it to the test.

In fine, the war, with all its vicissitudes, is illustrating the capacity and the destiny of the United States to be a great, a flourishing, and a powerful nation, worthy of the friendship which it is disposed to cultivate with all others, and authorized by its own example to require from all an observance of the laws of justice and reciprocity. Beyond these their claims have never extended, and in contending for these we behold a subject for our congratulations in the daily testimonies of increasing harmony throughout the nation, and may humbly repose our trust in the smiles of Heaven on so righteous a cause.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

### To The Senate And House Of Representatives Of The United States:

The tendency of our commercial and navigation laws, in their present state, to favor the enemy, and thereby prolong the war, is more and more developed by experience. Supplies of the most essential kinds find their way, not only to British ports and British armies at a distance, but the armies in our neighborhood, with which our own are contending, derive from our ports and outlets a subsistence attainable with difficulty, if at all, from other sources. Even the fleets and troops infesting our coasts and waters are, by like supplies, accommodated and encouraged in their predatory and incursive warfare.

Abuses, having a like tendency, take place in our import trade. British fabrics and products find their way into our ports, under the name and from the ports of other countries; and often in British vessels, disguised as neutrals, by false colors and papers.

To these abuses it may be added, that illegal importations are openly made, with advantage to the violators of the law, produced by undervaluations, or other circumstances involved in the course of the judicial proceedings against them.

It is found, also, that the practice of ransoming is a cover for collusive captures, and a channel for intelligence advantageous to the enemy.

To remedy, as much as possible, these evils, I recommend:

That an effectual embargo on exports be immediately enacted.

That all articles, known to be derived, either not at all, or in any immaterial degree only, from the productions of any other country than Great Britain, and particularly the extensive articles made of wool and cotton materials, and ardent spirits made from the cane, be expressly and absolutely prohibited, from whatever port or place, or in whatever vessels, the same may be brought into the United States; and that all violations of the non-importation act be subjected to adequate penalties.

That, among the proofs of the neutral and national character of foreign vessels, it be required that the masters and supercargoes, and three-fourths at least of the crews, be citizens or subjects of the country under whose flag the vessels sail.

That all persons concerned in collusive captures by the enemy, or in ransoming vessels or their cargoes from the enemy, be subjected to adequate penalties.

To shorten, as much as possible, the duration of the war, it is indispensable that the enemy should feel all the pressure that can be given to it; and the restraints having that

tendency, will be borne with the greater cheerfulness by all good citizens; as the restraints will affect those most, who are most ready to sacrifice the interest of their country in pursuit of their own.

December 9, 1813.

[\[Back to Table of Contents\]](#)

## TO GEORGE W. CAMPBELL.1

*(Private.)*

Montpelier, May 7, 1814.

Dear Sir,

I have had the pleasure of receiving yours of the 4<sup>th</sup>. inst.2 Altho' a just estimate by the lenders ought to have afforded us better terms, yet under all circumstances of the moment, the loan has been obtained on terms equal to the public expectation, and will have a favorable influence on our affairs. I hope no difficulty will grow out of the individual case you mention. The fulfilment of his former contract, & the effect of his present offer in improving the general terms of the loan were both in favor of receiving his subscription. I do not see however why he might not have disclosed spontaneously his connections in the business. If there were grounds, which I know of no facts to presume, for suspecting a defect of responsibility, the danger would be that an individual under such circumstances might take the chance of a rise of Stock, without incurring more than a failure otherwise hanging over him, in the event of a fall of Stock. Having secured a livelihood for the war for a few months, we shall have time to deliberate on a further experiment, and with a prospect of receiving from abroad information that may enlighten our calculations.

Mrs. Madison returns her best wishes to Mrs. Campbell who will please to accept mine also. We accomplished our journey within the time allotted, but thro' roads which made the utmost exertions necessary. A very seasonable spring has given a fine countenance to the country. I fear an exception is about to take place in our Wheat fields which abound with the Hessian fly.

Accept assurances of my esteem and friendly regards.

[\[Back to Table of Contents\]](#)

## TO GEORGE W. CAMPBELL. 1

*(Private)*

Montpelier, May 25, 1814.

Dear Sir,

I have just rec'd your favor of the 23<sup>d</sup>. inclosing two letters from Mr. Astor. As the resource of loans to a considerable amount in addition to taxes is necessary to our Treasury, and as money is cheaper in Europe than here, especially whilst disaffection withholds the greater part of the capital from Market, it is obviously desirable that we should avail ourselves of the foreign market, now become the more practicable in consequence of the repeal of the Non. Imp. law and of the Independence of Holland. The question is as to the mode, and the choice lies between the app<sup>t</sup>. of an agency to bargain abroad for the public, and a bargain here with individuals who will act for themselves abroad. Each mode has its pros. & its cons. which I need not suggest. I lean at present to the latter mode as least difficult under all circumstances, but I leave myself open to the lights I may receive at Washington, where I expect to be by the first of next month. I propose to set out thither the day after tomorrow (friday). The weather however which is unsettled may prevent it. I shall then be able to speak with you also on the subject of Gen. Jackson & the Treaty with the Creeks. It will be matter of regret, if either the State of Tennessee or that distinguished officer should be finally dissatisfied. The enumerations to you on the subject, have not taken into view the relation of Georgia as well as Tennessee to the case, or the advantage in a general view from the circumstances, but of neither State having too much share in the demarkation of the Territory to be ceded, a part of the Union having a jealous eye on the particular interest they, Western States, take in Indian Affairs.

It is difficult to say what may be the effect of this feature of things in Europe, on our affairs, should it be truly represented by the late arrivals, and undergo no new changes. Much will ultimately depend on the disposition of Russia & the other great powers of the Continent towards us. Their interests evidently coincide with ours, in bringing England to peace with us, unless Eng. should let them carry on her trade with us as well as their own which is too contrary to her favorite maxims to be presumed. The danger is that her temporary ascendancy and her success in propagating false impressions of the principles & views of the U. S. may induce them to acquiesce in her measures ag<sup>st</sup>. us.

Accept assurances of my esteem & regard.



[\[Back to Table of Contents\]](#)

## CABINET MEMORANDUM.

In cabinet June 7, 1814—present J. Monroe, G. W. Campbell, Gen<sup>l</sup> Armstrong, W. Jones, R. Rush. The subject, the opening of the campaign.

Chic. Hist. Soc.  
Mss.

1. determined, nem-con: on an expedition into L. Huron, of 4 or 5 vessels, and 800 or 1000 troops—the first objects to occupy. Machadash & S<sup>t</sup> Josephs—leaving ab<sup>t</sup> 500 to hold at least the former.
2. d<sup>o</sup>. nem-con. (except Mr. Monroe who did not positively oppose but thought the measure hazardous) on an expedition, with the forces under Genl. Brown, from L. Erie, near long Point, to Burlington Heights, preparatory to further operations for reducing the Peninsula, & proceeding towards York, &c; the expedition to depend on Comodore Chauncey's getting the command of the L. without w<sup>ch</sup> supplies could not be secured, and with which they might be conveyed safely by water from Depots on the S. side of L. Ontario.
3. d<sup>o</sup>. nem-con. 14 or 15 armed Boats to be built at Sacket's Harbour to command the St. Lawrence and on protection of posts to be supplied by detachments from Izard's command, so as to intercept the water communication between Montreal & Kingston.
4. d<sup>o</sup>. nem: con: the main force under Izard, to make demonstrations towards Montreal, as a diversion of the En<sup>y</sup>. from operations westward & affording a chance of compelling Prescott to fight disadvantageously, or break up his connection with L. Champlain.

[\[Back to Table of Contents\]](#)

## CABINET MEMORANDUM. 1

Mad. Mss.

*(Submitted To The Cabinet, June 23 And 24, 1814.)*

1. Shall the surrender by Great Britain of the practice of impressment, in a treaty limited to a certain period, be an ultimatum? Monroe, Campbell, Armstrong, Jones—No—Rush inclining but not insisting otherwise.
2. Shall a treaty of peace, silent on the subject of impressment be authorized? All no; but Armstrong and Jones, who were aye.
3. Shall a treaty be authorized comprising an article, referring the subject of impressment along with that of commerce to a separate negotiation? Monroe, Campbell, Armstrong & Jones Aye—Rush for awaiting further information from Europe.

June 27, 1814.

In consequence of the letters from Mess<sup>rs</sup>. Bayard & Gallatin of May 6—7 and of other accounts from Europe, as to the ascendancy & views of Great Britain and the dispositions of the great Continental powers, the preceding question No. 2, was put to the Cabinet, and agreed to by Monroe, Campbell, Armstrong & Jones; Rush being absent: our ministers to be instructed, besides trying the other conditions to make a previous trial to insert or annex some declaration or protest against any inference from the silence of the Treaty on the subject of impressment, that the British claim was admitted or that of the United States abandoned.

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

July 2, 1814.

Mad. Mss.

In analogy to the arrangement yesterday decided on in [1](#) reference to this City and Baltimore, and with a view to a systematic provision against invading armaments, the Secretary of War will digest and report to the President corresponding precautionary means of defence in reference to the other more important & exposed places along the Atlantic frontier; particularly Boston, New York, Wilmington, Norfolk, Charleston, Savannah and New Orleans. In addition to the distribution at suitable Depots, of arms and other necessaries, the Secretary will report, a circular communication to the Governors of the several States, calculated to obtain from them convenient designations of adequate portions of their Militia, with every other arrangement depending on the State Executives for having them in the best readiness for actual service in cases of emergency.

[\[Back to Table of Contents\]](#)

TO C. J. INGERSOLL.

Mad. Mss.

Washington July 28th 1814.

Dear Sir

I have received your favor of the 18th instant, and delivered into the hands of Mr. Rush the interesting extract inclosed in it. The armed neutrality in 1780 forms an Epoch in the history of maritime law, which makes it more than a point of mere curiosity, to trace it to its real source. You know perhaps that there is an American pretension to a share at least in bringing about that measure. The fact may not improperly enter into a general research.

On the question of “free ships, free goods,” it has always appeared to me very clear, that the principle was right in itself, and friendly to the general interest of Nations. It is perhaps less clear, that the United States have a special interest in it; unless combined with another principle, of which an example is found in our Treaty with Prussia, and probably in no other; namely, that unarmed merchant vessels, like wagons or ploughs, the property of one belligerent, should be unmolested by the other. This principle has, I believe, an undisputed American Father in Doctor Franklin.

On the question, whether under the law of Nations, as it stands de facto, “free ships make free Cargoes,” the United States at an early day, took the negative side<sup>1</sup>; and although the acknowledgment of it has been shunned as much as possible since, it seems to have been generally understood, that the British doctrine was practically admitted.

Were the question to be regarded as unsettled, and open to fair discussion, I am persuaded, that the weight of authority furnished by reason, public good, treaties, and the luminaries of public law, preponderates in favor of the principle “free ships free goods.”

The ablest defence of the opposite principle which I have seen, is in a treatise by Croker the present Vice Admiralty Judge, at Halifax, in answer to Schlegel. I am sorry I neither possess a Copy, nor can refer you to any convenient depository of one.

On the side of “free ships, free goods” may be urged not only the intrinsic merit of the rule, and the number and character of distinguished Jurists, but the predominant authority of Treaties, even of Treaties to which Great Britain is a party. Prior to the Treaty of Utrecht, her treaties, particularly with the Dutch, carefully inserted the stipulation. Sir W. Temple, her Ambassador, claimed great merit, on one occasion for his success in obtaining from them, an article to that effect. In the Treaty of Utrecht in 1713, to which the several great maritime powers were parties, the principle is stipulated in the most explicit form. In the successive Treaties, to which the great maritime powers were also parties in 1748, 1763 & 1783, the Treaty of Utrecht is

renewed and made a part thereof. Perhaps no article in maritime law, can be found which at one time rested on such broad and solid evidence of that general consent of Nations, which constitutes the positive law among them. To those Treaties, embracing so many parties, may be added the Treaty of 1786, between the two most important of them, Great Britain & France. In the negotiations at Amiens, at a still later date, the British Government was desirous of again re-enacting the Treaty, tho' probably with a view rather to the political balance, than to the maritime principles contained in it.

It has been unfortunate, that all the efforts of the Baltic Powers to secure the interests of neutrals have been frustrated by the want of a united and determined perseverance. Their leagues have been broken to pieces; and to finish the catastrophe, each of the parties has separately deserted itself. The latter Treaties of Russia, of Sweden, and of Denmark, with Great Britain, have all, in some form or other, let in the British doctrines, and become authorities against the claims of neutrals.

If a purification of the Maritime Code ever take place, the task seems to be reserved for the United States. They cannot fail to acquire rapidly more and more of respect from other Nations, and of influence on those having a common interest with themselves. They will soon become, in the Canvas they spread, and in all the means of power, on the Ocean, rivals of the Nation which has in fact legislated on that element. Under such auspices, truth, justice, humanity, and universal good, will be inculcated with an advantage which must gradually and peaceably enlist the civilized world, against a Code which violates all those obligations; a code as noxious by the wars and calamities it produces to its overbearing patron, as to the Nations protesting against it.

As a preparation for such a result, it is of great moment that the subject of maritime law should appear in our public debates, in the judicial proceedings, and in individual disquisitions, to have been profoundly studied and understood; so as to attract favorable attention elsewhere; and by inspiring respect for the lights and the character of the Nation, increase that for its power and importance. The Law of Nations has been made by the powerful nations; and these having been warlike in their dispositions and institutions, the law has been moulded to suit belligerent rather than peaceable nations. With the faculties for war, it is to be hoped, our country will continue friendly to peace, and exert the influence belonging to it, in promoting a system favorable to Nations cherishing peace and justice, rather than to those devoted to ambition and conquest.

The questions claiming more particular research and elucidation seem to be, those relating to Contraband of war, blockades, the Colonial and Coasting trades, and the great question of "free ships, free goods."

Accept &c

[\[Back to Table of Contents\]](#)

## TO JOHN ARMSTRONG.

August 13, 1814.

Chic. Hist. Soc.  
Mss.

For the Department of War.

On viewing the course which the proceedings of the War Department have not unfrequently taken, I find that I owe it to my own responsibility as well as to other considerations, to make some remarks on the relations in which the Head of the Department stands to the President, and to lay down some rules for conducting the business of the Department, which are dictated by the nature of those relations.

In general the Secretary of War, like the Heads of the other Dep<sup>ts</sup>. as well by express statute as by the structure of the constitution, acts under the authority & subject to the decisions & instructions of the President; with the exception of cases where the law may vest special & independent powers in the head of the Department.

From the great number & variety of subjects, however, embraced by that Department and the subordinate & routine character of a great portion of them, it cannot be either necessary or convenient that proceedings relative to every subject should receive a previous & positive sanction of the Executive. In cases of that minor sort it is requisite only that they be subsequently communicated as far and as soon as a knowledge of them can be useful or satisfactory.

In cases of a higher character & importance, involving necessarily, and in the public understanding, a just responsibility of the President, the acts of the Department ought to be either prescribed by him, or preceded by his sanction.

It is not easy to define in theory the cases falling within these different classes, or in practice to discriminate them with uniform exactness. But substantial observance of the distinction is not difficult, and will be facilitated by the confidence between the Executive & the Head of the Department.

This distinction has not been sufficiently kept in view.

I need not repeat the notice heretofore taken of the measure consolidating certain regiments; a measure highly important under more than one aspect; and which was adopted & executed without the knowledge or sanction of the President; nor was it subsequently made known to him otherwise than through the publication of the act in the newspapers.

The like may be said of certain rules & regulations, particularly a Body of them for the Hospital & Medical Dep<sup>ts</sup>. of which the law expressly required the approbation of the President, and which comprise a rule to be observed by the P. himself in future appointments. The first knowledge of these latter regulations was derived from the newspapers.

A very remarkable instance is a late general order prohibiting Duels and challenges, on pain of dismissal from the army. However proper such an order may be in itself, it would never be supposed to have been issued without the deliberate sanction of the President, the more particularly as it pledged an exercise of one of the most responsible of the Executive functions, that of summarily dismissing from military offices without the intervention of the military Tribunal provided by law. This order was adopted & promulgated without the previous knowledge of the P. nor was it ever made known to him otherwise than by its promulgation. Instructions to military Comanders relating to important plans & operations have been issued without any previous or even any subsequent communication thereof to the Executive; and letters expressly intended & proper for the knowledge & decision of the Ex. have been rec<sup>d</sup>. & acted on without being previously communicated or the measures taken being made known to him.

Other illustrations might be drawn from instances of other sorts, leading to the result of these remarks. The above may suffice, with the addition of one which with the circumstances attending it will be explained by a reference to the letter of resignation from Gen<sup>l</sup>. Harrison, to the letter of the P. to the Secretary of War of May 24, to the issuing of the commission of Major General to General Jackson, and the letter of the Secretary of War accompanying it.

The following course will be observed in future:

To be previously communicated to the President:

1. Orders from the Dept. of War establishing general or permanent regulations.
2. Orders for Courts of Enquiry or Courts Martial, on general officers; or designating the numbers or members of the Courts.
3. Commissions or notifications of appointment to officers other than regular promotions, in uncontested cases.
4. Dismissions of officers from the service.
5. Consolidations of Corps or parts of Corps & translations of F<sup>d</sup>. officers from one Regiment to another.
6. Acceptances & refusals of resignations from officers above the rank of Captains.
7. Requisitions & receptions of militia into the service & pay of the U. S.
8. Instructions relating to Treaties with Indians.
9. Instructions to officers commanding military Districts, or Corps or Stations, relative to military movements or operations.

10. Changes in the boundaries of military Districts, or the establishm<sup>t</sup> of separate commands therein; or the transfer of General officers from one District or command to another District or command.

In the absence of the P. from the seat of Gov<sup>t</sup> previous communications to him may be waived in urgent cases, but to be subsequently made without delay.

All letters giving military intelligence or containing other matters intended or proper for the knowledge of the P. will of course be immediately communicated to him.

These rules may omit cases falling within, and embrace cases not entirely within, the reason of them. Experience therefore may improve the rules. In the meantime, they will give a more suitable order & course to the business of the Dep<sup>t</sup>. will conduce to a more certain harmony & cooperation in the proceedings of the several Departments, and will furnish the proper opportunity for the advantage of cabinet consultations on cases of a nature to render them expedient.



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. 1

[August 21, 1814.]

Monroe Mss.

Dear Sir

I rec<sup>d</sup> yours of 11 P. M. about 20 minutes ago. You will hear from Genl. A. or myself by other express who will leave this about 9 or 10 o'C. If the force of the Enemy be not greater than yet appears, & he be without Cavalry, it seems extraordinary that he sh<sup>d</sup> venture on an enterprize to this distance from his shipping. He may however count on the effect of boldness & celerity on his side, and the want of precaution on ours. He may be bound also to do something, & therefore to risk everything. We know little of what is passing in the Potowmac. A company of regular recruits from V<sup>a</sup> arrived here last evening. Nothing new from the North or from abroad.

Y<sup>R</sup>s

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Monroe Mss.

[August 22, 1814.]  
10 O'C A.M.

Dear Sir

Since mine of this morning Tatham has come and speaks of reinforcements to the first Column of the Enemy at Nottingham. Taylor, I understand is also here just from Parker, with a report that the Enemy have 3000 in the Potowmac. This must be a great exaggeration, if there be not more shipping than we know of. It w<sup>d</sup>. seem not improbable that if they have land force of any sensible importance, that it would be equal to some distinct object, otherwise it w<sup>d</sup>. not be taken from the real operative force. It is s<sup>d</sup>. Parker is moving up parallel with the frigates; but at what point they were I do not learn. I take for granted that there are arrangements where you are for quick intelligence from every important point. The papers of all the Officers are under way to retired places. 1 I fear not much can be done more than has been done to strengthen the hands of Genl. W[inder]. As fast as succorers arrive here they will be hastened on, but the crisis I presume will be of such short duration, that but few Even from the neighboring Country will be on the ground before it is over. Gen<sup>l</sup> Douglas's Brigade will receive another spur, so will the Militia who are to rendezvous at a Church in Fairfax near this. Wadsworth is taking measures for defensive works on the road about Blandensb<sup>g</sup>.

It appears that the reinforcements in Canada, amount to 8 or 10,000.

Y<sup>R</sup>s.

[\[Back to Table of Contents\]](#)

## TO MRS. MADISON. 1

M<sup>r</sup> Williams about 6 or 7 miles from Washington  
Tuesday Aug 13.

My dearest

We reached our quarters last evening at the Camp between 8 & 9 oC. and made out very well. I have passed the forenoon among the troops who are in high spirits & make a good appearance. The reports as to the enemy have varied every hour. The last & probably truest information is that they are not very strong, and are without cavalry or artillery; and of course that they are not in a condition to strike at Washington. It is believed also that they are not about to move from Marlbro', unless it be from an apprehension of our gathering force, and on a retreat to their ships. It is possible however they may have a greater force or expect one, than has been represented or that their temerity may be greater than their strength. I sent you a message last night by Col. M. and one to-day by a messenger of Gen! Winder who set out at a moment when it was impossible to write. I have detained Shorter, that I might give you by him some final & certain information. We expect any how to learn something further from the camp concerning the enemy. If it should be [of] a nature to make it advisable to return to the camp, you will not see me this evening; otherwise I hope I shall be with you in the course tho' perhaps later in the evening

Your Devoted Husband

M

I met M<sup>r</sup> Cutts between this & the camp, & he returned with us to dinner here when we were offered it by the hospitality of M<sup>r</sup> Williams.

[\[Back to Table of Contents\]](#)

## MEMORANDUM—AUG. 24, 1814.<sup>1</sup>

Mad. Mss.

In the morning, a note, by an express from General Winder was handed me. It was addressed to the Secretary of War. Not doubting the urgency of the occasion, I opened and read it, and it went on immediately by the Express to Gen<sup>l</sup> Armstrong who lodged in the Seven Buildings. Finding by the note that the General requested the speediest counsel, I proceeded to his Head Quarters on the Eastern Branch, trusting for notice to the Secretary of War to follow, to the note from Winder. On my reaching his quarters, we were successively joined by the Secretary of State [who soon with our approbation repaired to Bladensburg] the Secretary of the Navy, and Mr. Rush, the Attorney General. After an hour or so, the Secretary of the Treasury arrived, and quickly after the Secretary of War. The latter had been impatiently expected, and surprize at his delay manifested. Gen. Winder was, at the moment setting off to hurry on the troops to Bladensburg in consequence of certain intelligence that the Enemy had taken that direction. Barney's corps was also ordered thither, leaving the Bridge to be blown up if necessary. On Gen. Armstrong's coming into the room, he was informed of the certain march of the enemy for Bladensburg, and of what had passed before his arrival; and he was asked whether he had any arrangement or advice to offer in the emergency. He said he had not; adding, that as the battle would be between Militia and regular troops, the former would be beaten.

On coming out of the house and mounting our horses, the Secretary of the Treasury, who though in a very languid state of health had turned out to join us, observed to me privately that he was grieved to see the great reserve of the Secretary of War, [he lodged in the same house with him] who was taking no part on so critical an occasion; that he found him under the impression, that as the means of defending the District had been committed to Gen<sup>l</sup> Winder, it might not be delicate to intrude his opinions without the approbation of the President; tho' with that approbation he was ready to give any aid he could. Mr. Campbell said that notwithstanding his just confidence in Gen<sup>l</sup> Winder, he thought, in the present state of things which called for all the military skill possible, the Military knowledge and experience of the Secretary of War ought to be availed of, and that no considerations of delicacy ought to jeopard the public safety. With these impressions he said, he had thought it his duty to make this communication, and was very anxious, that I should take some proper steps in the case. I told him I could scarcely conceive it possible that Gen<sup>l</sup> Armstrong could have so misconstrued his functions and duty as Secretary of war; that he could not but know that any proper directions from him would receive any sanction that might be necessary from the Executive; nor doubt that any suggestions or advice from him to Gen<sup>l</sup> Winder would be duly attended to [in this case it had been requested in writing] I told M<sup>r</sup> C. that I would speak to the Secretary of War explicitly on the subject; and accordingly turning my horse to him, expressed to him my concern and surprize at the reserve he shewed at the present crisis, and at the scruples I understood he had at offering his advice or opinions; that I hoped he had not construed the paper of instructions given him some time before, [see the paper of Aug<sup>t</sup>. 13, 1814] so as to restrain him in any respect from the exercise of functions belonging to his office; that

at such a juncture it was to be expected that he should omit nothing within the proper agency of Secretary of War, towards the public defence; and that I thought it proper particularly that he should proceed to Bladensburg and give any aid to Gen<sup>l</sup>. Winder that he could; observing that if any difficulty on the score of authority should arise, which was not likely, I should be near at hand to remove it [it was my purpose in case there should be time, to have the members of the Cabinet together in Bladensburg, where it was expected Gen<sup>l</sup> Winder would be, and in consultation with him to decide on the arrangements suited to the posture of things.] He said in reply that he had put no such construction on the paper of instructions as was alluded to; and that as I thought it proper, he would proceed to Bladensburg, and be of any service to Gen<sup>l</sup> Winder he could. The purport of this conversation I communicated to Mr. Campbell who remained near us. The Secretary of War set off without delay to Bladensburg.

After a short turn to the Marine barracks whither the Secretary of the Navy had gone, I mentioned to Mr. Rush who was with me my purpose of going to Bladensburg and my object in so doing. He readily accompanied me. On approaching the Town, we learned from William Simmons, that Winder was not there, and that the enemy were entering it. We rode up to him [Winder] instantly. The Secretaries of State and War were with him. I asked the latter whether he had spoken with Gen<sup>l</sup> Winder on the subject of his arrangements and views. He said he had not. I remarked that tho' there was so little time for it, it was possible he might offer some advice or suggestion that might not be too late, to be turned to account; on which he rode up to the General as I did myself. The unruliness of my horse prevented me from joining in the short conversation that took place. When it was over, I asked Gen<sup>l</sup> Armstrong whether he had seen occasion to suggest any improvement in any part of the arrangements. He said that he had not; that from his view of them they appeared to be as good as circumstances admitted.

When the Battle had decidedly commenced, I observed to the Secretary of War and Secretary of State that it would be proper to withdraw to a position in the rear, where we could act according to circumstances; leaving military movements now to the military functionaries who were responsible for them. This we did, Mr. Rush soon joining us. When it became manifest that the battle was lost; Mr. Rush accompanying me, I fell down into the road leading to the city and returned to it.

It had been previously settled that in the event of the enemy's taking possession of the city, and the necessity of Executive consultations elsewhere, Fredericktown would be the proper place for the assembling of the Cabinet.1

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.1

Brookville, Aug. 26, 1814, 10 o'clock, p.m.

Dear Sir—

I expected this morning to have reached General W. and yourself before your departure from Montgomery C. H., but was delayed so that I did not arrive there till six o'clock, partly to obtain quarters, partly to be within communication with you. I have proceeded thus far, in company with Mr. Rush, General Mason,1 &c., and avail myself of the bearer to inform you, that I will either wait here till you join me, or follow and join you, as you may think best. Let me know your idea on the subject by the bearer. If you decide on coming hither, the sooner the better. Mr. Rush will remain here also. Mr. Jones is with my family and his own on the other side of the Potomac, but will come to the city the moment he hears of its evacuation. General Armstrong and Mr. Campbell are, I understand, at Fredericktown. I shall give them immediate notice of the change in the state of things, and desire them to conform to it. A letter from General Smith (of Winchester) to General A. was put in my hands, by an express at Montgomery C. H., stating that a brigade of militia could come on or not, as might be desired. I have sent it open to Gen. W., who can judge best of the answer proper to be given, and will act on the letter accordingly.

Accept My Best Wishes And Great Esteem.

James Monroe, Esq.,

*Secretary of State.*

To be opened by Gen. Winder.

[\[Back to Table of Contents\]](#)

## TO MRS. MADISON. 1

Brookville Aug. 27th 10 oclock.

My dearest,

Finding that our army has left Montgomery C. H. we pushed on to this place, with a view to join it, or proceed to the City, as further information might prescribe. I have just recd. a line from Col Monroe saying that the enemy were out of Washington & on the retreat to their ships, & advising our immediate return to Washington. We shall accordingly set out thither immediately, you will all of course take the same resolution. I know not where we are in the first instance, to hide our heads; but shall look for a place on my arrival Mr Rush offers his house in the six buildings & the offer claims attention. Perhaps I may fall in with Mr Cutts & have the aid of his advice. I saw Mr Bradley at Montgomery C. H. who told me that Mr. Cutts was well. Jamey will give you some particulars truly yours.

P.S. I have not time to write, since the above it is found necessary to detain Jamey & send a trooper.

[\[Back to Table of Contents\]](#)

## MEMORANDUM.2

[August 29, 1814.]

Mad. Mss.

In the evening of the 29th of August, 1814, Being on horseback, I stopped at General Armstrong's lodgings for the purpose of communicating with him on the state of things in the District, then under apprehensions of an immediate visit from the force of the enemy at Alexandria.

I observed to him that he could not be unaware of the great excitement in the District produced by the unfortunate event which had taken place in the city; that violent prejudices were known to exist against the administration, as having failed in its duty to protect it, particularly against me and himself as head of the War Department; that threats of personal violence had, it was said, been thrown out against us both, but more especially against him; that it had been sufficiently known for several days, and before his return<sup>1</sup> to the city (which was about one o'clock P.M. of the 29th) that the temper of the troops was such as made it expedient, if possible, that he should have nothing to do with them; that I had within a few hours received a message from the commanding General of the Militia informing me that every officer would tear off his epauletts if Gen<sup>l</sup> Armstrong was to have anything to do with them; that before his arrival there was less difficulty, as Mr. Monroe who was very acceptable to them, had, as on preceding occasions of his absence, though very reluctantly on this, been the medium for the functions of Secretary of War, but that since his return and presence, the expedient could not be continued, and the question was, what was best to be done. Any convulsion at so critical a moment could not but have the worst consequences.

He said he had been aware of the excitement against him; that it was altogether artificial, and that he knew the sources of it, and the intrigues by which it had been effected, which this was not the proper time for examining; that the excitement was founded on the most palpable falsehoods, and was limited to this spot; that it was evident he could not remain here, and the functions belonging to him divided or exercised by any one else, without forgetting what he owed to his station, and to himself; that he had come into his office with the sole view of serving the public, and was willing to resign it when he could no longer do so with honor and effect; that if it was thought best therefore that he should adopt this course, he was ready to give up his appointment; or he could, with my permission, retire from the scene, by setting out immediately on a visit to his family in the State of New York.

I observed that a resignation was an extent which had not been contemplated; that if made under such circumstances, it might receive constructions which could not be desirable, either in a public or a personal view; that a temporary retirement, as he suggested, tho' also subject to be viewed in some lights not agreeable, was on the whole less objectionable, and would avoid the existing embarrassment, without precluding any future course which might be deemed most fit.



He dwelt on the groundless nature of the charges which had produced the excitement, and on the limits within which they had and would operate; affirming that his conduct in relation to the defence of the city &c. had proved that there had been no deficiency on his part.

I told him that I well knew that some of the particular charges brought against him were destitute of foundation, and that as far as they produced the discontents, these would be limited both as to time and space; but that I suspected the discontents to be in a great measure rooted in the belief that he had not taken a sufficient interest in the defence of the city, nor promoted the measures for it; and considering the heavy calamity which had fallen on the place and on its inhabitants, it was natural that strong feelings would be excited on the spot; and as the place was the Capital of the nation every where else also. I added that it would not be easy to satisfy the nation that the event was without blame somewhere, and I could not in candour say that all that ought to have been done had been done & in proper time.

He returned to an exculpation of himself, and remarked that he had omitted no preparations or steps whatever for the safety of the place which had been enjoined on him.

I replied that as the conversation was a frank one, I could not admit this justification; that it was the duty of the Secretary of War not only to execute plans, or orders committed to him, but to devise and propose such as would in his opinion be necessary and proper; that it was an obvious and essential part of his charge, and that in what related to military plans and proceedings elsewhere, he had never been scrupulous or backward in taking this course; that on the contrary he well knew from what on another occasion 1 had passed between us, he had taken a latitude in this respect which I was not satisfied with, that it was due to truth and to myself to say, that he had never appeared to enter into a just view either of the danger to the city which was to be apprehended, or of the consequences of its falling into the hands of the Enemy; that he had never himself proposed or suggested a single precaution or arrangement for its safety, everything done on that subject having been brought forward by myself, and that the apparent difference of his views on that subject from mine had naturally induced a reduction of my arrangements to the minimum, in order to obtrude the less on a reluctant execution. I reminded him also that he had fallen short of the preparations even decided on in the Cabinet, in some respects; particularly in not having arms and equipments brought to convenient depôts from distant ones, some of the militia, when called on for the defence of the City, being obliged to get arms first at Harper's ferry.

I remarked that it was not agreeable thus to speak, nor on an occasion less urgent would it be done; that I had selected him for the office he filled from a respect to his talents, and a confidence that he would exert them for the public good; that I had always treated him with friendliness and confidence and that as there was but a short distance before me to the end of my public career, my great wish, next to leaving my country in a state of peace and prosperity, was to have preserved harmony and avoid changes, and that I had accordingly as he well knew acquiesced in many things, to which no other consideration would have reconciled me.

He said he was very sensible of my friendly conduct towards him, and always had, and always should respect me for it.

The conversation was closed by my referring to the idea of his setting out in the Morning on a visit to his family; and observing that he would of course revolve it further, and if he continued to think of it as he then did, he would consider me as opposing no restraint. We parted as usual in a friendly manner. On the next morning he sent me word by Mr. Parker that he should proceed immediately to visit his family; and on his arrival at Baltimore, transmitted his resignation.

[\[Back to Table of Contents\]](#)

## PROCLAMATION.

Whereas the enemy by a sudden incursion have succeeded in invading the capital of the nation, defended at the moment by troops less numerous than their own and almost entirely of the militia, during their possession of which, though for a single day only, they wantonly destroyed the public edifices, having no relation in their structure to operations of war nor used at the time for military annoyance, some of these edifices being also costly monuments of taste and of the arts, and others depositories of the public archives, not only precious to the nation as the memorials of its origin and its early transactions, but interesting to all nations as contributions to the general stock of historical instruction and political science; and

Whereas advantage has been taken of the loss of a fort more immediately guarding the neighboring town of Alexandria to place the town within the range of a naval force too long and too much in the habit of abusing its superiority wherever it can be applied to require as the alternative of a general conflagration an undisturbed plunder of private property, which has been executed in a manner peculiarly distressing to the inhabitants, who had inconsiderately cast themselves upon the justice and generosity of the victor; and

Whereas it now appears by a direct communication from the British commander on the American station to be his avowed purpose to employ the force under his direction “in destroying and laying waste such towns and districts upon the coast as may be found assailable,” adding to this declaration the insulting pretext that it is in retaliation for a wanton destruction committed by the army of the United States in Upper Canada, when it is notorious that no destruction has been committed, which, notwithstanding the multiplied outrages previously committed by the enemy was not unauthorized, and promptly shown to be so and that the United States have been as constant in their endeavors to reclaim the enemy from such outrages by the contrast of their own example as they have been ready to terminate on reasonable conditions the war itself; and

Whereas these proceedings and declared purposes, which exhibit a deliberate disregard of the principles of humanity and the rules of civilized warfare, and which must give to the existing war a character of extended devastation and barbarism at the very moment of negotiations for peace, invited by the enemy himself, leave no prospect of safety to anything within the reach of his predatory and incendiary operations but in manful and universal determination to chastise and expel the invader:

Now, therefore, I, James Madison, President of the United States, do issue this my proclamation, exhorting all the good people thereof to unite their hearts and hands in giving effect to the ample means possessed for that purpose. I enjoin it on all officers, civil and military, to exert themselves in executing the duties with which they are respectively charged; and more especially I require the officers commanding the respective military districts to be vigilant and alert in providing for the defense

thereof, for the more effectual accomplishment of which they are authorized to call to the defense of exposed and threatened places portions of the militia most convenient thereto, whether they be or be not parts of the quotas detached for the service of the United States under requisitions of the General Government.

On an occasion which appeals so forcibly to the proud feelings and patriotic devotion of the American people none will forget what they owe to themselves, what they owe to their country and the high destinies which await it, what to the glory acquired by their fathers in establishing the independence which is now to be maintained by their sons with the augmented strength and resources with which time and Heaven had blessed them.

In testimony whereof &c. (September 1, 1814.)

[\[Back to Table of Contents\]](#)

## SIXTH ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, September 20, 1814.

Notwithstanding the early day which had been fixed for your session of the present year, I was induced to call you together still sooner, as well that any inadequacy in the existing provisions for the wants of the Treasury might be supplied as that no delay might happen in providing for the result of the negotiations on foot with Great Britain, whether it should require arrangements adapted to a return of peace or further and more effective provisions for prosecuting the war.

That result is not yet known. If, on the one hand, the repeal of the orders in council and the general pacification in Europe, which withdrew the occasion on which impressments from American vessels were practiced, suggest expectations that peace and amity may be reestablished, we are compelled, on the other hand, by the refusal of the British Government to accept the offered mediation of the Emperor of Russia, by the delays in giving effect to its own proposal of a direct negotiation, and, above all, by the principles and manner in which the war is now avowedly carried on to infer that a spirit of hostility is indulged more violent than ever against the rights and prosperity of this country.

This increased violence is best explained by the two important circumstances that the great contest in Europe for an equilibrium guaranteeing all its States against the ambition of any has been closed without any check on the overbearing power of Great Britain on the ocean, and it has left in her hands disposable armaments, with which, forgetting the difficulties of a remote war with a free people, and yielding to the intoxication of success, with the example of a great victim of it before her eyes, she cherishes hopes of still further aggrandizing a power already formidable in its abuses to the tranquillity of the civilized and commercial world.

But whatever may have inspired the enemy with these more violent purposes, the public councils of a nation more able to maintain than it was to acquire its independence, and with a devotion to it rendered more ardent by the experience of its blessings, can never deliberate but on the means most effectual for defeating the extravagant views or unwarrantable passions with which alone the war can now be pursued against us.

In the events of the present campaign the enemy, with all his augmented means and wanton use of them, has little ground for exultation, unless he can feel it in the success of his recent enterprises against this metropolis and the neighboring town of Alexandria, from both of which his retreats were as precipitate as his attempts were bold and fortunate. In his other incursions on our Atlantic frontier his progress, often

checked and chastised by the martial spirit of the neighboring citizens, has had more effect in distressing individuals and in dishonoring his arms than in promoting any object of legitimate warfare; and in the two instances mentioned, however deeply to be regretted on our part, he will find in his transient success, which interrupted for a moment only the ordinary public business at the seat of Government, no compensation for the loss of character with the world by his violations of private property and by his destruction of public edifices protected as monuments of the arts by the laws of civilized warfare.

On our side we can appeal to a series of achievements which have given new luster to the American arms. Besides the brilliant incidents in the minor operations of the campaign, the splendid victories gained on the Canadian side of the Niagara by the American forces under Major-General Brown and Brigadiers Scott and Gaines have gained for these heroes and their emulating companions the most unfading laurels, and, having triumphantly tested the progressive discipline of the American soldiery, have taught the enemy that the longer he protracts his hostile efforts the more certain and decisive will be his final discomfiture.

On our southern border victory has continued also to follow the American standard. The bold and skillful operations of Major-General Jackson, conducting troops drawn from the militia of the States least distant, particularly of Tennessee, have subdued the principal tribes of hostile savages, and, by establishing a peace with them, preceded by recent and exemplary chastisement, has best guarded against the mischief of their co-operation with the British enterprises which may be planned against that quarter of our country. Important tribes of Indians on our north-western frontier have also acceded to stipulations which bind them to the interests of the United States and to consider our enemy as theirs also.

In the recent attempt of the enemy on the city of Baltimore, defended by militia and volunteers, aided by a small body of regulars and seamen, he was received with a spirit which produced a rapid retreat to his ships, whilst a concurrent attack by a large fleet was successfully resisted by the steady and well-directed fire of the fort and batteries opposed to it.

In another recent attack by a powerful force on our troops at Plattsburg, of which regulars made a part only, the enemy, after a perseverance for many hours, was finally compelled to seek safety in a hasty retreat, with our gallant bands pressing upon him.

On the Lakes, so much contested throughout the war, the great exertions for the command made on our part have been well repaid. On Lake Ontario our squadron is now and has been for some time in a condition to confine that of the enemy to his own port, and to favor the operations of our land forces on that frontier.

A part of the squadron on Lake Erie has been extended into Lake Huron, and has produced the advantage of displaying our command on that lake also. One object of the expedition was the reduction of Mackinaw, which failed with the loss of a few brave men, among whom was an officer justly distinguished for his gallant exploits.

The expedition, ably conducted by both the land and the naval commanders, was otherwise highly valuable in its effects.

On Lake Champlain, where our superiority had for some time been undisputed, the British squadron lately came into action with the American, commanded by Captain Macdonough. It issued in the capture of the whole of the enemy's ships. The best praise for this officer and his intrepid comrades is in the likeness of his triumph to the illustrious victory which immortalized another officer and established at a critical moment our command of another lake.

On the ocean the pride of our naval arms has been amply supported. A second frigate has indeed fallen into the hands of the enemy, but the loss is hidden in the blaze of heroism with which she was defended. Captain Porter, who commanded her, and whose previous career had been distinguished by daring enterprise and by fertility of genius, maintained a sanguinary contest against two ships, one of them superior to his own, and under other severe disadvantages, till humanity tore down the colors which valor had nailed to the mast. This officer and his brave comrades have added much to the rising glory of the American flag, and have merited all the effusions of gratitude which their country is ever ready to bestow on the champions of its rights and of its safety.

Two smaller vessels of war have also become prizes to the enemy, but by a superiority of force which sufficiently vindicates the reputation of their commanders, whilst two others, one commanded by Captain Warrington, the other by Captain Blakely, have captured British ships of the same class with a gallantry and good conduct which entitle them and their companions to a just share in the praise of their country.

In spite of the naval force of the enemy accumulated on our coasts, our private cruisers also have not ceased to annoy his commerce and to bring their rich prizes into our ports, contributing thus, with other proofs, to demonstrate the incompetency and illegality of a blockade the proclamation of which is made the pretext for vexing and discouraging the commerce of neutral powers with the United States.

To meet the extended and diversified warfare adopted by the enemy, great bodies of militia have been taken into service for the public defense, and great expenses incurred. That the defense everywhere may be both more convenient and more economical, Congress will see the necessity of immediate measures for filling the ranks of the Regular Army and of enlarging the provision for special corps, mounted and unmounted, to be engaged for longer periods of service than are due from the militia. I earnestly renew, at the same time, a recommendation of such changes in the system of the militia as, by classing and disciplining for the most prompt and active service the portions most capable of it, will give to that great resource for the public safety all the requisite energy and efficiency.

The moneys received into the Treasury during the nine months ending on the 30th day of June last amounted to \$32,000,000, of which near eleven millions were the proceeds of the public revenue and the remainder derived from loans. The

disbursements for public expenditures during the same period exceeded \$34,000,000, and left in the Treasury on the 1st day of July near \$5,000,000. The demands during the remainder of the present year already authorized by Congress and the expenses incident to an extension of the operations of the war will render it necessary that large sums should be provided to meet them.

From this view of the national affairs Congress will be urged to take up without delay as well the subject of pecuniary supplies as that of military force, and on a scale commensurate with the extent and the character which the war has assumed. It is not to be disguised that the situation of our country calls for its greatest efforts. Our enemy is powerful in men and in money, on the land and on the water. Availing himself of fortuitous advantages, he is aiming with his undivided force a deadly blow at our growing prosperity, perhaps at our national existence. He has avowed his purpose of trampling on the usages of civilized warfare, and given earnest of it in the plunder and wanton destruction of private property. In his pride of maritime dominion and in his thirst of commercial monopoly he strikes with peculiar animosity at the progress of our navigation and of our manufactures. His barbarous policy has not even spared those monuments of the arts and models of taste with which our country had enriched and embellished its infant metropolis. From such an adversary hostility in its greatest force and in its worst forms may be looked for. The American people will face it with the undaunted spirit which in their revolutionary struggle defeated his unrighteous projects. His threats and his barbarities, instead of dismay, will kindle in every bosom an indignation not to be extinguished but in the disaster and expulsion of such cruel invaders. In providing the means necessary the National Legislature will not distrust the heroic and enlightened patriotism of its constituents. They will cheerfully and proudly bear every burden of every kind which the safety and honor of the nation demand. We have seen them everywhere paying their taxes, direct and indirect, with the greatest promptness and alacrity. We see them rushing with enthusiasm to the scenes where danger and duty call. In offering their blood they give the surest pledge that no other tribute will be withheld.

Having forborne to declare war until to other aggressions had been added the capture of nearly a thousand American vessels and the impressment of thousands of American seafaring citizens, and until a final declaration had been made by the Government of Great Britain that her hostile orders against our commerce would not be revoked but on conditions as impossible as unjust, whilst it was known that these orders would not otherwise cease but with a war which had lasted nearly twenty years, and which, according to appearances at that time, might last as many more; having manifested on every occasion and in every proper mode a sincere desire to arrest the effusion of blood and meet our enemy on the ground of justice and reconciliation, our beloved country, in still opposing to his persevering hostility all its energies, with an undiminished disposition toward peace and friendship on honorable terms, must carry with it the good wishes of the impartial world and the best hopes of support from an omnipotent and kind Providence.



[\[Back to Table of Contents\]](#)

TO DANIEL D. TOMPKINS.1

Sep<sup>r</sup> 28, 1814.

Mad. Mss.

D<sup>R</sup> Sir,—

Mr. Monroe having just been appointed Sec<sup>y</sup>. of War it is necessary to provide for the vacancy resulting in the Dep<sup>t</sup>. of State. Wishing to avail the U. S. of y<sup>r</sup>. talents & services, I take the liberty of requesting permission to name you to the Senate as his successor. I am aware of the very important station, from which their concurrence will withdraw you; but I justify my personal wish to see you a member of the Ex. family, by my persuasion, that the one contemplated will afford still greater scope for the benefits w<sup>ch</sup>. you have given so many proofs of your disposition to render to our Country. I need not suggest that as early an answer as you can make convenient will be acceptable.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington, Oc<sup>r</sup> 10, 1814.

Mad. Mss.

Dear Sir

Your favor of the 24th Ult: came duly to hand. I learn that the Library Com<sup>e</sup>. will report favorably on your proposition to supply the loss of books by Cong<sup>s</sup>. It will prove a gain to them, if they have the wisdom to replace it by such a Collection as yours. Mr. Smith will doubtless write you on the subject.1

I have not yet read your last communication to Mr. Monroe on the subject of finance.2 It seems clear, according to your reasoning in the preceding one, that a circulating medium, to take the place of a bank or metallic medium, may be created by law and made to answer the purpose of a loan, or rather anticipation of a tax; but as the resource cannot be extended beyond the amount of a *sufficient* medium, and of course cannot be *continued* but by successive re-emissions & redemptions by taxes, resort must eventually be had to loans of the usual sort, or an augmentation of taxes, according to the public exigencies: I say augmentations of taxes, because these absorbing a larger sum into circulation, will admit an enlargement of the medium employed for the purpose. In England where the paper medium, is a legal tender in paying a hundred millions of taxes, thirty millions of interest to the public creditors &c &c, and in private debts, so as to stay a final recovery, we have seen what a mass of paper has been kept afloat, with little if any depreciation. That the difference in value between the circulating notes and the metals proceeded rather from the rise in the latter than from the depreciation of the former, is now proved by the fact, that the notes are, notwithstanding a late increase of their quantity, rising towards a par with the metals, in consequence of a favorable balance of trade which diminishes the demand of them for foreign markets.

We have just received despatches from Ghent, which I shall lay before Cong<sup>s</sup>. to-day.1 The British sine qua non, excluded us from fishing within the sovereignty attached to her shores, and from using these in curing fish; required a Cession of as much of Maine as w<sup>d</sup> remove the obstruction to a *direct* communication between Quebec & Halifax, confirmed to her the Passamaquoddy Islands as always hers of right; included in the pacification the Indian Allies, with a boundary for them (such as that of the Treaty of Greenville) ag<sup>st</sup> the U. S. mutually guaranteed, and the Indians restrained from selling their lands to either party, but free to sell them to a *third* party; prohibited the U. S. from having an armed force on the Lakes or forts on their shores, the British prohibited as to neither; and substituted for the present N. W. limit of the U. S. a line running direct from the W. end of L. Superior to the Mississippi, with a right of G. B. to the navigation of this river. Our ministers were all present, & in perfect harmony of opinion on the arrogance of such demands. They w<sup>d</sup>. probably leave Ghent shortly after the sailing of the vessel just arrived. Nothing can prevent it, but a sudden change in the B. Cabinet not likely to happen, tho' it might be somewhat

favoured by an indignant rupture of the negotiation, as well as by the intelligence from this Country, and the fermentations taking place in Europe.

I intended to have said something on the changes in the Cabinet, involving in one instance, circumstances of which the public can as yet very little judge, but cannot do it now.

The situation of Sacketts Harbour is very critical. I hope for the best, but have serious apprehensions.

With truest affection always y<sup>rs</sup>.

[\[Back to Table of Contents\]](#)

## TO GEORGE W. CAMPBELL.1

(Private.)

Washington, Nov<sup>r</sup>. 2, 1814.

Dear Sir,

The Committee appointed by the H. of Rep<sup>s</sup>.2 to enquire into the causes of the late military events in this District have called for information on the members of the Cabinet, and the call will embrace you. That you may be under no restraint whatever from official or personal confidence, I think it proper to intimate to you, that in relation to myself, I hope no information you may be able to give will be withheld, from either of those considerations.

I am so far from wishing to circumscribe the range of enquiry, on the subject, that I am anxious that every circumstance may be reached that can throw light on it. I am the more anxious, because I understand that a statement furnished by the late Secretary of War, implicates me in two particulars, 1. that I committed to him, the direction of the military operations on the field of battle, which I could not even legally do, 2. that at a critical moment I interposed & prevented it.

On the latter point, I am aware that as you were not on the ground, you can have no direct knowledge & may be without a knowledge of any circumstances indirectly bearing on it. It is a point however which I believe can be disproved by evidence as decisive as can be required to establish the negative.

On the first point your memory may furnish circumstances not unimportant, as the statement in question has doubtless reference to the conversation with Genl. Armstrong on the morning of Aug. 24, to which I was led by the regret you expressed at his apparent reserve on so momentous a crisis, & your suggestion that he might be kept back by some feeling of delicacy in relation to Genl. Winder.

The conversation was held very near to you, but no part of it might be within your hearing. Your recollection of my reply to your remarks, & of my communication of what passed between me & Genl. Armstrong may, in connection with recollections of others, aid in elucidating truth.

I have heard with pleasure that you were far advanced on your journey to Nashville, and that your health was improving. With my sincere wishes for its perfect restoration, accept assurances of my great esteem & my friendly respects.

[\[Back to Table of Contents\]](#)

## TO WILSON CARY NICHOLAS.1

Washington, Novr 26, 1814.

Dear Sir,—

I did not receive your favor of the 11th instant till a few days ago, and I have till now been too much indisposed to acknowledge it.

You are not mistaken in viewing the conduct of the Eastern States as the source of our greatest difficulties in carrying on the war, as it certainly is the greatest, if not the sole, inducement with the enemy to persevere in it. The greater part of the people in that quarter have been brought by their leaders, aided by their priests, under a delusion scarcely exceeded by that recorded in the period of witchcraft; and the leaders are becoming daily more desperate in the use they make of it. Their object is power. If they could obtain it by menaces, their efforts would stop there. These failing, they are ready to go every length for which they can train their followers. Without foreign co-operation, revolts & separation will be hardly risked; and what the effect of so profligate an experiment may be, first on deluded partizans, and next on those remaining faithful to the nation who are respectable for their consistency, and even for their numbers, is for conjecture only. The best may be hoped, but the worst ought to be kept in view. In the mean time the course to be taken by the Govt is full of delicacy & perplexity; and the more so under the pinch which exists in our fiscal affairs, & the lamentable tardiness of the Legislature in applying some relief.

At such a moment the vigorous support of the well disposed States is peculiarly important to the General Govt; and it would be impossible for me to doubt that Virga, under your administration of its Executive Govt, will continue to be among the foremost in zealous exertions for the national rights and success.

Be pleased to accept assurances of my esteem & respect.

[\[Back to Table of Contents\]](#)

TO BENJAMIN W. CROWNINSHIELD.1

Wash. Dec<sup>r</sup>. 15, 1814.

Mad. Mss.

Sir

M<sup>r</sup>. Jones having retired from the Secretaryship of the Navy, my thoughts have been turned to you as a desirable Successor; and I have this day sent in your name to the Senate for the appointment. I hope you will excuse my doing it without your consent which would have been asked, if the business of that Dep<sup>t</sup>. had less urged an avoidance of delay. The same consideration will apologize for my hoping that it will not be inconsistent with your views to aid your Country in that Station, nor with your conveniency to be prepared to repair to it as soon as you may receive notice that the Senate have given effect to the nomination.

Accept Sir assurances of my esteem and of my friendly respects.

[\[Back to Table of Contents\]](#)

TO JOHN ADAMS.

Washington, Dec<sup>r</sup> 17th 1814.

Mad. Mss.

Dear Sir,—

Your favor of the 28th Ult<sup>o</sup>. was duly received, though with more delay, than usually attends the mail. I return the interesting letter from your son, with my thanks for the opportunity of perusing it.

I have caused the archives of the Department of State to be searched with an eye to what passed during the negotiation for peace on the subject of the fisheries. The search has not furnished a precise answer to the enquiry of Mr. Adams. It appears from one of your letters referring to the instructions accompanying the commission to make a Treaty of commerce with Great Britain, that the original views of Congress did not carry their Ultimatum, beyond the common right to fish in waters distant three leagues from the British shores. The negotiations therefore, and not the instructions, if no subsequent change of them took place, have the merit of the terms actually obtained. That other instructions, founded on the Resolutions of Congress, issued at subsequent periods cannot be doubted, though as yet they do not appear. But how far they distinguished between the common use of the sea, and the use, then common also, of the shores, in carrying on the fisheries, I have no recollection.

The view of the discussions at Ghent presented by the private letters of all our Ministers there, as well as by their official despatches, leaves no doubt of the policy of the British Cabinet, so forcibly illustrated by the letter of Mr. Adams to you. 1 Our Enemy knowing that he has peace in his own hands, speculates on the fortune of events. Should these be unfavorable, he can at any moment, as he supposes, come to our terms. Should they correspond with his hopes, his demands may be insisted on, or even extended. The point to be decided by our Ministers is, whether during the uncertainty of events, a categorical alternative of immediate peace, or a rupture of the negotiation, would not be preferable to a longer acquiescence in the gambling procrastinations of the other party. It may be presumed that they will before this, have pushed the negotiations to this point.

It is very agreeable to find that the superior ability which distinguishes the notes of our Envoys, extorts commendation from the most obdurate of their political Enemies. And we have the further satisfaction to learn that the cause they are pleading, is beginning to overcome the prejudice which misrepresentations had spread over the continent of Europe against it. The British Government is neither inattentive to this approaching revolution in the public opinion there, nor blind to its tendency. If it does not find in it a motive to immediate peace, it will infer the necessity of shortening the war by bringing upon us, the ensuing Campaign, what it will consider as a force not to be resisted by us.

It were to be wished that this consideration had more effect in quickening the preparatory measures of Congress. I am unwilling to say how much distress in every branch of our affairs is the fruit of their tardiness; nor would it be necessary to you, who will discern the extent of the evil, in the symptoms from which it is to be inferred.

I pray you Sir to accept assurances of my distinguished esteem and best regards.



[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

### To The Senate And House Of Representatives Of The United States:

Washington, February 18, 1815.

I lay before Congress copies of the treaty of peace and amity between the United States and His Britannic Majesty, which was signed by the commissioners of both parties at Ghent on the 24th of December, 1814, and the ratifications of which have been duly exchanged.

While performing this act I congratulate you and our constituents upon an event which is highly honorable to the nation, and terminates with peculiar felicity a campaign signalized by the most brilliant successes.

The late war, although reluctantly declared by Congress, had become a necessary resort to assert the rights and independence of the nation. It has been waged with a success which is the natural result of the wisdom of the legislative councils, of the patriotism of the people, of the public spirit of the militia, and of the valor of the military and naval forces of the country. Peace, at all times a blessing, is peculiarly welcome, therefore, at a period when the causes for the war have ceased to operate, when the Government has demonstrated the efficiency of its powers of defense, and when the nation can review its conduct without regret and without reproach.

I recommend to your care and beneficence the gallant men whose achievements in every department of the military service, on the land and on the water, have so essentially contributed to the honor of the American name and to the restoration of peace. The feelings of conscious patriotism and worth will animate such men under every change of fortune and pursuit, but their country performs a duty to itself when it bestows those testimonials of approbation and applause which are at once the reward and the incentive to great actions.

The reduction of the public expenditures to the demands of a peace establishment will doubtless engage the immediate attention of Congress. There are, however, important considerations which forbid a sudden and general revocation of the measures that have been produced by the war. Experience has taught us that neither the pacific dispositions of the American people nor the pacific character of their political institutions can altogether exempt them from that strife which appears beyond the ordinary lot of nations to be incident to the actual period of the world, and the same faithful monitor demonstrates that a certain degree of preparation for war is not only indispensable to avert disasters in the onset, but affords also the best security for the continuance of peace. The wisdom of Congress will therefore, I am confident, provide for the maintenance of an adequate regular force; for the gradual advancement of the naval establishment; for improving all the means of harbor defense; for adding

discipline to the distinguished bravery of the militia, and for cultivating the military art in its essential branches, under the liberal patronage of Government.

The resources of our country were at all times competent to the attainment of every national object, but they will now be enriched and invigorated by the activity which peace will introduce into all the scenes of domestic enterprise and labor. The provision that has been made for the public creditors during the present session of Congress must have a decisive effect in the establishment of the public credit both at home and abroad. The reviving interests of commerce will claim the legislative attention at the earliest opportunity, and such regulations will, I trust, be seasonably devised as shall secure to the United States their just proportion of the navigation of the world. The most liberal policy toward other nations, if met by corresponding dispositions, will in this respect be found the most beneficial policy toward ourselves. But there is no subject that can enter with greater force and merit into the deliberations of Congress than a consideration of the means to preserve and promote the manufactures which have sprung into existence and attained an unparalleled maturity throughout the United States during the period of the European wars. This source of national independence and wealth I anxiously recommend, therefore, to the prompt and constant guardianship of Congress.

The termination of the legislative sessions will soon separate you, fellow-citizens, from each other, and restore you to your constituents. I pray you to bear with you the expressions of my sanguine hope that the peace which has been just declared, will not only be the foundation of the most friendly intercourse between the United States and Great Britain, but that it will also be productive of happiness and harmony in every section of our beloved country. The influence of your precepts and example must be every where powerful; and while we accord in grateful acknowledgments for the protection which Providence has bestowed upon us, let us never cease to inculcate obedience to the laws, and fidelity to the union, as constituting the palladium of the national independence and prosperity.

[\[Back to Table of Contents\]](#)

## SPECIAL MESSAGE TO CONGRESS.

### To The Senate And House Of Representatives Of The United States:

Washington, February 25, 1815.

Peace having happily taken place between the United States and Great Britain, it is desirable to guard against incidents, which, during periods of war in Europe, might tend to interrupt it: and, it is believed, in particular, that the navigation of American vessels exclusively by American seamen, either natives, or such as are already naturalized, would not only conduce to the attainment of that object, but also to increase the number of our seamen, and consequently to render our commerce and navigation independent of the service of foreigners, who might be recalled by their governments under circumstances the most inconvenient to the United States. I recommend the subject, therefore, to the consideration of congress; and, in deciding upon it, I am persuaded, that they will sufficiently estimate the policy of manifesting to the world a desire, on all occasions, to cultivate harmony with other nations by any reasonable accommodations, which do not impair the enjoyment of any of the essential rights of a free and independent people. The example on the part of the American government will merit, and may be expected to receive, a reciprocal attention from all the friendly powers of Europe.

[\[Back to Table of Contents\]](#)

## VETO MESSAGE.

### To The Senate Of The United States:

Washington, January 30, 1815.

Having bestowed on the bill entitled “An act to incorporate the subscribers to the Bank of the United States of America” that full consideration which is due to the great importance of the subject, and dictated by the respect which I feel for the two Houses of Congress, I am constrained by a deep and solemn conviction that the bill ought not to become a law to return it to the Senate, in which it originated, with my objections to the same.

Waiving the question of the constitutional authority of the Legislature to establish an incorporated bank as being precluded in my judgment by repeated recognitions under varied circumstances of the validity of such an institution in acts of the legislative, executive, and judicial branches of the Government, accompanied by indications, in different modes, of a concurrence of the general will of the nation, the proposed bank does not appear to be calculated to answer the purposes of reviving the public credit, of providing a national medium of circulation, and of aiding the Treasury by facilitating the indispensable anticipations of the revenue and by affording to the public more durable loans.

1. The capital of the bank is to be compounded of specie, of public stock, and of Treasury notes convertible into stock, with a certain proportion of each of which every subscriber is to furnish himself.

The amount of the stock to be subscribed will not, it is believed, be sufficient to produce in favor of the public credit any considerable or lasting elevation of the market price, whilst this may be occasionally depressed by the bank itself if it should carry into the market the allowed proportion of its capital consisting of public stock in order to procure specie, which it may find its account in procuring with some sacrifice on that part of its capital.

Nor will any adequate advantage arise to the public credit from the subscription of Treasury notes. The actual issue of these notes nearly equals at present, and will soon exceed, the amount to be subscribed to the bank. The direct effect of this operation is simply to convert fifteen millions of Treasury notes into fifteen millions of 6 per cent stock, with the collateral effect of promoting an additional demand for Treasury notes beyond what might otherwise be negotiable.

Public credit might, indeed, be expected to derive advantage from the establishment of a national bank, without regard to the formation of its capital, if the full aid and co-operation of the institution were secured to the Government during the war and during the period of its fiscal embarrassments. But the bank proposed will be free from all legal obligation to cooperate with the public measures, and whatever might be the

patriotic disposition of its directors to contribute to the removal of those embarrassments, and to invigorate the prosecution of the war, fidelity to the pecuniary and general interest of the institution according to their estimate of it might oblige them to decline a connection of their operations with those of the National Treasury during the continuance of the war and the difficulties incident to it. Temporary sacrifices of interest, though overbalanced by the future and permanent profits of the charter, not being requirable of right in behalf of the public, might not be gratuitously made, and the bank would reap the full benefit of the grant, whilst the public would lose the equivalent expected from it; for it must be kept in view that the sole inducement to such a grant on the part of the public would be the prospect of substantial aids to its pecuniary means at the present crisis and during the sequel of the war. It is evident that the stock of the bank will on the return of peace, if not sooner, rise in the market to a value which, if the bank were established in a period of peace, would authorize and obtain for the public a bonus to a very large amount. In lieu of such a bonus the Government is fairly entitled to and ought not to relinquish or risk the needful services of the bank under the pressing circumstances of war.

2. The bank as proposed to be constituted cannot be relied on during the war to provide a circulating medium nor to furnish loans or anticipations of the public revenue.

Without a medium the taxes can not be collected, and in the absence of specie the medium understood to be the best substitute is that of notes issued by a national bank. The proposed bank will commence and conduct its operations under an obligation to pay its notes in specie, or be subject to the loss of its charter. Without such an obligation the notes of the bank, though not exchangeable for specie, yet resting on good pledges and performing the uses of specie in the payment of taxes and in other public transactions, would, as experience has ascertained, qualify the bank to supply at once a circulating medium and pecuniary aids to the Government. Under the fetters imposed by the bill it is manifest that during the actual state of things, and probably during the war, the period particularly requiring such a medium and such a resource for loans and advances to the Government, notes for which the bank would be compellable to give specie in exchange could not be kept in circulation. The most the bank could effect, and the most it could be expected to aim at, would be to keep the institution alive by limited and local transactions which, with the interest on the public stock in the bank, might yield a dividend sufficient for the purpose until a change from war to peace should enable it, by a flow of specie into its vaults and a removal of the external demand for it, to derive its contemplated emoluments from a safe and full extension of its operations.

On the whole, when it is considered that the proposed establishment will enjoy a monopoly of the profits of a national bank for a period of twenty years; that the monopolized profits will be continually growing with the progress of the national population and wealth; that the nation will during the same period be dependent on the notes of the bank for that species of circulating medium whenever the precious metals may be wanted, and at all times for so much thereof as may be an eligible substitute for a specie medium, and that the extensive employment of the notes in the collection of the augmented taxes will, moreover, enable the bank greatly to extend its

profitable issues of them without the expense of specie capital to support their circulation, it is as reasonable as it is requisite that the Government, in return for these extraordinary concessions to the bank, should have a greater security for attaining the public objects of the institution than is presented in the bill, and particularly for every practicable accommodation, both in the temporary advances necessary to anticipate the taxes and in those more durable loans which are equally necessary to diminish the resort to taxes.

In discharging this painful duty of stating objections to a measure which has undergone the deliberations and received the sanction of the two Houses of the National Legislature I console myself with the reflection that if they have not the weight which I attach to them they can be constitutionally overruled, and with a confidence that in a contrary event the wisdom of Congress will hasten to substitute a more commensurate and certain provision for the public exigencies.

[\[Back to Table of Contents\]](#)

## TO HENRY DEARBORN.

Washington March 4th 1815.

Mad. Mss.

Dear Sir

Being desirous of obtaining for the Department of War, <sup>1</sup> services which I thought you could render with peculiar advantage, and hoping that for a time at least you might consent to step into that Department, I took the liberty, without a previous communication, for which there was not time, to nominate you as successor to Mr. Monroe, who was called back to the Department of State. I had not a doubt from all the calculations I could make, that the Senate would readily concur in my views; and if a doubt had arisen, it would have been banished by the confidence of the best informed and best disposed with whom I conferred, that the nomination would be welcomed where it was to be decided on. Contrary to these confident expectations, an opposition was disclosed in an extent, which determined me to withdraw the nomination. But before the Message arrived, the Senate very unexpectedly had taken up the subject and proceeded to a decision. They promptly however relaxed so far as to erase the proceeding from their Journal, and in that mode to give effect to the withdrawal.

I have thought this explanation due both to me and to yourself. I sincerely regret the occasion for it. But to whatever blame I may have subjected myself, I trust you will see in the course taken by me, a proof of the high value I place on your public, and of the esteem I feel for your personal character. Permit me to add that I have been not a little consoled for the occurrence to which I have been accessory, by the diffusive expression to which it has led, of sentiments such as your best friends have heard with most pleasure.

Accept assurances of my great respect and sincere regard

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Washington Mar 12, 1815.

Mad. Mss.

Dear Sir

It was long desirable that an Expose of the causes and character of the War between the U. S. & G. B.<sup>1</sup> should remedy the mischief produced by the Declaration of the Prince Regent & other misstatements which had poisoned the opinion of the world on the subject. Since the pacification in Europe & the effect of that and other occurrences in turning the attention of that quarter of the World towards the U. S. the antidote became at once more necessary & more hopeful. It was accordingly determined soon after the meeting of Cong<sup>s</sup> that a correct & full view of the War, should be prepared & made public in the usual Demiofficial form. The commencement of it was however somewhat delayed by the probability of an early termination of the Negotiations at Ghent, either, in a peace, or in a new epoch particularly inviting a new appeal to the neutral public. The long suspension of intelligence from our Envoys, & the critical state of our affairs at home, as well as abroad, finally overruled this delay, and the execution of the task was committed to Mr. Dallas. Altho' he hastened it as much as the nature of it, and his other laborious attentions admitted, it was not finished in time for publication before the news of peace arrived. The latter pages had not even been struck off at the press. Under these circumstances, it became a question whether it should be published with a prefatory notice that it was written before the cessation of hostilities, and thence derived its spirit & language; or should be suppressed, or written over with a view to preserve the substantial vindication of our Country ag<sup>st</sup> prevailing calumnies, and avoid asperities of every sort unbecoming the change in the relations of the two Countries. This last course, tho' not a little difficult might have been best in itself, but it required a time & labour not to be spared for it, and the suppression was preferred to the first course, which w<sup>d</sup> have been liable to misconstructions of an injurious tendency. The printed copies however amounting to several hundred are not destroyed, and will hereafter contribute materials for a historical review of the period which the document embraces. I have thought a perusal of it might amuse an hour of your leisure; requesting only that as it is to be guarded ag<sup>st</sup> publication, you will be so good as either to return the Copy, or to place it where it will be in no danger of escaping. You will observe, from the plan & cast of the Work, that it was meant for the eye of the British people, and of our own, as well as for that of the Neutral world. This threefold object increased the labor not a little, and gives the composition some features not otherwise to be explained.

The despatch vessel with the peace via France, has just arrived. It brings little more than duplicates of what was rec<sup>d</sup>. via England. The affairs at Vienna remain in a fog, which rather thickens than disperses. The situation of France also has yet it would seem to pass some clearing up shower. The peace between this Country & G. B. gives sincere pleasure there as relieving the Gov<sup>t</sup>. and the Nation, from the dilemma, of humiliating submissions to the antineutral measures of G. Britain, or a premature contest with her. In Spain, every thing suffers under the phrenzy of the Throne, and



the fanaticism of the People. But for our peace with England, it is not impossible, that a new War from that quarter would have been opened upon us. The affair at New Orleans will perhaps be a better Guarantee ag<sup>st</sup>. such an event.

Mr. Smith will have communicated to you the result of our consultation on the transportation of the Library.

We are indulging hopes of paying a trip soon to our farm; and shall not fail, if it be practicable, to add to it the pleasure of a visit to Monticello.

Always & with sincere affection y<sup>rs</sup>.,

[\[Back to Table of Contents\]](#)

## SEVENTH ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

Washington, December 5, 1815.

I have the satisfaction on our present meeting of being able to communicate to you the successful termination of the war which had been commenced against the United States by the Regency of Algiers. The squadron in advance on that service, under Commodore Decatur, lost not a moment after its arrival in the Mediterranean in seeking the naval force of the enemy then cruising in that sea, and succeeded in capturing two of his ships, one of them the principal ship, commanded by the Algerine admiral. The high character of the American commander was brilliantly sustained on that occasion which brought his own ship into close action with that of his adversary, as was the accustomed gallantry of all the officers and men actually engaged. Having prepared the way by this demonstration of American skill and prowess, he hastened to the port of Algiers, where peace was promptly yielded to his victorious force. In the terms stipulated the rights and honor of the United States were particularly consulted by a perpetual relinquishment on the part of the Dey of all pretensions to tribute from them. The impressions which have thus been made, strengthened as they will have been by subsequent transactions with the Regencies of Tunis and of Tripoli by the appearance of the larger force which followed under Commodore Bainbridge, the chief in command of the expedition, and by the judicious precautionary arrangements left by him in that quarter, afford a reasonable prospect of future security for the valuable portion of our commerce which passes within reach of the Barbary cruisers.

It is another source of satisfaction that the treaty of peace with Great Britain has been succeeded by a convention on the subject of commerce concluded by the plenipotentiaries of the two countries. In this result a disposition is manifested on the part of that nation corresponding with the disposition of the United States, which it may be hoped will be improved into liberal arrangements on other subjects on which the parties have mutual interests, or which might endanger their future harmony. Congress will decide on the expediency of promoting such a sequel by giving effect to the measure of confining the American navigation to American seamen—a measure which, at the same time that it might have that conciliatory tendency, would have the further advantage of increasing the independence of our navigation and the resources for our maritime defence.

In conformity with the articles in the treaty of Ghent relating to the Indians, as well as with a view to the tranquillity of our western and northwestern frontiers, measures were taken to establish an immediate peace with the several tribes who had been engaged in hostilities against the United States. Such of them as were invited to Detroit acceded readily to a renewal of the former treaties of friendship. Of the other

tribes who were invited to a station on the Mississippi the greater number have also accepted the peace offered to them. The residue, consisting of the more distant tribes or parts of tribes, remain to be brought over by further explanations, or by such other means as may be adapted to the dispositions they may finally disclose.

The Indian tribes within and bordering on the southern frontier, whom a cruel war on their part had compelled us to chastise into peace, have latterly shown a restlessness which has called for preparatory measures for repressing it, and for protecting the commissioners engaged in carrying the terms of the peace into execution.

The execution of the act fixing the military peace establishment has been attended with difficulties which even now can only be overcome by legislative aid. The selection of officers, the payment and discharge of the troops enlisted for the war, the payment of the retained troops and their reunion from detached and distant stations, the collection and security of the public property in the Quartermaster, Commissary, and Ordnance departments, and the constant medical assistance required in hospitals and garrisons rendered a complete execution of the act impracticable on the 1st of May, the period more immediately contemplated. As soon, however, as circumstances would permit, and as far as it has been practicable consistently with the public interests, the reduction of the Army has been accomplished; but the appropriations for its pay and for other branches of the military service having proved inadequate, the earliest attention to that subject will be necessary; and the expediency of continuing upon the peace establishment the staff officers who have hitherto been provisionally retained is also recommended to the consideration of Congress.

In the performance of the Executive duty upon this occasion there has not been wanting a just sensibility to the merits of the American Army during the late war; but the obvious policy and design in fixing an efficient military peace establishment did not afford an opportunity to distinguish the aged and infirm on account of their past services nor the wounded and disabled on account of their present sufferings. The extent of the reduction, indeed, unavoidably involved the exclusion of many meritorious officers of every rank from the service of their country; and so equal as well as so numerous were the claims to attention that a decision by the standard of comparative merit could seldom be attained. Judged, however, in candor by a general standard of positive merit, the Army register will, it is believed, do honor to the establishment, while the case of those officers whose names are not included in it devolves with the strongest interest upon the legislative authority for such provision as shall be deemed the best calculated to give support and solace to the veteran and the invalid, to display the beneficence as well as the justice of the Government, and to inspire a martial zeal for the public service upon every future emergency.

Although the embarrassments arising from the want of an uniform national currency have not been diminished since the adjournment of Congress, great satisfaction has been derived in contemplating the revival of the public credit and the efficiency of the public resources. The receipts into the Treasury from the various branches of revenue during the nine months ending on the 30th of September last have been estimated at \$12,500,000; the issues of Treasury notes of every denomination during the same period amounted to the sum of \$14,000,000, and there was also obtained upon loan

during the same period a sum of \$9,000,000, of which the sum of \$6,000,000 was subscribed in cash and the sum of \$3,000,000 in Treasury notes. With these means, added to the sum of \$1,500,000, being the balance of money in the Treasury on the 1st day of January, there has been paid between the 1st of January and the 1st of October on account of the appropriations of the preceding and of the present year (exclusively of the amount of the Treasury notes subscribed to the loan and of the amount redeemed in the payment of duties and taxes) the aggregate sum of \$33,500,000, leaving a balance then in the Treasury estimated at the sum of \$3,000,000. Independent, however, of the arrearages due for military services and supplies, it is presumed that a further sum of \$5,000,000, including the interest on the public debt payable on the 1st of January next, will be demanded at the Treasury to compete the expenditures of the present year, and for which the existing ways and means will sufficiently provide.

The national debt, as it was ascertained on the 1st of October last, amounted in the whole to the sum of \$120,000,000, consisting of the unredeemed balance of the debt contracted before the late war (\$39,000,000), the amount of the funded debt contracted in consequence of the war (\$64,000,000), and the amount of the unfunded and floating debt, including the various issues of Treasury notes, \$17,000,000, which is in a gradual course of payment. There will probably be some addition to the public debt upon the liquidation of various claims which are depending, and a conciliatory disposition on the part of Congress may lead honorably and advantageously to an equitable arrangement of the militia expenses incurred by the several States without the previous sanction or authority of the Government of the United States; but when it is considered that the new as well as the old portion of the debt has been contracted in the assertion of the national rights and independence, and when it is recollected that the public expenditures, not being exclusively bestowed upon subjects of a transient nature, will long be visible in the number and equipments of the American Navy, in the military works for the defense of our harbors and our frontiers, and in the supplies of our arsenals and magazines the amount will bear a gratifying comparison with the objects which have been attained, as well as with the resources of the country.

The arrangements of the finances with a view to the receipts and expenditures of a permanent peace establishment will necessarily enter into the deliberations of Congress during the present session. It is true that the improved condition of the public revenue will not only afford the means of maintaining the faith of the Government with its creditors inviolate, and of prosecuting successfully the measures of the most liberal policy, but will also justify an immediate alleviation of the burdens imposed by the necessities of the war. It is, however, essential to every modification of the finances that the benefits of an uniform national currency should be restored to the community. The absence of the precious metals will, it is believed, be a temporary evil, but until they can again be rendered the general medium of exchange it devolves on the wisdom of Congress to provide a substitute which shall equally engage the confidence and accommodate the wants of the citizens throughout the Union. If the operation of the State banks can not produce this result, the probable operation of a national bank will merit consideration; and if neither of these expedients be deemed effectual it may become necessary to ascertain the terms upon which the notes of the

Government (no longer required as an instrument of credit) shall be issued upon motives of general policy as a common medium of circulation.

Notwithstanding the security for future repose which the United States ought to find in their love of peace and their constant respect for the rights of other nations, the character of the times particularly inculcates the lesson that, whether to prevent or repel danger, we ought not to be unprepared for it. This consideration will sufficiently recommend to Congress a liberal provision for the immediate extension and gradual completion of the works of defense, both fixed and floating, on our maritime frontier, and an adequate provision for guarding our inland frontier against dangers to which certain portions of it may continue to be exposed.

As an improvement in our military establishment, it will deserve the consideration of Congress whether a corps of invalids might not be so organized and employed as at once to aid in the support of meritorious individuals excluded by age or infirmities from the existing establishment, and to procure to the public the benefit of their stationary services and of their exemplary discipline. I recommend also an enlargement of the Military Academy already established, and the establishment of others in other sections of the Union; and I can not press too much on the attention of Congress such a classification and organization of the militia as will most effectually render it the safeguard of a free state. If experience has shewn in the recent splendid achievements of militia the value of this resource for the public defense, it has shewn also the importance of that skill in the use of arms and that familiarity with the essential rules of discipline which can not be expected from the regulations now in force. With this subject is intimately connected the necessity of accommodating the laws in every respect to the great object of enabling the political authority of the Union to employ promptly and effectually the physical power of the Union in the cases designated by the Constitution.

The signal services which have been rendered by our Navy and the capacities it has developed for successful co-operation in the national defense will give to that portion of the public force its full value in the eyes of Congress, at an epoch which calls for the constant vigilance of all governments. To preserve the ships now in a sound state, to complete those already contemplated, to provide amply the imperishable materials for prompt augmentations, and to improve the existing arrangements into more advantageous establishments for the construction, the repairs, and the security of vessels of war is dictated by the soundest policy.

In adjusting the duties on imports to the object of revenue the influence of the tariff on manufactures will necessarily present itself for consideration. However wise the theory may be which leaves to the sagacity and interest of individuals the application of their industry and resources, there are in this as in other cases exceptions to the general rule. Besides the condition which the theory itself implies of a reciprocal adoption by other nations, experience teaches that so many circumstances must concur in introducing and maturing manufacturing establishments, especially of the more complicated kinds, that a country may remain long without them, although sufficiently advanced and in some respects even peculiarly fitted for carrying them on with success. Under circumstances giving a powerful impulse to manufacturing

industry it has made among us a progress and exhibited an efficiency which justify the belief that with a protection not more than is due to the enterprising citizens whose interests are now at stake it will become at an early day not only safe against occasional competitions from abroad, but a source of domestic wealth and even of external commerce. In selecting the branches more especially entitled to the public patronage a preference is obviously claimed by such as will relieve the United States from a dependence on foreign supplies ever subject to casual failures, for articles necessary for the public defense or connected with the primary wants of individuals. It will be an additional recommendation of particular manufactures where the materials for them are extensively drawn from our agriculture, and consequently impart and insure to that great fund of national prosperity and independence an encouragement which can not fail to be rewarded.

Among the means of advancing the public interest the occasion is a proper one for recalling the attention of Congress to the great importance of establishing throughout our country the roads and canals which can best be executed under the national authority. No objects within the circle of political economy so richly repay the expense bestowed on them; there are none the utility of which is more universally ascertained and acknowledged; none that do more honor to the governments whose wise and enlarged patriotism duly appreciates them. Nor is there any country which presents a field where nature invites more the art of man to complete her own work for his accommodation and benefit. These considerations are strengthened, moreover, by the political effect of these facilities for intercommunication in bringing and binding more closely together the various parts of our extended confederacy. Whilst the States individually, with a laudable enterprise and emulation, avail themselves of their local advantages by new roads, by navigable canals, and by improving the streams susceptible of navigation, the General Government is the more urged to similar undertakings, requiring a national jurisdiction and national means, by the prospect of thus systematically completing so inestimable a work; and it is a happy reflection that any defect of constitutional authority which may be encountered can be supplied in a mode which the Constitution itself has providently pointed out.

The present is a favorable season also for bringing again into view the establishment of a national seminary of learning within the District of Columbia, and with means drawn from the property therein, subject to the authority of the General Government. Such an institution claims the patronage of Congress as a monument of their solicitude for the advancement of knowledge, without which the blessings of liberty can not be fully enjoyed or long preserved; as a model instructive in the formation of other seminaries; as a nursery of enlightened preceptors, and as a central resort of youth and genius from every part of their country, diffusing on their return examples of those national feelings, those liberal sentiments, and those congenial manners which contribute cement to our Union and strength to the great political fabric of which that is the foundation.

In closing this communication I ought not to repress a sensibility, in which you will unite, to the happy lot of our country and to the goodness of a superintending Providence, to which we are indebted for it. Whilst other portions of mankind are laboring under the distresses of war or struggling with adversity in other forms, the

United States are in the tranquil enjoyment of prosperous and honorable peace. In reviewing the scenes through which it has been attained we can rejoice in the proofs given that our political institutions, founded in human rights and framed for their preservation, are equal to the severest trials of war as well as adapted to the ordinary periods of repose. As fruits of this experience and of the reputation acquired by the American arms on the land and on the water, the nation finds itself possessed of a growing respect abroad and of a just confidence in itself, which are among the best pledges for its peaceful career. Under other aspects of our country the strongest features of its flourishing condition are seen in a population rapidly increasing on a territory as productive as it is extensive; in a general industry and fertile ingenuity which find their ample rewards, and in an affluent revenue which admits a reduction of the public burdens without withdrawing the means of sustaining the public credit, of gradually discharging the public debt, of providing for the necessary defensive and precautionary establishments, and of patronizing in every authorized mode undertakings conducive to the aggregate wealth and individual comfort of our citizens.

It remains for the guardians of the public welfare to persevere in that justice and good will toward other nations which invite a return of these sentiments toward the United States, to cherish institutions which guarantee their safety and their liberties, civil and religious; and to combine with a liberal system of foreign commerce an improvement of the national advantages and a protection and extension of the independent resources of our highly favored and happy country.

In all measures having such objects my faithful co-operation will be afforded.

[\[Back to Table of Contents\]](#)

TO JOHN GRAHAM.

[Filed about June 1, 1816.]

D. Of S. Mss.  
Misc. Lets.

Dear Sir,—

I return the papers sent with yours of the 29<sup>th</sup>. except the letter from E. Lewis, which goes to the Treas<sup>y</sup> Dep<sup>t</sup>. If M<sup>r</sup>. B[agot] 1 has no more power than to receive proposals, 2 I s<sup>d</sup>. have supposed his object in an interview w<sup>d</sup>. have been simply to ask for them, with an assurance of the general disposition of his Gov<sup>t</sup>. to receive them favorably, and that the uncertainty or misconception occasioned by his remarks would have been prevented. I have stated to M<sup>r</sup>. M[onroe] the grounds occurring to me, for a tacit or express arrangement as to the Lake armaments; an essential one being an immediate discontinuance of equipments & preparations. As this already exists on our part, it w<sup>d</sup> be sufficient to give an order to that effect on the other. If even this cannot be done by M<sup>r</sup>. B[agot] and must be reported across the Atlantic, the B[ritish] augmentations going on in the mean time, I see nothing in the transfer of the business to M<sup>r</sup> B[agot] worth the taking it from M<sup>r</sup>. A[dams] the delay is certainly not diminished, and the “general disposition” of the P[rince] R[egent] could have been as promptly expressed, or rather *repeated* to M<sup>r</sup>. A. as conveyed through M<sup>r</sup>. B. The views of the B. gov<sup>t</sup>. I am willing to believe are candid, but the course it has taken, if it proceeds with its equipments, would tempt a different construction. I hope M<sup>r</sup>. B. will yet be brought to have them suspended.

I am reading some Spanish official documents sent by M<sup>r</sup> Dallas. The date of the last is in Dec<sup>r</sup>. 1814. They sanction all the accounts from other sources, of the extreme jealousy & hatred of us prevailing in the Spanish Court, and prove that after the fall of Napoleon, there was a project entertained, for taking advantage of our war with England, and the expected succour of the latter to Spain, to settle all territorial matters with the U. S. according to Spanish wishes.

We have had here as with you, fine rains with somewhat of the other desideratum warm weather. There is however a return of cold, after hurricanes, & destructive showers of hail in spots. In some instances the corn and tobacco have been *totally* demolished by the latter.

Cordial Respects



[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpelier, June 14, 1816.

D. Of S. Mss.  
Misc. Lets.

Dear Sir,—

Altho' the inclosed letter is anonymous, the idea it suggests, of requiring an admission of our Cotton in a half manufactured state at least by nations whose luxuries fully manufactured, are admitted in the U. S. is not unworthy of attention. The general idea I believe has not escaped in the instructions to M<sup>r</sup> Gallatin and M<sup>r</sup>. Pinkney. But it may be well to enforce it and particularly in relation to Cotton Twist, which Russia receives from G. B. whilst her manufactures are excluded by the latter, and which France has lately prohibited even from the U. S. on the principle of reciprocity. The U. S. may reasonably demand such a regulation in their favor; and the nations granting it may with equal reason refuse it to G. B. without a charge of partiality. As the Netherlands have adopted a like policy ag<sup>st</sup>. the U. S. a change may very properly be urged, on the same grounds, by M<sup>r</sup>. Eustis, whether a treaty be or be not contemplated. An admission of cotton twist from this country into Europe, is of vast importance to manufacturing estab<sup>ts</sup>. & indeed to its general interests.

[\[Back to Table of Contents\]](#)

## TO ALEXANDER J. DALLAS.1

Montpelier, July 4, 1816.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup> yours of the 29 June, with the several papers sent with it.

Under the difficult circumstances of the currency, and the obligation to attempt a remedy or at least an alleviation of them, the plan you have in view is entitled to a fair experiment. You do right however in reserving a discretion to judge of the sufficiency of accessions by the State Banks. Should there be a single State, in which a failure of the Banks to accede should reduce the people to the necessity of pay<sup>g</sup>. their taxes in coin, or treasury notes, or a bank paper out of their reach, the pressure and the complaint would be intense, and the more so from the inequality with which the measure w<sup>d</sup>. operate.1

Can the suspension of payments in coin by the principal Banks, be regarded as the precise cause of the undue depreciation of treasury notes, as intimated in the 3<sup>d</sup> paragraph of your Circular? A slight modification, if you think it requisite, would obviate the remark.

As your statement to the President will remain an official document, I suggest for your consideration, the expression that the Treas<sup>y</sup>. “cannot discriminate in the mode of payment between the revenue of the customs and the internal revenue” as liable to be turned ag<sup>st</sup>. the Distinction proposed in the payment of them.

With respect to the validity of this distinction, I should yield my doubts if they were stronger than they are, to the unanimous opinion which has sanctioned it.

I anxiously wish that the State Banks may enter promptly & heartily into the means of re-establishing the proper Currency. Nothing but their general co-operation, is wanting for the purpose; and they owe it to their own character, and ultimately to their own interest, as much as they do to the immediate & vital interest of the Nation. Sh<sup>d</sup> they sacrifice all these powerful obligations to the unfair gain of the moment, it must remain with the State Legislatures to apply the remedy, and it is to be hoped that they will not be diverted from it either by their share in the gains of the Banks, or the influence of the Banks on their deliberations. If they will not enforce the obligation of the Banks to redeem their notes in specie, they cannot surely forbear to enforce the alternatives of redeeming them with public stock, or with national Bank notes, or, finally of paying interest on all their notes presented for payment. The expedient also of restricting their circulating paper in a reasonable proportion to their metallic fund, may merit attention as at once aiding the credit of their paper, and accelerating a resumption of specie payments.

I enclose the papers marked A, B, & C, to guard ag<sup>st</sup> the possibility, that you may not have copies of them with you.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpelier July 13 1816.

D. Of S. Mss.  
Misc. Lets.

Dear Sir

Herewith are the papers rec<sup>d</sup>. from M<sup>r</sup>. Hughs. He seems to have been no wise sparing of diplomatic politeness to the Spanish Gov<sup>r</sup>. You will of course express the satisfaction afforded by the successful execution of his commission in reference to our Captive Citizens with an approbation of the interest taken in behalf of the English & French captives, and forward the documents to M<sup>r</sup>. Erving,<sup>1</sup> with instructions to press at Madrid the restitution of the Am<sup>a</sup>. property refused to M<sup>r</sup>. Hughs. If the Spanish authorities had had [sic] taken the ground that the property was forfeited by the aid and comfort it afforded to rebels, it would have involved the discussion commenced with M<sup>r</sup>. Onis, and have avoided the inconsistency now added to their injustice. In resting the seizure on the alleged Blockade, which was a spurious one, and substituting a decoy, for the warning, required by the L. of N. to neutrals, they have disarmed themselves of every plea, or rather have armed us with every plea ag<sup>st</sup>. them.

You will find herewith also the 2 letters from M<sup>r</sup>. Onis.<sup>2</sup> His complaint of expeditions from our ports ag<sup>st</sup>. Spanish commerce, are entitled to the ordinary answer. His conciliatory remarks introducing them, are too guarded to mean much that is favorable, if they do not cover a disposition to thwart some of our demands on Spain. It appears from his final paragraph that his participation in the transactions relating to Louisiana, is to be produced as testimony ag<sup>st</sup>. us. Will it not be well, in forwarding the correspondence to M<sup>r</sup>. Erving to furnish him with the facts of an opposite tendency which fall within your personal knowledge.<sup>1</sup> Great stress will doubtless be laid by the Spanish Gov<sup>t</sup>. on the principle asserted by Onis, that France & Spain alone who were parties to the Treaties, can interpret the respective intentions recorded in them. To this must be opposed the meaning deducible by the legal rules of interpretation, and the fact that the U. S. were bona fide purchasers without notice of any other interpretation, altho' Spain was not ignorant of our views, of purchasing, and even referred us to France as alone having the right to sell.—The second letter of Onis shows adroitness; but it does not clear his Gov<sup>t</sup>. from the charge of not proceeding at Algiers in the spirit we were authorized to expect. If However Algiers obtained the Brig, without redeeming it from Spain no pretext remains for a demand on the U. S.

Cordial Regards

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

Montp<sup>r</sup>. July 26, 1816.

Dear Sir

.....

Herewith are the communications from M<sup>r</sup>. Adams. He pinches Castlereagh not a little. I always suspected that the enlistments & apprenticeship of captured Negroes, in the W. Ind<sup>s</sup>. would be the refuge ag<sup>st</sup>. the allegations on our part. [2](#)

But, if the former be for life, & the latter for 14 years even for those of mature age, both be *forced*, as the law & order in council shew, how can either be a situation in which the unfortunate blacks are protected in the *privileges of freedom*? Nor is it conceivable that the act of Parl<sup>t</sup>, which contemplates evidently the *African* trade, and *seizures on the high seas*, can be fairly applied to negroes in the U. States in a slavery originating with G. B. herself, seduced or forced therefrom with her sanction, and rec<sup>d</sup>. on board vessels within the waters of the U. S. As the B. Gov<sup>t</sup>. [illegible] a full [illegible] into the charges ag<sup>st</sup>. its officers, whether w<sup>th</sup> a view to discredit this Gov<sup>t</sup>. or for whatever other purpose, it will be proper to promote the establishment of the truth. It will be particularly proper to keep in the front of the transaction, the inviting proclamation of the B. Commander, and the bondage de facto into which, it is admitted, that the negroes are placed, under the name of freedom & protection. I hope M<sup>r</sup> Adams will not fail in the most suitable stage of the business to do justice to this view of the subject. It will put our charges on defensible ground, even if we fail to establish what is fairly to be believed, that the captives or fugitives in question were sold into the ordinary slavery of the W. Indies. The object of L<sup>d</sup>. Castlereagh evidently is to draw the question to a point most difficult of proof, and in the failure of it to avail himself of an ostentatious zeal for an impracticable investigation.

Yours

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpellier Aug. 4, 1816.

D. Of S. Mss.  
Miscl. Lets.

Dear Sir

I rec<sup>d</sup>. yesterday the 2 letters from Onis herewith returned, and today copies of the papers transmitted by M<sup>r</sup>. Crowninshield, which as the originals are in the Dep<sup>t</sup>. I return. The law of nations, and our position in relation to the contest between Spain & Spanish America will of course govern the reply to these representations.

The remarks of Judge Story as to the fisheries are valuable, and furnish some precise objects for discussion with the B. Gov<sup>t</sup>. If Mr. B[agot] will accede to the most favorable arrangements marked out, it may be well to close with him. Whether the one next best ought to be accepted, is a more delicate question; notwithstanding the opinion of Mr. Crowninshield on the subject. I do not think in the present temper & situation of G.B. that delay with a prudent conduct on our part will injure our prospects. And it appears after all, that the right to cure fish on the B. shores, the fish cured on them being the proportion only of ? or ? of those caught by our vessels in those waters, is of less importance than was supposed. How far the waters within the marginal league have been used, and w<sup>d</sup>. be prohibited if not stipulated is to be ascertained. On the whole, I still think unless an arrangement likely to be satisfactory can be obtained, it will be better to prolong the negotiation, than to cut it short from a despondence as to better terms. I observe that J. Story represents the shores of Labrador as a good deal settled. If this be the fact and could appear in an arrangement of our use of them, we might accept the use of the shores without any unselfish surrender of our pretensions, which are limited to unsettled districts. Perhaps M<sup>r</sup>. B. may be willing to make a partial arrangement, leaving open the negotiation for its extension. If this can be done in a form avoiding implications adverse to our claims, it w<sup>d</sup>. be a safe & might be an eligible course. It might be predicated on the want of full information, and the purpose of obtaining it. The sources of further information pointed at by the Judge may deserve attention.

Best Respects & Regards

[\[Back to Table of Contents\]](#)

TO JOHN GRAHAM.

Montpellier Aug. 5, 1816.

D. Of S. Mss.  
Misc. Lets.

Dear Sir

I return the letter from M<sup>r</sup>. Bagot. [1](#) It manifests a good disposition on his part, and on that of the Commander in chief in Canada. But it appears by communications to the War Dep<sup>t</sup>. from one of our own sources, that the hostile purposes of the Indians in question are the effect, of instigations from British Traders. I have desired M<sup>r</sup>. G. Graham to lay these communications before the Dep<sup>t</sup>. of State. In connection with those from M<sup>r</sup>. B. they will bring the whole subject into the conversation desired by M<sup>r</sup>. B. The British authorities ought to repress a resort to their posts, of Indians from our side of the boundary, at least for political purposes; and to prohibit effectually the misconduct of their traders. If this be not done we must strengthen our military establishments, on that quarter, and hasten the exclusion of British traders from intercourse with Indians within our limits. It will certainly be better for the British to cooperate with us in keeping the Indians within rule, than to force us into the alternatives. I am glad you are likely to obtain at length a translation of the Algerine letter. I wrote to M<sup>r</sup>. Monroe on the receipt of it, to send with the translation an answer ready to be signed. This can best be drawn at Washington, where all the circumstances are most distinctly in view, including those connected with the Navy Dep<sup>t</sup>., and the lapse of time increases also the reason for diminishing delay.

Friendly Respects

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpellier Aug. 6 1816.

D. Of S. Mss.  
Misc. Lets.

Dear Sir

I have just rec<sup>d</sup>. yours of the 3<sup>d</sup> and return without delay the several letters inclosed in it. The apprehensions of M<sup>r</sup> Shaler, are instigated at least by the recent occurrence, if true, at Oran, and its probable effect on the relations of G. B. & Algiers. 1 M<sup>r</sup>. Adams's idea of making his country the sole champion of Xndum against the Barbarians, is very heroic, but is not in perfect harmony with the sober spirit which tempers its zeal & interprize. If we can maintain an elevated position in the Mediterranean for ourselves, and afford that example for others, it will, for the present at least, best reconcile all our duties.

Friendly Respects



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

Montpelier Aug. 13, 1816.

Dear Sir

I have yours of the 12<sup>th</sup> intended for the 11<sup>th</sup> inst: I have no map by which I can judge of the comparative values of the 2 offers of M<sup>r</sup>. Bagot as to the fisheries. [2](#) There will be some delicacy in referring the arrangement to M<sup>r</sup>. A. who prefers a decision here, and will say that we having better means of procuring the necessary information we ought not to put the task & responsibility on him. If M<sup>r</sup> Bagot will not favor an arrangement which we can acquiesce in I still think it will be best to decide nothing but to instruct M<sup>r</sup>. A. to press the subject in such an extent as we think admissible, and to engage as far as we can the co-operation of M<sup>r</sup>. B. As to armaments on the Lakes, M<sup>r</sup>. A. may be furnished with our propositions and if they be concurred in the effect will be accelerated, in case the B. Gov<sup>t</sup>. be liberal eno' to send over the necessary orders, without waiting for the consummating forms. If it be understood that Shaler intends or wishes to leave Algiers, [3](#) Poinsett may take his place; and in the event of an ulterior mission, he will be so far on his way. I think, however, he ought not to be permitted to form any ulterior expectations as well because the ulterior mission in question is of too important & too delicate a nature to be hastily contemplated, as because unforeseen selections may become preferable.

As you will so soon be here I leave for consultation the choice of an agent for the pacific. The gentleman you name comes fairly into a comparative view of characters.

Affec<sup>t</sup> Respects

[\[Back to Table of Contents\]](#)

## TO ALEXANDER J. DALLAS.

Montpellier Aug<sup>t</sup>. 25, 1816.

Mad. Mss.

Dear Sir

Since the rece<sup>t</sup>. of your several letters relating to the Treasury proposition,<sup>1</sup> & the decision of Bank Deputies at Phil<sup>a</sup>. my thoughts have been duly turned to the important & perplexing subject. Altho' there may be no propriety in recalling the proposition, it seems now certain that it will fail of its effect. Should the Banks not represented at Phil<sup>a</sup>. come into the measure, the refusal of those represented would be fatal. The want of a medium for taxes in a single state would be a serious difficulty; so extensive a want would forbid at once an enforcement of the proposition. The Banks feel their present importance & seem more disposed to turn it to their own profit than to the public good, & the views of the Gov<sup>t</sup>. Without their co-operation it does not appear that any immediate relief can be applied to the embarrassments of the Treasury or of the currency. This co-operation they refuse. Can they be coerced?

Should the State Legislatures unite in the means within their power, the object may be attained. But this is scarcely to be expected; & in point of time is too remote. The National Bank must for a time at least, be on the defensive.

The interposition of Congress remains; & we may hope the best as to a vigorous use of it. But there is danger that the influence of the local Banks may reach even that resource. Should this not be the case, the remedy is future not immediate. The question then before us is, whether any & what further expedients lie with the Executive. Altho we have satisfied by what has been already attempted our legal responsibility, it would be still incumbent on us to make further experiments if any promising ones can be devised. If there be such I have full confidence, that they will enter into your views on the subject. One only occurs to me; & I mention it because no other does, not because I regard it as free from objections which may be deemed conclusive. The notes in the Treasury might be presented to the Banks respectively with a demand of the specie due on the face of them. On refusal suits might be immediately instituted not with a view to proceed to execution, but to establish a claim to interest from the date of the demand. The notes thus bearing interest being kept in hand, Treasury notes bearing interest might be issued in payments from the Treasury; & so far injustice to the several classes of creditors might be lessened, whilst a check would be given to the unjust career of the Banks.

Such a proceeding ought to be supported by the Stockholders, the Army, the Navy, & all the disinterested & well-informed part of the community. The clamor ag<sup>st</sup>. it would be from the Banks & those having interested connections with them, supported by the honest part of the community misled by their fallacies; and the probability is but too great that the clamor would be overwhelming. I do not take into view the expedient of requiring a payment of the Impost, in specie, in part at least, because it could not be extended to the other taxes, & would in that respect as well as otherwise, be a measure

too delicate for the Ex: Auth<sup>y</sup>; nor would its effect be in time for any very early purpose.

I have been led by the tenor of your letters to put on paper these observations. The report you are preparing will doubtless enlighten my view of the whole subject.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

Montpellier Aug. 28, 1816.

Dear Sir

Among the inclosures is a very ex<sup>ty</sup> letter from M<sup>r</sup> De Neuville. [2](#) It was brought by his private Secretary from whom I thought it better for several reasons to receive it, than to let him proceed with it to your House. As its contents were neither known nor guessed, it was possible that they might call for an attention which my knowledge of them might hasten and it was desirable for you that you should not be [obliterated] with the Bearer if not necessary. It was a further calculation that an *immediate* answer if not convenient might thus be avoided. The young Secretary left me with a mere intimation to him, that his dispatch would be answered by the Sec<sup>y</sup>. of State. M<sup>r</sup>. De Neuville could not have given a greater proof of want of judgment than in putting the amity of the two countries on such an issue, or of a personal wish to flatter the ultra royal Bourbons who may ere long accede to the throne. The proper answer to him will be facilitated by his undertaking to *dictate* the *precise* reparation in the case. Common delicacy would have demanded an adequate one in general terms, leaving the particular mode to the Gov<sup>t</sup>. and the arrogance of the manner in which he has disregarded it, forfeits the respect that might be otherwise due to his complaint. It will be well if possible by a conciliatory language towards his sovereign to counteract the efforts of his minister to work up a trivial incident into a provoking enormity, and to awaken his attention to our just sensibility to the indecorous & unauthorized step of the latter. It would seem as if De N. hoped to hide the degradation of the Bourbons in Europe, under a blustering deportment in a distant country. Whatever may be the answer to his letter, it will be proper to hasten communications & instructions to M<sup>r</sup>. Gallatin on the whole subject.

Dashkoff's letter also among the inclosures, revives the question how far anything beyond the despatches by M<sup>r</sup>. Coles is called for by the posture of Kozloff's affair. Perhaps it may not be amiss for you to write a letter to the Russian Secy. of For. Aff<sup>s</sup>. [1](#) referring to that of Dasch<sup>f</sup> and relying, with expressions of respect & friendship here for the Emperor, on the communications by M<sup>r</sup>. Coles, as of a satisfactory import. It is however to be recollected that the instructions to Dash<sup>f</sup>. were given prior to the last discussions transmitted by Mr. Harris. . . .

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

[Montpellier] Sep<sup>r</sup> 6, 1816.

Dear Sir

On perusing your letters to Mr. De Neuville, and M<sup>r</sup>. Gallatin, [2](#) some ideas occurred which induced me to put them on paper for your consideration. Those relating to the first letter are interlined with a pencil. Those relating to the 2<sup>d</sup>. are partly so & partly penned on a separate sheet. In the communication to M<sup>r</sup>. G. I. thought it might be not amiss to suggest the several topics which he may find it expedient to develop orally or in writing. Reject or use any or the whole as you judge best.

As De Neuvilles communication to his gov<sup>t</sup>. may first arrive and forestall impressions at Paris, the interlineation in pa. 2<sup>d</sup>. of the letter to him, is intended to suggest an important and very pertinent fact which may not be known there, & which he will not disclose, and to controul the effect of his magnifying comments on the subject. Whether this last part of the interlineation merits adoption is the more questionable of the two.

The little delay occasioned by this retrograde of the papers is not material as De Neuville himself will think on rec your answer. But to avoid a protraction of it, it will be best to sign blank sheets (if there be not more signed at the office) for copies of the letters whatever the final shapes you give them, and to send these with your drafts directly to M<sup>r</sup> Graham, with instructions to forward triplicates immediately to M<sup>r</sup>. Gallatin; perhaps one ought to be forwarded thro' G. B. I have no objection if you think it proper to your intimating to M<sup>r</sup>. Gallatin that the *recall* of De Neuville is not our object, nor wish if his continuance be agreeable to his gov<sup>t</sup>.

[\[Back to Table of Contents\]](#)

TO W. H. CRAWFORD.

Montpellier, Sep<sup>r</sup> 23, 1816.

Mad. Mss.

Dear Sir

I have just rec<sup>d</sup>. from Mr. Monroe a very extraordinary communication, *confidentially* made to him by Col. Jessup. A copy of it is inclosed. An invasion by a Spanish force at the present period might be pronounced a mere chimoera, if a less degree of folly reigned at Madrid; unless, indeed the Councils of Spain sh<sup>d</sup>. be supported by a power, whose councils may reasonably be more confided in. It is probable however that Onis is intriguing at N. Orleans, and the extent to which he may mislead, an ignorant proud & vindictive Gov<sup>t</sup>. cannot be calculated. It is incumbent on us therefore to have an eye to our S. W. Frontier, proportioning our precautions to our means, and to a fair estimate of the danger. As Gen: Jackson is apprized of the apprehensions of Col. Jessup, tho' without some of the grounds of them mentioned to Mr. Monroe, we may expect soon to hear from him on the subject. Are there any reinforcements or defences, which can be added to those now within his employment? Should Jessup execute his purpose, it will be the boldest project, ever assumed by no higher authority. I communicate the intelligence he gives, to the Sec<sup>y</sup> of the Navy. Be so good as to do the same to your Colleagues at Washington. [1](#)

[\[Back to Table of Contents\]](#)

## TO WILLIAM H. CRAWFORD.2

Montpellier, Sep<sup>r</sup>. 23, 1816.

Dear Sir

I have rec<sup>d</sup>. yours of the 20<sup>th</sup>. inst. The claim of M<sup>r</sup>. Knagg involves an important question:—what is the effect produced on the salaries of persons made prisoners by an Enemy by & during their captivity?

Civil officers are of two classes. 1. Those holding during good behaviour.

2. Those holding during pleasure.

Whilst the officers of the 1<sup>st</sup> class continue and the officers are not removed in the mode authorized, the salaries are legally due, and cannot be withheld by the Ex: auth<sup>y</sup>.: and it is understood that neither the capture of the officer, nor even the capture of the office by that of the place including it (unless peace sh<sup>d</sup>. transfer the right to the possessor) annuls the office. The former suspends the functions of the officer, and the latter the office itself. In the former case temporary provision when necessary can only be made by the Legislative authority. In the latter case the temporary provision will depend on the conqueror.

With respect to officers holding during pleasure, their claim to their salaries appears to be legal, whilst their offices continue, and no removal, or other appointment involving a removal takes place.

The claim of W. K. then depends on the question whether his two app<sup>ts</sup>. or either of them was of a nature to cease with the capture of Detroit and of himself, and if not whether, as no direct removal appears to have taken place, any other appointment was made, actually superceding his.

The latter is a simple question of fact to be decided by the evidence in the Dept.

The former question must be decided by the character of the appointments in the eye of the law. Is that of a *deputy* Indian agent, an *office* which would be vacated only not extinguished by the death removal or resignation of the person exercising it; or a personal agency ceasing with the non-exercise of it? Is the app<sup>t</sup>. of Indian Interpreter, in like manner, an office & an agency, as so distinguished?

Not finding it convenient in my present situation to examine our laws fully in relation to these app<sup>ts</sup>. and aware that there is merit often in discriminating between an office & an agency I cannot do better than request you to communicate these observations with the interesting ones contained in your letter to the other members of the Cabinet at Washington; and transmit me the results of a consultation on the whole subject.

Should there be no difference of opinion & delay be inconvenient it may be acted on, without hearing further from me.

Genl. Hull presented some time ago a claim for two salaries during his captivity, and pressed strongly the reasoning which gave most color to it. His military claim I believe was viewed in a different light from his salary as gov<sup>r</sup> at the time when he was charged with the Expedition which had so unfortunate an issue.



[\[Back to Table of Contents\]](#)

## TO WILLIAM H. CRAWFORD. 1

Montpellier, Sep<sup>r</sup> 30, 1816.

Dear Sir,—

I have received your two letters of the 27th and 28th. The views taken by yourself and your colleagues at Washington of the subject presented by Col. Jesup's communication, and your letters to the Secretary of the Navy and General Jackson in consequence of them, were very proper. The part of the precautionary arrangements involving most delicacy is that of sending the naval force into the Gulf of Mexico. Besides the unavoidable delay, I fear the expense of equipment will be considerable, under an appropriation known to be deficient. It will be well to give him the earliest notice of any change in the prospect releasing the Navy Department from the call. The letter from Mr. Erving goes far towards it, and further intelligence from him may be daily expected. As a communication of the contents of Col. Jesup's letter to the Governors of Georgia, Kentucky, Tennessee, and Louisiana, will lead to no immediate expense, nor to any unnecessary public excitement, it is recommended by the general policy of anticipating danger and guarding against it. I am glad to find General Jackson's views coinciding with those transmitted to him.

I sent to the Attorney General the papers received by the Navy Department from Commodore Patterson, relating to the destruction of the Negro fort, and the property taken in it, with a request from the Commodore that a decision might be had on the distribution of the property among the captors. I referred Mr. Rush, also, to the report, when received from Col. Clinch. Be so good as to let him see the communications from that officer, now returned. The case is novel, and involves several legal questions.

I perceive that a part of the Negroes captured were deserters from the Spaniards, who will therefore be gainers by breaking up the establishment on the Apalachicola. This is another consideration which may prevent complaints from that quarter. It may be recollected, also, that the Governor of Pensacola declared that territory not to be within Spanish jurisdiction.

Jameson's remarks in favor of making the seat of the factory the seat of his agency have weight. His pacific mediations among the Indians may also be recommended by a humane policy. But I think it will be best to discountenance the proposed visit of some of them to Washington. We complain at present of the reception of our Indians even at British outposts, and we may find occasion for making a point of putting an end to that sort of intercourse.

Mr. Monroe has not yet arrived on his way to Washington, and I cannot fix on the day of my setting out until he does. Some other circumstances, also, have been in the way.

I fear I shall not be able to put an end to the detention before the last of the week; possibly not before Monday next.

I have already mentioned to you the answer of Mr. Clay, declining the offer made to him.<sup>1</sup> Altho' Mr. Lowndes has not had occasion to manifest particular qualifications for the War Department, his general talents and public standing present him in very favorable comparison with any other occurring for consideration.

Cordial regards.

[\[Back to Table of Contents\]](#)

## TO WILSON CARY NICHOLAS.1

Montpellier Oct. 5. 1816.

Dear Sir

I have recd. yours of the 30<sup>th</sup>. ult.2 It will afford me pleasure to promote your wishes in behalf of Mr. Armistead; and the pleasure will be increased by my recollection of the period & persons to whom you allude. It is incumbent on me at the same time to remark that it is the usage, to leave to the heads of Dep<sup>ts</sup>. the selection of their own clks. which the law vests in their discretion & responsibility; that they generally have their preferences often founded on relations of friendship and personal confidence; and there is always depending a list of applicants for the few vacancies which occur, some of which pretensions may have peculiar force. My connection with such appointments is much less therefore than might be supposed, and I mention it that in the event of disappointment it may not be inferred that I have been insensible or inattentive to the object you so justly have at heart.

Mr. Dallas has & will have explained so fully his measures with the grounds of them, that I need say very little on the subject. If any have supposed him not conciliatory toward the Banks, they have done him great injustice. As to the epoch of enforcing specie payments the law had fixed on the 20<sup>th</sup>. of Feb<sup>y</sup>. next; with an evident obligation on him to anticipate it if practicable. Many of the Banks, instead of co-operating with him for the latter purpose, have announced purposes at variance with the positive injunctions of the law. It can scarcely be doubted that if the Banks had concerted a general concurrence with the views of the Treasury, the former confidence & currency would have been easily re-established by the time fixed by Congress, and probably sooner. Nor can it well be doubted that such a concert would have taken place, if the Bank dividends had been as much favored by the effort, as they might, at least for a time, be reduced by it. I am far from applying these remarks to all the Banks. There are exceptions which we could jointly name with equal pleasure. But it is certain that as far as the Banks have not done their duty, they have to answer for the injustice done by a depreciated currency to particular states, to the public creditors, to the Army, to the Navy, and even to private creditors who were in a manner forced to receive their debts in that currency. Had the Banks sold their public stock for their own notes with which they procured it when they could have done so with a liberal profit, or had they agreed to pay interest on their protested notes, whilst they received interest on the paper pledged to them, they would have stood on different ground. But they preferred, too many of them, to these sacrifices, or rather to these acts of justice, an increased issue of notes on a capital as productive nearly as the notes issued on that basis. Taking the whole subject as we find it, it is not easy to say what Congress, with whom it lies, may decide on. There is sufficient reason to believe that if the crisis requires a relaxation they will not withhold it. But there are indications that a resumption of specie payments, is rapidly becoming practicable and popular. If the demand of Spain to discharge a foreign balance ag<sup>st</sup>. the nation, should not raise the Exchange above the Expence and difficulty of exporting it; the Banks in

general will run no risk in uniting at once with the National Banks in restoring health to the currency, and justice to all transactions public & private. . . .

[\[Back to Table of Contents\]](#)

## TO JOHN ADAMS.

Washington, Oct<sup>r</sup>. 12th, -16.

Mad. Mss.

Dear Sir

Your favor of the 4th of Sep<sup>r</sup>. was handed to me by Doctor Freeman at my abode in Virg<sup>a</sup>. just before I left it for this place. His transient stay afforded but a slight opportunity for the civilities I wished to shew to one who enjoys so much of your esteem, and who appeared so well to deserve them. He was so good as to call at the door since my arrival here; but being at the moment engaged, he was so informed without my being apprised of the name, till he had retired; and his ensuing departure from the City closed our intercourse, unless he should repeat his southern excursion when I shall pay with pleasure the arrears due on the first.

Mrs. Madison, wishing to seize the occasion for a letter to Mrs. Adams, has herself answered the enquiry in yours to me having reference to her. You will perceive that she has not the slightest recollection of any letter to Mr. Steel, such as could have led to the intimations in yours. We conclude therefore that some error has taken place in the statement made to you. It will rest with your goodness & conveniency to throw any light upon it, which you may have the means of doing, and which you may think the subject worthy of. I beg you to be assured that I join fully in her acknowledgments for the delicate manner in which you have alluded to it, and for the kind dispositions which it has led you to express.

The favorable judgment you are so good as to express on the course of my administration, cannot but be very gratifying to me; not merely for the immediate value I set on it, but as an encouraging presage of the light in which my endeavours in the service of my country will be hereafter viewed by those most capable of deciding on them.

Be pleased to accept, Dear Sir assurances of my high esteem and best wishes.

[\[Back to Table of Contents\]](#)

## EIGHTH ANNUAL MESSAGE.

### Fellow-Citizens Of The Senate And Of The House Of Representatives:

December 3, 1816.

In reviewing the present state of our country, our attention can not be withheld from the effect produced by peculiar seasons which have very generally impaired the annual gifts of the earth and threatened scarcity in particular districts. Such, however, is the variety of soils, of climates, and of products within our extensive limits that the aggregate resources for subsistence are more than sufficient for the aggregate wants. And as far as an economy of consumption, more than usual, may be necessary, our thankfulness is due to Providence for what is far more than a compensation, in the remarkable health which has distinguished the present year.

Amidst the advantages which have succeeded the peace of Europe, and that of the United States with Great Britain, in a general invigoration of industry among us and in the extension of our commerce, the value of which is more and more disclosing itself to commercial nations, it is to be regretted that a depression is experienced by particular branches of our manufactures and by a portion of our navigation. As the first proceeds in an essential degree from an excess of imported merchandise, which carries a check in its own tendency, the cause in its present extent can not be of very long duration. The evil will not, however, be viewed by Congress without a recollection that manufacturing establishments, if suffered to sink too low or languish too long, may not revive after the causes shall have ceased, and that in the vicissitudes of human affairs situations may recur in which a dependence on foreign sources for indispensable supplies may be among the most serious embarrassments.

The depressed state of our navigation is to be ascribed in a material degree to its exclusion from the colonial ports of the nation most extensively connected with us in commerce, and from the indirect operation of that exclusion.

Previous to the late convention at London between the United States and Great Britain the relative state of the navigation laws of the two countries, growing out of the treaty of 1794, had given to the British navigation a material advantage over the American in the intercourse between the American ports and British ports in Europe. The convention of London equalized the laws of the two countries relating to those ports, leaving the intercourse between our ports and the ports of the British colonies subject, as before, to the respective regulations of the parties. The British Government enforcing now regulations which prohibit a trade between its colonies and the United States in American vessels, whilst they permit a trade in British vessels, the American navigation loses accordingly, and the loss is augmented by the advantage which is given to the British competition over the American in the navigation between our

ports and British ports in Europe by the circuitous voyages enjoyed by the one and not enjoyed by the other.

The reasonableness of the rule of reciprocity applied to one branch of the commercial intercourse has been pressed on our part as equally applicable to both branches; but it is ascertained that the British cabinet declines all negotiation on the subject, with a disavowal, however, of any disposition to view in an unfriendly light whatever countervailing regulations the United States may oppose to the regulations of which they complain. The wisdom of the Legislature will decide on the course which, under these circumstances, is prescribed by a joint regard to the amicable relations between the two nations and to the just interests of the United States.

I have the satisfaction to state, generally, that we remain in amity with foreign powers.

An occurrence has indeed taken place in the Gulf of Mexico which, if sanctioned by the Spanish Government, may make an exception as to that power. According to the report of our naval commander on that station, one of our public armed vessels was attacked by an overpowering force under a Spanish commander, and the American flag, with the officers and crew, insulted in a manner calling for prompt reparation. This has been demanded. In the meantime a frigate and a smaller vessel of war have been ordered into that Gulf for the protection of our commerce. It would be improper to omit that the representative of His Catholic Majesty in the United States lost no time in giving the strongest assurances that no hostile order could have emanated from his Government, and that it will be as ready to do as to expect whatever the nature of the case and the friendly relations of the two countries shall be found to require.

The posture of our affairs with Algiers at the present moment is not known. The Dey, drawing pretexts from circumstances for which the United States were not answerable, addressed a letter to this Government declaring the treaty last concluded with him to have been annulled by our violation of it, and presenting as the alternative war or a renewal of the former treaty, which stipulated, among other things, an annual tribute. The answer, with an explicit declaration that the United States preferred war to tribute, required his recognition and observance of the treaty last made, which abolishes tribute and the slavery of our captured citizens. The result of the answer has not been received. Should he renew his warfare on our commerce, we rely on the protection it will find in our naval force actually in the Mediterranean.

With the other Barbary States our affairs have undergone no change.

The Indian tribes within our limits appear also disposed to remain at peace. From several of them purchases of land, have been made particularly favorable to the wishes and security of our frontier settlements, as well as to the general interests of the nation. In some instances the titles, though not supported by due proof, and clashing those of one tribe with the claims of another, have been extinguished by double purchases, the benevolent policy of the United States preferring the augmented expense to the hazard of doing injustice or to the enforcement of justice against a

feeble and untutored people by means involving or threatening an effusion of blood. I am happy to add that the tranquillity which has been restored among the tribes themselves, as well as between them and our own population, will favor the resumption of the work of civilization which had made an encouraging progress among some tribes, and that the facility is increasing for extending that divided and individual ownership, which exists now in movable property only, to the soil itself, and of thus establishing in the culture and improvement of it the true foundation for a transit from the habits of the savage to the arts and comforts of social life.

As a subject of the highest importance to the national welfare, I must again earnestly recommend to the consideration of Congress a reorganization of the militia on a plan which will form it into classes according to the periods of life more or less adapted to military services. An efficient militia is authorized and contemplated by the Constitution and required by the spirit and safety of free government. The present organization of our militia is universally regarded as less efficient than it ought to be made, and no organization can be better calculated to give to it its due force than a classification which will assign the foremost place in the defense of the country to that portion of its citizens whose activity and animation best enable them to rally to its standard. Besides the consideration that a time of peace is the time when the change can be made with most convenience and equity, it will now be aided by the experience of a recent war in which the militia bore so interesting a part.

Congress will call to mind that no adequate provision has yet been made for the uniformity of weights and measures also contemplated by the Constitution. The great utility of a standard fixed in its nature and founded on the easy rule of decimal proportions is sufficiently obvious. It led the Government at an early stage to preparatory steps for introducing it, and a completion of the work will be a just title to the public gratitude.

The importance which I have attached to the establishment of a university within this District on a scale and for objects worthy of the American nation induces me to renew my recommendation of it to the favorable consideration of Congress. And I particularly invite again their attention to the expediency of exercising their existing powers, and, where necessary, of resorting to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals, such as will have the effect of drawing more closely together every part of our country, by promoting intercourse and improvements and by increasing the share of every part in the common stock of national prosperity.

Occurrences having taken place which shew that the statutory provisions for the dispensation of criminal justice are deficient in relation both to places and to persons under the exclusive cognizance of the national authority, an amendment of the law embracing such cases will merit the earliest attention of the Legislature. It will be a seasonable occasion also for inquiring how far legislative interposition may be further requisite in providing penalties for offenses designated in the Constitution or in the statutes, and to which either no penalties are annexed or none with sufficient certainty. And I submit to the wisdom of Congress whether a more enlarged revision of the criminal code be not expedient for the purpose of mitigating in certain cases



penalties which were adopted into it antecedent to experiment and examples which justify and recommend a more lenient policy.

The United States, having been the first to abolish within the extent of their authority the transportation of the natives of Africa into slavery, by prohibiting the introduction of slaves and by punishing their citizens participating in the traffic, can not but be gratified at the progress made by concurrent efforts of other nations toward a general suppression of so great an evil. They must feel at the same time the greater solicitude to give the fullest efficacy to their own regulations. With that view, the interposition of Congress appears to be required by the violations and evasions which it is suggested are chargeable on unworthy citizens who mingle in the slave trade under foreign flags and with foreign ports, and by collusive importations of slaves into the United States through adjoining ports and territories. I present the subject to Congress with a full assurance of their disposition to apply all the remedy which can be afforded by an amendment of the law. The regulations which were intended to guard against abuses of a kindred character in the trade between several States ought also to be rendered more effectual for their humane object.

To these recommendations I add, for the consideration of Congress, the expediency of a remodification of the judiciary establishment, and of an additional department in the executive branch of the Government.

The first is called for by the accruing business which necessarily swells the duties of the Federal courts, and by the great and widening space within which justice is to be dispensed by them. The time seems to have arrived which claims for members of the Supreme Court a relief from itinerary fatigues, incompatible as well with the age which a portion of them will always have attained as with the researches and preparations which are due to their stations and to the juridical reputation of their country. And considerations equally cogent require a more convenient organization of the subordinate tribunals, which may be accomplished without an objectionable increase of the number or expense of the judges.

The extent and variety of executive business also accumulating with the progress of our country and its growing population call for an additional department, to be charged with duties now overburdening other departments and with such as have not been annexed to any department.

The course of experience recommends, as another improvement in the executive establishment, that the provision for the station of Attorney-General, whose residence at the seat of Government, official connections with it, and the management of the public business before the judiciary preclude an extensive participation in professional emoluments, be made more adequate to his services and his relinquishments, and that, with a view to his reasonable accommodation and to a proper depository of his official opinions and proceedings, there be included in the provision the usual appurtenances to a public office.

In directing the legislative attention to the state of the finances it is a subject of great gratification to find that even within the short period which has elapsed since the

return of peace the revenue has far exceeded all the current demands upon the Treasury, and that under any probable diminution of its future annual products which the vicissitudes of commerce may occasion it will afford an ample fund for the effectual and early extinguishment of the public debt. It has been estimated that during the year 1816 the actual receipts of revenue at the Treasury, including the balance at the commencement of the year, and excluding the proceeds of loans and Treasury notes, will amount to about the sum of \$47,000,000; that during the same year the actual payments at the Treasury, including the payment of the arrearages of the War Department as well as the payment of a considerable excess beyond the annual appropriations, will amount to about the sum of \$38,000,000, and that consequently at the close of the year there will be a surplus in the Treasury of about the sum of \$9,000,000.

The operations of the Treasury continued to be obstructed by difficulties arising from the condition of the national currency, but they have nevertheless been effectual to a beneficial extent in the reduction of the public debt and the establishment of the public credit. The floating debt of Treasury notes and temporary loans will soon be entirely discharged. The aggregate of the funded debt, composed of debts incurred during the wars of 1776 and 1812, has been estimated with reference to the 1st of January next at a sum not exceeding \$110,000,000. The ordinary annual expenses of the Government for the maintenance of all its institutions, civil, military, and naval, have been estimated at a sum less than \$20,000,000, and the permanent revenue to be derived from all the existing sources has been estimated at a sum of about \$25,000,000.

Upon this general view of the subject it is obvious that there is only wanting to the fiscal prosperity of the Government the restoration of an uniform medium of exchange. The resources and the faith of the nation, displayed in the system which Congress has established, insure respect and confidence both at home and abroad. The local accumulations of the revenue have already enabled the Treasury to meet the public engagements in the local currency of most of the States, and it is expected that the same cause will produce the same effect throughout the Union; but for the interests of the community at large, as well as for the purposes of the Treasury, it is essential that the nation should possess a currency of equal value, credit, and use wherever it may circulate. The Constitution has intrusted Congress exclusively with the power of creating and regulating a currency of that description, and the measures which were taken during the last session in execution of the power give every promise of success. The Bank of the United States has been organized under auspices the most favorable, and can not fail to be an important auxiliary to those measures.

For a more enlarged view of the public finances, with a view of the measures pursued by the Treasury Department previous to the resignation of the late Secretary, I transmit an extract from the last report of that officer. Congress will perceive in it ample proofs of the solid foundation on which the financial prosperity of the nation rests, and will do justice to the distinguished ability and successful exertions with which the duties of the Department were executed during a period remarkable for its difficulties and its peculiar perplexities.

The period of my retiring from the public service being at little distance, I shall find no occasion more proper than the present for expressing to my fellow-citizens my deep sense of the continued confidence and kind support which I have received from them. My grateful recollection of these distinguished marks of their favorable regard can never cease, and with the consciousness that, if I have not served my country with greater ability, I have served it with a sincere devotion will accompany me as a source of unfailing gratification.

Happily, I shall carry with me from the public theater other sources, which those who love their country most will best appreciate. I shall behold it blessed with tranquillity and prosperity at home and with peace and respect abroad. I can indulge the proud reflection that the American people have reached in safety and success their fortieth year as an independent nation; that for nearly an entire generation they have had experience of their present Constitution, the offspring of their undisturbed deliberations and of their free choice; that they have found it to bear the trials of adverse as well as prosperous circumstances; to contain in its combination of the federate and elective principles a reconciliation of public strength with individual liberty, of national power for the defense of national rights with a security against wars of injustice, of ambition, and of vainglory in the fundamental provision which subjects all questions of war to the will of the nation itself, which is to pay its costs and feel its calamities. Nor is it less a peculiar felicity of this Constitution, so dear to us all, that it is found to be capable, without losing its vital energies, of expanding itself over a spacious territory with the increase and expansion of the community for whose benefit it was established.

And may I not be allowed to add to this gratifying spectacle that I shall read in the character of the American people, in their devotion to true liberty and to the Constitution which is its palladium, sure presages that the destined career of my country will exhibit a Government pursuing the public good as its sole object, and regulating its means by the great principles consecrated in its charter, and by those moral principles to which they are so well allied; a Government which watches over the purity of elections, the freedom of speech and of the press, the trial by jury, and the equal interdict against encroachments and compacts between religion and the state; which maintains inviolably the maxims of public faith, the security of persons and property, and encourages in every authorized mode that general diffusion of knowledge which guarantees to public liberty its permanency and to those who possess the blessing the true enjoyment of it; a Government which avoids intrusions on the internal repose of other nations, and repels them from its own; which does justice to all nations with a readiness equal to the firmness with which it requires justice from them; and which, whilst it refines its domestic code from every ingredient not congenial with the precepts of an enlightened age and the sentiments of a virtuous people, seeks by appeals to reason and by its liberal examples to infuse into the law which governs the civilized world a spirit which may diminish the frequency or circumscribe the calamities of war, and meliorate the social and beneficent relations of peace; a Government, in a word, whose conduct within and without may bespeak the most noble of all ambitions—that of promoting peace on earth and good will to man.

These contemplations, sweetening the remnant of my days, will animate my prayers for the happiness of my beloved country, and a perpetuity of the institutions under which it is enjoyed.

[\[Back to Table of Contents\]](#)

## TO WILLIAM H. CRAWFORD.

Mad. Mss.

Letter of P. of the U. S. Bank of Feb<sup>y</sup> 1, 1817, covering negotiations and arrangement with Deligates of Banks from N. Y., Phil<sup>a</sup> Baltimore & Virg<sup>a</sup> for resuming specie payments.

The letter & papers returned Feb<sup>y</sup> 4 with the following note:

[February 4, 1817.]

The arrangement communicated by the Presid<sup>t</sup>. of the U. S. Bank is so important an advance towards a universal return of specie circulation, that the Treasury sanction to it, under existing circumstances is evidently proper. Serious difficulties will notwithstanding remain to be encountered, if the principal Banks in *every* State do not immediately follow the example set them. Even in the States comprising the Banks parties to the arrangement, the payment of the internal taxes after the 20th inst. will be distressing to many not possessing the notes of their own Banks. In the other States the payment in the legalized notes, will be generally impossible for a considerable time.

[\[Back to Table of Contents\]](#)

## VETO MESSAGE.

### To The House Of Representatives Of The United States:

March 3, 1817.

Having considered the bill this day presented to me entitled “An act to set apart and pledge certain funds for internal improvements,”<sup>1</sup> and which sets apart and pledges funds “for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions for the common defense,” I am constrained by the insuperable difficulty I feel in reconciling the bill with the Constitution of the United States to return it with that objection to the House of Representatives, in which it originated.

The legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.

“The power to regulate commerce among the several States” can not include a power to construct roads and canals, and to improve the navigation of water courses in order to facilitate, promote, and secure such a commerce without a latitude of construction departing from the ordinary import of the terms strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress.

To refer the power in question to the clause “to provide for the common defense and general welfare” would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers which follow the clause nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them, the terms “common defense and general welfare” embracing every object and act within the purview of a legislative trust. It would have the effect of subjecting both the Constitution and laws of the several States in all cases not specifically exempted to be superseded by laws of Congress, it being expressly declared “that the Constitution of the United States and laws made in pursuance thereof shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.” Such a view of the Constitution, finally, would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the General and the State Governments, inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision.

A restriction of the power “to provide for the common defense and general welfare” to cases which are to be provided for by the expenditure of money would still leave within the legislative power of Congress all the great and most important measures of Government, money being the ordinary and necessary means of carrying them into execution.

If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the States in the mode provided in the bill cannot confer the power. The only cases in which the consent and cession of particular States can extend the power of Congress are those specified and provided for in the Constitution.

I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it can not be deduced from any part of it without an inadmissible latitude of construction and a reliance on insufficient precedents; believing also that the permanent success of the Constitution depends on a definite partition of powers between the General and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it, and to cherishing the hope that its beneficial objects may be attained by a resort for the necessary powers to the same wisdom and virtue in the nation which established the Constitution in its actual form and providently marked out in the instrument itself a safe and practicable mode of improving it as experience might suggest.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Washington, Mar. [Filed March 5] 1817.

D. Of S. Mss.  
Instr.

Dear Sir,—

Altho' your personal and official acquaintance with M<sup>r</sup>. J. Graham, 1 be well known to me, I can not, on the occasion of my final departure from the public service, satisfy myself, without expressing my sense of his great merit.

M<sup>r</sup>. Graham, recommended by my knowledge of his public agency abroad, and of his private virtues, was invited into the Department of State, as the chief under the Head of it, whilst the Department was in my hands. It was my wish, more than his own that was gratified by the appointment. And I have always considered it as the effect of an honorable desire to serve his country, combined with his personal & political feelings, that he remained for so long a period, in a station, without the attractions, which could otherwise have detained him in it.

On these grounds, & from continued & varied opportunities of being intimately acquainted with M<sup>r</sup>. Graham, I not only take a pleasure, but feel an obligation, in saying that I regard him as among the most worthy of men, and most estimable of citizens; as adding to a sound & discriminating judgment, a valuable stock of acquirements adapted to public affairs; and to both, a purity of character, a delicacy of sentiment, and an amenity of temper & manners, exceeded in no instance to which I could refer.

With this view of his capacity to be useful to his country and the principles guarantying a proper exertion of it, I can not but hope that suitable occasions may present themselves for preventing a loss to the public of the services of a citizen, so highly entitled to its confidence.

With the highest consideration & regard, I remain Yours.



[\[Back to Table of Contents\]](#)

## TO JOHN ADAMS. 1

May 22d, 1817.

Dear Sir,—

I have received your favor of April 22d, with the two volumes bearing the name of Condorcet. If the length of time they remained in your hands had been in the least inconvenient to me, which was not the case, the debt would have been overpaid by the interesting observations into which you were led by your return of them.

The idea of a Government “in one centre,” as expressed and espoused by this Philosopher and his theoretic associates, seems now to be every where exploded. And the views which you have given of its fallacy will be a powerful obstacle to its revival anywhere. It is remarkable that in each of our States which approached nearest to the theory changes were soon made, assimilating their constitutions to the examples of the other States, which had placed the powers of Government in different depositories, as means of controlling the impulse and sympathy of the passions, and affording to reason better opportunities of asserting its prerogatives.

The great question now to be decided, and it is one in which humanity is more deeply interested than in any political experiment yet made, is, whether checks and balances sufficient for the purposes of order, justice, and the general good, may not be created by a proper division and distribution of power among different bodies, differently constituted, but all deriving their existence from the elective principle, and bound by a responsible tenure of their trusts. The experiment is favored by the extent of our Country, which prevents the contagion of evil passions; and by the combination of the federal with the local systems of Government, which multiplies the divisions of power, and the mutual checks by which it is to be kept within its proper limits and direction. In aid of these considerations much is to be hoped from the force of opinion and habit, as these ally themselves with our political institutions. I am running, however, into reflections, without recollecting that all such must have fallen within the comprehensive reviews which your mind has taken of the principles of our Government, and the prospects of our Country.

I have always been much gratified by the favorable opinion you have been pleased occasionally to express of the public course pursued while the Executive trust was in my hands, and I am very thankful for the kind wishes you have added to a repetition of it. I pray you to be assured of the sincerity with which I offer mine, that a life may be prolonged which continues to afford proofs of your capacity to enjoy and make it valuable.

[\[Back to Table of Contents\]](#)

TO D LYNCH, JUN<sup>R</sup>.

Montpellier, June 27, 1817.

Mad. Mss.

Sir

I have rec<sup>d</sup>. your letter of the 18th inst. informing me that “the Am<sup>n</sup>. Society for the encouragement of domestic Manufactures” have been pleased to elect me one of its members.

Altho’ I approve the policy of leaving to the sagacity of individuals, and to the impulse of private interest, the application of industry & capital, I am equally persuaded, that in this as in other cases, there are exceptions to the general rule, which do not impair the principle of it. Among these exceptions, is the policy of encouraging domestic manufactures, within certain limits, and in reference to certain articles.

Without entering into a detailed view of the subject, it may be remarked, that every prudent Nation will wish to be independent of other Nations for the necessary articles of food, of raiment, and of defence; and particular considerations applicable to the U. S. seem to strengthen the motives to this independence.

Besides the articles falling under the above description, there may be others for manufacturing which, natural advantages exist, which require temporary interpositions for bringing them into regular & successful activity.

When the fund of industry is acquired by emigrations from abroad, and not withdrawn or with-held, from other domestic employments, the case speaks for itself.

I will only add, that among the articles of consumption and use the preference in many cases, is decided merely, by fashion or by habits. As far as an equality, and still more where a real superiority is found in the articles manufactured at home, all must be sensible that it is politic and patriotic to encourage a preference of them, as affording a more certain source of supply for every class, and a more certain market for the surplus products of the agricultural class.

With these sentiments, I beg you to make my acknowledgments for the mark of distinction conferred on me; and which I accept from a respect for the Society and for its objects rather than from any hope of being useful as a Member.

To yourself Sir, I tender my friendly respects.

[\[Back to Table of Contents\]](#)

## TO RICHARD RUSH.

Montpellier, June 27, 1817.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your two favors of the 18 & 20th inst.<sup>1</sup> I am promised a visit from Mr. Jefferson the ensuing month, and shall not fail to communicate to him the one you note for that purpose.

I readily conceive that Mr. Correa,<sup>2</sup> may feel some conflict in his present position, between his two characters of Philanthropist and Plenipotentiary; and that he may infer some indulgence towards the latter from a respect to the former. He ought not however to impose on you a conflict between this kind feeling in the Gov<sup>t</sup>. and its self-respect. It is both illiberal & impolitic, and necessarily extorts the admonitions you so gently convey to him.

In assuming a guardianship of our character in Europe, he committed to say the least, a marked indelicacy; and his avowed resort to the Press as the medium of giving information to the public here, was a still greater aberration. His regard for our National reputation if sincere, might have been manifested in a less exceptionable mode, than in an *official* conversation. And his consciousness of the wrongfulness of a direct communication to the people, is betrayed by the flimsiness of his apology. A silly reason from a wise man is never the true one.

The British doctrine of Blockades has given rise to error & irregularity in the practice of other nations. In strictness, the blockade notifies itself, and no other notification can be admitted by Neutrals who understand their rights as having any other effect, than as a friendly caution ag<sup>st</sup> a probable danger. But even in this sense, the notification ought to be to the Gov<sup>t</sup>. which may make the use of it deemed proper. This Gov<sup>t</sup>. has never formally promulgated the blockades, more than any other regulations of foreign Gov<sup>ts</sup>. The most that seems admissible in such cases, is to let the public be informally apprized of them that individuals may not ignorantly incur just penalties. In one instance an answer was given by the Dep<sup>t</sup>. of State to a notification of a B. Blockade by Mr. Merry, which according to my recollection explained the sense in which it was rec<sup>d</sup>. and precluded the idea, that anything short of an *actual* attempt to violate a *legal* blockade, could subject neutral vessels to interruption on the high seas. Notwithstanding these views of the subject, I am not sure, that foreign Consuls in our ports may not have addressed notifications to our Merchants through the Newspapers. And it may be worth enquiry whether something of the sort was not done by Mr. Onis, perhaps prior to his reception as public Minister.

It is to be regretted that any difficulties should have arisen with Portugal, the only recognized Nation, beside ourselves on this Hemisphere, and particularly that the

most enlightened and esteemed foreigner among us should be the pivot on which they turn. It is not the less necessary however, to make these considerations, as you are making them, subordinate to the rights of our Country and the honor of its Gov<sup>t</sup>. As far as these will permit, conciliation can in no case be more properly intermingled.

May not the event at Pernambuco, if not caused by actual oppression, tend to give at the present moment an unfavorable turn to the sentiment of European Sovereigns in relation to the revolutionary Scene in S. America? The struggle of the Spanish part of it having the appearance of shaking off a *foreign yoke*, appeals merely to the interest & sympathy of those Sovereigns. That in the Brazils, may be viewed by them as an attack on a *domestic* throne; and as adding an example in the New World, to those which have inspired so much alarm in the Old.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpellier, Nov<sup>r</sup> 29, 1817.

Mad. Mss.

Dear Sir,—

Your favor of the 24<sup>th</sup>. has just been rec<sup>d</sup>. I am fully aware of the load of business on your hands preparatory to the meeting of Congress. The course you mean to take in relation to Roads & Canals, appears to be best adapted to the posture in which you find the case. A reluctance has generally been felt to include amendments to the Constitution among Executive recommendations to Cong<sup>s</sup>. but it seems to be called for on the present occasion as preferable to arresting their deliberations, by a notice though the result will be negatived, or to meeting the result with an unexpected negative. For myself, I had not supposed that my view<sup>1</sup> of the Constitution could have been unknown, and I felt with great force the delicacy of giving intimations of it, to be used as a bar or a clog to a depending measure.

The *expediency of vesting in Cong<sup>s</sup>* a power as to roads & Canals I have never doubted, and there has never been a moment when such a proposition to the States was so likely to be approved. A *general* power to establish Seminaries, being less obvious and affecting more the equilibrium of influence between the National & State Gov<sup>ts</sup>. is a more critical experiment. The feelings awakened by the proposed University within the Congressional District, are a proof of the opposition which may be looked for. I should consider it as at least essential that the two propositions whatever may be the modification of the latter sh<sup>d</sup>. be so distinct, that the rejection of the one by the States should not be inconsistent with the adoption of the other.

It is very grateful to have such an overflowing Treasury, especially when every other nation is on the brink, if not in the abyss of bankruptcy. A natural effect is, the prevailing desire that the taxes may be reduced, particularly the internal taxes which are most seen & felt. May it not however deserve consideration whether the Still tax which is a moralizing as well as a very easy, productive tax w<sup>d</sup>. not be advantageously retained, even at the expence of revenue from foreign trade. Why not press on the Whisky drinkers rather than the Tea & Coffee drinkers, or the drinkers of the lighter kinds of Wine. The question will depend much I am aware on the public opinion and on the expence of collecting a solitary internal tax, both of which points will be better understood in the Cabinet than they can be by the fireside, and in the result there I shall rest with perfect confidence. I make the same remark with respect to the influence which the disbanding at this moment of a conspicuous portion of our fiscal strength may have on the calculations of any other power, particularly Spain.

Health & prosperity.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Dec<sup>r</sup>. 9, 1817.

Mad. Mss.

Dear Sir,—

The mail of Saturday brought me the Copy of your message. It is a fine landscape of our situation; and cannot fail to give pleasure at home, and command respect abroad. The recommendation of a repeal of taxes, is happily shaped: so also the introduction of the subject of Amending the Constitution. The only questions which occur relate to the proposed suppression of the establishment at Amelia Island, not within our territorial claim; and to the latitude of the principle on which the right of a Civilized people is asserted over the lands of a savage one. I take for granted that the first point was well considered. And the latter may be susceptible of qualifying explanations. I observe you say nothing of a remodelling of the Judiciary. Perhaps you may have in reserve a special message, or you may think it best to let the subject originate in Congress; or it may not appear to you in the light it does to me. I have long thought a systematic change in that Dep<sup>t</sup>. proper; and should have pressed it more when in office, but for the circumstance, that it involved a personal accommodation where I might be supposed to feel an interest biasing my judgment, and diminishing the attention paid to my opinion.

[\[Back to Table of Contents\]](#)

TO J. Q. ADAMS.1

Montpellier, Dec<sup>r</sup>. 23, 1817.

Mad. Mss.

Dear Sir,—

I rec<sup>d</sup>. two days ago your favor of the 15 with the written & printed accompaniments.

I am glad to find that your personal interviews with Mr. Bentham afforded an entertainment which may have been some recompence for the trouble which I contributed to give you in relation to him.1 The celebrity which this Philosophic politician has acquired abroad as well as in his own Country, does not permit one to doubt the extent of his capacity or of his researches; and there is still less room to question the philanthropy which adorns his character. It is unfortunate that he has not added to his merits a style and manner of conveying his ideas which would do more justice to their profoundness and importance. With all his qualifications however I greatly overrate or he greatly underrates the task in which he has been so anxious to employ his intellectual labors and treasures, for the reformation of our Code of laws, especially in the advanced age at which the work was to be commenced. And I own that I find some difficulty in reconciling the confidence he feels in the adequacy of his powers not only for a digest of our Statutes into a concise and clear system, but a reduction of our unwritten to a text law, with that penetrating and accurate judgment for which he has the reputation. The disinterestedness and friendly zeal, nevertheless, which dictated the offer of his services to our Country are entitled to its acknowledgments, and no one can join in them with more cordiality than myself.

I have looked over & return the letters from Gov<sup>r</sup>. Plumer and his son. The work conceived by the latter, and the manner in which he has presented an outline of it, indicate talents which merit cultivation & encouragement. The best answer I can give to your communication on the subject of his wish for a copy of the Journal of the Convention, is to state the circumstance, that at the close of the Convention, the question having arisen what was to be done with the Journal & the other papers, and it being suggested that they ought to be either destroyed or deposited in the Custody of the Presid<sup>t</sup>. it was determined that they should remain in his hands subject only to the orders of the National Legislature. Whether a publication of them ought to be promoted, as having a useful tendency, you will probably be better able to decide, on a perusal of the document than one who cannot take the same abstract view of the subject.1

I cannot be insensible to the terms in which you refer to the official relations which have subsisted between us, but must disclaim the obligations which you consider as lying on your side. The results of what took place on mine prove that I only avoided the demerit of a different course. Be pleased Sir to accept assurances of my continued esteem and of my friendly respects.

[\[Back to Table of Contents\]](#)

## TO HENRY ST. GEORGE TUCKER.

Montp. Dec<sup>r</sup> 23, 1817.

Mad. Mss.

D<sup>r</sup> Sir

I have rec<sup>d</sup>. your favor of the 18th, inclosing the Report on Roads & Canals.<sup>2</sup>

I respect too much the right and the duty of the Rep<sup>s</sup> of the people to examine for themselves, the merits of all questions before them, and am too conscious of my own fallibility, to view the most rigid & critical examination of the particular question referred to your Committee, with any other feeling than a solicitude for a result favorable to truth and the public good.

I am not unaware that my belief, not to say knowledge of the views of those who proposed the Constitution, and, what is of more importance my deep impression as to the views of those who bestowed on it the stamp of Authority, may influence my interpretation of the Instrument. On the other hand it is not impossible, that those who consult the Instrument without a danger of that bias, may be exposed to an equal one in their anxiety to find in its text an authority for a particular measure of great apparent Utility.

I must pray you, my dear Sir, to be assured that, altho' I cannot concur in the latitude of Construction taken in the Report, or in the principle that the Consent of States, even of a single one, can enlarge the jurisdiction of the Gen<sup>l</sup>. Gov<sup>t</sup> or in the force & extent allowed to precedents & analogies introduced into the Report, I do not permit this difference of opinion to diminish my esteem for the talents, or my confidence in the motives of its Author. I am far more disposed to acknowledge my thankfulness, for the polite attention shewn in forwarding the document, and for the friendly expressions which accompanied it. Be pleased to accept a sincere return of them.



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpellier, Dec. 27, 1817.

Mad. Mss.

Dear Sir

Your favor of the 22d has been duly rec<sup>d</sup>. I am so much aware that you have not a moment to spare from your public duties, that I insist on your never answering my letters out of mere civility. This rule I hope will be applied to the present as well as future letters.

My quere as to the expedition ag<sup>ts</sup>. Amelia Island turned solely on the applicability of the *Executive* power to such a case. That relating to the right to Indian lands was suggested by the principle which has limited the claim of the U. S. to a right of pre-emption. It seemed also that an *unqualified* right of a Civilized people to land used by people in the hunter-state, on the principle that the earth was intended for those who would make it most conducive to the sustenance & increase of the human race, might imply a right in a people cultivating it with the Spade, to say to one using the plow, either adopt our mode, or let us substitute it ourselves. It might also be not easy to repel the claims of those without land in other Countries, if not in our own, to vacant lands within the U. S. likely to remain for a *long* period unproductive of human food. The quere was not meant to contest the doctrine of the Message, under qualifications which were probably entertained without being specified.

The Cumberland road having been a measure taken during the administration of Mr. Jefferson, and, as far as I recollect, not then brought to my particular attention, I cannot assign the grounds assumed for it by Congress, or which produced his sanction. I suspect that the question of Constitutionality was but slightly if at all examined by the former. And that the Executive assent was doubtingly or hastily given. Having once become a law, and being a measure of singular utility, additional appropriations took place, of course under the same Administration, and, with the accumulated impulse thence derived, were continued under the succeeding one, with less of critical investigation perhaps than was due to the case. Be all this as it may, the case is distinguished from that now before Congress, by the circumstances 1. that the road was undertaken essentially for the accommodation of a portion of the Country with respect to which Cong<sup>s</sup>. have a general power not applicable to other portions. 2. that the funds appropriated, & which alone have been applied, were also under a general power of Cong<sup>s</sup>. not applicable to other funds. As a precedent, the case is evidently without the weight allowed to that of the National Bank which had been often a subject of solemn discussion in Cong<sup>s</sup>. had long engaged the critical attention of the public, and had received reiterated & deliberate sanctions of *every* branch of the Gov<sup>t</sup>., to all which had been superadded many positive concurrences of the States, and implied ones by the people at large. The Bank case is analogous to that of the Carriage tax, which was generally regarded by those who opposed the Bank as a direct tax & therefore unconstitutional, and did not receive their acquiescence untill these objections were superseded by the highest Judicial as well as other sanctions. As

to the case of post roads & military roads; instead of implying a general power to make roads, the constitutionality of them must be tested by the bona fide object of the particular roads. The Post cannot travel, nor troops march without a road. If the necessary roads cannot be found, they must of course be provided.

Serious danger seems to be threatened to the genuine sense of the Constitution, not only by an unwarrantable latitude of construction, but by the use made of precedents which cannot be supposed to have had in the view of their Authors, the bearing contended for, and even where they may have crept, thro' inadvertence, into acts of Cong<sup>s</sup> & been signed by the Executive at a midnight hour, in the midst of a group scarcely admitting perusal, & under a weariness of mind as little admitting a vigilant attention.

Another & perhaps a greater danger is to be apprehended from the influence which the usefulness & popularity of measures may have on questions of their Constitutionality. It is difficult to conceive that any thing short of that influence c<sup>d</sup>. have overcome the constitutional and other objections to the Bill on roads & Canals which passed the 2 Houses at the last Session.

These considerations remind me of the attempts in the Convention to vest in the Judiciary Dep<sup>t</sup>. a qualified negative on Legislative *bills*. Such a Controul, restricted to Constitutional points, besides giving greater stability & system to the rules of expounding the Instrument, would have precluded the question of a Judiciary annulment of Legislative *Acts*. But I am running far beyond the subject presented in your letter, and will detain you no longer than to assure you of my highest respect & sincerest regard.

[\[Back to Table of Contents\]](#)

TO CHARLES J. INGERSOLL.

Montpellier, Jan<sup>y</sup> 4, 1818.

Mad. Mss.

D<sup>R</sup> Sir,—

I have rec<sup>d</sup> your letter of the 25th Ult.1

Believing that the late war merits a historical review penetrating below the surface of events, and beyond the horizon of unexpanded minds, I am glad to learn that the task is contemplated by one whose talents, and, what is not less essential, whose fairness of dispositions, are entitled to so much confidence. Whatever be the light in which any individual actor on the public Theatre may appear, the contest exhibited in its true features cannot fail to do honor to our Country; and, in one respect particularly, to be auspicious to its solid & lasting interest. If our first struggle was a war of our infancy, this last was that of our youth; and the issue of both, wisely improved, may long postpone, if not forever prevent, a necessity for exerting the strength of our manhood.

With this view of the subject, and of the hands into which it is falling, I cannot be unwilling to contribute to the Stock of Materials. But you much overrate I fear, “my private papers,” as distinct from those otherwise attainable. They consist for the most part of my correspondence with the heads of Departments, particularly when separated from them, and of a few vestiges remaining of Cabinet Consultations. It has been my purpose to employ a portion of my leisure, in gathering up and arranging these, with others relating to other periods of our public affairs; and after looking over carefully the first, I shall be better able to judge how far, they throw any valuable rays on your object, and are of a nature not improper for public use.

Be pleased, Sir, to accept assurances of my esteem and cordial respects.

[\[Back to Table of Contents\]](#)

TO JACOB GIDEON.

Montpellier, 28. January, 1818.

Sir,—

I have rec<sup>d</sup>. your letter of the 19th, and in consequence of the request it makes, I send you a Copy of the 1<sup>st</sup>. Edition of the “Federalist,” with the names of the writers prefixed to their respective numbers. 1 Not being on the spot, when it was in the Press, the errors now noted in mine were not then corrected. You will be so good as to return the 2 vol<sup>s</sup> when convenient to you.

The 2<sup>d</sup> Edition of the Work comprised a pamphlet ascribed to one of its Authors. The pamphlet had no connection with the Plan to which the others were parties, and contains a comment on an important point in the Constitution, which was disapproved by one of them who published an answer to it.

I take the liberty of suggesting that as comparative views frequently occur in the work of the original “Articles of Confederation” and The Constitution by which it was superseded it might be convenient to the Reader to have the former as well as the latter prefixed to the Commentary on both.

[\[Back to Table of Contents\]](#)

TO MORDECAI M. NOAH.

Montpellier, May 15; 1818.

Mad. Mss.

Sir,—

I have rec<sup>d</sup>. your letter of the 6th, 1 with the eloquent discourse delivered at the Consecration of the Jewish Synagogue. Having ever regarded the freedom of religious opinions & worship as equally belonging to every sect, & the secure enjoyment of it as the best human provision for bringing all either into the same way of thinking, or into that mutual charity which is the only substitute, I observe with pleasure the view you give of the spirit in which your Sect partake of the blessings offered by our Gov<sup>t</sup>. and Laws.

As your foreign Mission took place whilst I was in the Administration, it cannot but be agreeable to me to learn that your acc<sup>ts</sup>. have been closed in a manner so favorable to you. And I know too well the justice & candor of the present Executive to doubt, that an official [illegible] will be readily allowed to explanations necessary to protect your character against the effect of any impressions whatever ascertained to be erroneous. It is certain that your religious profession was well known at the time you rec<sup>d</sup>. your Commission; and that in itself could not be a motive for your recall.

I thank you Sir for your friendly wishes and tender you mine.

[\[Back to Table of Contents\]](#)

TO JOHN ADAMS.

Montpellier, Aug. 7, 1818.

Mad. Mss.

Dear Sir,—

On my return two days ago from a meeting appointed to report to the Legislature of the State a proper Site for a University, I found your obliging favor of the 25, Ult: with its inclosed copies of D<sup>F</sup>. Mayhews sermon. I have read with pleasure this symbol of the political tone of thinking at the period of its original publication. The Author felt the strength of his argument, and has given a proof of his own.

Your remark is very just on the subject of Independence. It was not the offspring of a particular man or a particular moment. If Mr. Wirt be otherwise understood in his life of Mr. Henry, I cannot but suppose that his intention has been not clearly expressed, or not sufficiently scrutinized. Our forefathers brought with them the germ of Independence, in the principle of self-taxation. Circumstances unfolded & perfected it.

The first occasion which aroused this principle, was, if I can trust my recollection, the projected Union at Albany in 1754, when the proposal of the British Gov<sup>t</sup>. to reimburse its advances for the Colonies by a Parliamentary tax on them was met by the letter from D<sup>F</sup>. Franklin to Governor Shirley, pointing out the unconstitutionality, the injustice, and the impolicy of such a tax.

The opposition & discussions produced by the Stamp & subsequent Acts of Parliament, make another stage in the growth of Independence. The attempts to distinguish between legislation on the subject of taxes, and on other subjects, terminated in the disclosure that no such distinction existed.

And these combats against the arrogated Authority of the British Legislature paved the way for burying in the same grave with it, the forfeited Authority of the British King.

If the merit of Independence as declared in 1776 is to be traced to Individuals, it belongs to those who first meditated the glorious measure, who were the ablest in contending for it, & who were the most decided in supporting it. Future times will be disposed to apportion this merit justly, and the present times ought to bequeath the means for doing it, unstained with the unworthy feelings which you so properly deprecate.

Be pleased Sir to accept renewed assurances of my great esteem & best wishes.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Oct<sup>r</sup> [2<sup>d</sup>.], 1818.

Mad. Mss.

D<sup>R</sup>. Sir,—

I have duly rec<sup>d</sup> yours of the 27th Ult: I am very sorry that I shall not be able to have the pleasure of joining you at the Meeting of the Visitors. We must await, therefore that of seeing you & Mrs. M. on your way to Washington; and hope you will set out in time to spare us some days.

The communications from Mr. Rush are very interesting. G. B. seems so anxious to secure the general trade with the U. S. and at the same time to separate that from the question of the colonial trade, that I fear she will use means to struggle ag<sup>st</sup>. a change in the latter. I had not understood that the renewal of the existing Treaty<sup>1</sup> was desired by our merch<sup>ts</sup>. & ship owners, unless coupled with a reciprocity in the colonial trade, and had supposed that by making the latter a condition of the former, it w<sup>d</sup>. be the more attainable, especially as it w<sup>d</sup>. be more easy for the B. Ministry to find a cover for the concession in a mixed than a simple transaction. I readily presume however that the official views of the subject are the result of much better estimates than my information can furnish. Were it practicable it w<sup>d</sup>. be an agreeable precedent to effectuate a treaty making no distinction between Colonial & other ports of the same nation, as no distinction is made between our ports. I have no doubt that this will Ultimately be the case in all our Treaties; but we must move in concert with one great & good Ally, Time.

It proves as all of us suspected that the sauciness of Spain proceeded from her expectation of being powerfully backed in Europe. The situation of G. B. is a little envious and not a little perplexing. She sees the jealousy of the Continental powers, and endeavors to manage it by acquiescing in the proposed mediation between Spain & S. America, & by protesting ag<sup>st</sup>. peculiar advantages in the trade of the latter. On the other hand she wishes to stand as well as possible with the revolutionary countries, & does not wish the U. S. to be ahead of her in countenancing them. It would be a fortunate thing, if she could be prevailed on to unite with our views, instead of inviting a union of ours with hers. If she restricts the mediation to an *advisory* one, a great point will be gained for all parties. In every view it is very gratifying to find her become so much disposed to meet the U. S. in that conciliatory policy for w<sup>ch</sup> they have so long kept the way open, & which is so evidently the true interest of both parties.

Y<sup>Rs</sup>. Respectfully & Aff<sup>ly</sup>.

[\[Back to Table of Contents\]](#)

## TO JOHN QUINCY ADAMS.

Montpellier, Nov<sup>r</sup>. 2, 1818.1

D. Of S. Mss.  
Misc. Lets.

Sir

I have received your letter of the 22 ult: and enclose such extracts from my notes relating to the two last days of the Convention, as may fill the chasm in the Journals, according to the mode in which the proceedings are recorded.

Col. Hamilton did not propose in the Convention any plan of a Constitution. He had sketched an outline which he read as part of a speech; observing that he did not mean it as a proposition, but only to give a more correct view of his ideas.

M<sup>r</sup>. Patterson regularly proposed a plan which was discussed & voted on.

I do not find the plan of M<sup>r</sup>. Charles Pinkney among my papers.

I tender you, Sir, assurances of my great respect and esteem.



[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpellier, Nov<sup>r</sup> 28, 1818.

Mad. Mss.

Dear Sir

Your favor of the 23d having passed on to Milton whence it came back to Orange Court House I did not receive it until yesterday.

I am glad to find that our proportion of Shipping in the direct trade with G. B. is increasing. It must continue to do so under an established reciprocity, with regard to the trade with the B. Colonies, whether that be founded on the admission or exclusion of the ships of both Countries.

I thank you for the printed Copy of the documents relating to our long controversy with Spain.<sup>1</sup> It forms a valuable continuation of the State papers already published.

It is pleasing to see proofs of the growing respect for us among the great powers of Europe; which must be cherished and enhanced by the current developments of a just and elevated policy on the part of the United States. Is it not worth while to found on this respect an experiment to draw Russia and France who particularly profess it, into our liberal and provident views in favor of S. America. The great work of its emancipation would then be completed per saltum; for Great Britain could not hold back if so disposed, and Spain would have no choice but acquiescence.

The inference of Mr. Rush from the circumstances of his last interview with Lord Castle[reagh]: in the moment of his departure for Aix la Chapelle, is as judicious as it is favorable to our hopes of terminating the Thorny question of impressment. The British Cabinet gave up its sine qua non in order to get rid of a war with us at a crisis rendering it embarrassing to its affairs internal and external. It may be equally ready to obviate by another sacrifice the danger of one which might be not less embarrassing in both respects. Impressment and peace, it must now be evident, are irreconcilable. It will be happy if the apparent disposition to yeild in this case be carried into effect; and it may be hoped the same flexibility may be extended to the case of blockades, which in the event of a maritime war in Europe would have a like tendency with impressments. The remaining danger to a permanent harmony would then lie in the possession of Canada; which as Great B. ought to know, whenever rich enough to be profitable, will be strong enough to be independent. Were it otherwise, Canada can be of no value to her, when at war with us; and when at peace, will be of equal value, whether a British Colony or an American State. Whether the one or the other the consumption of British Manufactures & export of useful materials will be much the same. The latter would be guarded even ag<sup>st</sup> a tax on them by an Article in our Constitu<sup>n</sup>.

But notwithstanding the persuasive nature of these considerations there is little probability of their overcoming the national pride which is flattered by extended

dominion; and still less perhaps ministerial policy always averse to narrow the field of patronage. As far as such a transfer would affect the relative power of the two Nations, the most unfriendly jealousy could find no objection to the measure; for it would evidently take more weakness from G. B. than it would add strength to the U. S. In truth the only reason we can have to desire Canada, ought to weigh as much with G. B. as with us. In her hands it must ever be a source of collision which she ought to be equally anxious to remove; and a Snare to the poor Indians towards whom her humanity ought to be equally excited. Interested individuals have dwelt much on its importance to G. B. as a channel for evading & crippling our commercial laws. But it may well be expected that other views of her true interest will prevail in her councils, if she permits experience to enlighten them. I return the private letter you enclosed from Mr. Rush.

Health & Success.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montp., Feb<sup>y</sup> 13, 1819.

Mad. Mss.

D<sup>f</sup>. Sir

I rec<sup>d</sup> by the last mail your favor of the 7th. The death of Gen<sup>l</sup>. Mason with the manner of it is an event truly lamentable. The only alleviation it admits is in the hope that its admonitions will not be fruitless.

The Newspapers from Washington not having come to hand regularly of late, and other matters having engaged my attention, I am but partially acquainted with what has passed in Congress on the subject of the proceedings in Florida. 1 The views of the Ex. could not certainly have been better directed than to the objects of shielding the Constitution, silencing Spain & her allies, & turning every thing to the best account for the nation. It will be a most happy termination of the business if Onis sh<sup>d</sup>. make good the prospect of the desired accommodation of our affairs with Spain.

It would be a happiness also, if the subject as it relates to Gen<sup>l</sup>. Jackson could have an issue satisfactory to his feelings & to the scruples of his friends & admirers. Mr. Adams has given all its lustre to the proof that the conduct of the General is invulnerable to complaints from abroad; and the question between him & his Country ought to be judged under the persuasion that if he has erred it was in the zeal of his patriotism, and under a recollection of the great services he has rendered.

You have seen the agreeable result at Richmond to the Report of the University Commissioners. I do not know what steps have been taken for carrying the law into execution.

I have heard nothing from or of Mr. Jefferson since the visit of D<sup>f</sup> Eustis & myself to Monticello. I mentioned to you the state of his health at that time & our hopes that it would be soon entirely restored. It is to be wished that he may witness & guide the launching of the Institution which he put on the stocks, and the materials for which were supplied from his Stores.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. [1](#)

Montpellier, February 18, 1819.

Dear Sir,—

I have received your favor of the 13th. I beg that you will not think of the pecuniary subject until it be in every respect perfectly convenient to you.

The real sense of the nation with respect to the Revolutionary struggle in South America cannot, I should suppose, be mistaken. Good wishes for its success, and every lawful manifestation of them, will be approved by all, whatever may be the consequences. The nation will equally disapprove any measures unnecessarily involving it in the danger of a war, which might even do less good to the Spanish patriots than harm to the United States, or any underhand measures bringing a just stain on the national character. Those who are most disposed to censure the tardiness of the Executive in acknowledging the Independence of Buenos Ayres, which alone has the appearance of having reached maturity, should recollect that it was never *declared* until July, 1806, and that it has been rendered uncertain whether the declaration would preclude a modified re-establishment of a dependent State.

The account of Mr. Rush's conversation must be founded at least in some egregious mistake. No one who is acquainted with his good sense, his self-command, his official habits, and his personal dispositions, can easily believe that he would commit either the Executive or himself in the manner stated, and still less that he would have withheld what he had done from you. Besides, what considerate citizen could desire that the Government should purchase Florida from such an adventurer as M<sup>c</sup>Gregor, [1](#) whose conquest, if a real one, could give no title that would be *alienable*, before it should be consummated by a termination of the contest between the parties? The purchase of such a title from such a quarter would have exposed the United States to the utmost odium as to the mode of gaining the possession, without any greater security for keeping it than would attend a direct seizure on the plea of an obstinate refusal to pay an acknowledged debt.

[\[Back to Table of Contents\]](#)

## TO RICHARD PETERS.

Feb<sup>y</sup> 22 1819.

Mad. Mss.

D<sup>f</sup>. Sir

I perceive that I am indebted to you for the copy of an Agricultural Almanack and Memorial brought me by a late mail; for which I offer my thanks. Accept them also for the copy of Mr. Rawle's Address which you have been so kind as to send me. [1](#)

I am particularly pleased with your scheme of a "Pattern farm." There is no form in which Agricultural instruction can be so successfully conveyed. Nor is there any situation so favorable for the establishment of them as the neighbourhood of a large commercial City. The vessels going thence to every part of the Globe can obtain from our Consuls or from mercantile correspondents, specimens of every article vegetable & animal, which deserve experiment; and from such a position, the fruits of successful experiments can be conveniently diffused by water as well as by land. The only objection likely to be started is the expence. But I do not see that even this extends much if at all beyond the outfit. A small proportion only of the experiments would be a dead loss; Whilst many would yield lucrative samples for distributive sale.

The subject of Mr. Rawle's Address is an important one, and he has handled it with the Ability of which he enjoys the reputation. My own ideas run much in the same channel with his. Our kind reception of emigrants is very proper, but it is dictated more by benevolent than by interested considerations, tho' some of them seem to be very far from regarding the obligations as lying on their side. I think he has justly graduated also the several classes of emigrants. The Cultivators of the soil are of a character and in so minute a proportion to our Agricultural population, that they give no foreign tint whatever to its complexion. When they come among us too, it is with such a deep feeling of its being for good & all, that their adopted Country soon takes the place Of a native home. These remarks belong in a considerable degree to the Mechanical class. The mercantile class, has different features. Their proportional number, their capital or their credit, and their intelligence often, give them pretensions, and even an influence among the native class which you can better appreciate perhaps than I can. They are also less permanently tied to their new Country by the nature of their property & pursuits than either of the other classes a translation of them to another being more easy. And even after naturalization, the rights involved in their native allegiance, facilitate violations of the duties of their assumed one. According to the general laws of Europe, no emigrant ceases to be a subject. With this double aspect, I believe it cannot be doubted that naturalized Citizens among us have found it more easy than native ones to practise certain frauds. I have been led to think it worthy of consideration whether our law of naturalization might not be so varied as to communicate the rights of Citizens by degrees, and in that way, preclude or abridge the abuses committed by naturalized merchants particularly Ship owners. The restrictions w<sup>d</sup>. be felt it is true by meritorious individuals, of whom I could name some & you doubtless more, but this always happens in precautionary

regulations for the general good. But I forget that I am only saying what Mr. Rawle has much better told you, or what, if just, will not have escaped your own reflections.

I wish you health & every other happiness.

[\[Back to Table of Contents\]](#)

## TO ROBERT WALSH.

Mad. Mss.

Montpellier, Mar. 2, 1819.

D<sup>f</sup>. Sir

I rec<sup>d</sup>. some days ago your letter of Feb<sup>y</sup> 15, in which you intimate your intention to vindicate our Country against misrepresentations propagated abroad, and your desire of information on the subject of Negro slavery, of moral character, of religion, and of education in Virginia, as affected by the Revolution, and our public Institutions.

The general condition of slaves must be influenced by various causes. Among these are 1. the ordinary price of food, on which the quality and quantity allowed them will more or less depend. This cause has operated much more unfavorably against them in some quarters than in Virg<sup>a</sup>. 2. the kinds of labour to be performed, of w<sup>ch</sup> the Sugar & Rice plantations afford elsewhere & not here unfavorable examples. 3. the national spirit of their Masters, which has been graduated by Philosophical writers among the slaveholding Colonies of Europe. 4. the circumstance of conformity or difference in the physical characters of the two classes; such a difference cannot but have a material influence, and is common to all the slave-holding Countries within the American Hemisphere. Even in those where there are other than black slaves, as Indians & mixed breeds, there is a difference of Colour not without its influence. 5. the proportion which the slaves bear to the free part of the community, and especially the greater or smaller numbers in which they belong to individuals.

This last is, perhaps, the most powerful of all the causes deteriorating the condition of the slave, and furnishes the best scale for determining the degree of its hardship.

In reference to the actual condition of slaves in Virg<sup>a</sup>. it may be confidently stated, as better beyond comparison, than it was before the Revolution. The improvement strikes every one who witnessed their former condition, and attends to their present. They are better fed, better clad, better lodged, and better treated in every respect: insomuch that what was formerly deemed a moderate treatment, w<sup>d</sup>. now be a rigid one, and what formerly a rigid one, would now be denounced by the Public feeling. With respect to the great article of food particularly it is a common remark among those who have visited Europe, that it includes a much greater proportion of the animal ingredient, than is attainable by the free labourers even in that quarter of the Globe. As the two great causes of the general melioration in the lot of the slaves since the establishment of our Independence, I should set down 1. the sensibility to human rights, and sympathy with human sufferings excited and cherished by the discussions preceding, & the spirit of the Institutions growing out of, that event. 2. the decreasing proportion which the slaves bear to the individual holders of them; a consequence of the abolition of entails, & the rule of primogeniture, and of the equalizing tendency of parental affection unfettered from all prejudices, as well as from the restrictions of law.

With respect to the moral features of Virg<sup>a</sup>. it may be observed, that pictures which have been given of them are, to say the least, outrageous caricatures even when taken from the state of Society previous to the Revolution; and that so far as there was any ground or colour for them, then, the same cannot be found for them now.

Omitting more minute or less obvious causes tainting the habits and manners of the people under the Colonial Gov<sup>t</sup>., the following offer themselves. 1. the negro slavery chargeable in so great a degree on the very quarter which has furnished most of the libellers. It is well known that during the Colonial dependence of Virg<sup>a</sup>. repeated attempts were made to stop the importation of slaves each of which attempts was successively defeated by the foreign negative on the laws, and that one of the first offsprings of independent & Republican legislation was an Act of perpetual prohibition. 2. the too unequal distribution of property favored by laws derived from the British code, which generated examples in the opulent class inauspicious to the habits of the other classes. 3. the indolence of most & the irregular lives of many of the established Clergy, consisting, in a very large proportion, of foreigners, and these in no inconsiderable proportion, of men willing to leave their homes in the parent Country where their demerit was an obstacle to a provision for them, and whose degeneracy here was promoted by their distance from the controuling eyes of their kindred & friends, by the want of Ecclesiastical superiors in the Colony, or efficient ones in G. B. who might maintain a salutary discipline among them, and finally by their independence both of their congregations and of the Civil authority for their stipends. 4. A source of contagious dissipation might be traced in the British Factors chiefly from Scotland, who carried on the general trade external & internal of the Colony. These being interdicted by their principals from marrying in the Country, being little prone to apply their leisure to intellectual pursuits, and living in knots scattered in small towns or detached spots affording few substitutes of social amusement easily fell into irregularities of different sorts, and of evil example. I ought not however to make this remark, without adding not only that there were exceptions to it, but that those to whom the remark is applicable, often combined with those traits of character others of a laudable & amiable kind. Such of them as eventually married & settled in the Country were in most cases remarked for being good husbands, parents & masters, as well as good neighbours as far as was consistent with habits of intemperance, to which not a few became victims. The weight of this mercantile class, in the community may be inferred from the fact that they had their periodical meetings at the seat of Gov<sup>t</sup>. at which they fixed the rate of foreign exchange, the advance on their imported merchandise universally sold on credit, and the price of Tob<sup>o</sup>. the great & indeed the only staple commodity for exportation; regulations affecting more deeply the interests of the people at large, than the ordinary proceedings of the Legislative Body. As a further mark of their importance, their influence as creditors was felt in elections of the popular branch of that Body. It had the common name of the Ledger interest. 5. Without laying undue stress on it, I may refer to the rule of septennial elections for the Legislature, which led of course to the vitiating means to which candidates are more tempted to resort by so durable, than by a shorter, period of power.

With the exception of slavery these demoralizing causes have ceased or are wearing out; and even that as already noticed, has lost no small share of its former character.



On the whole the moral aspect of the State may at present be fairly said to bear no unfavorable comparison with the average standard of the other States. It certainly gives the lie to the foreign Calumniators whom you propose to arraign.

That there has been an increase of religious instruction since the revolution can admit of no question. The English church was originally the established religion; the character of the clergy that above described. Of other sects there were but few adherents, except the Presbyterians who predominated on the W. side of the Blue Mountains. A little time previous to the Revolutionary struggle the Baptists sprang up, and made a very rapid progress. Among the early acts of the Republican Legislature, were those abolishing the Religious establishment, and putting all Sects at full liberty and on a perfect level. At present the population is divided, with small exceptions, among the Protestant Episcopalians, the Presbyterians, the Baptists & the Methodists. Of their comparative numbers I can command no sources of information. I conjecture the Presbyterians & Baptists to form each ab<sup>t</sup>. a third, & the two other sects together of which the Methodists are much the smallest, to make up the remaining third. The Old churches, built under the establish<sup>t</sup>. at the public expence, have in many instances gone to ruin, or are in a very dilapidated state, owing chiefly to a transition desertion of the flocks to other worships. A few new ones have latterly been built particularly in the towns. Among the other sects, Meeting Houses, have multiplied & continue to multiply; tho' in general they are of the plainest and cheapest sort. But neither the number nor the style of the Religious edifices is a true measure of the state of religion. Religious instruction is now diffused throughout the Community by preachers of every sect with almost equal zeal, tho' with very unequal acquirements; and at private houses & open stations and occasionally in such as are appropriated to Civil use, as well as buildings appropriated to that use. The qualifications of the Preachers, too among the new sects where there was the greatest deficiency, are understood to be improving. On a general comparison of the present & former times, the balance is certainly & vastly on the side of the present, as to the number of religious teachers the zeal which actuates them, the purity of their lives, and the attendance of the people on their instructions. It was the Universal opinion of the Century preceding the last, that Civil Gov<sup>t</sup>. could not stand without the prop of a Religious establishment, & that the X<sup>n</sup>. religion itself, would perish if not supported by a legal provision for its Clergy. The experience of Virginia conspicuously corroborates the disproof of both opinions. The Civil Gov<sup>t</sup>. tho' bereft of everything like an associated hierarchy possesses the requisite stability and performs its functions with complete success; Whilst the number, the industry, and the morality of the Priesthood, & the devotion of the people have been manifestly increased by the total separation of the Church from the State.

On the subject of education I am not eno' informed to give a view of its increase. The system contemplated by the literary fund cannot yet be taken into the estimate, farther than as it may be an index of the progress of knowledge prerequisite to its adoption. Those who are best able to compare the present intelligence of the Mass of the people, with that antecedent to the revolution, will all agree I believe, in the great superiority of the present.

I know not how far these notices may fall within the precise scope of your meditated Exposition. Should any of them do so, I communicate them with pleasure; well

assured that they will be in good hands for a good purpose. The only restriction I wish in the use of them is that my name may not be referred to.

In compliance with your request I send a copy of the observations addressed to the Agricult: Soc<sup>y</sup>. of Albemarle. I regret that they are not more worthy of the place to which you destine them. I am not unaware that some of the topics introduced may be interesting ones; but they required a development very different from that which I gave them.

As you intend to notice the variance between my statement and that of Mr. Hamilton relating to certain n<sup>os</sup>. in the Federalist, I take the liberty of remarking, that independent of any internal evidences that may be discernible, the inaccuracy of Mr. H's memory is illustrated by the circumstance, that his memorandum ascribes, not only to Mr. Jay, a paper N<sup>o</sup>. 54, not written by him, but to himself a paper N<sup>o</sup>. 64 written by Mr. Jay. This appears by the statement (presumed to be authentic) in the life of Mr. Jay by Delaplaine. If I have any interest in proving the fallibility of Mr. H's memory, or the error of his statement however occasioned, it is not that the authorship in question is of itself a point deserving the solicitude of either of the parties; but because I had, at the request of a confidential friend or two, communicated a list of the n<sup>os</sup>. in that publication with the names of the writers annexed, at a time & under circumstances depriving me of a plea for so great a mistake in a slip of the memory or attention. Be pleased to accept my esteem & friendly respects.

[\[Back to Table of Contents\]](#)

## TO RICHARD RUSH.

Montp<sup>r</sup>, May 10, 1819.

Mad. Mss.

Dear Sir

Your favor of De<sup>t</sup>. 13 came safely to hand, but was months on its way. I have looked over with amusement the two posthumous works of Watson & Walpole. The former has an importance to which the latter cannot pretend: But both; in drawing aside the Curtain from the secrets of Monarchy, offer at once lessons & eulogies to Republican Gov<sup>t</sup>. As you have in hand a remnant of the fund from the Bill on Mr. Baring, I avail myself of your kindness so far as to request that you will procure for me & forward the last & fullest Edition of the posthumous Works of Gibbon. If the cost should exceed the fund let me know; if it sh<sup>d</sup>. leave any little balance, this may be laid out in some literary article of your choice for which it will suffice. As you sent a copy of what was addressed to the Agricult Socy of Alb: to Sir Jn<sup>o</sup>. Sinclair,<sup>1</sup> I owe perhaps an apology for not doing it myself, having been fav<sup>d</sup>. with several marks of that sort of attention from him. The truth is I did not wish to attach to so inadequate a discussion of the subject; the importance implied by regarding it as worth his acceptance; and if any unsought opportunity sh<sup>d</sup>. make it proper you will oblige me by intimating to him such a view of the omission.

It is much to be regretted that the B. Gov<sup>t</sup>. had not the magnanimity nor the forecast to include in the late treaty a final adjustment of all the questions on which the two Countries have been at variance.<sup>2</sup> A more apt occasion cannot be expected, and it must be evident, that if not adjusted by treaty, the first War in Europe will leave G. B. no alternative but an ungracious & humiliating surrender of her pretensions, or an addition of this Country to the number of her enemies. With regard to the W. Ind trade she is not less inconsiderate. Nothing but a retrograde course by Cong<sup>s</sup> not to be presumed, can save her from ultimate defeat in the Legislative contest.

The P. is executing the Southern half of his projected tour, and is every where greeted with Public testimonies of affection & confidence. Whatever may be the motives of some who join in the acclamations the unanimity, will have the good effect of strengthening the administration at home and inspiring respect abroad.

Our printed journals of every denomination, will present to you, the perplexed situation of our monied & mercantile affairs, & the resulting influence on the general condition of the Country. The pressure is severe, but the evil must gradually cure itself. The root of it lies more particularly in the multitude & mismanagement of the Banks. It has always been a question with some how far Banks when best constituted, and when limited to mercantile credits, furnished setoffs in the abuse of them by the imprudent, ag<sup>st</sup>. the advantage of them to the Prudent. But there are few now who are not sensible, that when distributed thro'out the land, and carrying or rather hawking their loans at every man's door they become a real nuisance. They not only furnish the greedy & unskilful with means for their ruinous enterprises; but seduce the mass of

the people, into gratifications, beyond their resources; and these gratifications consisting chiefly of imported articles, it follows that the entire country consumes more of them than it can pay for. Hence the balance of trade ag<sup>st</sup>. it, hence the demand on the banks for specie to pay it; hence their demands on their debtors and hence the bankruptcies of both. This is the little circle of causes & effects, which shew that the Banks are themselves, the principal authors of the state of things of which they are the victims. A better state of things it is to be hoped will grow out of their ashes.

In the mean time the policy of the great nations with which we have most intercourse, co-operates in augmenting the temporary difficulties experienced. Whether it may not in the end have a more salutary operation for us than for themselves remains to be seen. G. B. is endeavoring to make herself independ<sup>t</sup>. of us & of the world for supplies of food. In this she is justified by cogent views of the subject; altho' with her extensive capital & maritime power she w<sup>d</sup>. seem in little danger of being unable at any time to supply her deficiency; whilst the tendency of this policy is to contract the range of her commerce, on which she depends for her wealth & power. If agricultural nations cannot sell her the products of their soil, they cannot buy the products of her looms. They must plough less, and manufacture more. The fall in the price of our Wheat & flour is already reanimating, the manufacturing spirit, and enforcing that of economy. She is endeavoring also to make herself independent of the U. S. for the great article of Cotton wool, by encouraging E. Ind<sup>a</sup>. substitutes. If she pays that part of her dominions for its raw material by the return of it in a manufactured State, the loss of our Custom may be balanced, perhaps for a time, overbalanced. But a proportional loss of our Custom great & growing as it is, must be certain. One-half of our ability to purchase British manufactures is derived from the Cotton sold to her. The effect of her Ind<sup>a</sup>. importations in reducing the demand & the price of that article is already felt, both in the necessity & the advantage of working it up at home.

France too is making herself independent of the U. S. for one of their great Staples. Before our Revolution she consumed, if I rightly remember, ab<sup>t</sup>. thirty thousand Hhds of Tob<sup>o</sup>. Her market now receives but a very few thousand & it is said that land eno<sup>7</sup> is appropriated in France for the culture of the balance. If France means to be a commercial & maritime power this policy does not bespeak wisdom in her Councils. She ought rather to promote an exchange of her superfluous wines & silks, for a foreign article, which not being a necessary of life need not be forced into cultivation at home, which she will rarely if ever be unable to procure when she pleases from abroad, and which is well adapted by its bulk to employ shipping & marines. The price of this article like that of Cotton has rapidly fallen, & will contribute of course to turn the attention here to the obligation of substituting internal manufactures for imports which the exports will not balance. Neither G. B. nor F. seems sufficiently aware that a self-subsisting system in some nations must produce it in others, and that the result of it in all must be most injurious to those whose prosperity & power depend most on the freedom & extent of the commerce among them.

I find myself very pertinently called off from speculations w<sup>ch</sup>. whether just or otherwise cannot be new to you, by a charge from Mrs. M. to present her very affectionate regards to Mrs. Rush, with many thanks for the repetitions of her kind

offers. I pray that my respectful ones may be added, and that you will accept for yourself assurances of my great esteem and unvaried friendship.

[\[Back to Table of Contents\]](#)

TO J. Q. ADAMS.

Montpellier June 7, 1819.

Mad. Mss.

Dear Sir

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

[\[Back to Table of Contents\]](#)

TO ROBERT J. EVANS.

Montpellier, June 15, 1819.

Mad. Mss.

Sir,—

I have rec<sup>d</sup>. your letter of the 3d instant,<sup>1</sup> requesting such hints as may have occurred to me on the subject of an eventual extinguishment of slavery in the U. S.

Not doubting the purity of your views, and relying on the discretion by which they will be regulated, I cannot refuse such a compliance as will at least manifest my respect for the object of your undertaking.

A general emancipation of slaves ought to be 1. gradual. 2. equitable & satisfactory to the individuals immediately concerned. 3. consistent with the existing & durable prejudices of the nation.

That it ought, like remedies for other deeprooted and wide-spread evils, to be gradual, is so obvious that there seems to be no difference of opinion on that point.

To be equitable & satisfactory, the consent of both the Master & the slave should be obtained. That of the Master will require a provision in the plan for compensating a loss of what he held as property guarantied by the laws, and recognised by the Constitution. That of the slave, requires that his condition in a state of freedom, be preferable in his own estimation, to his actual one in a state of bondage.

To be consistent with existing and probably unalterable prejudices in the U. S. the freed blacks ought to be permanently removed beyond the region occupied by or allotted to a White population. The objections to a thorough incorporation of the two people are, with most of the Whites insuperable; and are admitted by all of them to be very powerful. If the blacks, strongly marked as they are by Physical & lasting peculiarities, be retained amid the Whites, under the degrading privation of equal rights political or social, they must be always dissatisfied with their condition as a change only from one to another species of oppression; always secretly confederated ag<sup>st</sup>. the ruling & privileged class; and always uncontrouled by some of the most cogent motives to moral and respectable conduct. The character of the free blacks, even where their legal condition is least affected by their colour, seems to put these truths beyond question. It is material also that the removal of the blacks be to a distance precluding the jealousies & hostilities to be apprehended from a neighboring people stimulated by the contempt known to be entertained for their peculiar features; to say nothing of their vindictive recollections, or the predatory propensities which their State of Society might foster. Nor is it fair, in estimating the danger of Collisions with the Whites, to charge it wholly on the side of the Blacks. There would be reciprocal antipathies doubling the danger.

The colonizing plan on foot, has as far as it extends, a due regard to these requisites; with the additional object of bestowing new blessings civil & religious on the quarter of the Globe most in need of them. The Society proposes to transport to the African Coast all free & freed blacks who may be willing to remove thither; to provide by fair means, & it is understood with a prospect of success, a suitable territory for their reception; and to initiate them into such an establishment as may gradually and indefinitely expand itself.

The experiment, under this view of it, merits encouragement from all who regard slavery as an evil, who wish to see it diminished and abolished by peaceable & just means; and who have themselves no better mode to propose. Those who have most doubted the success of the experiment must at least have wished to find themselves in an error.

But the views of the Society are limited to the case of blacks already free, or who may be *gratuitously* emancipated. To provide a commensurate remedy for the evil, the plan must be extended to the great Mass of blacks, and must embrace a fund sufficient to induce the Master as well as the slave to concur in it. Without the concurrence of the Master, the benefit will be very limited as it relates to the Negroes; and essentially defective, as it relates to the U. States; and the concurrence of Masters, must, for the most part, be obtained by purchase.

Can it be hoped that voluntary contributions, however adequate to an auspicious commencement, will supply the sums necessary to such an enlargement of the remedy? May not another question be asked? Would it be reasonable to throw so great a burden on the individuals distinguished by their philanthropy and patriotism?

The object to be obtained, as an object of humanity, appeals alike to all; as a National object, it claims the interposition of the nation. It is the nation which is to reap the benefit. The nation therefore ought to bear the burden.

Must then the enormous sums required to pay for, to transport, and to establish in a foreign land all the slaves in the U. S. as their Masters may be will<sup>g</sup>. to part with them, be taxed on the good people of the U. S. or be obtained by loans swelling the public debt to a size pregnant with evils next in degree to those of slavery itself?

Happily it is not necessary to answer this question by remarking that if slavery as a national evil is to be abolished, and it be just that it be done at the national expence, the amount of the expence is not a paramount consideration. It is the peculiar fortune, or, rather a providential blessing of the U. S. to possess a resource commensurate to this great object, without taxes on the people, or even an increase of the public debt.

I allude to the vacant territory the extent of which is so vast, and the vendible value of which is so well ascertained.

Supposing the number of slaves to be 1,500,000, and their price to average 400 drs, the cost of the whole would be 600 millions of doll<sup>rs</sup>. These estimates are probably beyond the fact; and from the n<sup>o</sup>. of slaves should be deducted. 1. those whom their



Masters would not part with. 2. those who may be gratuitously set free by their Masters. 3. those acquiring freedom under emancipating regulations of the States. 4. those preferring slavery where they are, to freedom in an African settlement. On the other hand, it is to be noted that the expence of removal & settlement is not included in the estimated sum; and that an increase of the slaves will be going on during the period required for the execution of the plan.

On the whole the aggregate sum needed may be stated at about 600 Mil<sup>s</sup> of dollars.

This will require 200 mil<sup>s</sup> of Acres at 3 dol<sup>ts</sup>. per Acre; or 300 mil<sup>s</sup>. at 2 doll<sup>ts</sup>. per Acre a quantity which tho' great in itself, is perhaps not a third part of the disposable territory belonging to the U. S. And to what object so good so great & so glorious, could that peculiar fund of wealth be appropriated? Whilst the sale of territory would, on one hand be planting one desert with a free & civilized people, it would on the other, be giving freedom to another people, and filling with them another desert. And if in any instances, wrong has been done by our forefathers to people of one colour, by dispossessing them of their soil, what better atonement is now in our power than that of making what is rightfully acquired a source of justice & of blessings to a people of another colour?

As the revolution to be produced in the condition of the negroes must be gradual, it will suffice if the sale of territory keep pace with its progress. For a time at least the proceeds w<sup>d</sup>. be in advance. In this case it might be best, after deducting the expence incident to the surveys & sales, to place the surplus in a situation where its increase might correspond with the natural increase of the unpurchased slaves. Should the proceeds at any time fall short of the calls for their application, anticipations might be made by temporary loans to be discharged as the land should find a Market.

But it is probable that for a considerable period, the sales would exceed the calls. Masters would not be willing to strip their plantations & farms of their laborers too rapidly. The slaves themselves, connected as they generally are by tender ties with others under other Masters, would be kept from the list of emigrants by the want of the multiplied consents to be obtained. It is probable indeed that for a long time a certain portion of the proceeds might safely continue applicable to the discharge of the debts or to other purposes of the Nation. Or it might be most convenient, in the outset, to appropriate a certain proportion only of the income from sales, to the object in view, leaving the residue otherwise applicable.

Should any plan similar to that I have sketched, be deemed eligible in itself no particular difficulty is foreseen from that portion of the nation which with a common interest in the vacant territory has no interest in slave property. They are too just to wish that a partial sacrifice sh<sup>d</sup>. be made for the general good; and too well aware that whatever may be the intrinsic character of that description of property, it is one known to the constitution, and, as such could not be constitutionally taken away without just compensation. That part of the Nation has indeed shewn a meritorious alacrity in promoting, by pecuniary contributions, the limited scheme for colonizing the Blacks, & freeing the nation from the unfortunate stain on it, which justifies the belief that any enlargement of the scheme, if founded on just principles would find

among them its earliest & warmest patrons. It ought to have great weight that the vacant lands in question have for the most part been derived from grants of the States holding the slaves to be redeemed & removed by the sale of them.

It is evident however that in effectuating a general emancipation of slaves, in the mode which has been hinted, difficulties of other sorts would be encountered. The provision for ascertaining the joint consent of the masters & slaves; for guarding ag<sup>st</sup>. unreasonable valuations of the latter; and for the discrimination of those not proper to be conveyed to a foreign residence, or who ought to remain a charge on Masters in whose service they had been disabled or worn out and for the annual transportation of such numbers, would Require the mature deliberations of the National Councils. The measure implies also the practicability of procuring in Africa, an enlargement of the district or districts, for receiving the exiles, sufficient for so great an augmentation of their numbers.

Perhaps the Legislative provision best adapted to the case would be an incorporation of the Colonizing Society or the establishment of a similar one, with proper powers, under the appointment & superintendence of the National Executive.

In estimating the difficulties however incident to any plan of general emancipation, they ought to be brought into comparison with those inseparable from other plans, and be yielded to or not according to the result of the comparison.

One difficulty presents itself which will probably attend every plan which is to go into effect under the Legislative provisions of the National Gov<sup>t</sup>. But whatever may be the defect of existing powers of Congress, the Constitution has pointed out the way in which it can be supplied. And it can hardly be doubted that the requisite powers might readily be procured for attaining the great object in question, in any mode whatever approved by the Nation.

If these thoughts can be of any aid in your search of a remedy for the great evil under which the nation labors, you are very welcome to them. You will allow me however to add that it will be most agreeable to me, not to be publickly referred to in any use you may make of them.

[\[Back to Table of Contents\]](#)

## TO SPENCER ROANE.

Sept<sup>r</sup>. 2; 1819.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. your favor of the 22d Ult<sup>1</sup> inclosing a copy of your observations on the Judgment of the Supreme Court of the U. S. in the case of M'Culloch ag<sup>st</sup>. the State of Maryland; and I have found their latitudinary mode of expounding the Constitution, combated in them with the ability and the force which were to be expected.

It appears to me as it does to you that the occasion did not call for the general and abstract doctrine interwoven with the decision of the particular case. I have always supposed that the meaning of a law, and for a like reason, of a Constitution, so far as it depends on Judicial interpretation, was to result from a course of particular decisions, and not these from a previous and abstract comment on the subject. The example in this instance tends to reverse the rule and to forego the illustration to be derived from a series of cases actually occurring for adjudication.

I could have wished also that the Judges had delivered their opinions seriatim. The case was of such magnitude, in the scope given to it, as to call, if any case could do so, for the views of the subject separately taken by them. This might either by the harmony of their reasoning have produced a greater conviction in the Public mind; or by its discordance have impaired the force of the precedent now ostensibly supported by a unanimous & perfect concurrence in every argument & dictum in the judgment pronounced.

But what is of most importance is the high sanction given to a latitude in expounding the Constitution which seems to break down the landmarks intended by a specification of the Powers of Congress, and to substitute for a definite connection between means and ends, a Legislative discretion as to the former to which no practical limit can be assigned. In the great system of Political Economy having for its general object the national welfare, everything is related immediately or remotely to every other thing; and consequently a Power over any one thing, if not limited by some obvious and precise affinity, may amount to a Power over every other. Ends & means may shift their character at the will & according to the ingenuity of the Legislative Body. What is an end in one case may be a means in another; nay in the same case, may be either an end or a means at the Legislative option. The British Parliament in collecting a revenue from the commerce of America found no difficulty in calling it either a tax for the regulation of trade, or a regulation of trade with a view to the tax, as it suited the argument or the policy of the moment.

Is there a Legislative power in fact, not expressly prohibited by the Constitution, which might not, according to the doctrine of the Court, be exercised as a means of carrying into effect some specified Power?

Does not the Court also relinquish by their doctrine, all controul on the Legislative exercise of unconstitutional powers? According to that doctrine, the expediency & constitutionality of means for carrying into effect a specified Power are convertible terms; and Congress are admitted to be Judges of the expediency. The Court certainly cannot be so; a question, the moment it assumes the character of mere expediency or policy, being evidently beyond the reach of Judicial cognizance.

It is true, the Court are disposed to retain a guardianship of the Constitution against legislative encroachments. "Should Congress," say they, "under the pretext of executing its Powers, pass laws for the accomplishment of objects not entrusted to the Government, it would become the painful duty of this Tribunal to say that such an act was not the law of the land." But suppose Congress should, as would doubtless happen, pass unconstitutional laws not to accomplish objects not specified in the Constitution, but the same laws as means expedient, convenient or conducive to the accomplishment of objects entrusted to the Government; by what handle could the Court take hold of the case? We are told that it was the policy of the old Government of France to grant monopolies, such as that of Tobacco, in order to create funds in particular hands from which loans could be made to the Public, adequate capitalists not being formed in that Country in the ordinary course of commerce. Were Congress to grant a like monopoly merely to aggrandize those enjoying it, the Court might consistently say, that this not being an object entrusted to the Govern<sup>t</sup>. the grant was unconstitutional and void. Should Congress however grant the monopoly according to the French policy as a means judged by them to be necessary, expedient or conducive to the borrowing of money, which is an object entrusted to them by the Constitution, it seems clear that the Court, adhering to its doctrine, could not interfere without stepping on Legislative ground, to do which they justly disclaim all pretension.

It could not but happen, and was foreseen at the birth of the Constitution, that difficulties and differences of opinion might occasionally arise in expounding terms & phrases necessarily used in such a charter; more especially those which divide legislation between the General & local Governments; and that it might require a regular course of practice to liquidate & settle the meaning of some of them. But it was anticipated I believe by few if any of the friends of the Constitution, that a rule of construction would be introduced as broad & as pliant as what has occurred. And those who recollect, and still more those who shared in what passed in the State Conventions, thro' which the people ratified the Constitution, with respect to the extent of the powers vested in Congress, cannot easily be persuaded that the avowal of such a rule would not have prevented its ratification. It has been the misfortune, if not the reproach, of other nations, that their Gov<sup>ts</sup>. have not been freely and deliberately established by themselves. It is the boast of ours that such has been its source and that it can be altered by the same authority only which established it. It is a further boast that a regular mode of making proper alterations has been providently inserted in the Constitution itself. It is anxiously to be wished therefore, that no innovations may take place in other modes, one of which would be a constructive assumption of powers never meant to be granted. If the powers be deficient, the legitimate source of additional ones is always open, and ought to be resorted to.

Much of the error in expounding the Constitution has its origin in the use made of the species of sovereignty implied in the nature of Gov<sup>t</sup>. The specified powers vested in Congress, it is said, are sovereign powers, and that as such they carry with them an unlimited discretion as to the means of executing them. It may surely be remarked that a limited Gov<sup>t</sup>. may be limited in its sovereignty as well with respect to the means as to the objects of his powers; and that to give an extent to the former, superseding the limits to the latter, is in effect to convert a limited into an unlimited Gov<sup>t</sup>. There is certainly a reasonable medium between expounding the Constitution with the strictness of a penal law, or other ordinary statute, and expounding it with a laxity which may vary its essential character, and encroach on the local sovereignties with w<sup>ch</sup>. it was meant to be reconcilable.

The very existence of these local sovereignties is a controul on the pleas for a constructive amplification of the powers of the General Gov<sup>t</sup>. Within a single State possessing the entire sovereignty, the powers given to the Gov<sup>t</sup>. by the People are understood to extend to all the Acts whether as means or ends required for the welfare of the Community, and falling within the range of just Gov<sup>t</sup>. To withhold from such a Gov<sup>t</sup>. any particular power necessary or useful in itself, would be to deprive the people of the good dependent on its exercise; since the power must be there or not exist at all. In the Gov<sup>t</sup>. of the U. S. the case is obviously different. In establishing that Gov<sup>t</sup>. the people retained other Gov<sup>ts</sup>. capable of exercising such necessary and useful powers as were not to be exercised by the General Gov<sup>t</sup>. No necessary presumption therefore arises from the importance of any particular power in itself, that it has been vested in that Gov<sup>t</sup>. because tho' not vested there, it may exist elsewhere, and the exercise of it elsewhere might be preferred by those who alone had a right to make the distribution. The presumption which ought to be indulged is that any improvement of this distribution sufficiently pointed out by experience would not be withheld.

Altho' I have confined myself to the single question concerning the rule of interpreting the Constitution, I find that my pen has carried me to a length which would not have been permitted by a recollection that my remarks are merely for an eye to which no aspect of the subject is likely to be new. I hasten therefore to conclude with assurances &c &c.

[\[Back to Table of Contents\]](#)

## TO EDWARD COLES.1

Montpellier, Sept. 3, 1819.

Chic. Hist. Soc.  
Mss.

I have received, my dear Sir, your agreeable letter of July 20 wch. was very long on the way.

We congratulate you much on the various successes of your western career. The first thing that strikes is the rapidity of your promotions. Bounding over the preliminary sailorship, the first step on the deck of your Bark, pardon me, of the nobler structure, your Ark, makes you a Pilot. The name of Pilot is scarcely pronounced, before you are a Captain. And in less than a twinkling of an eye, the Captain starts up a Commodore. On the land, a scene opens upon us in which you equally figure. We see you at once a ploughman, a rail splitter, a fence builder, a cornplanter, a Haymaker, and soon to be a wheat sower. To all these rural felicities, which leave but a single defect on your title of *Husband*-man, you add the polished pleasures of a Town, you mean a City, life. And to cap the whole, you enjoy the official dignity of Register of the land office in the important Territory of Illinois. We repeat our congratulations on all these honors & employments, and wish that the emoluments may fully equal them.

You are well off, for this year at least, in being where you can expect bread from corn planted in July. Here famine threatens us, in the midst of fields planted in April. So severe a drought is not remembered. We have had no rain, scarcely, throughout the months of June, July & Aug'st, and the earth previously but little charged with moisture. On some farms, among them my two small ones near me, there has been no rain at all, or none to produce a sensible effect. In some instances there will not be the tythe of a crop, and the drought has been very general not only in this, but in other States. It has been, I understand particularly severe throughout the Tobacco Districts in Virg'a and must make this crop very scanty. It is at this critical moment feeling in all its force, the want of rain. I fear that Albemarle has no better than neighbour's fare. Fortunately for us the wheat crop was everywhere very fine, and well harvested.

The season has been as remarkable too for the degree & constancy of its heat, as for its dryness. The Thermometer in the coolest part of my largest room was on two days, at 92°, for several at 90 & 91, and generally from 84 to 5-6-7-8. Our springs & wells have not yet entirely failed; but without copious rains this must quickly be the case.

You are pursuing, I observe, the true course with your negroes, in order to make their freedom a fair experiment for their happiness. With the habits of the slave, and without the instruction, the property, or the employments of a freeman, the manumitted blacks, instead of deriving advantage from the partial benevolence of their Masters, furnish arguments against the general efforts in their behalf. I wish your philanthropy could compleat its object, by changing their colour as well as their legal condition. Without this, they seem destined to a privation of that moral rank & those social participations which give to freedom more than half its value.

Mrs. Madison as well as myself, is much gratified by your promise to devote the next winter to your native haunts. We hope your arrangements will give us an ample share of your time. We will then take the case of your Bachelorship, into serious & full consideration. Mrs. M. is well disposed to give all her aid, in getting that old thorn out of your side, and putting a young rib in its place. She very justly remarks, however, that with your own exertions, hers will not be wanted & without them not deserved.

Accept our joint & affectionate wishes for your health & every other happiness.

END OF VOLUME VIII

[1]The MS. ends here; the balance is from the works of Madison (Congressional Edition).

[1]The omitted portions relate to finding a successor to Fulwar Skipwith, Consul at Paris, and the state of public opinion in the United States.

[1]See Belsham Memoirs, Smollet's continuation, vol. 3, p. 130; also Journals House of Commons.

[1]Erskine wrote the Secretary of State, Robert Smith, as follows:

Washington, April 18th 1809.

Th Day Of June Next.

I have the honor, &c.—*D. of S. MSS. Notes.*

[1]From the original kindly loaned by John Boyd Thacher, Esq.

[1]The order revoked the old orders except so far as a blockade would accomplish their object. The blockade extended from Ems on the north and included the northern ports of Italy, but opened to neutral commerce all ports not actually French. Erskine wrote to Secretary Smith:

“Washington, June 15, 1809.

“Sir,

“I have the Honor to inclose a Copy of an Order of His Majesty in Council, issued on the 26th of April last.

“In consequence of official Communications sent to me from His Majesty's Government, since the Adoption of that measure, I am enabled to assure you that it has no Connection whatever with the Overtures, which I have been authorized to make to the Government of the United States, and that I am persuaded that the Terms

of the Agreement so happily concluded by the recent Negotiation, will be strictly fulfilled on the part of His Majesty.

“The internal Evidence of the Order itself, would fully justify the foregoing Construction and moreover, it will not have escaped your Notice that the Repeal has not thereby been made of the Order of the 7th of January 1807, which according to the Engagement I have entered into, on the part of His Majesty, is to be abrogated with the other Orders, in consequence of the Adjustment of Differences between the two Countries, and the confidence entertained of a further conciliatory understanding.

“I have the Honor,” &c.—*D. of S. MSS. Notes.*

[1] Erskine wrote to Secretary Smith:

“Washington July 31st, 1809.

“Sir,

“I have the Honor to inclose to you a Copy of an Order, which was passed by His Majesty in Council on the 24th of May last.

“In communicating this Order, it is with the deepest Regret that I have to inform you that His Majesty has not thought proper to confirm the late provisional Agreement which I had entered into with you on the part of our respective Governments.

“Neither the present time, nor the occasion will afford me a favourable Opportunity for explaining to you the Grounds and Reasons upon which I conceived I had conformed to His Majesty’s Wishes; and to the Spirit, at least, of my Instructions upon that Subject—nor, indeed, would any vindication of my Conduct, (whatever I may have to offer) be of any Importance further than as it might tend to shew that no Intention existed on my part to practice any Deception towards the Government of the United States.

“I have the Satisfaction, however, to call your Attention to that part of the inclosed Order, which protects the Commerce and Shipping of the United States, from the Injury and Inconveniences, which might have arisen to American Citizens from a reliance on the provisional Agreement beforementioned; and I cannot but cherish a Hope that no further bad Consequences may result from an Arrangement, which I had fully believed would have met with His Majesty’s Approbation, and would have led to a complete and cordial Understanding, between the two Countries.

“With Sentiments of the highest Respect and Consideration,

“I have the honor” &c.—*D. of S. MSS. Notes.*

[1] From *Memoirs and Letters of Dolly Madison* (1886), p. 67. The letter is there dated August 17, which is obviously an error. The correct date must be August 7th.



[1] While there he issued his proclamation of Aug. 9, withdrawing the proclamation of April 19:

“Whereas it is now officially made known to me that the said orders in council have not been withdrawn agreeably to the communication and declaration aforesaid,

“I do hereby proclaim the same, and, consequently, that the trade renewable on the event of the said orders, being withdrawn, is to be considered as under the operation of the several acts by which such trade was suspended.”

[1] Berent Gardenier, of New York, a federalist of the extreme type.

[1] Only an extract of Pinkney’s chief letter was sent to Congress. It may be seen in *Am. State Papers, For. Affs., III., 303*, and *Annals of Cong., 11th Cong., 2d Sess., Part 2, p. 2074*, and is indicated in the complete letter which follows by an asterisk at the beginning and end of the extract. The closing sentence of Secretary Smith’s letter of April 17th (written by Madison) to Erskine, to which Canning took exception, was as follows:

“But I have it in express charge from the President to state that, while he forbears to insist on a further punishment of the offending officer [Berkeley], he is not the less sensible of the justice and utility of such an example, nor the less persuaded that it would best comport with what is due His Britannic Majesty to his own honor.”

Pinkney’s letter to Smith was as follows:

“London, June 23, 1809.

“Sir,

“I had an Interview yesterday with Mr. Canning, of which I will trouble you with a very brief account.

“As the orders in Council of the 24th. of May did not extend to the Dutch Settlement of Batavia, and as an American Trade with that Settlement was supposed to be affected by the order of the 26th. of April, I suggested to Mr. Canning the propriety of a supplemental order on that point. His Idea was that the omission of Batavia in the order of the 24th of May must have been an oversight, and that it would be set to rights as I proposed. Of course he could not speak positively on such a Subject.

“American Vessels, taking Cargoes to Holland, are not allowed by the order of May to clear out from that Country, with Return Cargoes, after the 1st of July. I supposed that the homeward Voyage ought, upon every principle, to have been placed upon the same Footing with the outward, and that both should have been considered as forming one Transaction and equally resting upon the Faith of Mr. Erskine’s arrangement. Mr. Canning did not appear to be convinced that this was a correct View of the Case, but he took a Note of what I said upon it for Consideration. The Importance of this alteration will depend upon the Manner in which our Vessels may be received &

treated in Holland. This is still doubtful, but I hope to be able in a few Days to give you precise Information on that point.

“It seemed to be desirable that, before Mr. Jackson’s Departure this Government should determine to avoid the Error of taking formal Exception to your letter of the 17th of April to Mr. Erskine; and, accordingly, I availed myself of this occasion to enter very fully into that subject. I need not state in Detail the Grounds upon which I recommended that Mr. Jackson should not be directed or even permitted to attribute to that Letter in his official Discussions with you any thing of that Harshness which had at first been supposed to belong to it. I ought to say, however, that I thought myself bound to contrast the Spirit and Terms of your Letter with the strong Imputations contained in the introductory part of Mr. Canning’s Instructions to Mr. Erskine of the 23 of January, which introductory part, as well as the Body of the Instructions, Mr. Erskine was authorized, without any apparent necessity, to communicate to you, and which has, moreover been lately published to the World, with still less of the Appearance of Necessity, through the House of Commons; and that I dwelt, with the same object upon Mr. Canning’s official reply to my Letter of the 23d of August last, and pointed out in as conciliatory a Way as possible but nevertheless with great Explicitness the Course of Recrimination which a Complaint by the British Government of the Temper imputed to your Letter would inevitably produce, and how perniciously it might affect the Relations of the two Countries without any Chance of doing Good.

“It was not necessary, or perhaps proper, that I should make many Comments upon your Letter; and I added, in fact, very little to a confident Denial that it was written in any other than a just and friendly Spirit or that it was liable to the Charge of Harshness. The last Sentence of it has been felt with some Sensibility here; but I am inclined to think that no Stress will now be laid upon it. It would be obviously unjust as well as injudicious to do so and although I am quite sure that you would meet, with that Moderation by which national Dignity is best supported, a Disposition on the part of this Government to press this Punctilio into Notice, it certainly is not to be wished that any thing of the Sort should be attempted.

“\* In conversing upon the first of the conditions, upon the obtaining of which Mr. Erskine was to promise the Repeal of the British orders in Council and a special Mission, I collected, from what was said by Mr. Canning, that the Exemption of Holland from the Effect of our Embargo & non-Intercourse would not have been much objected to by the British Government, if the Government of the United States had been willing to concede the first condition subject to that Exemption. Mr. Canning observed that the Expedient of an actual Blockade of Holland had occurred to them as being capable of meeting that Exemption; but that Mr. Erskine had obtained no Pledge, express or implied, or in any Form, that we would enforce our non-Intercourse System against *France* and her Dependencies—that our mutual System would, if not re-enacted or continued as to France, terminate with the present Session of Congress—that, for aught that appeared to the contrary in your correspondence with Mr. Erskine or in the President’s proclamation, the Embargo and non Intercourse Laws might be suffered without any Breach of Faith to expire, or might even be repealed immediately, notwithstanding the Perseverance of France in

her Berlin and other Edicts—and that Mr. Erskine had in Truth secured nothing more, as the Consideration of the Recall of the orders in Council, than the Renewal of American Intercourse with Great Britain.

“Upon the second of the Conditions mentioned in Mr. Erskine’s Instructions I made several Remarks. I stated that it had no necessary connection with the principal subject—that it had lost its Importance to Great Britain by the Reduction of almost all the Colonies of her Enemies—that Batavia was understood not to be affected by it—that it could not apply to Guadaloupe (the only other unconquered colony) since it was admitted that we were not excluded from a Trade with Guadaloupe in Peace—that I did not know what the Government of the United States would, upon sufficient Inducements, consent to do upon this point; but that it could scarcely be expected to give the implied Sanction, which this Condition called upon it to give, to the Rules of the War of 1756, without any equivlaent or reciprocal Stipulation whatsoever.—Mr. Canning admitted that the second condition had no necessary connection with the orders in Council, and he intimated that they would have been content to leave the Subject of it to future Discussion and arrangement. He added that this condition was inserted in Mr. Erskine’s Instructions because it had appeared from his own Report of Conversations with official persons at Washington that there would be no difficulty in agreeing to it.

“Upon the third Condition I said a very few Words. I restated what I had thrown out upon the matter of it in an informal Conversation in January—and expressed my regret that it should have been misapprehended. Mr. Canning immediately said that he was himself of opinion that the Idea upon which that condition turns could not well find its way into a stipulation—that he had, nevertheless, believed it to be proper to propose the condition to the United States—that he should have been satisfied with the Rejection of it—and that the Consequence would have been that they should have intercepted the Commerce to which it referred, if any such commerce should be attempted.\*

“In conclusion I urged the Importance of sending out Mr. Jackson as promptly as possible, with such liberal Instructions as would be likely, if acted upon as they ought to be, to conduct the two countries to peace and Friendship. I was told that Mr. Jackson would probably sail in ten days, and I had much Reason to hope that his orders would not be such as to render adjustment impracticable.

“I shall commit this letter to Mr. Jackson’s care. It is rather a prevailing notion here that this Gentleman’s conduct will not and cannot be what we all wish, and that a better choice might have been made. I trust, however, that you will find him anxious to reestablish a good understanding with us, and that with some small occasional allowances he will do very well. It must be granted, however, that the Crisis seems to require a minister of mild Department, studious to soften asperities, and incapable, from Temperament, of being betrayed into an offensive manner of discharging his Duty.”—*D. of S. MSS. Despatches.*

[1] From the original among the family papers of the late J. Henley Smith, Esq., of Washington. The letter is undated, but was written in 1809.

[1] From the *Writings of Madison* (Congressional Edition).

[1] September 23, 1809, Pinkney wrote to Smith:

“Mr. George Joy has gone to Denmark with the view of being useful, as the agent of the parties, in obtaining the Liberation of the American vessels and cargoes captured by the Cruizers of that nation. He wished Instructions from me, so as to give an official air to his Interposition. I declined giving any Instructions both because I was not authorized and did not think it at all necessary to do so. I wrote him a Letter, however, giving as much countenance to his object as I could, which Letter he is to make as much use of as he thinks fit.”—*D. of S. MSS. Despatches.*

[1] From Wheaton’s *Life, Writings, and Speeches of William Pinkney*, p. 437.

[1] The bill was introduced in the House Dec. 19, 1809, by Macon from the Committee on Foreign Relations, and prohibited public vessels of France or England or private vessels owned by subjects of either power from entering American ports; forbade the importation of goods from either country or its colonies; and provided that whenever either country should revoke or modify her edicts so that they would cease to violate the neutral commerce of the U. S. the President should issue a proclamation announcing the cessation of the prohibitions of the act towards the revoking power. He afterwards moved an amendment to make the act expire with the present session of Congress, when by its terms it would not go into effect till April 15, his object being to make it useless. It finally passed by the unsatisfactory vote of 73 to 52. The Senate amended it by striking out all but the sections prohibiting British and French public vessels from entering American ports and limiting the act to the next session of Congress. The House refused to recede and the bill was lost. On April 8, 1810, Macon brought in another bill providing that if France or Great Britain should revoke her edicts before March 3 next the President should proclaim the fact, and if within three months thereafter the other nation did not repeal her edicts the non-intercourse regulations should be effective against her. This bill after undergoing various amendments passed the House April 19, by a vote of 61 to 40. It was sent back to the Senate with further amendments and finally passed on the last day of the session, May 1st, being approved on the same day.

[1] In the Senate, approving the President’s course towards Jackson.

[1] See *ante*, p. 70, n.

[1] From Wheaton’s *Life, Writings, and Speeches of William Pinkney*, p. 441.

[1] From the *Works of James Madison* (Congressional Edition).

[1] Communicated to Congress November 29, 1809, February 19 and May 1, 1810. *Annals of Cong., 11th Cong., 2d Session*, p. 2124.

[1] Given in the case of *Dempsey, assignee of Brown, v. The Insurance Co. of Pennsylvania*. The case was argued twice, in 1807 and 1808, before the High Court of Errors and Appeals of Pennsylvania, and Judge Cooper’s opinion is discussed in

*Calhoun v. The Insurance Co. of Pennsylvania* (1 Binney, 293). See also *Maryland Insurance Co. v. Woods*, 6 Cranch, 29. Ch. Justice Marshall rendered the opinion.

[2] See *ante* Vol. III., 197, n., for the text of the plan.

[3] Afterwards found. (Madison's note.)

[1] David Holmes, appointed Governor of Mississippi Territory in 1809.

[1] Robert K. Lowry, of Maryland, left for La Guayra, Caracas, towards the end of July, but no regular commission was issued to him until Feb. 3, 1812, when he was appointed Consul at that place. From Baltimore, July 10, 1810, he wrote Secretary Smith: "In the course of conversation two days since, Mr. Bolivar informed me that a considerable order for muskets has been received by him for the Govt. of Caraccas.

"Mr. De Orca, the other deputy, who sailed for Laguayra this morning, has related to me an interview which took place between him & Mr. Jackson last week in Philada. Don Onis, the Span. Consul, & Ex Governor of Caraccas being present. The impression left on his mind is that the British govt. will not be so friendly to them as was expected, especially if, as they appeared to anticipate, the revolution ends in the total rejection of the authority of Ferdinand the 7th."—*Dept. of State MSS., Consular Letters.*

[1] He was then Minister to Russia, having been appointed the year before.

[1] Gideon Granger was Postmaster-General at the time. Levi Lincoln was appointed January 7, 1811, but he declined on account of failing eyesight; on February 22 John Quincy Adams was appointed, but he preferred to remain in Russia, finally, November 18th, Joseph Story was appointed. On the subject of Granger Madison wrote to Jefferson Dec. 7, 1810. "Granger has stirred up recommendations throughout the Eastern States. The means by which this has been done are easily conjectured, and outweigh the recommendations themselves. The soundest Republicans of N. England are working hard agst. him as infected with Yazooism, and intrigue. They wish for J. Q. Adams as honest, able, independent, & untainted with such objections. There are others however in the view of the Southern Republicans, tho perhaps less formidable to them, than Yazooism on the Supreme Bench If there be other Candidates they are disqualified either politically, morally or intellectually. Such is the prospect before me which your experience will make you readily understand"—*Mad. MSS.*

[1] February 24, 1804, Congress passed a law extending the customs regulations over Louisiana and authorizing the President, whenever he should deem it expedient to do so, to make the bay and river Mobile a separate district. Jefferson deemed it inexpedient to put this part of the law into effect. In the summer of 1810 a revolution broke out among the people of the region and West Florida was declared independent and asked annexation to the United States. As the United States had already asserted the territory to be hers, the opportunity to extend her authority over it was not to be resisted. See *Henry Adams*, v., 306.

[1] The original of this letter is at Rokeby, General Armstrong's country seat on the Hudson River.

[1] The proclamation was dated November 2. It recited the terms of the Act of May 1, 1810, and proceeded: "And, Whereas it has been officially made known to this Government that the edicts of France violating the neutral commerce of the United States have been so revoked as to cease to have effect on the 1st of the present month,

"Now, therefore, I, James Madison, President of the United States, do hereby proclaim the said edicts of France have been so revoked as that they ceased on the said 1st day of the present month to violate the neutral commerce of the United States, and that from the date of these presents all the restrictions imposed by the aforesaid act shall cease and be discontinued to France and their dependencies."

[1] From the *Works of Madison* (Congressional Edition). The letter is also printed in part in Wheaton's *Life, Writings, and Speeches of William Pinkney*, 449. Pinkney's letter was dated August 14th. Lord Wellesley's letter to him of July 22d contained but two sentences: "I think it may be difficult to enter upon the subject of your last note, (respecting the diplomatic rank of our minister in America,) in any official form.

"But I have no difficulty in assuring you, that it is my intention immediately to recommend the appointment of an envoy extraordinary and minister plenipotentiary from the king to the United States."—*American Archives*, iii., *Foreign Affairs*, 363.

[1] David Bailie Warden was appointed Consul at Paris, March 3, 1811, and held the office for many years.

[1] Madison caused Richard Brent, Senator from Virginia, to write to Monroe and ask him if he would accept the Secretaryship of State. March 18th Monroe replied favorably. (*Writings of Monroe*, v., 178.) Madison wrote to Jefferson April 1: "You will have inferred the change which is taking place in the Dept. of State. Col. Monroe agrees to succeed Mr. Smith, who declines however the mission to Russia, at first not unfavorably looked at. I was willing, notwithstanding many trying circumstances, to have smoothed the transaction as much as possible, but it will be pretty sure to end in secret hostility, if not open warfare. On account of my great esteem & regard for common friends such a result is truly painful to me. For the rest, I feel myself on firm ground, as well in the public opinion as in my own consciousness.

[1] Endorsed by Madison: "(Quere: if necessary to become public?) Memorandum as to R. Smith." It was not made public.

A newspaper controversy arose and Smith's friends became Madison's enemies. Madison wrote to Jefferson from Washington, July 8, 1811: "You will have noticed in the Nat. Intelligencer that the wicked publication of Mr. Smith is not to escape with impunity. It is impossible however that the whole turpitude of his conduct can be understood without disclosures to be made by myself alone, and of course, as he knows, not to be made at all."—*Mad. MSS.*



[1] See Jefferson's correspondence with and concerning Duane in *Writings of Jefferson* (Ford), ix., 310 *et seq.*

[1] May 16 Commodore John Rodgers with *The President* engaged the British corvette *Little Belt*.

[2] The State now had a Republican majority and Timothy Pickering was retired from the Senate, Joseph B. Varnum being elected to succeed him.

[1] John Quincy Adams wrote to Madison June 3, 1811, from St. Petersburg, declining the commission sent him as Associate Justice of the Supreme Court. The study of law had never been congenial to him, and he had formerly declined a similar appointment in Massachusetts. He recommended in his place John Davis, of Massachusetts.—*Chicago Hist. Soc. Mss.*

[1] November 1, the British Minister wrote to Monroe formally disavowing Admiral Berkeley's act and offering to restore the men taken from the *Chesapeake* to that vessel and make compensation for their injuries. The two surviving seamen were accordingly brought from Halifax, where they were in jail, and restored to the deck of the *Chesapeake* in Boston Harbor.—*Henry Adams*, vi., 122.

[1] Joel Barlow was appointed consul at Algiers March 3, 1797, and Minister to France, February 27, 1811, and left for Paris July, 1811, arriving in Paris Sept. 19th.

[1] The address was drawn up by Charles Pinckney and an advance copy sent by him to Monroe for the President December 15. It praised Madison and promised him the support of South Carolina.—*D. of S. Mss. Miscellaneous Letters*.

[1] The act of January 11th provided for raising immediately ten regiments of infantry, two of artillery and one of light dragoons for five years unless sooner discharged. The act of February 6th authorized the President to accept volunteers to the number of 50,000, to do duty whenever he should deem proper and to be bound to remain in the service for twelve months after arriving at a rendezvous. They were to retain their own officers and receive the same pay and allowances as regular troops.—*Annals of Cong.* 12th Cong., Part 2, 2230 *et seq.*

[2] James Wilkinson was Senior Brigadier-General in the army. He was tried by court-martial September 2d to December 25th on eight charges—being a pensioner of Spain, treasonable projects for the dismemberment of the United States, conspiracy with Aaron Burr, connivance at treasonable designs, conspiracy against a friendly nation, disobedience of orders, neglect of duty, misapplication and waste of public funds. His acquittal was because there was not sufficient evidence to convict. February 14th, Madison approved the finding with this memorandum:

“I have examined and considered the foregoing proceedings of the General Court Martial, held at Fredericktown, for the trial of Brigadier General Wilkinson—and although I have observed in those proceedings, with regret, that there are instances in the conduct of the court as well as of the officer on trial, which are evidently and

justly objectionable, his acquittal of the several charges, exhibited against him, is approved and his sword is accordingly ordered to be restored.”—*Annals of Congress*, 12th Cong., Part 2, p. 2125.

[1] Nevertheless, Barlow brought the subject before the French government and submitted the full draft of a commercial treaty. Barlow to Monroe, December 31, 1811.—*D. of S. MSS. Despatches*.

[1] The vote was 56 to 34, passed Mar. 4th.—*Annals of Cong*, 12th Cong, Part 1, p. 1155.

[1] This was the famous Henry correspondence which showed that a secret agent of the British government had been engaged in reporting the extent of the disaffection towards the government in the New England States. The correspondence may be read in the *Annals of Cong.*, 12th Cong., Part 1, p. 1162. For an account of the whole transaction see *Henry Adams*, v., 14 and 86, and vi., 176, *et seq.*

[1] The anonymous letters cannot be found. Jonathan Dayton was a revolutionary veteran, Senator from New Jersey 1799 to 1805, speaker of the House of Representatives 1795 to 1799. He was arrested for alleged conspiracy with Aaron Burr, but never tried.

[1] On April 1 Madison sent the following message to Congress: “Considering it expedient under existing circumstances and prospects, that a general embargo be laid on all vessels now in port, or hereafter arriving, for the period of sixty days, I recommend the immediate passage of a law to that effect.” (*Annals of Cong.*, 12th Cong., Part 2, p. 1587.) He intended it as a war measure, but the Senate, in altering the period to ninety days, made it rather a measure of negotiation.

[1] The allusion is to Barlow’s efforts to negotiate a full commercial convention. April 23, Monroe wrote to him: “I will observe generally that the project is thought to be liable to objections which would delay if it did not defeat here, a Treaty corresponding with it. A formal Treaty was not contemplated by your instructions. The objects contemplated by them were 1st, The admission of our productions into France on beneficial terms. 2nd, security for our neutral and national rights on the high seas, and 3dly, provision for the Rambouillet and other spoliations; and these objects it was expected might be obtained by Decrees or Acts of the French Government adopted separately and independently by itself.”—*D. of S. MSS. Instr.*

[1] The instructions were to take possession of East Florida, if the Spanish governor was disposed to surrender it. If a foreign power should attempt to take possession he was to take effective measures for its occupation.—*Annals of Cong.*, 12th Cong., Part 2, p. 1687. Matthews, however, organized a force and took possession of Amelia Island. See *Henry Adams*, vi, 237, *et seq.*

[1] J. G. Jackson, a Representative from Virginia, a connection by marriage of Madison’s, wrote to him from Clarksburg, Va., March 30, 1812, that the hostility of the opposition was inveterate, and that the damning proof of British perfidy submitted



in the Henry correspondence had not moved them. "My voice is for war," he added. Elbridge Gerry, Governor of Massachusetts, wrote confidentially April 12, that three division commanders of Massachusetts troops and three brigadiers were friends of the national government. He had been obliged to appoint officers who were federalists because he could not find others, but he thought they would do their duty and the Major-Generals could be depended upon to correct them if they were guilty of misconduct. On May 19, he wrote again to say that the opposition increased with delay and that war would help matters. "By war we shall be purified as by fire," he said.—*Mad. MSS.* These are only examples of many letters to the same effect received by Madison at this time.

[1] "More than six months had passed since Congress met, and the question of actual war was still in suspense. At length, after private conference, a deputation of Members of Congress, with Mr. Clay at their head, waited upon the President, and upon the representations of the readiness of a majority of Congress to vote the war if recommended, the Presdnt, on the first Monday in June, transmitted to Congress his message submitting that question to their decision."—Joseph Gale's account, *Am. Hist. Rev.*, xiii, 309. Here is the true account of the visit to Madison, which has been so often represented as the occasion when he was promised a renomination for the Presidency if he would send Congress a war message. See Hildreth, vi., 298; McMaster, iii., 445; Von Holst, i., 230; Gay's *Madison*, 308. The message being referred to the Committee on Foreign Affairs of the House, John C. Calhoun brought in the famous war manifesto June 3, but this paper had really been written by James Monroe. See Joseph Gales on the "War Manifesto of 1812," *Am Hist. Rev.*, xiii, 303.

[1] This is endorsed: Instructions for private armed vessels, drawn up by President Madison. It is in Madison's hand and is among the War of 1812 MSS., Letters of Marque.

[1] He had been appointed Senior Major-General in the army, January 27, and assigned to the command of the northern department.

[1] William Hull, appointed to command the northwestern army, surrendered on August 16.

[1] May 12, which followed his of May 2. They are printed in part in *State Papers, Foreign Relations*, vol. iii., 602.

[1] September 4, 1812, Richard Rush wrote to Madison, from Washington, that the effect of Hull's defeat had been disastrous. Would Monroe consent to lead the army? Would Jefferson emerge from his retirement and lend the administration the weight of his counsels?—*Chic. Hist. Soc. MSS.*

[1] *The Diverting History of John Bull and Brother Jonathan*, New York, 1812, is referred to. It was by James Kirke Paulding, not by Washington Irving; but Paulding and Irving had been collaborating in their *Salmagundi* and the mistake was a natural one.

[1] Governor of Vermont, a Republican, now serving his second term. Vermont was the only New England State which cast its vote for Madison for President at this time. By the following year, however, it became Federalist.

[1] Eustis's retirement as Secretary of War was probably voluntary, he himself recognizing that Congress had no confidence in his ability to cope with the situation. Monroe was appointed Secretary of War *pro tempore* January 1, 1813, and served till February 4.

[1] Hamilton's resignation was probably on a hint from Madison. On January 12, 1813, William Jones, of Pennsylvania, succeeded him.

[1] The circular of the British Government dated November 9, 1812, transmitting the Order in Council of October 26, to the Lieutenant-Governor of the Bermudas, contained this paragraph:

“Whatever importations are proposed to be made under the order, from the United States of America, should be by your licenses confined to the ports in the Eastern States exclusively, unless you have reason to suppose that the object of the order would not be fulfilled if licenses are not also granted for importations from other ports in the United States”—*Annals of Cong.*, 12th Cong., 2d Sess., p. 1119.

[1] Madison had been re-elected by a vote of 128 to 89 for DeWitt Clinton, of New York. Georgia, Kentucky, Louisiana, Maryland, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, and Virginia voted for him; Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York and Rhode Island against.

[1] Offered by Dashkoff, the Russian Chargé at Washington, March 8.

[1] Jonathan Russell was nominated May 29 to be Minister Plenipotentiary to Sweden. On June 14 the Senate “Resolved, that the nomination of Jonathan Russell, and the motion of Mr. Goldsborough, on the subject, together with the message of the President of the United States, of the 7th instant, with the communications therein mentioned, be referred to a committee, with instructions respectfully to confer with the President of the United States, upon the subject of the said nomination, and report thereon.”—*Executive Journal of the Senate*, ii., 354.

[1] On April 17 Gallatin was appointed Envoy Extraordinary and Minister Plenipotentiary with John Quincy Adams and James A. Bayard, but it was intended that his post as Secretary of the Treasury should be kept open for him. He left Washington April 21 and the Senate rejected the nomination July 19. On February 9, 1814, it declared his seat as Secretary of the Treasury vacant, because he was absent from it, and on the same day he was nominated to be Envoy Extraordinary and Minister Plenipotentiary to England. Jones, Secretary of the Navy, served as Secretary of the Treasury *ad interim* from April 21, but on July 24 he wrote to Madison that a continuance of the double service was absolutely impracticable. Nevertheless, he continued to serve till George W. Campbell was appointed February 9, 1814.

[2] Italics for cypher.

[1] In the letter of July 24 from Utica Dearborn said he intended to retire to his family near Boston and asked that an inquiry be made into his conduct.—*Mad. MSS.* The request was denied; but, ostensibly because of his ill-health, he was relieved of his active command and transferred to New York, considered an important post. Madison to Armstrong, Sept. 8, 1813.—*Madison's Works* (Cong. Ed.).

[1] Governor of Kentucky.

[1] The letter appeared in the *Federal Republican* of Georgetown. It was dated June 14, 1809, and started out: "The federal government is going to settle all its differences with Great Britain, and to make a treaty of amity, of commerce and of navigation with that power." Turreau then proceeded to point out the undesirability from France's point of view of a treaty with the United States and recited the wrongs committed by the United States upon France. The manner as well as the matter of the letter made it one which the United States could not have received without dismissing Turreau. On August 31, Graham wrote the *Federal Republican*, saying the letter was one which he had translated for Secretary Smith when it was received, but that it had been withdrawn by Turreau. Both letters may be found in *Niles's Weekly Register*, v., 37.

[1] Mr. Erskine.

[2] Mr. Pichon.

[1] From the *Works of Madison* (Cong. Ed.).

[1] From a copy kindly furnished by Mrs. Susan P. Brown, of Spring Hill, Tenn.

[2] By the act of March 24, Congress authorized a loan of \$25,000,000. Campbell wrote to Madison, May 4, saying he had disposed of \$10,000,000 of the loan "at \$88 in money for \$100 in 6 per cent. stocks: the government agreeing that if any part of the 25 millions authorized to be borrowed for the present year should be given on terms more favorable to the lenders, the benefit of such terms should be extended to the persons then holding the stock issued for the present year. . . . A considerable portion of it has been offered by public institutions and individuals of whose ability there is no reason to doubt. There is, however, a large sum (5 millions) taken by or in the name of one man, Mr. Barker; who at an early day put in his proposal for that amount on the foregoing terms. It is presumed he acts in conjunction with others, or is supported by some public institutions which will enable him to comply with his proposal."—*Mad. MSS.*

[1] From a copy kindly furnished by Mrs. Susan P. Brown, of Spring Hill, Tenn.

[1] From the copy made by Madison's direction for the statement he prepared in 1824 in reply to General Armstrong's communication printed in 1821 in the *Literary and Scientific Repository*. (See *Post*, January, 1824.)

[1] The plan of defense of Washington and Baltimore was decided upon in Cabinet July 1st and the following estimate of force was made. It is found among the copies made by Madison's direction for the statement he prepared in 1824 in reply to General Armstrong's communication printed in 1821 in the *Literary and Scientific Repository*. The letter is from the same source.

*Estimate of force and preparation  
for defence of the City, made up in  
Cabinet meeting July 1, 1814.*

Cavalry City of Washington	120
Ditto, from Carlisle say	200
Regular infantry	1,000
District ditto	1,000
Marines	120
District artillery	200
	2,640
Of Barney's corps	500
	3,140

10,000 militia to be designated & held in readiness 10,000 Arms and Camp equipage to be brought forward for use. Survey of the grounds &c.

[1] See Jefferson's correspondence with Genet. *Madison's Note*.

[1] Monroe went on a reconnoissance August 20, but August 21 reported that he had been unable to discover anything of consequence.—*Writings of Monroe* v., 290.

[1] The papers of the State Department had been moved the day before, Monroe having notified the clerks in his office to make the best disposition possible of them. They were taken first to a grist mill belonging to Edgar Patterson on the Virginia side of the Potomac a short distance from the Chain Bridge; but this place being deemed unsafe were moved to Leesburg and placed in an empty house, where they remained for some weeks, until the British fleet had left the Chesapeake. See letter of S. Pleasanton, August 7, 1848, to W. H. Winder in *A Sketch of the Events which Preceded the Capture of Washington*, by E. D. Ingraham.

[1] From the original kindly loaned by Fred'k D. McGuire, Esq., of Washington.

On the night of August 22d the President received the following note from Monroe: "The enemy are advancing six miles on the road to the Wood-Yard and our troops retiring. Our troops were on the march to meet them, but too small a body to engage. General Winder proposes to retire until he can collect them in a body. The enemy are in full march for Washington. Have the materials prepared to destroy the bridges.

"Tuesday, 9 o'clock."

He then went out with his Cabinet to the camp, where he spent the night, and returned to the White House the evening of the 23d.

[1] The memorandum was evidently written contemporaneously with the events it describes. It was copied by Madison's direction in 1824 for the Armstrong statement (see *ante* p. 280 *n.*), the portions in brackets being then inserted.

[1] It was about two o'clock in the afternoon, when the President and Rush started for Washington. As they rode along slowly, the stream of flying militiamen and civilians poured past them, and they realized what had happened. The President reached the White House about three o'clock, and at six crossed the river in a boat, taking a carriage on the Virginia shore, accompanied by Secretary Jones and Attorney General Rush, and drove to a house a few miles above the Little Falls of the Potomac, where he passed the night. The next morning, August 25th, he went on further for six miles to an inn, where he found Mrs. Madison awaiting him. There he remained all day and part of the night, and was insulted by some of the refugees, who held him responsible for their misfortunes. In the dead of night a report came that the enemy was approaching, and the President left the inn, going to a hovel deeper in the woods, where he spent the rest of the night. The next day he crossed the river and went to Montgomery Court House, Maryland, and then on to Brookville, a Quaker settlement, whence he sent notes to his Cabinet to rejoin him at Washington, the enemy having left the city. He himself reached the city at five o'clock, having been absent three days. The White House having been burned and partially destroyed by the enemy, he went to his sister-in-law, Mrs. Anna Cutts's, house on F street about a block from the Treasury Department, where he remained for a month, when he moved into the Octagon House belonging to Col. John Tayloe, at the corner of New York Avenue and Nineteenth Street.—*Hunt's Life of Madison*, 331 *et seq.*

[1] From *A Sketch of the Events which preceded the Capture of Washington*, by Edward D. Ingraham, Philadelphia, 1849. Ingraham probably obtained the letter from William H. Winder, of Philadelphia, General Winder's son.

Madison and his party had just arrived at Brookville and he was staying at Mrs. Bently's. "Just at bedtime the Presd. had arrived and all hands went to work to prepare supper and lodgings for him, his companions and guards—beds were spread in the parlour, the house was filled and guards placed round the house during the night. . . . All the villagers, gentlemen and ladies, young and old, throng'd to see the President. He was tranquil as usual, and tho' much distressed by the dreadful event, which had taken place not dispirited."—Mrs. Samuel Harrison Smith to her sister. *The First Forty Years of Washington Society*, p. 108.

The Mayor of Washington, James H. Blake, wrote to Madison the evening of Aug. 26th, but could find neither horse nor rider to carry the message and sent him a message Saturday morning at 7 o'clock that everything was perfectly quiet and a few of the citizens returning.—*D. of S. MSS. Misc. Lets.*

[1] John Mason of Analostan Island. He and Rush were continuously with the President from the time of the flight.—*The First Forty Years of Washington Society*, p. 105.

[1] From the family papers of the late J. Henley Smith, Esq., of Washington.

[2] See *ante*, p. 280 *n*.

[1] He had repaired to Fredericktown, the place appointed for the rendezvous of the Executive in the event of their being driven from the city. The turn which things took after his departure prevented the other members from joining him. (*Madison's note*.)

[1] See the instructions to him on the 13th day of August 1814. (*Madison's note*.)

[1] Tompkins was at that time Governor of New York. Upon Armstrong's dismissal Monroe became Secretary of War *ad interim* from August 30th to September 30th. He was nominated for the office of Secretary of War September 26th, confirmed September 27th, qualified October 1st, 1814, and served to February 28th, 1815, when he was again commissioned Secretary of State. Mosher's *Executive Register of the United States*, 83, 84. Tompkins declined on the ground that he was more useful in his present situation. Madison to Tompkins, October 18, 1814.—*Mad. MSS*.

[1] The library was bought for \$23,950 by act of January 30, 1815.—*History of the Library of Congress*, i., 68, *et seq*.

[2] September 24th. See also his letter of October 15th (*Writings*, 14, 488, 489), to which Madison replied October 23d: "I find that the variance in our ideas relates 1. to the probable quantity of circulating medium. 2 to the effect of an annual augmentation of it. I cannot persuade myself that in the present stagnation of private dealings, & the proposed limitation of taxes, the two great absorbents of money, the circulating sum would amount even to 20 mills. But be this amount what it may, every emission beyond it, must either enter into circulation and depreciate the whole mass; or it must be locked up. If it bear an interest it may be locked up for the sake of the interest, in which case it is a loan, both in substance & in form, and implies a capacity to lend, in other words a disposable capital, in the Country. If it does not bear an interest, it could not be locked up, but on the supposition that the terms on which it is recd are such as to promise indemnity at least for the intermediate loss of interest, by its value at a future day; but this both involves the substance of a loan, to the amount of the value locked up, and implies a depreciation differing only from the career of the old continental currency, by a gradual return from a certain point of depression to its original level. If this view of the subject be in any measure correct, I am aware of the gloomy inferences from it. I trust however that our case is not altogether without remedy. To a certain extent paper in some form or other, will as a circulating medium, answer the purpose your plan contemplates. The increase of taxes will have the double operation of widening the channel of circulation, and of pumping the medium out of it. And I cannot but think that a domestic capital existing under various shapes, and disposable to the public, may still be obtained on terms tho' hard, not intolerable; and that it will not be very long before the money market abroad, will not be entirely



shut agst us; a market however ineligible in some respects, not to be declined under our circumstances.”—*Mad. MSS.*

[1] See *State Papers*, vol. iii., *Foreign Relations*, p. 695.

[1] From a copy kindly furnished by Mrs. Susan P. Brown, of Spring Hill, Tenn. Campbell wrote to Madison September 26th that his health was so bad it was imperative for him to retire from public life for a time.—*Mad. MSS.*

[2] The committee was appointed September 23d and reported November 29th. The full report may be found in *Annals of Cong.*, 13th Cong., vol. 3, p. 1518.

[1] From *Mass. Hist. Collections*, 7th Series, vol. i., p. 212. *The Jefferson Papers, Coolidge Collection*. Nicholas was then serving as Governor of Virginia.

The feeling in New England is illustrated by a letter Madison received from Jedediah Morse, a pupil of Jonathan Edwards, pastor of the church at Charlestown, Mass., written from Woodstock, Conn., November 23d. He said he was an old man, 89 years of age, and that it was a “cruel, unnecessary, unjust war; esteemed so by thousands of good people of the United States and the expenses of it, too heavy and grievous to be born.”—*Mad. MSS.*

[1] On April 25th, 1814, Jones wrote to Madison that he must resign, as peace had come and he had only expected to serve during the war. On September 11th, alluding to this letter, he asked to be relieved on December 1st. He must go to work to make money, he said, as he had debts to meet.—*Mad. MSS.* On November 24th Madison wrote to Commodore John Rodgers asking him to be Secretary of the Navy; but, having been advised by the Attorney-General that a naval officer could not lawfully serve, he withdrew the offer December 4th.—*Chicago Hist. Soc. MSS.* On December 26th Crowninshield replied declining Madison’s offer, but December 28th wrote accepting “at the special request of my political friends & the permission of my family.”—*Mad. MSS.* He entered upon his duties January 16th, 1815.—*Ex. Reg. U. S.*, 85.

[1] Extract of a letter from J. Q. Adams to his father, dated Ghent, October 27th, 1814:

“The whole compass of the diplomatic skill employed by the British Government in this negotiation has consisted in consuming time, without coming to any conclusion. Mr. Clay and Mr. Russell arrived at Gottenburg the 11th of April. The negotiations had been proposed by Lord Castlereagh in November; had been acceded to by the President in the beginning of January. The British Government were informed in February of the appointment of American Plenipotentiaries. Their first dilatory proceeding was to defer the appointment of their Commissioners until official notification should be given them, by the American Ministers themselves, that they were at the place of meeting which had been agreed upon. One full month was gained by this. The next device was, to propose the transfer of the negotiation to Ghent, which absorbed six weeks more; and then they left us from the 24th of June to the 6th

of August waiting here for the appearance of their Plenipotentiaries.”

On June 27th, 1874, the American Commissioners at Ghent were instructed to abandon the question of impressment as a *sine qua non* in making a treaty of peace. The treaty was signed December 24th, and sent to the Senate February 15th.

[1] Dearborn was nominated March 1st and the nomination withdrawn March 2d. On the same day William H. Crawford, of Georgia, was nominated and confirmed the next day.—*Ex. Reg. U. S.*, 84.

[1] “An Exposition of the causes and character of the War.” It may be found in *Annals of Cong.*, 13th Cong., vol. iii., p. 1416.

[1] Charles Bagot presented his credentials as British Minister March 21, 1816.

[2] Bagot asked for an interview on May 22.

Following instructions Adams informed the British government that the United States wished to reach an agreement in regard to the naval armaments on the Lakes, and on July 26, 1816, Bagot wrote to Monroe that he had received Lord Castlereagh’s instructions to say Great Britain would cheerfully adopt any reasonable system.—Bagot to Monroe, July 26, 1816, *Dept. of State MSS. Notes*.

[1] Dallas was nominated to be Secretary of the Treasury October 5, 1814; confirmed at once and entered upon his duties October 14. He resigned April 8, 1816, and served to October 21, when William H. Crawford succeeded him. On April 9, Madison wrote to Dallas:

“I have recd. your letter of yesterday communicating your purpose of resigning the Dept. of the Treasury. I need not express to you the regret at such an event which will be inspired by my recollection of the distinguished ability and unwearied zeal, with which you have filled a station at all times deeply responsible in its duties, through a period rendering them particularly arduous & laborious.

“Should the intention you have formed be nowise open to reconsideration, I can only avail myself of your consent to prolong your functions to the date and for the object which your letter intimates. It cannot but be advantageous that the important measure in which you have had so material an agency, should be put into its active state by the same hands.

“Be assured Sir, that whatever may be the time of your leaving the Department, you will carry from it, my testimony of the invaluable services you have rendered to your Country, my thankfulness for the aid they have afforded in my discharge of the Executive trust, and my best wishes for your prosperity & happiness.”—*Mad. MSS.*

[1] On January 8 Calhoun reported the bill to incorporate the subscribers to the Bank of the United States, which was passed and approved by Madison April 10. Madison’s



argument against the constitutionality of a federal bank may be found *ante*, Vol. VI., p. 27, *et seq.*

[1] George W. Erving, of Massachusetts was commissioned as Minister to Spain August 10, 1814, but the Spanish government refused to receive him until the spring of 1816.

[2] On July 3 Onis wrote to the State Department remonstrating against the arming of certain vessels against Spanish commerce in the United States.—*D. of S. MSS. Notes.*

[1] The argument of the United States was put forward by Monroe June 10, 1816, in a long note to Onis.—*See Am. State Papers, For. Rels.*, Vol. IV., 429.

[1] From the original in the New York Public Library (Lenox).

[2] In his note of April 27, 1816, to Adams, Lord Castlereagh said: “By the Act for the abolition of the Slave trade and the consequent order in Council (of which copies are inclosed for the information of the American Minister) all negroes captured at Sea are condemned as prize to His Majesty and the disposal of them after condemnation is specially limited to their enlistment into the army or navy by which they at once by Law acquire the Rights of freemen, or to their being bound for a limited time as free apprentices to persons capable of teaching them some Trade or Handicraft.”—*D. of S. MSS. Despatches.*

[1] July 29 Bagot wrote a private letter to Monroe saying he had just received information from the Commander-in-Chief in Canada that a very hostile spirit had been manifested towards the United States by the Indian tribes, “in consequence, as it seems, of the American Government having signified their intention of erecting Forts within their land during the course of the summer.”—*D. of S. MSS. Notes.*

[1] Under date of May 18, 1816, Adams reported that Shaler, the Consul at Algiers, had informed him that Lord Exmouth had arrived in the Bay of Algiers and that immediately peace between Algiers and the Kingdoms of Naples and Sardinia had ensued; and that difficulties between the Dey and the United States had begun as soon as Lord Exmouth departed. Adams went on to say that Lord Castlereagh had sent for him and assured him Lord Exmouth had not been engaged in any operations against the United States. Adams urged Lord Castlereagh to compel Algiers to cease the practice of making slaves of Christian prisoners of war, and promised that the United States would help him. “Lord Castlereagh declared that it was the earnest wish of the British Government, that all the Barbary Powers should abandon altogether this mode of warfare; but he thought that mild and moderate measures, and persuasion would be better calculated to produce this effect, than force . . . that Great Britain, with all her exertions had not been able to obtain the abolition of the African Slave trade by Spain and Portugal, and as she would not have felt justified in resorting to War, to compel them to it, so she could not make War upon the Barbary States to force them to renounce the practice of making slaves of Christians, so long as they never applied it to her Subjects, or had given her any cause of offence. . . . She had for herself no complaint against the Barbary States to make. She had often found them useful

friends; and especially during the late War in the Peninsula, which it would have been impossible for her to have carried through, successfully, without the supplies, which her troops had received from the Coast of Barbary, from which they had almost all their fresh provisions.” Adams rejoined: “If, however Great Britain should not incline to assume the task of putting an end to Barbary Piracy, if she should leave them in our hands, I believed we should be able to give a good account of them. The experience of last year had proved that they were not very formidable antagonists upon the Ocean, and if we had to deal with them alone, I had no doubt that our navy would be competent to the protection of our Commerce against them.”—*D. of S. MSS. Despatches.*

[1] From the original in the New York Public Library (Lenox).

[2] “Mr. Bagot offered to secure us the rights in question on the Labrador shore, between Mount Joli and the bay of Esquimaux, near the entrance of the strait of Belleisle.” This being objected to he then offered “an alternative on the shore of the island of Newfoundland, to commence at Cape Ray, and extend, east, to the Ramea islands.” Monroe to Adams, August 13, 1816.—*D. of S. MSS. Instructions.* See the correspondence in *American State Papers*, vol. iv., *Foreign Relations*, p. 348 *et seq.*

[3] William Shaler continued at his post. Joel R. Poinsett, of South Carolina, was not appointed in the diplomatic service till the following administration, when he went as minister to Mexico.

[1] Dallas wrote August 8 that he had conferred with Baltimore, Philadelphia, and New York bankers on the resumption of specie payment. On August 11 he wrote that he was solicitous concerning the conduct of the State banks, the National bank, and the state of the currency.

August 31 he wrote: “The National bank grows in the public confidence. I believe its immediate uses will be as great as was anticipated by its most strenuous advocates. Under a prudent and skilfull director acting in concert with the government, it will restore the national currency, and destroy the artificial differences of exchange. But I look with peculiar pleasure to the establishment, as furnishing a machinery to frustrate the usurpation of the state banks, and to retrieve the constitutional powers of the Government over the coin and currency of the nation.”—*Mad. MSS.*

[1] From the original in the New York Public Library (Lenox).

[2] De Neuville’s letter was dated “Near Brunswick, N. Jersey,” July 21. He said he was familiar with the liberty of the press in America and that the government often had not the power to check its license; but when officers attached to the federal government permitted themselves to forget that his Majesty Louis XVIII. was King of France and Navarre; when a public functionary outraged impudently the brother of Louis XVI at a public fête, his duty required him to call attention to it. Mr. J. S. Skinner at the 4th of July celebration in Baltimore had given this volunteer toast: “The generals of France in exile; the glory of their native land—not to be dishonored by the proscriptions of an imbecile tyrant.” Skinner was postmaster at Baltimore. Therefore

he demanded reparation officially, and said a dismissal would be meted out to a French official if he perpetrated such an outrage in France.—*D. of S. MSS. Notes.*

On August 15 Monroe answered that the government had no responsibility “for any effusion of sentiment which may be displayed at a public feast, in regard to foreign powers, in which the character of the officer, especially of inferior grade, is lost in that of the citizen.” The high consideration for His Most Christian Majesty which this government entertained was well known. This note proving unsatisfactory de Neuville wrote again, and on September 10 Monroe said: “The President has seen with regret the demand which you have thought proper to make. The manner of it, too, has excited not less surprise, for in dictating the reparation claimed, which you say must be immediate, all deliberation on the subject, all freedom of action in this Government, are evidently intended to be precluded.” He concluded by saying the correspondence had been sent to the American plenipotentiary at Paris to make proper representations to the French government.—*D. of S. MSS. Instructions.*

[1] Kosloff, Russian consul at Philadelphia, was arrested and thrown into prison on the charge of having committed rape upon a girl twelve years of age, a servant in his family. The Chief-Justice of Pennsylvania, in hearing the application for a writ of habeas corpus, expressed the opinion that the evidence produced was not sufficient to convict; but he was, nevertheless, indicted. The jurisdiction of the local court was denied, and the case sent to the federal court. There, however, he could not be tried because rape was an offence at common law, “of which description of offences the courts of the United States do not take cognizance,” and no statute covering the crime had ever been passed. Monroe to Levett Harris, Chargé d’Affaires at St. Petersburg, July 31, 1816.—*D. of S. MSS. Instructions.* Monroe wrote to Count de Nesselrode, Secretary of State for Foreign Affairs of Russia, under date of September 12, 1816, making a full explanation of the matter. It had been misrepresented in St. Petersburg and the American Chargé had been forbidden to attend the court.

[1] From the original in the New York Public Library (Lenox).

[2] The instruction is dated September 10. It followed the same ground as the note to de Neuville and said: “The case admitted of no compromise; a discussion on it, therefore, seemed to be useless even from the commencement, and after the last letter from the French Minister it would have been evidently highly improper, since it must have turned, on points which no government, entertaining a proper respect for itself, can ever bring into discussion with a Foreign Minister.”—*D. of S. MSS. Instructions.* De Neuville was not recalled, but served till 1822.

[1] On September 27 Crawford informed Jackson of the reported intended Spanish invasion and on the same day asked the Secretary of the Navy to send a ship to the Gulf of Mexico to co-operate with the land forces.—*Mad. MSS.*

[2] From the original in the New York Public Library (Lenox). September 20 Crawford wrote to Madison asking his decision on the claim of Whitman Knaggs to pay and emoluments when he was a deputy Indian agent in 1812 and was captured.—*Mad. MSS.*

[1] From *The Works of Madison* (Cong. Ed.).

[1] To be Secretary of War. William Lowndes of South Carolina also declined, and no one was appointed, George Graham, the Chief Clerk, serving *ad interim* to the close of the administration.—*Ex. Register of U. S.*, 84.

[1] From the original in the New York Public Library (Lenox).

[2] Applying for a clerkship for Mr. Armistead.—*Mad. MSS.*

[1] The bill was drawn up by John C. Calhoun, who was much surprised when Madison vetoed it. It provided that the bonus and dividends of the United States from the United States Bank should constitute a fund for internal improvements.

[1] This letter, probably handed to Graham just before Madison left the Presidency, was one of the few letters of recommendation for office written by Madison. Soon after his return to Montpelier he had the following circular letter printed:

The friendship which has long subsisted between the President of the United States and myself gave me reason to expect, on my retirement from office, that I might often receive applications to interpose with him on behalf of persons desiring appointments. Such an abuse of his dispositions towards me would necessarily lead to the loss of them, and to the transforming me from the character of a friend to that of an unreasonable and troublesome solicitant. It therefore became necessary for me to lay down as a law for my future conduct never to interpose in any case, either with him or the Heads of Departments (from whom it must go to him) in any case whatever for office To this rule I must scrupulously adhere; for were I to depart from it in a single instance, I could no longer plead it with truth to my friends in excuse for my not complying with their requests. I hope therefore that the declining it in the present, as in every other case, will be ascribed to its true cause, the obligation of this general law, and not to any disinclination existing in this particular case; and still less to an unwillingness to be useful to my friends on all occasions not forbidden by a special impropriety.—*D. of S. MSS. Applications for Office.*

[1] From the *Works of Madison* (Cong. Ed.).

[1] Rush was serving as Secretary of State *ad interim* until John Quincy Adams entered upon his duties September 22, 1817

[2] José Correa da Serra, Minister Plenipotentiary of Portugal from July 22, 1816, to November 9, 1820, was a noted figure in Washington society. He was the author of the saying that Washington was a “city of magnificent distances.” The difficulty alluded to in this letter arose from a publication in the *National Intelligencer* of May 22, by the Legation, of the blockade of the port of Pernambuco and adjacent coasts. On May 24 Rush wrote the Minister to ask if the publication was authoritative, and, being informed that it was, on May 28 addressed him a stiff note, saying he should have addressed his information to the government and not to the public.—*D. of S. MSS. Notes.*

[1] See Hamilton's corresponding opinion in his Arg. for the Bank power, published in his works in 3 vols.—(*Madison's Note.*)

[1] Now the Secretary of State.

[1] Jeremy Bentham sent a long letter of forty-one pages to Madison, October 30, 1811, offering to draw up "a complete body of law; in one word, a pannonian, or as much of it as the life and health of a man, whose age wanted little of four and sixty, might allow of" for the United States or for any of the states. This letter was not answered till Adams went to London as minister, when Madison gave him a reply to deliver to Bentham dated May 8, 1816, in which he politely expressed doubt of the feasibility of the scheme. In the course of the letter he said: "With respect to the unwritten law, it may not be improper to observe, that the extent of it has been not a little abridged, in this Country, by successive events. A certain portion of it was dropped by our emigrant forefathers as contrary to their principles, or inapplicable to their new situation. The Colonial Statutes had a further effect in amending and diminishing the mass. The revolution from Colonies to Independent States, capped off other portions. And the changes which have been constantly going on since this last event, have everywhere made, and are daily making further reductions." Under date of June, 1817, Bentham wrote a circular letter to the Governor of each of the states enclosing a copy of his letter of Oct. 30, 1811, to Madison. All the correspondence was published in London in 1817, under the title, *Papers Relative to Codification and Public Instruction: Including Correspondence with the Russian Emperor, and Divers Constituted Authorities in the American United States.*

[1] Published in 1819. See *ante*, Vol. III, p. 14.

[2] Tucker's report was submitted to the House December 15th.—*Annals of Cong.*, 15th Cong., 1st Sess., vol. i., p. 415.

[1] Ingersoll had been a warm supporter of the war from the beginning. The work he was undertaking appeared in four volumes (Philadelphia, 1845-'52) under the title *Historical Sketch of the Second War between the United States and Great Britain.*

[1] See *ante*, Vol. V., pp. 54, 55, *n.* Gideon inclosed a list of the numbers of the Federalist and requested Madison to give the names of the author of each. Madison wrote to him on February 20th:

I have recd. your letter of the 12th. You are welcome to the Copy of the Federalist sent you. If you refer to it in your proposed Edition it will be more proper to note the fact that the numbers with my name prefixed were published from a Copy containing corrections in my hand, than to use the phrase "revised & corrected by J. M." which would imply a more careful & professed revisal, than is warranted by strict truth.

You seem not rightly to have understood my remark on the circumstance of including in an Edition of the Federalist a pamphlet written by one of its authors, which had been answered in one written by another. My object was to suggest for your consideration how far it wd. be proper to insert in your Edition the former; not to

suggest the insertion of both. The occasion, the plan, and the object of the Federalist, essentially distinguish it from the two pamphlets; and there may be a double incongruity in putting into the same Publication a work in which the two writers co-operated, and productions at once unconnected with it, and in which they are so pointedly opposed to each other.

That the motive to these observations may not be misconceived, it will not be amiss to say, that altho' I cannot at this day but be sensible that in the pamphlet under the name of Helvidius a tone is indulged which must seek an apology in impressions of the moment, and altho' in other respects it may be liable to criticisms for which the occasions are increased by the particular haste in which the several papers were written, to say nothing of inaccuracies in transcribing them for the press, yet I see no ground to be dissatisfied with the constitutional doctrine espoused, or the general scope of the reasoning used in support of it.—*Mad. MSS.*

On the same subject Madison wrote to Richard Cutts March 14:

As it appears from your letter of the 5th that Mr. Gideon adheres to his plan of publishing the 2 pamphlets in the same volumes with the Federalist, and desires a corrected Copy of the one written by me, I have thought it best to send one. Be so good as to let it be put into his hands. I have limited the corrections to errors of the press, and of the transcriber; and a few cases in which the addition of a word or two seemed to render the meaning more explicit. There are passages to which a turn a little different might have been conveniently given; particularly that speaking of treaties as laws, which might have been better guarded agst a charge of inconsistency with the doctrine maintained on another occasion; and which probably wd. have been so guarded, after the accurate investigation of the Constitutional doctrine occasioned by Mr. Jay's Treaty. The reasoning however in the pamphlet is not affected by the question of consistency, and as the Author of Pacificus is charged with the want of it, I have chosen rather, to let the passage stand as it was first published, than to give it what might be considered a retrospective meaning. Intelligent readers will be sensible that the scope of the argument did not lead to a critical attention to Constitutional doctrines properly called forth on other occasions. If you think it worth while you may give Mr. Gideon a hint of these observations.—*Mad. MSS.*

The two pamphlets are those of Pacificus (Hamilton) and Helvidius (Madison). (See *ante*, Vol. VI, p. 138, *n.*) Gideon's edition was. "The Federalist, or the New Constitution, Written in the Year 1788, by Mr. Hamilton, Mr. Madison, and Mr. Jay with an Appendix, containing the Letters of Pacificus and Helvidius, on the Proclamation of Neutrality of 1793; also, the Original Articles of Confederation, and the Constitution of the United States, with the Amendments made thereto. A New Edition. The Numbers Written by Mr. Madison Corrected by Himself. City of Washington. Printed and Published by Jacob Gideon, Jun. 1818."

TO JAMES K. PAULDING.

Montpr. July 23. [1818.]



Th. Inst. With The Handsome Copy Of Your Edition Of The “Federalist.” As This Replaces The Copy Sent You, There Is The Less Occasion For A Return Of The Latter. It May Be Proper Perhaps To Observe That It Is Not The [Only] One Containing The Names Of The Writers Correctly Prefixed To Their Respective Papers. I Had A Considerable Time Ago, At The Request Of Particular Friends, Given The Same Advantage To Their Copies.

I have not yet been able to look over the passages corrected by me; but from the care you bestowed on the Edition I cannot doubt that in that instance as well as others, it is free from errors.

[1] Noah’s letter said that the Jews of America owed many of the blessings they enjoyed to Madison and his colleagues. He hoped that the impression that his recall from the foreign service was due to irregularity in his accounts might be removed and that it might be attributed to his religion.—*Mad. MSS.* Madison had appointed him consul at Riga, Russia, June 4, 1811, but he declined. He accepted the appointment of Consul at Tunis made March 20, 1813.

[1] The convention concluded between the United States and England October 20, 1818, provided in Article IV. for the continuance of the Commercial Convention of 1815.

[1] See *ante* Vol. III., pp. xv and 209, n. On June 27, 1819, Madison wrote to Adams again:

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

[1] Communicated to Congress, March 26, 1818, relating to illegal armaments and the occupation of Amelia Island. See *Am. State Papers, For. Affs.*, iv., 183.

[1] Florida affairs and the Seminole Campaign were taken up by the House December 14, 1818.

[1] From Madison's *Works* (Cong. Ed.)

[1] He had a plan to take Amelia Island and then the Floridas. See *Am. State Papers, For. Offs.*, iv., p. 603.

[1] An Address before the Philadelphia Society for Promoting Agriculture, Philadelphia, 1819.

[1] On May 12, 1818, Madison delivered an address on Agriculture before the Agricultural Society of Albemarle, which was printed by order of the Society. It may be found in Madison's *Works* (Cong. Ed.) iii., p. 97.

[2] The reference is to the treaty of 1818, negotiated by Gallatin and Rush on the part of the United States.—*Treaties and Conventions* (1873), p. 350.

[1] See *ante*, Vol. III., p. 182.

[1] Evans wrote that he was convinced the time had arrived for adopting a plan of eventual emancipation.—*Mad. MSS.* He was the author of certain newspaper articles printed over the name of Benjamin Rush.

[1] Roane sent Madison on August 22d. his articles in *The Richmond Inquirer* under the name Algernon Sidney in which he asserted the doctrine of state supremacy. For the full text of the momentous opinion of Chief Justice Marshall see 4 Wheaton, 600.

[1] Coles was Madison's secretary from 1810 to 1816 and in 1819 went to Edwardsville, Ill., where he freed all his slaves, giving to each man 160 acres of land. He was governor of Illinois from 1823 to 1826. See *Sketch of Edward Coles, Second Governor of Illinois*, by Elihu B. Washburne, Chicago, 1882.

[1] See *ante*, Vol. V., pp. 54, 55, *n.* Gideon inclosed a list of the numbers of the Federalist and requested Madison to give the names of the author of each. Madison wrote to him on February 20th:

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I have not yet been able to look over the passages corrected by me; but from the care you bestowed on the Edition I cannot doubt that in that instance as well as others, it is free from errors.

[1] The MS. of the Memorandum up to Feb. 22 is missing from the Mad. MSS. and is given here from the Works of Madison (Congressional Edition).

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James Madison, *The Writings, vol. 9 (1819-1836)* [1910]

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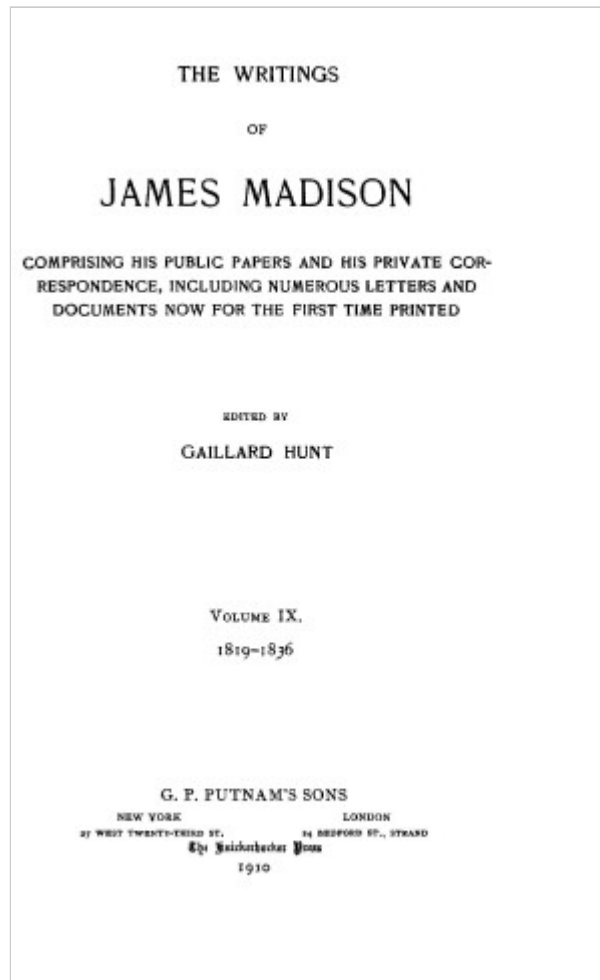
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CONTENTS OF VOLUME IX.

	PAGE
Note . . . . .	xix
Chronology . . . . .	xxi
1819.	
To Robert Walsh, November 27th . . . . .	1
Slave trade in the constitution—Compromise effected— Migration of persons—Admission of new states— Louisiana—Representation—Slavery in territories—Mis- souri question.	
To Thomas Hertell, December 20th . . . . .	13
His appeal—Abolition of intoxicants.	
To Clarkson Crolius, December — . . . . .	15
Failure of banks—Balance of trade—Protective duties.	
1820.	
To Noah Webster, January — . . . . .	20
"Sketches of American Policy"—Peletiah Webster's pam- phlet.	
To James Monroe, February 10th . . . . .	21
Journals of convention—Missouri and Maine—Objects of abolitionists—Missouri question—Migration of slaves.	
To James Monroe, February 23rd . . . . .	23
Health—Slavery in the territories—Inflammatory conduct of King.	
To C. D. Williams, February — . . . . .	26
Circulating medium.	

v

## Table Of Contents

[Note.](#)

[Chronology of James Madison. 1819-1836.](#)

[The Writings of James Madison.](#)

[1819 - to Robert Walsh. Mad. Mss.](#)

[To Thomas Hertell. Mad. Mss.](#)

[To Clarkson Crolius. Mad. Mss.](#)

[1820 - to Noah Webster. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To C. D. Williams. Mad. Mss.](#)

[To James Monroe. 1](#)

[To J. Q. Adams. Mad. Mss.](#)

[To Jacob De La Motta. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To Marquis De La Fayette. Mad. Mss.](#)

[To Francis Corbin. 1](#)

[To James Monroe. Mad. Mss.](#)

[1821 - to Richard Rush. Mad. Mss.](#)

[To Spencer Roane. Mad. Mss.](#)

[To Peter S. Du Ponceau. Chic. Hist. Soc. Mss.](#)

[To Spencer Roane. Mad. Mss.](#)

[To Joseph Gales. Mad. Mss.](#)

[To John G. Jackson. Mad. Mss.](#)

[Jonathan Bull & Mary Bull \(1821\). Chic. Hist. Soc. Mss.](#)

[1822 - to Hezekiah Niles. 1 Chic. Hist. Soc. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To Edward Livingston. Mad. Mss.](#)

[To W. T. Barry. Mad. Mss.](#)

[To Thomas Ritchie. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[1823 - to Thomas Jefferson. Mad. Mss.](#)

[To Edward Everett. Mad. Mss.](#)

[To Edward Everett. Mad. Mss.](#)

[Answers to Questions Concerning Slavery. 1 \[1823\]. Mad. Mss.](#)

[To William Eustis. Mad. Mss.](#)

[To Thomas Jefferson. Mad. Mss.](#)

[To James Monroe. Chic. Hist. Soc. Mss.](#)

[To George Hay. Mad. Mss.](#)

[To Thomas Jefferson. Mad. Mss.](#)

[To James Monroe. Mad. Mss.](#)

[To Richard Rush. Mad. Mss.](#)

[To William Taylor. Chic. Hist. Soc. Mss.](#)

[To Edward Everett. Mad. Mss.](#)

[To James Barbour. Mad. Mss.](#)  
[1824 - to Thomas Jefferson. Mad. Mss.](#)  
[To Robert S. Garnett. Mad. Mss.](#)  
[To Thomas Cooper. 1](#)  
[To John Cartwright. 1 Mad. Mss.](#)  
[To Henry Clay. Mad. Mss.](#)  
[To Edward Livingston. Mad. Mss.](#)  
[To Henry Lee. Mad. Mss.](#)  
[To Henry Wheaton. Chic. Hist. Soc. Mss.](#)  
[To James Monroe. Mad. Mss.](#)  
[To Peter S. Duponceau. Chic. Hist. Soc. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To A. B. Woodward. Mad. Mss.](#)  
[To Mrs. Madison 2](#)  
[To Frederick Beasley. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[1825 - to Henry Lee. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Sketch.](#)  
[To Nicholas Biddle. Chic. Hist. Soc. Mss.](#)  
[To Benjamin Waterhouse. Mad. Mss.](#)  
[To Frances Wright. Mad. Mss.](#)  
[To Frederick Beasley. Mad. Mss.](#)  
[To Thomas Ritchie. Mad. Mss.](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[Remarks On an Extract From Hamilton's Report Published In the Richmond Enquirer. Mad. Mss.](#)  
[1826 - to Morris Anthony. 1](#)  
[To Thomas Jefferson. Mad. Mss.](#)  
[To Noah Webster. 1](#)  
[To N. P. Trist. Mad. Mss.](#)  
[To George Mason. 1](#)  
[To Henry Colman. Mad Mss.](#)  
[To Martin Van Buren. Mad. Mss.](#)  
[To Samuel Harrison Smith. 1](#)  
[To Marquis De Lafayette. Mad. Mss.](#)  
[To Thomas Cooper. 1](#)  
[1827 - to Samuel Harrison Smith. 1](#)  
[To Jonathan Elliot. Mad. Mss.](#)  
[To Henry Wheaton. Chic. Hist. Soc. Mss.](#)  
[To J. K. Paulding. Mad. Mss.](#)  
[To Martin Van Buren. Mad. Mss.](#)  
[To Joseph C. Cabell. Mad. Mss.](#)  
[To Nicholas Biddle. Mad. Mss.](#)  
[To Thomas J. Wharton. Mad. Mss.](#)  
[To Jonathan Elliot. Mad. Mss.](#)  
[To George Mason. Va. Hist. Soc. Mss.](#)  
[1828 - to Jared Sparks. Mad. Mss.](#)

[To Thomas S. Grimke. Mad. Mss.](#)  
[To N. P. Trist Mad. Mss.](#)  
[To Marquis De La Fayette. Mad. Mss.](#)  
[To William Wirt. Mad. Mss.](#)  
[To Martin Van Buren. Mad. Mss.](#)  
[To Thomas Lehre. 1 Mad. Mss.](#)  
[To Joseph C. Cabell. Mad. Mss.](#)  
[1829 - to John Quincy Adams. Mad. Mss.](#)  
[To Joseph C. Cabell. Mad. Mss.](#)  
[To Thomas S. Hinde. Mad. Mss.](#)  
[To Joseph C. Cabell. Mad. Mss.](#)  
[Outline. Mad. Mss.](#)  
[Speech In the Virginia Constitutional Convention. 1](#)  
[1830 - to George Mcduffie. 1](#)  
[To James Hillhouse. Mad. Mss.](#)  
[To M. L. Hurlbert. Mad. Mss.](#)  
[To Martin Van Buren. Mad. Mss.](#)  
[To Martin Van Buren Mad. Mss.](#)  
[To Edward Everett. 1 Mad. Mss.](#)  
[To Margaret B. Smith. 1](#)  
[To Thomas W. Gilmer. Mad. Mss.](#)  
[To Jared Sparks. Mad. Mss.](#)  
[To Henry Clay. Mad. Mss.](#)  
[To Andrew Stevenson. Mad. Mss.](#)  
[To James K. Tefft. Mad. Mss.](#)  
[1831 - to Reynolds Chapman. Mad. Mss.](#)  
[To Charles J. Ingersoll. Mad. Mss.](#)  
[To Theodore Sedgwick, Jr. Mad. Mss.](#)  
[To C. E. Haynes. 1](#)  
[To James Robertson. Mad. Mss.](#)  
[To Jared Sparks. 1 Mad. Mss.](#)  
[To J. K. Paulding. Mad. Mss.](#)  
[To James Monroe. Monroe Mss.](#)  
[To Jared Sparks. Mad. Mss.](#)  
[To Tench Ringgold. Mad. Mss.](#)  
[To Matthew Carey. Mad. Mss.](#)  
[To Jared Sparks. 1](#)  
[To R. R. Gurley. Mad. Mss.](#)  
[To N. P. Trist. Mad. Mss.](#)  
[1832 - to Henry Clay. Mad. Mss.](#)  
[To N. P. Trist. Mad. Mss.](#)  
[To N. P. Trist. Mad. Mss.](#)  
[To C. E. Haynes. Mad. Mss.](#)  
[To Rev. — Adams. Chic. Hist. Soc. Mss. 1832.](#)  
[To Andrew Stevenson 1](#)  
[To N. P. Trist. Mad. Mss.](#)  
[To Joseph C. Cabell. Mad. Mss.](#)  
[1833 - to Alexander Rives. 1](#)



[To Thomas R. Dew. Mad Mss.](#)  
[To John Tyler. 1 Mad. Mss.](#)  
[To William Cabell Rives. Mad. Mss.](#)  
[To Henry Clay. Mad. Mss.](#)  
[To Benjamin F. Papoon. Mad. Mss.](#)  
[To — — 1 Mad. Mss.](#)  
[1834 - to Thomas S. Grimke. Mad. Mss.](#)  
[To Henry Lee. Mad. Mss.](#)  
[To William Cogswell Mad. Mss.](#)  
[To John M. Patton. Mad. Mss.](#)  
[To Edward Coles. Mad. Mss.](#)  
[To William H. Winder. 1 Mad. Mss.](#)  
[To Mann Butler. Mad. Mss.](#)  
[1835 - to Daniel Drake. Mad. Mss.](#)  
[Madison's Will. 1](#)  
[To W. A. Duer. 1](#)  
[To Charles Francis Adams. 1](#)  
[To Charles J. Ingersoll. Mad. Mss.](#)  
[Sovereignty. Mad. Mss.](#)  
[Notes On Nullification. 1 Mad. Mss.](#)  
[1836 - to — —. Mad. Mss.](#)

*June, 1910*

[\[Back to Table of Contents\]](#)

## NOTE.

The system which I have followed in compiling the volumes of Madison's writings has been to include those which narrate events important to American history, those which show his agency in such events, those which expound the Constitution of the United States, and those which illustrate his private life and character. The progress of the Revolution, the formation of the Constitution, the constitutional crises of 1798 and 1832, the struggle for neutrals' rights, the economic and social conditions surrounding a Southern planter and slaveholder are the chief subjects which are illuminated by these pages. Many of the papers have never been printed before and all of them are printed from original sources where such exist. A few have been available only from a previously-printed record. Such are his speeches in the Virginia convention which ratified the Constitution in 1788 and in the early congresses; but such important state papers as his vital instructions when he was Secretary of State, while most of them had contemporaneous publication, are here given with accuracy from the official record, and few of them were given accurately in their previous publication. In determining what papers should be included I have resisted the temptation to select newly-discovered letters rather than better known but more important papers.

Since my work began a number of additional sources of material have been opened to me, and for this courtesy I have made acknowledgment in the appropriate places; but I wish to record separately my indebtedness and gratitude to the Chicago Historical Society, whose great collection of Madison papers, second only to that which the Federal Government owns, has been freely placed at my disposal and freely made use of.

G. H.

Washington, *April*, 1910.

[\[Back to Table of Contents\]](#)

## CHRONOLOGY OF JAMES MADISON.

1819-1836.

1819.  
At Montpelier.  
Begins arrangement of his letters.
- Nov. 20. Discusses slavery in territories.
1820.  
June 13. Shows errors in journals of constitutional convention.
1821.  
May 6. Discusses the supreme court.  
Aug. 26. Shows errors in Yates's minutes.
1822.  
Aug. 13. Writes on Declaration of Independence.
1823.  
Information concerning slavery.  
Oct. 30. Discusses South American independence.
1824.  
Feb. 11. Nature of constitution propounded.  
Mar. 23. Principles of protective tariff.  
Apr. 17. Internal improvements discussed.  
Nov. — Meets Lafayette.
1825.  
Apr. 16. Asks loan from U. S. Bank.
1826.  
Mar. 10. Discusses origin of federal convention.  
July 6. Receives news of Jefferson's death.
1827.  
Feb. 2. Writes concerning his records.  
Feb. — Defends conduct of war of 1812.  
Mar. 22. Constitutionality of protective tariff.
1828.  
Feb. 20. Nominated as presidential elector.  
May 13. Shows contest in federal convention.  
Aug. 2. Discusses disunion sentiment.
1829.  
Aug. 10. Expounds Virginia doctrine of 1798.  
Dec. 2. In Virginia constitutional convention.
1830.  
May — On common defense and general welfare.
1831.  
Mar. 27. On authorship of Virginia resolutions of 1798.  
April — June 1. } Discusses Pinckney's plan.
- Dec. 28. On emancipation and colonization.  
Dec. — Nullification.
- 1832.

Dec. 23. Right of secession discussed.  
1833.  
Feb. 23. Plan for emancipation.  
The Virginia plan for constitution.  
1834.  
Mar. 10. Authorship of constitution.  
1835.  
April 19. Makes his will.  
June 5. Pinckney's plan discussed.  
Explains sovereignty.  
Discusses nullification.  
1836.  
June 28. Dies.

[\[Back to Table of Contents\]](#)

***THE WRITINGS OF JAMES MADISON.***

TO ROBERT WALSH.

Montpellier, Nov<sup>r</sup> 27 1819.

Mad. Mss.

Dear Sir,—

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

As to the intention of the framers of the Constitution in the clause relating to “the migration and importation of persons, &c” the best key may perhaps be found in the case which produced it. The African trade in slaves had long been odious to most of the States, and the importation of slaves into them had been prohibited. Particular States however continued the importation, and were extremely averse to any restriction on their power to do so. In the convention the former States were anxious, in framing a new constitution, to insert a provision for an immediate and absolute stop to the trade. The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a Constitution containing such an article. Out of this conflict grew the middle measure providing that Congress should not interfere until the year 1808; with an implication, that after that date, they might prohibit the importation of slaves into the States then existing, & previous thereto, into the States not then existing. Such was the tone of opposition in the States of S. Carolina & Georgia, & such the desire to gain their acquiescence in a prohibitory power, that on a question between the epochs of 1800 & 1808, the States of N. Hampshire, Mass<sup>ts</sup> & Connecticut, (all the eastern States in the Convention,) joined in the vote for the latter, influenced however by the collateral motive of reconciling those particular States to the power over commerce & navigation; against which they felt, as did some other States, a very strong repugnance. The earnestness of S. Carolina & Georgia was farther manifested by their insisting on the security in the V article, against any amendment to the Constitution affecting the right reserved to them, & their uniting with the small states, who insisted on a like security for their equality in the Senate.

But some of the States were not only anxious for a Constitutional provision against the introduction of slaves. They had scruples against admitting the term “slaves” into the Instrument. Hence the descriptive phrase, “migration or importation of persons;” the term migration allowing those who were scrupulous of acknowledging expressly a property in human beings, to view *imported* persons as a species of emigrants, while others might apply the term to foreign malefactors sent or coming into the country. It

is possible tho' not recollected, that some might have had an eye to the case of freed blacks, as well as malefactors.<sup>1</sup>

But whatever may have been intended by the term "migration" or the term "persons," it is most certain, that they referred exclusively to a migration or importation from other countries into the U. States; and not to a removal, voluntary or involuntary, of slaves or freemen, from one to another part of the U. States. Nothing appears or is recollected that warrants this latter intention. Nothing in the proceedings of the State conventions indicates such a construction there.<sup>2</sup> Had such been the construction it is easy to imagine the figure it would have made in many of the states, among the objections to the constitution, and among the numerous amendments to it proposed by the State conventions<sup>1</sup> not one of which amendments refers to the clause in question. Neither is there any indication that Congress have heretofore considered themselves as deriving from this Clause a power over the migration or removal of individuals, whether freemen or slaves, from one State to another, whether new or old: For it must be kept in view that if the power was given at all, it has been in force eleven years over all the States existing in 1808, and at all times over the States not then existing. Every indication is against such a construction by Congress of their constitutional powers. Their alacrity in exercising their powers relating to slaves, is a proof that they did not claim what they did not exercise. They punctually and unanimously put in force the power accruing in 1808 against the further importation of slaves from abroad. They had previously directed their power over American vessels on the high seas, against the African trade. They lost no time in applying the prohibitory power to Louisiana, which having maritime ports, might be an inlet for slaves from abroad. But they forebore to extend the prohibition to the introduction of slaves from other parts of the Union. They had even prohibited the importation of slaves into the Mississippi Territory from *without the limits of the U. S.* in the year 1798, without extending the prohibition to the introduction of slaves from *within those limits*; altho' at the time the ports of Georgia and S. Carolina were open for the importation of slaves from abroad, and increasing the mass of slavery within the U. States.

If these views of the subject be just, a power in Congress to controul the interior migration or removals of persons, must be derived from some other source than Sect 9, Art. 1; either from the clause giving power "to make all needful rules and regulations respecting the Territory or other property belonging to the U. S. or from that providing for the admission of New States into the Union."

The terms in which the 1<sup>st</sup> of these powers is expressed, tho' of a ductile character, cannot well be extended beyond a power over the Territory as property, & a power to make the provisions really needful or necessary for the Gov<sup>t</sup> of settlers until ripe for admission as States into the Union. It may be inferred that Congress did not regard the interdict of slavery among the needful regulations contemplated by the constitution; since in none of the Territorial Governments created by them, is such an interdict found. The power, however be its import what it may, is obviously limited to a Territory whilst remaining in that character as distinct from that of a State.

As to the power of admitting new States into the federal compact, the questions offering themselves are; whether congress can attach conditions, or the new States



concur in conditions, which after admission, would abridge or *enlarge* the constitutional rights of legislation common to the other States; whether Congress can by a compact with a new member take power either to or from itself, or place the new member above or below the equal rank & rights possessed by the others; whether all such stipulations, expressed or implied would not be nullities, and so pronounced when brought to a practical test. It falls within the Scope of your enquiry, to state the fact, that there was a proposition in the convention to discriminate between the old and new States, by an Article in the Constitution declaring that the aggregate number of representatives from the States thereafter to be admitted should never exceed that of the States originally adopting the Constitution. The proposition happily was rejected. The effect of such a discrimination, is sufficiently evident.

In the case of Louisiana, there is a circumstance which may deserve notice. In the Treaty ceding it, a privilege was retained by the ceding party, which distinguishes between its ports & others of the U. S. for a special purpose & a short period.<sup>1</sup> This privilege however was the result not of an ordinary legislative power in Congress; nor was it the result of an arrangement between Congress & the people of Louisiana. It rests on the ground that the same entire power, even in the nation, over that territory, as over the original territory of the U. S. never existed; the privilege alluded to being in the deed of cession carved by the foreign owner, out of the title conveyed to the purchaser. A sort of necessity therefore was thought to belong to so peculiar & extraordinary a case. Notwithstanding this plea it is presumable that if the privilege had materially affected the rights of other ports, or had been of a permanent or durable character, the occurrence would not have been so little regarded. Congress would not be allowed to effect through the medium of a Treaty, obnoxious discriminations between new and old States, more than among the latter.

With respect to what has taken place in the N. W. Territory, it may be observed, that the ordinance giving its distinctive character on the Subject of Slaveholding proceeded from the old Congress, acting, with the best intentions, but under a charter which contains no shadow of the authority exercised. And it remains to be decided how far the States formed within that Territory & admitted into the Union, are on a different footing from its other members, as to their legislative sovereignty.

For the grounds on which ? of the slaves were admitted into the ratio of representation, I will with your permission, save trouble by referring to No. 54 of the Federalist. In addition, it may be stated that this feature in the Constitution was combined with that relating to the power over Commerce & navigation. In truth these two powers, with those relating to the importation of slaves, & the Articles establishing the equality of representation in the Senate & the rule of taxation, had a complicated influence on each other which alone would have justified the remark, that the Constitution was “the result of mutual deference & Concession.”

It was evident that the large States holding slaves, and those not large which felt themselves so by anticipation, would not have concurred in a constitution, allowing them no more Representation in one legislative branch than the smallest States, and in the other less than their proportional contributions to the Common Treasury.

The considerations which led to this mixed ratio which had been very deliberately agreed on in Ap<sup>l</sup>., 1783, by the old Congress, make it probable that the Convention could not have looked to a departure from it, in any instance where slaves made a part of the local population.

Whether the Convention could have looked to the existence of slavery at all in the new States is a point on which I can add little to what has been already stated. The great object of the Convention seemed to be to prohibit the increase by the *importation* of slaves. A power to emancipate slaves was disclaimed; Nor is anything recollected that denoted a view to controul the distribution of those within the Country. The case of the N. Western Territory was probably superseded by the provision ag<sup>st</sup>. the importation of slaves by S. Carolina & Georgia, which had not then passed laws prohibiting it. When the existence of slavery in that territory was precluded, the importation of slaves was rapidly going on, and the only mode of checking it was by narrowing the space open to them. It is not an unfair inference that the expedient would not have been undertaken, if the power afterward given to terminate the importation everywhere, had existed or been even anticipated. It has appeared that the present Congress never followed the example during the twenty years preceding the prohibitory epoch.

The *expediency* of exercising a supposed power in Congress, to prevent a diffusion of the slaves actually in the Country, as far as the local authorities may admit them, resolves itself into the probable effects of such a diffusion on the interests of the slaves and of the Nation.

Will it or will it not better the condition of the slaves, by lessening the number belonging to individual masters, and intermixing both with greater masses of free people? Will partial manumissions be more or less likely to take place, and a general emancipation be accelerated or retarded? Will the moral & physical condition of slaves, in the mean time, be improved or deteriorated? What do experiences and appearances decide as to the comparative rates of generative increase, in their present, and, in a dispersed situation?

Will the aggregate strength security tranquillity and harmony of the whole nation be advanced or impaired by lessening the proportion of slaves to the free people in particular sections of it?

How far an occlusion of the space now vacant, ag<sup>st</sup>. the introduction of slaves may be essential to prevent compleatly a smuggled importation of them from abroad, ought to influence the question of expediency, must be decided by a reasonable estimate of the degree in which the importation would take place in spite of the spirit of the times, the increasing co-operation of foreign powers ag<sup>st</sup> the slave trade, the increasing rigor of the Acts of Congress and the vigilant enforcement of them by the Executive; and by a fair comparison of this estimate with the considerations opposed to such an occlusion.

Will a multiplication of States holding slaves, multiply advocates of the importation of foreign slaves, so as to endanger the continuance of the prohibitory Acts of

Congress? To such an apprehension seem to be opposed the facts, that the States holding fewest slaves are those which most readily abolished slavery altogether; that of the 13 primitive States, Eleven had prohibited the importation before the power was given to Cong<sup>s</sup>, that all of them, with the newly added States, unanimously concurred in exerting that power; that most of the present slaveholding States cannot be tempted by motives of interest to favor the reopening of the ports to foreign slaves; and that these, with the States which have even abolished slavery within themselves, could never be outnumbered in the National Councils by new States wishing for slaves, and not satisfied with the supply attainable within the U. S.

On the whole, the Missouri question, as a constitutional one, amounts to the question whether the condition proposed to be annexed to the admission of Missouri would or would not be void in itself, or become void the moment the territory should enter as a State within the pale of the Constitution. And as a question of expediency & humanity, it depends essentially on the probable influence of such restrictions on the quantity & duration of slavery, and on the general condition of slaves in the U. S.

The question raised with regard to the tenor of the stipulation in the Louisiana Treaty, on the subject of its admission, is one which I have not examined, and on which I could probably throw no light if I had.

Under one aspect of the general subject, I cannot avoid saying, that apart from its merits under others, the tendency of what has passed and is passing, fills me with no slight anxiety. Parties under some denominations or other must always be expected in a Gov<sup>t</sup> as free as ours. When the individuals belonging to them are intermingled in every part of the whole Country, they strengthen the Union of the Whole, while they divide every part. Should a State of parties arise, founded on geographical boundaries and other Physical & permanent distinctions which happen to coincide with them, what is to controul those great repulsive Masses from awful shocks ag<sup>st</sup> each other?

The delay in answering your letter made me fear you might doubt my readiness to comply with its requests. I now fear you will think I have done more than these justified. I have been the less reserved because you are so ready to conform to my inclination formerly expressed, not to be drawn from my sequestered position into public view.

Since I thanked you for the copy of your late volume<sup>1</sup> I have had the pleasure of going thro' it; and I should have been much disappointed, if it had been rec<sup>d</sup>. by the public with less favor than is everywhere manifested. According to all accounts from the Continent of Europe, the American character has suffered much there by libels conveyed by British Prints, or circulated by itinerant Calumniators. It is to be hoped the truths in your book may find their way thither. Good translations of the Preface alone could not but open many eyes which have been blinded by prejudices against this Country.

[\[Back to Table of Contents\]](#)

TO THOMAS HERTELL.

Dec<sup>r</sup> 20, 1819.

Mad. Mss.

Dear Sir,—

I have been some time a debtor for your favor of Nov<sup>r</sup> 11th accompanied by a Copy of your Exposé.<sup>2</sup> It reached me at a time when my attention had some particular calls on it; and I was so unlucky as to lose by an accident, the answer which I had prepared for a late mail.

I now repeat the thanks it contained for your communication. I have read with pleasure the interesting lights in which you have placed a subject, which had passed thro' so many able hands. The task of abolishing altogether the use of intoxicating, & even exhilarating drinks, is an arduous one. If it should not succeed in the extent at which you aim, your mode of presenting the causes and effects of the prevailing intemperance, with the obligation & operation of an improved police & of corrective examples, cannot fail to recompense your efforts tho' it should not satisfy your philanthropy & patriotism.

A *complete* suppression of every species of stimulating indulgence, if attainable at all, must be a work of peculiar difficulty, since it has to encounter not only the force of habit, but propensities in human nature. In every age & nation, some exhilarating or exciting substance seems to have been sought for, as a relief from the languor of idleness, or the fatigues of labor. In the rudest state of Society, whether in hot or cold climates, a passion for ardent spirits is in a manner universal. In the progress of refinement, beverages less intoxicating, but still of an exhilarating quality, have been more or less common. And where all these sources of excitement have been unknown or been totally prohibited by a religious faith, substitutes have been found in opium, in the nut of the betel, the root of the Ginseng, or the leaf of the Tob<sup>o</sup>. plant.

It w<sup>d</sup> doubtless be a great point gained for our Country, and a great advantage towards the object of your publication, if ardent spirits could be made only to give way to malt liquors, to those afforded by the apple & pear, and the lighter & cheaper varieties of wine. It is remarkable that in the Countries where the grape supplies the common beverage, habits of intoxication are rare; and in some places almost without example.

These observations, as you may well suppose are not made for notice in a new edition of your work, of which they are certainly not worthy, even if they should not too much vary from your own view of the subject. They are meant merely as an expression to yourself of that respect for the laudable object of the Exposé, and for its author, of which sincere assurances are tendered.

[\[Back to Table of Contents\]](#)

## TO CLARKSON CROLIUS.

Montpellier, Dec<sup>r</sup>, 1819.

Mad. Mss.

I have received Sir the copy of the Address of the Society of Tammany, with which I have been politely favored.<sup>1</sup>

The want of economy in the use of imported articles enters very justly into the explanation given of the causes of the present general embarrassments. Were every one to live within his income, or even the savings of the prudent to exceed the deficits of the extravagant, the balance in the foreign commerce of the nation, could not be against it. The want of a due economy has produced the unfavorable turn which has been experienced. Hence the need of specie to meet it, the call on the vaults of the Banks, and the discontinuance of their discounts, followed by their curtailments: Hence too the failure of so many Banks, with a diminished confidence in others: And hence finally a superabundance of debts, without the means of paying them.

The Address seems very justly also to charge much of the general evil by which many of the Banks themselves have been overwhelmed, on the multiplicity of these Institutions, and a diffusion of the indiscriminate loans, of which they have been the sources. It has been made a question whether Banks, when restricted to spheres in which temporary loans only are made to persons in active business promising quick returns, do not as much harm to imprudent as good to prudent borrowers. But it can no longer be a doubt with any, that loan offices, carrying to every man's door, and even courting his acceptance of, the monied means of gratifying his present wishes under a prospect or hope of procrastinated repayments, must, of all devices, be the one most fatal to a general frugality, and the benefits resulting from it.

The effect of domestic manufactures in diminishing imports, and as far as they are carried on by hands attracted from abroad, or by hands otherwise idle or less productively employed at home, without a proportional diminution of the exports, merits certainly a distinguished attention in marking out an internal system of political Economy, and in counteracting a tendency in our foreign Commerce to leave a balance against us. The relief from this source would be more effectual, but for the circumstance that the articles which contribute much to an excess of our imports over our exports, are articles, some not likely soon, others perhaps not at all to be produced within ourselves. There is moreover a feature in the trade between this Country and most others, which promotes not a little an unfavorable result. Our Exports being chiefly articles for food, for manufactures, or for a consumption easily surcharged, the amount of them called for, never exceeds what may be deemed real and definite wants. This is not the case with our imports. Many of them, some the most costly, are objects neither of necessity, nor utility; but merely of fancy & fashion, wants of a nature altogether indefinite. This relative condition of the trading parties, altho' it may give to the one furnishing the necessary & profitable articles, a powerful advantage over the one making its returns in superfluities, on extraordinary occasions of an interrupted intercourse; yet, in the ordinary and free course of commerce, the

advantage lies on the other side; and it will be the greater in proportion to the lengthened credits on which the articles gratifying extravagant propensities are supplied. Such an inequality must in a certain degree controul itself. It w<sup>d</sup> be compleatly redressed by a change in the public preferences & habits, such as is inculcated in the address.

In not regarding domestic manufactures as of themselves, an adequate cure for all our embarrassments, it is by no means intended to detract from their just importance, or from the policy of legislative protection for them.

However true it may be in general that the industrious pursuits of individuals, ought to be regulated by their own sagacity & interest, there are practical exceptions to the Theory, which sufficiently speak for themselves. The Theory itself indeed requires a similarity of circumstances, and an equal freedom of interchange among commercial nations, which have never existed. All are agreed also that there are certain articles so indispensable that no provident nation would depend for a supply of them on any other nation. But besides these, there may be many valuable branches of manufactures which if once established, would support themselves, and even add to the list of exported commodities; but which without public patronage would either not be undertaken or come to a premature downfall. The difficulty of introducing manufactures, especially of a complicated character & costly outfit, and above all, in a market preoccupied by powerful rivals, must readily be conceived. They appear accordingly to have required, for their introduction into the Countries where they are now seen in their greatest extent & prosperity, either the liberal support of the Government, or the aid of exiled or emigrant manufacturers, or both of these advantages.

In determining the degree of encouragement which can be afforded to domestic manufactures, it is evident that, among other considerations, a fair comparison ought to be made of what might be saved by supplies at home during foreign wars, to say nothing of our own, with the expence of supporting manufactures in times of peace against foreign competitions in our market. The price of domestic fabrics, tho' dearer than foreign, in times of peace, might be so much cheaper in times of war, as to be cheaper also than the medium price of the foreign taking the two periods together. Yet the Am<sup>n</sup>. manufacturer if unprotected during the periods of peace w<sup>d</sup> necessarily be undermined by the foreign; and he could not be expected to resume his undertaking at the return of war, knowing the uncertainty of its continuance; and foreseeing his certain ruin at the end of it. Estimates on these points cannot be made with much precision, but they ought not on that acc<sup>t</sup>. to be overlooked; and in making them a strong leaning ought to be indulged towards the policy of securing to the nation independent resources within itself.

If I have extended these remarks beyond the proper limits I must find my apology in the nature of the subject; & in the tenor of your letter, for Which I pray you to accept my acknowledg<sup>ts</sup>., with my respects & good wishes.

[\[Back to Table of Contents\]](#)

TO NOAH WEBSTER.

Montpellier (near Orange Court House Virg<sup>a</sup>) Jan<sup>y</sup> —, 1820.

Mad. Mss.

Dear Sir,—

In looking over my papers in order to purge and finally arrange my files, my attention fell on your letter of Aug. 20, 1804, in which I was requested to give such information as I could as to the origin of the change in the Federal Government which took place in 1788. My answer does not appear, the copy of it having been lost, if one was retained as is probable. Will you be so obliging as to enable me to replace it, and to pardon the trouble I am imposing on you; accepting at the same time assurances of my esteem, and of my friendly respects.

Where can your pamphlet entitled “Sketches of Am<sup>n</sup> policy” be now obtained; also that of Mr. Peletiah Webster referred to in your letter.[1](#)

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montp<sup>l</sup>r., Feb<sup>y</sup> 10, 1820.

Mad. Mss.

Dear Sir,—

I have duly rec<sup>d</sup>. your fav<sup>r</sup>. of the 5<sup>th</sup>, followed by a copy of the public documents, for which I give you many thanks. I sh<sup>d</sup>. like to get a copy of the Journals of the Convention. 1 Are they to be purchased & where?

It appears to me as it does to you, that a coupling of Missouri with Maine, in order to force the entrance of the former thro' the door voluntarily opened to the latter is, to say the least, a very doubtful policy. Those who regard the claims of both as similar & equal, and distrust the views of such as wish to disjoin them may be strongly tempted to resort to the expedient; and it w<sup>d</sup> perhaps, be too much to say that in no possible case such a resort c<sup>d</sup> be justified. But it may at least be said that a very peculiar case only could supersede the general policy of a direct & magnanimous course, appealing to the justice & liberality of others, and trusting to the influence of conciliatory example.

I find the idea is fast spreading that the zeal w<sup>th</sup>. which the extension, so called, of slavery is opposed, has, with the coalesced *leaders*, an object very different from the welfare of the slaves, or the check to their increase; and that their real object is, as you intimate, to form a new state of parties founded on local instead of political distinctions; thereby dividing the Republicans of the North from those of the South, and making the former instrumental in giving to the opponents of both an ascendancy over the whole. If this be the view of the subject at Washington it furnishes an additional reason for a conciliatory proceeding in relation to Maine.

I have been truly astonished at some of the doctrines and deliberations to which the Missouri question has led; and particularly so at the interpretations put on the terms "migration or importation &c." Judging from my own impressions I sh<sup>d</sup>. deem it impossible that the memory of any one who was a member of the Gen<sup>l</sup>. Convention, could favor an opinion that the terms did not *exclusively* refer to Migration & importation *into the U. S.* Had they been understood in that Body in the sense now put on them, it is easy to conceive the alienation they would have there created in certain States; And no one can decide better than yourself the effect they would have had in the State Conventions, if such a meaning had been avowed by the Advocates of the Constitution. If a suspicion had existed of such a construction, it w<sup>d</sup> at least have made a conspicuous figure among the amendments proposed to the Instrument.

I have observed *as yet*, in none of the views taken of the Ordinance of 1787, interdicting slavery N. W. of the Ohio, an allusion to the circumstance, that when it passed, the Cong<sup>s</sup>. had no authority to prohibit the importation of slaves from abroad; that all the States had, & some were in the full exercise of the right to import them;



and, consequently, that there was no mode in which Cong<sup>s</sup>. could check the evil, but the indirect one of narrowing the space open for the reception of slaves. Had a federal authority then existed to prohibit directly & totally the importation from abroad, can it be doubted that it w<sup>d</sup> have been exerted? and that a regulation having merely the effect of preventing an interior dispersion of the slaves actually in the U. S. & creating a distinction among the States in the degrees of their sovereignty, would not have been adopted, or perhaps, thought of?

No folly in the Spanish Gov<sup>t</sup> can now create surprise. I wish you happily thro' the thorny circumstances it throws in your way. Adieu &c.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montp<sup>r</sup>, Feb<sup>y</sup>. 23, 1820

Mad. Mss.

D<sup>R</sup> Sir,—

I rec<sup>d</sup>. yours of the 19th on Monday. Gen<sup>l</sup>. Brown who returned from Monticello that evening has been since with me till 10 O'C today. Your letter found me indisposed from exposure to a cold wind, without due precaution, And I have continued so. I write now with a fever on me. This circumstance will account for both the delay & the brevity in complying with your request.

The pinch of the difficulty in the case stated seems to be in the words “forever,” coupled with the interdict relating to the Territory N. of L 36° 30'. 1 If the necessary import of these words be that they are to operate as a condition on future States admitted into the Union, and as a restriction on them after admission, they seem to encounter indirectly the arg<sup>ts</sup>. which prevailed in the Senate for an unconditional admission of Missouri. I must conclude therefore from the assent of the Senate to the words, after the strong vote on constitutional grounds ag<sup>st</sup>. the restriction on Missouri, that there is some other mode of explaining them in their actual application.

As to the right of Cong<sup>s</sup>. to apply such a restriction during the Territorial Periods, it depends on the clause in the Constitution specially providing for the management of these subordinate establishments.

On one side it naturally occurs that the right being given from the necessity of the case, and in suspension of the great principle of self Gov<sup>t</sup>. ought not to be extended farther nor continued longer than the occasion might fairly require.

On the other side it cannot be denied that the Const<sup>l</sup>. phrase, “to make all rules” &c as expounded by uniform practice, is somewhat of a ductile nature, and leaves much to Legislative discretion.

The questions to be decided seem to be whether a *territorial* restriction be an assumption of illegitimate power, or 2 a measure of legitimate power. And if the latter only whether the injury threatened to the nation from an acquiescence in the measure, or from a frustration of it, under all the circumstances of the case, be the greater. On the first point there is certainly room for difference of Opinion, tho' for myself I must own that I have always leaned to the belief that the restriction was not within the true scope of the Constitution. On the alternative presented by the second point there can be no room, with the cool and candid, for blame on those acquiescing in a conciliatory course, the demand for which was deemed urgent, and the course itself deemed not irreconcilable with the Constitution.

This is the hasty view of the subject I have taken. I am aware that it may be suspected of being influenced by the habit of a guarded construction of Const<sup>l</sup> powers; and I have certainly felt all the influence that c<sup>d</sup>. justly flow from a conviction, that an uncontroled dispersion of the slaves now in the U. S. was not only best for the nation, but most favorable for the slaves, also both as to their prospects of emancipation, and as to their condition in the mean time.

The inflammatory conduct of Mr. King surprises every one. His general warfare ag<sup>st</sup>. the slave-holding States, and his efforts to disparage the securities derived from the Const<sup>n</sup> were least of all to be looked for. I have noticed less of recurrence to the contemporary expositions of the Charter than was to be expected from the zeal & industry of the Champions in Debate. The proceedings of the V<sup>a</sup>. Convention have been well sifted; but those of other States ought not to have been Overlooked. The speeches of Mr. King in Mass<sup>ts</sup> and Mr. Hamilton in N. York shew the ground on which they vindicated particularly the Compound rule of representation in Cong<sup>s</sup>. And doubtless there are many other evidences of the way of thinking then prevalent on that & other articles equally the result of a sense of *equity* & a spirit of mutual concession.

[\[Back to Table of Contents\]](#)

TO C. D. WILLIAMS.

Feb<sup>y</sup> —, 1820

Mad. Mss.

I have received your favor of [January 29] accompanied by the pamphlet on the subject of a circulating medium.1

I have not found it convenient to bestow on the plan proposed the attention necessary to trace the bearings and operations of new arrangements ingeniously combined on a subject which in its most simple forms has produced so much discussion among political Economists.

It cannot be doubted that a paper currency rigidly limited in its quantity to purposes absolutely necessary, may be made equal & even superior in value to specie. But experience does not favor a reliance on such experiments. Whenever the paper has not been convertible into specie, and its quantity has depended on the policy of the Gov<sup>t</sup>. a depreciation has been produced by an undue increase, or an apprehension of it. The expedient suggested in the pamphlet has the advantage of tying up the hands of the Gov<sup>t</sup> but besides the possibility of legislative interferences, bursting the fetters, a discretion vested in a few hands over the Currency of the nation, & of course over the legal value of its property, is liable to powerful objections; and tho' confined to a range of 5 per C<sup>t</sup>, w<sup>d</sup> have still room for a degree of error or abuse not a little formidable. The idea also of making foreign currency depending on a foreign will, and the balance of trade always varying, and at no time reducible to certainty & precision, standards for a nat<sup>l</sup> Currency w<sup>d</sup> not easily be admitted.

I am sensible Sir that these observations must have been included in your examination of the subject, and that they are to be regarded in no other light than as an expression of the respect & acknowledgment, which I pray you to accept for your polite Communication.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE. 1

Montplr, Mar., 1820

Dr. Sir,—

My nephew R. L. Madison has turned his thoughts to the new acquisition expected from Spain on our S. Frontier and wishes an official situation there which may be convenient for the time and improve his future prospects for a growing family. The reluctance I feel in speaking on all such occasions is heightened in this by the personal relation which may be supposed to bias me. Leaving the other sources there for the more general information requisite, I will not permit myself to say more than that I consider him as not deficient in talents and that to these have been added a tolerably good education. However agreeable it must of course be to me to see his interests promoted, I can neither expect nor wish it farther than his pretensions may bear the test applied to those of others and those that public considerations will authorize.

[\[Back to Table of Contents\]](#)

TO J. Q. ADAMS.

Montpl<sup>r</sup>., June 13, 1820

Mad. Mss.

D<sup>R</sup>. Sir,—

I have rec<sup>d</sup> & return my thanks for your polite favor accompanying the Copy of the printed Journal of the Federal Convention transmitted in pursuance of a late Resolution of Congress.

In turning over a few pages of the Journal, which is all I have done a casual glance caught a passage which erroneously prefixed my name to y<sup>e</sup> proposition made on the 7, day of Sep<sup>r</sup>. for making a Council of six members a part of the Executive branch of the Gov<sup>t</sup>. The proposition was made by Col. George Mason one of the Virg<sup>a</sup> delegates, & seconded by D<sup>r</sup>. Franklin. 1 I cannot be mistaken in the fact; For besides my recollection which is sufficiently distinct on the subject, my notes contain the observations of each in support of the proposition. As the original Journal according to my extract from it, does not name the mover of y<sup>e</sup> prop<sup>n</sup> the error, I presume must have had its source in some of the extrinsic communications to you, unless indeed it was found in some of the separate papers of the Secretary of the Convention, or is to be ascribed to a copying pen. The degree of symphony in the two names Madison & Mason may possibly have contributed to the substitution of the one for the other.

This explanation having a reference to others as well as myself, I have thought it w<sup>d</sup>. be neither improper nor unacceptable. Along with it I renew the assurance of my high esteem and cordial resp<sup>ts</sup> ..

[\[Back to Table of Contents\]](#)

TO JACOB DE LA MOTTA.

Montpellier, Aug., 1820

Mad. Mss.

Sir,—

I have received your letter of the 7th inst. with the Discourse delivered at the Consecration of the Hebrew Synagogue at Savannah, for which you will please to accept my thanks.

The history of the Jews must forever be interesting. The modern part of it is, at the same time so little generally known, that every ray of light on the subject has its value.

Among the features peculiar to the Political system of the U. States, is the perfect equality of rights which it secures to every religious Sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and oppressed elsewhere, a happy illustration of the safety & success of this experiment of a just & benignant policy. Equal laws protecting equal rights, are found as they ought to be presumed, the best guarantee of loyalty & love of country; as well as best calculated to cherish that mutual respect & good will among Citizens of every religious denomination which are necessary to social harmony and most favorable to the advancement of truth. The account you give of the Jews of your Congregation brings them fully within the scope of these observations.

I tender you, Sir, my respects & good wishes

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpellier, Nov. 19, 1820

Mad. Mss.

D<sup>R</sup>. Sir,—

Yesterday's mail brought me your favor of the 16th, with a copy of your message; the only one which reached me; no newspaper containing it having come to hand.

The view you have taken of our public affairs cannot but be well received at home, and increase our importance abroad. The State of our finances is the more gratifying as it so far exceeds the public hopes. I infer from the language of your letter that the contest for the Chair terminated in favor of Mr. Taylor, and that it manifested a continuance of the spirit which connected itself with the Missouri question at the last session. <sup>1</sup> This is much to be regretted, as is the clause in the constitution of the new State, which furnishes a text for the angry & unfortunate discussion. There can be no doubt that the clause, if against the Constitution of the U. S., would be a nullity; it being impossible for congress, with, more than without, a concurrence of New or old members of the Union, to vary the political equality of the States, or their constitutional relations to each other or to the whole. But it must, to say the least, be an awkward precedent, to sanction the Constitution of the New State containing a clause at variance with that of the U. S. even with a declaration that the clause was a nullity, and the awkwardness might become a very serious perplexity if the admission of the New State into the Union, and of its Senators & Representatives into Congress, & their participation in the acts of the latter, should be followed by a determination of Missouri to remain as it is rather than accede to an annulment of the obnoxious clause. Would it not be a better course to suspend the Admission until the people of Missouri could amend their constitution; provided their so doing would put an end to the controversy and produce a quiet admission at the ensuing session. Or if the objections to this course be insuperable; may it not deserve consideration, whether the terms of the clause, would not be satisfied by referring the authority it gives, to the case of free people of colour *not Citizens* of other States. Not having the Constitution of Missouri at hand, I can form no opinion on this point. But a right in the States to inhibit the entrance of that description of coloured people, it may be presumed, would be as little disrelished by the States having no slaves, as by the States retaining them. There is room also for a more critical examination of the Constitutional meaning of the term "Citizens" than has yet taken place; and of the effect of the various civil disqualifications applied by the laws of the States to free people of colour.

I do not recollect that Mr. Correa had any direct or explicit conversation with me on the subject between him & the Gov<sup>t</sup>. It is possible that my view of it might have been inferred from incidental observations; but I have no recollections leading me to the supposition; unless an inference was made from a question touched on concerning the precise criterion between a Civilized and uncivilized people, which had no



connection, in my mind with his diplomatic transactions. What may have passed with Mr. Jefferson I know not.

I find that Mr. Tench Coxe is desirous of some *profitable mark* of the confidence of the Gov<sup>t</sup>. for which he supposes some opportunities are approaching; and with that view, that you should be reminded of his public career. 1 I know not what precise object he has in his thoughts, nor how far he may be right in anticipating an opening for its attainment; and I am aware both of your own knowledge of his public services, and of your good dispositions towards him. I feel an obligation, nevertheless, to testify in his behalf, that from a very long acquaintance with him, and continued opportunities of remarking his political course, I have ever considered him among the most strenuous & faithful laborers for the good of his Country. At a very early period he was an able defender of its commercial rights & interest. He was one of the members of the convention at Annapolis. His pen was indefatigable in demonstrating the necessity of a new form of Gov<sup>t</sup>. for the nation; & he has steadfastly adhered, in spite of many warping considerations, to the true principles and policy on which it ought to be administered. He has also much merit in the active & efficient part he had in giving impulse to the Cotton cultivation, & other internal interests; and I have reason to believe that his mind & his pen continue to be occupied with subjects closely connected with the public welfare. With these impressions of the services he has rendered, I cannot but own, that any provision that could be proper in itself, & contribute to make his advanced age more comfortable than it otherwise might be, would afford me real pleasure. Of its practicability I do not presume to judge.

In looking over the bundle of my letters to Mr. Jones I find one dated in Dec<sup>r</sup>., 1780, containing a statement of what passed in the old Congress relative to the proposed cession of the Mississippi to Spain, corresponding *precisely* with my recollection of it as explained to you 1 I was disappointed in finding it limited to that year. My correspondence ran through a much longer period of which I have proofs on hand, and from the tenor of the above letters, & my intimacy with him, I have no doubt that my communications were often of an interesting character. Perhaps the remaining letters or a part of them may have escaped your search. Will you be so good as to renew it whenever & wherever the convenient opportunity may admit?

What is become of the Secret journals of the old Congress, & when will the press give them to the public?

A fever of the Typhus denomination, which has for some months been rambling in this district of Country, has lately found its way to this spot. Out of 14 patients within my precincts 5 have died, 2 only have perfectly recovered, & among the rest the major number are very ill. New Cases also are almost daily occurring. I have sustained a heavy loss in a young fellow who was educated in Washington a cook, & was becoming moreover a competent Gardener. I am suffering also much from the protracted illness of the man charged with my farming business, which exposes the several crops not yet secured to great neglect & waste.

We have heard nothing particularly of Mrs. Monroe's health, which we hope has been fully restored. We have the same hope as to Mr. Gouverneur, who Mr. Hay informed

me was dangerously ill. With our best wishes for you all, be assured of my affectionate respects.

[\[Back to Table of Contents\]](#)

## TO MARQUIS DE LA FAYETTE.

Montpellier, Nov<sup>r</sup> 25, 1820

Mad. Mss.

I have received, my dear friend, your kind letter of July 22, inclosing your printed opinion on the Election project. It was very slow in reaching me.

I am very glad to find, by your letter, that you retain, undiminished the warm feelings of friendship so long reciprocal between us; and, by your “opinion,” that you are equally constant to the cause of liberty so dear to us both. I hope your struggles in it will finally prevail in the full extent required by the wishes, and adapted to the exigencies of your Country.

We feel here all the pleasure you express at the progress of reformation on your Continent. Despotism can only exist in darkness, and there are too many lights now in the political firmament, to permit it to reign any where, as it has heretofore done, almost every where. To the events in Spain & Naples has succeeded already, an auspicious epoch in Portugal. Free States seem indeed to be propagated in Europe, as rapidly as new States are on this side of the Atlantic: Nor will it be easy for their births or their growths if safe from dangers within to be strangled by external foes, who are not now sufficiently united among themselves, are controuled by the aspiring sentiments of their people, are without money of their own, and are no longer able to draw on the foreign fund which has hitherto supplied their belligerent necessities.

Here, we are, on the whole, doing well, and giving an example of a free system, which I trust will be more of a Pilot to a good Port, than a Beacon warning from a bad one. We have, it is true, occasional fevers, but they are of the transient kind flying off thro’ the surface, without preying on the vitals. A Gov<sup>t</sup>. like ours has so many safety-valves giving vent to overheated passions, that it carries within itself a relief ag<sup>st</sup>. the infirmities from which the best of human Institutions cannot be exempt. The subject which ruffles the surface of public affairs most at present, is furnished by the transmission of the “Territory” of Missouri from a state of nonage to a maturity for self-Gov<sup>t</sup>. and for a membership in the Union. Among the questions involved in it, the one most immediately interesting to humanity is the question whether a toleration or prohibition of slavery Westward of the Mississippi, would most extend its evils. The humane part of the argument against the prohibition, turns on the position, that whilst the importation of slaves from abroad is precluded, a diffusion of those in the Country, tends at once to meliorate their actual condition, and to facilitate their eventual emancipation. Unfortunately, the subject which was settled at the last session of Congress, by a mutual concession of the parties, is reproduced on the Arena, by a clause in the Constitution of Missouri, distinguishing between free persons of Colour, and white persons; and providing that the Legislature of the new State shall exclude from it the former. What will be the issue of the revived discussion is yet to be seen. The case opens the wider field as the Constitutions & laws of the different States are much at variance in the civic character given to free people of colour; those of most of the States, not excepting such as have abolished slavery, imposing various

disqualifications which degrade them from the rank & rights of white persons. All these perplexities develop more & more the dreadful fruitfulness of the original sin of the African trade.

I will not trouble you with a full Picture of our economics. The cessation of neutral gains, the fiscal derangements incident to our late war, the inundation of foreign merchandizes since, and the spurious remedies attempted by the local authorities, give to it some disagreeable features. And they are made the more so, by a remarkable downfall in the prices of two of our great Staples Breadstuffs & Tobacco, carrying privations to every man's door, and a severe pressure to such as labour under debts for the discharge of which, they relied on crops & prices which have failed. Time however will prove a sure Physician for these maladies. Adopting the remark of a British Senator applied with less justice to his Country, at the commencement of the revolutionary Contest, we may say, that "altho' ours may have a sickly countenance, we trust she has a strong Constitution."

I see that the bickerings between our Gov<sup>ts</sup>. on the point of tonnage has not yet been terminated. The difficulty, I should flatter myself, cannot but yield to the spirit of amity, & the principles of reciprocity entertained by the parties.

You would not, believe me, be more happy to see me at Lagrange, than I should be to see you at Montp<sup>r</sup>. where you w<sup>d</sup>. find as zealous a farmer, tho' not so well cultivated a farm as Lagrange presents. As an interview can hardly be expected to take place at both, I may infer from a comparison of our ages a better chance of your crossing the Atlantic than of mine. You have also a greater inducement in the greater number of friends whose gratifications would at least equal your own. But if we are not likely to see one another, we can do what is the next best, communicate by letter what we w<sup>d</sup> most wish to express in person, and particularly can repeat those sentiments of affection & esteem, which, whether expressed or not, will ever be most sincerely felt by your old & steadfast friend.

[\[Back to Table of Contents\]](#)

## TO FRANCIS CORBIN. 1

November 26, 1820

D<sup>R</sup> Sir,—

I had the pleasure of receiving, a few days ago, your favor post-marked the 18th, in lieu of the greater pleasure with which I should have received you *in propria persona*. I am sorry you so readily yielded to the consideration which deprived us of it in September. The addition of your company would have been felt no otherwise than as an ingredient highly acceptable to that you would have met here, as well as to Mrs. M. and myself. For a day or two, indeed, you might have been involved in the common distress occasioned by the hopeless and expiring condition of the little son of Mrs. Scott; but even that drawback might not have taken place within the period of your visit.

You complain of the times, which are certainly very hard; but you have a great abatement of your comparative suffering in your paper funds, notwithstanding the suspension of their current productiveness. This is but a *lucrum cessans*. How many are feeling the *damnum emergens* also! Besides, in the event of a necessary sale of property, (certainly not your case,) the paper property is the only sort that can find a tolerable and certain market. Whilst I condole with you, therefore, on the hardships in which you participate, I must congratulate you on your escape from a portion which afflicts others. The general condition of these is truly lamentable. If debtors to the Banks, nothing can relieve them but a renewal of discounts, not to be looked for: if owing debts, for discharging which they have relied on crops or prices, which have failed, they have no resource but in the sale of property, which none are able to purchase. With respect to all these, the times are hard indeed; the more so, as an early change is so little within the reach of any fair calculation.

I do not mean to discuss the question how far *slavery* and *farming* are incompatible. Our opinions agree as to the evil, moral, political, and economical, of the former. I still think, notwithstanding, that under all the disadvantages of slave cultivation, much improvement in it is practicable. Proofs are annually taking place within my own sphere of observation; particularly where slaves are held in small numbers, by good masters and managers. As to the very wealthy proprietors, much less is to be said. But after all, (protesting against any inference of a disposition to underrate the evil of slavery,) is it certain that in giving to your wealth a new investment, you would be altogether freed from the cares and vexations incident to the shape it now has? If converted into paper, you already feel some of the contingencies belonging to it; if into commercial stock, look at the wrecks every where giving warning of the danger. If into large landed property, where there are no slaves, will you cultivate it yourself? Then beware of the difficulty of procuring faithful or complying labourers. Will you dispose of it in leases? Ask those who have made the experiment what sort of tenants are to be found where an ownership of the soil is so attainable. It has been said that

America is a country for the poor, not for the rich. There would be more correctness in saying it is the country for both, where the latter have a relish for free government; but, proportionally, more for the former than for the latter.

Having no experience on the subject myself, I cannot judge of the numerical point at which congratulations on additional births cease to be appropriate. I hope that your 7th son will in due time prove that in his case, at least, they were amply called for; and that Mrs. C. and yourself may long enjoy the event as an addition to your happiness.

Mrs. M. unites with me in this, and in every assurance of respect and good wishes to you both.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpellier, Dec<sup>r</sup>. 28, 1820.

Mad. Mss.

Dear Sir,—

I have received your two favors of the 10th & 23d inst. The prospect of a favorable issue to the difficulties with Spain, is very agreeable. I hope the ratification will arrive without Clogs on it; and that the acquisition of Florida will give no new stimulus to the Spirit excited by the case of Missouri. I am glad to learn that a termination of this case, also is not despaired of. If the new State is to be admitted with a proviso, none better occurs than a declaration that its admission is not to imply an opinion in Congress that its Constitution will be less subject to be tested & controuled by the Constitution of the U. S. than if formed after its admission, or than the Constitutions of other States now members of the Union.

It is a happy circumstance that the discussions renewed by the offensive clause introduced by Missouri, are marked by such mitigated feelings in Congress. It argues well as to the ultimate effect which you anticipate. The spirit and manner of conducting the opposition to the new State, with the palpable efforts to kindle lasting animosity between Geographical divisions of the nation will have a natural tendency, when the feverish crisis shall have passed, to reunite those who never differed as to the essential principles and the true policy of the Gov<sup>t</sup>.. This salutary reaction will be accelerated by candor & conciliation on one side appealing to like dispositions on the other; & it would be still farther promoted by a liberality with regard to all depending measures, on which local interests may seem to be somewhat at variance, and may perhaps be so for a time.

Your dispositions towards Mr. T. Coxe are such as I had counted on. I shall regret, if it so happen, that nothing can properly be done for him. I feel a sincere interest in behalf of Doct Eustis.<sup>1</sup> The expedient at which you glance would I suppose be in itself an appropriate provision; but I am sensible of the delicacy of the considerations which I perceive weigh with you. I wish he could have been made the Gov<sup>r</sup>. of his State. It would have closed his public career with the most apt felicity.

Is not the law vacating periodically the described offices an encroachment on the Constitutional attributes of the Executive?<sup>1</sup> The creation of the office is a legislative act, the appointment of the officer, the joint act of the President & Senate; the tenure of the Office, (the judiciary excepted,) is the pleasure of the P. alone; so decided at the commencement of the Gov<sup>t</sup>. so acted on since, and so expressed in the commission. After the appointment has been made neither the Senate nor H. of Rep<sup>s</sup> have any power relating to it; unless in the event of an impeachment by the latter, and a judicial decision by the former; or unless in the exercise of a legislative power by both, abolishing the office itself, by which the officer indirectly loses his place; and even in this case, if the office were abolished merely to get rid of the tenant, and with a

view, by its reestablishment, to let in a new one, on whom the Senate would have a negative, it would be a virtual infringement of the constitutional distribution of the powers of Government. If a law can displace an officer at every period of 4 years, it can do so at the end of every year, or at every session of the Senate, and the tenure will then be the pleasure of the Senate, as much as of the President, & not of the P. alone. Other very interesting views might be taken of the subject. I never read if I ever saw the debates on the passage of the law. Nor have I looked for precedents which may have countenanced it. I suspect that these are confined to the Territories, that they had their origin in the ordinance of the old Congress in whom all powers of Gov<sup>t</sup>. were confounded; and that they were followed by the New Cong<sup>s</sup>. who have exercised a very undefined and irregular authority within the Territorial limits; the Judges themselves being commissioned from time to time, and not during good behaviour, or the continuance of their *offices*.



[\[Back to Table of Contents\]](#)

## TO RICHARD RUSH.

Ap<sup>l</sup>. 21, 1821.

Mad. Mss.

Dear Sir,—

Your favor of Nov<sup>r</sup>. 15, came duly to hand, with Mr. Ridgeley's farming Pamphlet; for which I return my thanks.

The inflexibility of G. B. on the points in question with the U. S. is a bad omen for the future relations of the parties. The present commercial dispute, tho' productive of ill humor will shed no blood. The same cannot be said of Impressments & blockades.

I have lately rec<sup>d</sup> also Mr. Godwin's attack on Malthus, which you were so good as to forward. The work derives some interest from the name of the Author and the singular views he has taken of the subject. But it excites a more serious attention by its tendency to disparage abroad the prospective importance of the U. S. who must owe their rapid growth to the principle combated. [1](#)

In this Country the fallacies of the Author will be smiled at only unless other emotions should be excited by the frequent disregard of the probable meaning of his opponent, and by the harshness of comments on the moral scope of his doctrine. Mr. G. charges him also with being dogmatical. Is he less so himself? and is not Mr. G. one of the last men who ought to throw stones at Theorists? At the moment of doing it too he introduces one of the boldest speculations in anticipating from the progress of chemistry an artificial conversion of the air the water & earth into food for man of the natural flavour and colour.

My memory does not retain all the features of Mr. Malthus's System. He may have been unguarded in his expressions, & have pushed some of his notions too far. He is certainly vulnerable in assigning for the increase of human food, an arithmetical ratio. In a Country thoroughly cultivated, as China is said to be, there can be *no* increase. And in one as partially cultivated, and as fertile as the U. S. the increase may *exceed* the geometrical ratio. A surplus beyond it, for which a foreign demand has failed, is a primary cause of the present embarrassments of this Country.

The two cardinal points on which the two Authors are at issue, are 1. the prolific principle in the human race. 2. its actual operation, particularly in the U. S. Mr. G. combats the extent of both.

If the principle could not be proved by direct facts, its capacity is so analogous to what is seen throughout other parts of the animal as well as vegetable domain, that it would be a fair inference. It is true indeed that in the case of vegetables on which animals feed, and of animals the food of other animals, a more extensive capacity of increase might be requisite than in the Human race. But in this case also it is required,

over and above the degree sufficient to repair the ordinary wastes of life, by two considerations peculiar to man: one that his reason can add to the natural means of subsistence for an increased number, which the instinct of other animals cannot; the other, that he is the only animal that destroys his own species.

Waiving however the sanction of analogy, let the principle be tested by facts, either stated by Mr. G. or which he cannot controvert.

He admits that Sweden has doubled her numbers, in the last hundred years, without the aid of emigrants. Here then there must have been a prolific capacity equal to an increase in ten centuries from 2 millions to 1000 mill<sup>s</sup>. If Sweden were as populous ten Centuries ago as now, or should not in ten Centuries to come arrive at a thousand millions, must not 998 mill<sup>s</sup>. of births have been prevented; or that number of infants have perished? And from what causes?

The two late enumerations, in England which shew a rate of increase there much greater than in Sweden are rejected by Mr. G. as erroneous. They probably are so; tho' not in the degree necessary for his purpose. He denies that the population increases at all. He even appeals with confidence to a comparison of what it has been with what it is at present as proving a decrease.

There being no positive evidence of the former numbers and none admitted by him of the Present, resort must be had to circumstantial lights; and these will decide the question with sufficient certainty.

As a general rule it is obvious that the quantity of food produced in a country determines the actual extent of its population. The number of people cannot exceed the quantity of food, and this will not be produced beyond the consumption. There are exceptions to the rule; as in the case of the U. S. which export food, and of the W. Indies which import it. Both these exceptions however favor the supposition that there has been an increase of the English population: England adding latterly imported food to its domestic stock, which at one period it diminished by exportation. The question to be decided is whether the quantity of food produced the true measure of the population consuming it, be greater or less now than heretofore.

In the savage state where wild animals are the chief food, the population must be the thinnest. Where reared ones are the chief food, as among the Tartars, in a pastoral State, the number may be much increased. In proportion as grain is substituted for animal food a far greater increase may take place. And as cultivated vegetables, & particularly roots, enter into consumption, the mass of subsistence being augmented, a greater number of consumers, is necessarily implied.

Now, it will not be pretended, that there is at present in England more of forest, and less of Cultivated ground than in the feudal or even much later periods. On the contrary it seems to be well understood that the opened lands have been both enlarged & fertilized; that bread has been substituted for flesh; and that vegetables, particularly roots have been more & more substituted for both. It follows that the aggregate food

raised & consumed now, being greater than formerly, the number who consume it, is greater also.

The Report to the Board of Agriculture quoted by Mr. G. coincides with this inference. The Animal food of an individual which is the smaller part of it, requires, according to this authority, 2 acres of ground; all the other articles  $1\frac{3}{4}$  of an acre only. The report states that a horse requires four acres. It is probable that an ox requires more, being fed less on grain & more on Grass.

It may be said that Horses which are not eaten are now used instead of oxen which were. But the horse as noted is supported by fewer acres than the ox; and the oxen superseded by the horses, form but a small part of the eatable Stock to which they belong. The inference therefore can at most be but slightly qualified by this innovation.

The single case of Ireland ought to have warned Mr. G. of the error he was maintaining. It Seems to be agreed that the population there has greatly increased of late years; altho' it receives very few if any emigrants; and has sent out numbers, very great numbers, as *Mr. G. must suppose*, to the U. S.

In denying the increase of the Am<sup>n</sup>. population, from its own stock, he is driven to the most incredible suppositions, to a rejection of the best established facts, and to the most preposterous estimates & calculations.

He ascribes the rapid increase attested by our periodical lists, wholly to emigrations from Europe; which obliged him to suppose that from 1790, to 1810 150 thousand persons were annually transported; an extravagance which is made worse by his mode of reducing the n<sup>o</sup>. necessary to one half; and he catches at little notices of remarkable numbers landed at particular ports, in particular seasons; as if these could be regarded as proofs of the average arrivals for a long series of years, many of them unfavorable for such transmigrations. In the year 1817, in which the emigrants were most numerous, according to Seybert, they did not in the ten Principal ports where with few if any exceptions they are introduced, exceed 22,240; little more than of the average annually assumed.

Were it even admitted that our population is the result altogether of emigrations from Europe, what w<sup>d</sup>. Mr. G. gain by it?

The Census for 1820 is not yet compleated. There is no reason however, to doubt that it will swell our numbers to about ten millions. In 1790 the population was not quite four millions. Here then has been an increase of six millions. Of these six five millions will have been drawn from the population of G. B. & Ireland. Have the numbers there been reduced accordingly? Then they must have been 30 years ago, greater by 5 millions than at this time. Has the loss been replaced? Then, as it has not been by emigrants, it must have been by an effect of the great principle in question. Mr. G. may take his choice of the alternatives.

It is worth remarking that N. England which has sent out such continued swarms to other parts of the Union for a number of years, has continued at the same time, as the Census shews to increase in population, altho' it is well known that it has rec<sup>d</sup>. comparatively very few emigrants from any quarter; these preferring places less inhabited for the same reason that determines the course of migrations from N. England.

The appeal to the case of the black population in the U. S. was particularly unfortunate for the reasoning of Mr. G. to which it gives the most striking falsification.

Between the years 1790 & 1810 the number of slaves increased from 694,280 to 1,165,441. This increase at a rate nearly equal to that of the Whites, surely was not produced by *emigrants* from Africa. Nor could any part of it have been imported, (except 30 or 40,000<sup>1</sup> into S. Carolina & Georgia,) the prohibition being every where strictly enforced throughout that period. Louisiana indeed brought an addition amounting in 1810 to 37,671. This n<sup>o</sup>. however (to be reduced by the slaves carried thither from other States prior to 1810) may be regarded as overbalanced by emancipated blacks & their subsequent offspring. The whole number of this description in the Census of 1810, amounts to 186,446.

The evidence of a natural and rapid increase of the Blacks in the State of Virginia is alone conclusive on the subject. Since the Epoch of Independence the importation of slaves has been uniformly prohibited, and the spirit of the people concurring with the policy of the law, it has been carried fully into execution. Yet the number of slaves increased from 292,627 in 1790 to 392,518 in 1810; altho' it is notorious that very many have been carried from the State by external purchases and migrating masters. In the State of Maryland to the North of Virginia whence alone it could be surmised that any part of them could be replaced, there has been also an increase.

Mr. G. exults not a little (p. 420—2) in the detection of error in a paper read by Mr. W. Barton in 1791 to the Philosophical Society at Phil<sup>d</sup><sup>a</sup>. I have not looked for the paper; but from the account of it given by Mr. G. a strange error was committed by Mr. B. not however in the false arithmetic blazoned by Mr. G., but by adding the number of deaths to that of births in deducing the Productiveness of marriages in a certain Parish in Massachusetts. But what is not less strange than the lapsus of Mr. B. is that his critic should overlook the fact on the face of the paper as inserted in his own Page, that the population of the Parish had doubled in 54 years, in spite of the probable removals from an old parish to newer settlements; And what is strangest of all, that he should not have attended to the precise statement in the record, that the number of births within the period exceeded the number of deaths, by the difference between 2,247 and 1,113. Here is the most demonstrable of all proofs of an increasing population unless a Theoretical zeal should suppose that the Pregnant women in the neighbourhood made lying in visits to Hingham, or that its sick inhabitants chose to have their dying eyes closed elsewhere.

Mr. G. has not respected other evidence in his hands, which ought to have opened his eyes to the reality of an increasing population in the U. S. In the population list of

Sweden, in the authenticity of which he fully acquiesces as well as in the Census of the U. S. the authenticity of which he does not controvert, there is a particular column for those under ten years of Age. In that of Sweden, the number is to the whole population, as 2,484 to 10,000 which is less than  $\frac{1}{4}$ . In that of the U. S. the number is as 2,016,704 to 5,862,096, which is more than  $\frac{1}{4}$ . Now Mr. G. refers (p. 442) to the proportion of the ungrown to the whole population, as testing the question of its increase. He admits & specifies the rate at which the population of Sweden increases. And yet with this evidence of a greater increase of the population of the U. S. he contends that it does not increase at all. An attempt to extricate himself by a disproportion of children or of more productive parents emigrating from Europe, would only plunge him the deeper into contradictions & absurdities.

Mr. G. dwells on the Indian Establishment at Paraguay by the Jesuits, which is said not to have increased as a triumphant disproof of the prolific principle. He places more faith in the picture of the establishment given by Raynal than is due to the vivid imagination of that Author, or than the Author appears to have had in it himself. For he rejects the inference of Mr. G. and reconciles the failure to increase with the power to increase by assigning two causes for the failure; the small-pox, and the exclusion of individual Property. And he might have found other causes, in the natural love of indolence till overcome by avarice & vanity motives repressed by their religious discipline; in the pride of the men, retaining a disdain of agricultural labour; and in the female habit of prolonging for several years the period of keeping children to the breast. In no point of view can a case marked by so many peculiar circumstances & these so imperfectly known, be allowed the weight of a precedent.

Mr. G. could not have given a stronger proof of the estrangement of his ideas from the Indian character & modes of life than by his referring to the Missouri Tribes, which do not multiply, "altho' they cultivate corn." His fancy may have painted to him fields of Wheat, cultivated by the Plough & gathered into Barns, as a provision for the year. How w<sup>d</sup>. he be startled at the sight of little patches of Maize & squashes, stirred by a piece of Wood, and that by the Squaws only; the hunters & warriors spurning such an occupation, & relying on the fruits of the Chase for the support of their Wigwams? "Corn Eaters" is a name of reproach given by some tribes to others beginning under the influence of the Whites to enlarge their cultivated spots.

In going over Mr. G<sup>s</sup> volume, these are some of the remarks which occurred; and in thanking you for it, I have made them supply the want of more interesting materials for a letter. If the heretical Work should attract conversations in which you may be involved, some of the facts, which you are saved the trouble of hunting up, may rebut misstatements from misinformed friends or illiberal opponents of our Country.

You have not mentioned the cost of Godwin's book or the pamphlet of Mr. Rigby. I suspect that they overgo the remnant of the little fund in your hands. If so let me provide for it. You will oblige me also by forwarding with its cost, the Book Entitled "The apocryphal New Testament translated from the Original Tongues," "printed for W<sup>m</sup>. Hone Ludgate Hill."

[\[Back to Table of Contents\]](#)

## TO SPENCER ROANE.

Montp<sup>r</sup>, May 6, 1821.

Mad. Mss.

Dear Sir,—

I rec<sup>d</sup>. more than two weeks ago, your letter of Ap<sup>l</sup>. 17. A visit to a sick friend at a distance, with a series of unavoidable attentions have prevented an earlier acknowledgment of it.

Under any circumstances I should be disposed rather to put such a subject as that to which it relates into your hands than to take it out of them. Apart from this consideration, a variety of demands on my time would restrain me from the task of unravelling the arguments applied by the Supreme Court of the U. S. to their late decision.<sup>1</sup> I am particularly aware moreover that they are made to rest not a little on technical points of law, which are as foreign to my studies as they are familiar to yours.

It is to be regretted that the Court is so much in the practice of mingling with their judgments pronounced, comments & reasonings of a scope beyond them; and that there is often an apparent disposition to amplify the authorities of the Union at the expence of those of the States. It is of great importance as well as of indispensable obligation, that the constitutional boundary between them should be impartially maintained. Every deviation from it in practice detracts from the superiority of a Chartered over a traditional Gov<sup>t</sup>. and mars the experiment which is to determine the interesting Problem whether the organization of the Political system of the U. S. establishes a just equilibrium; or tends to a preponderance of the National or the local powers, and in the latter case, whether of the national or of the local.

A candid review of the vicissitudes which have marked the progress of the General Gov<sup>t</sup>. does not preclude doubts as to the ultimate & fixed character of a Political Establishment distinguished by so novel & complex a mechanism. On some occasions the advantage taken of favorable circumstances gave an impetus & direction to it which seemed to threaten subversive encroachments on the rights & authorities of the States. At a certain period we witnessed a spirit of usurpation by some of these on the necessary & legitimate functions of the former. At the present date, theoretic innovations at least are putting new weights into the scale of federal sovereignty which make it highly proper to bring them to the Bar of the Constitution.

In looking to the probable course and eventual bearing of the compound Gov<sup>t</sup>. of our Country, I cannot but think that much will depend not only on the moral changes incident to the progress of society; but on the increasing number of the members of the Union. Were the members very few, and each very powerful, a feeling of self-sufficiency would have a relaxing effect on the bands holding them together. Were they numerous & weak, the Gov. over the whole would find less difficulty in

maintaining & increasing subordination. It happens that whilst the power of some is swelling to a great size, the entire number is swelling also. In this respect a corresponding increase of centripetal & centrifugal forces, may be equivalent to no increase of either.

In the existing posture of things, my reflections lead me to infer that whatever may be the latitude of Jurisdiction assumed by the Judicial Power of the U. S. it is less formidable to the reserved sovereignty of the States than the latitude of power which it has assigned to the National Legislature; & that encroachments of the latter are more to be apprehended from impulses given to it by a majority of the States seduced by expected advantages, than from the love of Power in the Body itself, controuled as it *now* is by its responsibility to the Constituent Body.

Such is the plastic faculty of Legislation, that notwithstanding the firm tenure which judges have on their offices, they can by various regulations be kept or reduced within the paths of duty; more especially with the aid of their amenability to the Legislative tribunal in the form of impeachment. It is not probable that the Supreme Court would long be indulged in a career of usurpation opposed to the decided opinions & policy of the Legislature.

Nor do I think that Congress, even seconded by the Judicial Power, can, without some change in the character of the nation, succeed in *durable* violations of the rights & authorities of the States. The responsibility of one branch to the people, and of the other branch to the Legislatures, of the States, seem to be, in the present stage at least of our political history, an adequate barrier. In the case of the alien & sedition laws, which violated the general *sense* as well as the *rights* of the States, the usurping experiment was crushed at once, notwithstanding the co-operation of the federal Judges with the federal laws.

But what is to controul Congress when backed & even pushed on by a majority of their Constituents, as was the case in the late contest relative to Missouri, and as may again happen in the constructive power relating to Roads & Canals? Nothing within the pale of the Constitution but sound arguments & conciliatory expostulations addressed both to Congress & to their Constituents.

On the questions brought before the Public by the late doctrines of the Supreme Court of the U. S. concerning the extent of their own powers, and that of the exclusive jurisdiction of Congress over the ten miles square and other specified places, there is as yet no evidence that they express either the opinions of Congress or those of their Constituents. There is nothing therefore to discourage a development of whatever flaws the doctrines may contain, or tendencies they may threaten. Congress if convinced of these may not only abstain from the exercise of Powers claimed for them by the Court, but find the means of controuling those claimed by the Court for itself. And should Congress not be convinced, their Constituents, if so, can certainly under the forms of the Constitution effectuate a compliance with their deliberate judgment and settled determination.

In expounding the Constitution the Court seems not insensible that the intention of the parties to it ought to be kept in view; and that as far as the language of the instrument will permit, this intention ought to be traced in the contemporaneous expositions. But is the Court as prompt and as careful in citing and following this evidence, when ag<sup>st</sup>. the federal Authority as when ag<sup>st</sup> that of the States? (See the partial reference of the Court to “The Federalist.”)1

The exclusive jurisdiction over the ten miles square is itself an anomaly in our Representative System. And its object being manifest, and attested by the views taken of it, at its date, there seems a peculiar impropriety in making it the fulcrum for a lever stretching into the most distant parts of the Union, and overruling the municipal policy of the States. The remark is still more striking when applied to the smaller places over which an exclusive jurisdiction was suggested by a regard to the defence & the property of the Nation.

Some difficulty, it must be admitted may result in particular cases from the impossibility of executing some of these powers within the defined spaces, according to the principles and rules enjoined by the Constitution; and from the want of a constitutional provision for the surrender of malefactors whose escape must be so easy, on the demand of the U. States as well as of the Individual States. It is true also that these exclusive jurisdictions are in the class of enumerated powers, to w<sup>ch</sup>. is subjoined the “power in Congress to pass all laws necessary & proper for their execution.” All however that could be exacted by these considerations would be that the means of execution should be of the most obvious & essential kind; & exerted in the ways as little intrusive as possible on the powers and police of the States. And, after all, the question would remain whether the better course would not be to regard the case as an omitted one, to be provided for by an amendment of the Constitution. In resorting to legal precedents as sanctions to power, the distinctions should ever be strictly attended to, between such as take place under transitory impressions, or without full examination & deliberation, and such as pass with solemnities and repetitions sufficient to imply a concurrence of the judgment & the will of those, who having granted the power, have the ultimate right to explain the grant. Altho’ I cannot join in the protest of some against the validity of all precedents, however uniform & multiplied, in expounding the Constitution, yet I am persuaded that Legislative precedents are frequently of a character entitled to little respect, and that those of Congress are sometimes liable to peculiar distrust. They not only follow the example of other Legislative assemblies in first procrastinating and then precipitating their acts; but, owing to the termination of their session every other year at a fixed day & hour, a mass of business is struck off, as it were at shorthand, and in a moment. These midnight precedents of every sort ought to have little weight in any case.

On the question relating to involuntary submissions of the States to the Tribunal of the Supreme Court, the Court seems not to have adverted at all to the expository language when the Constitution was adopted; nor to that of the Eleventh Amendment, which may as well import that it was declaratory, as that it was restrictive of the meaning of the original text. It seems to be a strange reasoning also that would imply that a State in controversies with its own Citizens might have less of sovereignty, than in controversies with foreign individuals, by which the national relations might be



affected. Nor is it less to be wondered that it should have appeared to the Court that the dignity of a State was not more compromised by being made a party ag<sup>st</sup>. a private person than ag<sup>st</sup> a co-ordinate Party.

The Judicial power of the U. S. over cases arising under the Constitution, must be admitted to be a vital part of the System. But that there are limitations and exceptions to its efficient character, is among the admissions of the Court itself. The Eleventh Amendment introduces exceptions if there were none before. A liberal & steady course of practice can alone reconcile the several provisions of the Constitution literally at variance with each other; of which there is an example in the Treaty Power & the Legislative Power on subjects to which both are extended by the words of the Constitution. It is particularly incumbent, in taking cognizance of cases arising under the Constitution, and in which the laws and rights of the States may be involved, to let the proceedings touch individuals only. Prudence enjoins this if there were no other motive, in consideration of the impracticability of applying coercion to States.

I am sensible Sir, that these ideas are too vague to be of value, and that they may not even hint for consideration anything not occurring to yourself. Be so good as to see in them at least an unwillingness to disregard altogether your request. Should any of the ideas be erroneous as well as vague, I have the satisfaction to know that they will be viewed by a friendly as well as a candid eye.

[\[Back to Table of Contents\]](#)

TO PETER S. DU PONCEAU.

May, 1821

Chic. Hist. Soc.  
Mss.

Dr. Sir,—

I cannot return my thanks for your address on the subject of a central seminary of Jurisprudence without offering my best wishes for the success of such an Institution.

The Citizens of the U. S. not only form one people governed by the same code of laws, in all cases falling within the range of the Federal authority, but as Citizens of the different States, are connected by a daily intercourse & by multiplying transactions, which give to all an interest in the character, & in a reciprocal knowledge of the State laws also.

It is not only desirable therefore that the national code should receive whatever improvements the cultivation of law as a science may impart but that the local codes should be improved in like manner, and a general knowledge of each facilitated by an infusion of every practicable identity through the whole.

All these objects must be promoted by an Institution concentrating the talents of the most enlightened of the Legal profession, and attracting from every quarter the pupils most devoted to the studies leading to it.

Such an assemblage in such a position would have particular advantages for taking a comprehensive view of the local codes, for examining their coincidences and their differences, and for pointing out whatever in each might deserve to be adopted into the others, and it can not be doubted that something would be found in each worthy of a place in all.

This would be a species of consolidation having the happy tendency to diminish local prejudices, to cherish mutual confidence and to accommodate the intercourse of business between citizens of different States, without impairing the constitutional separation & Independence of the States themselves, which are deemed essential to the security of individual liberty as well as to the preservation of Republican Government.

Uniformity in the laws of the States might have another effect not without its value. These laws furnish in many cases the very principles & rules on which the decisions of the national Tribunal are to be hinged. A knowledge of them in such cases is indispensable. The difficulty of acquiring it whilst the several codes vary so much is obvious, and is a motive for imposing on the Judges of the Supreme Court of the Nation those itinerary duties which may suit neither their years nor can long be practicable within the expanding field of them, and which moreover preclude those enriching "lucubrations" by which they might do fuller justice to themselves, fulfill

the better expectations at home, and contribute the more to the national character abroad.

I rec<sup>d</sup> some time ago your recommendation of Mr. [Lardner Clark] Vanuxem for the Chemical Chair in the University of Virg<sup>a</sup> President Cooper has borne his testimony also in favor of Mr. Vanuxem. Nothing can yet be s<sup>d</sup> on the prospect of his success, the other candidates not being yet known, and the time even of opening the University being uncertain.

[\[Back to Table of Contents\]](#)

## TO SPENCER ROANE.

Montpellier, June 29, 1821

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>, and return my thanks for your obliging communication of the 20th instant. The papers of “Algernon Sidney” have given their full lustre to the arguments ag<sup>st</sup> the suability of States by individuals, and ag<sup>st</sup> the projectile capacity of the power of Congress within the “ten miles square.” The publication is well worthy of a Pamphlet form, but must attract Public attention in any form.

The Gordian Knot of the Constitution seems to lie in the problem of collision between the federal & State powers, especially as eventually exercised by their respective Tribunals. If the knot cannot be untied by the text of the Constitution it ought not, certainly, to be cut by any Political Alexander.

I have always thought that a construction of the instrument ought to be favoured, as far as the text would warrant, which would obviate the dilemma of a Judicial rencounter or a mutual paralysis; and that on the abstract question whether the federal or the State decisions ought to prevail, the sounder policy would yield to the claims of the former.

Our Governmental System is established by a compact, not between the Government of the U. States, and the State Governments; but between the States, as sovereign communities, stipulating each with the others, a surrender of certain portions, of their respective authorities, to be exercised by a Common Gov<sup>t</sup>. and a reservation, for their own exercise, of all their other Authorities. The possibility of disagreements concerning the line of division between these portions could not escape attention; and the existence of some Provision for terminating regularly & authoritatively such disagreements, not but be regarded as a material desideratum.

Were this trust to be vested in the States in their individual characters, the Constitution of the U. S. might become different in every State, and would be pretty sure to do so in some; the State Gov<sup>ts</sup>. would not stand all in the same relation to the General Gov<sup>t</sup>., some retaining more, others less of sovereignty; and the vital principle of equality, which cements their Union thus gradually be deprived of its virtue. Such a trust vested in the Gov<sup>t</sup>. representing the whole and exercised by its tribunals, would not be exposed to these consequences; whilst the trust itself would be controulable by the States who directly or indirectly appoint the Trustees: whereas in the hands of the States no federal controul direct or indirect would exist the functionaries holding their appointments by tenures altogether independent of the General Gov<sup>t</sup>..

Is it not a reasonable calculation also that the room for jarring opinions between the National & State tribunals will be narrowed by successive decisions sanctioned by the

Public concurrence; and that the weight of the State tribunals will be increased by improved organizations, by selections of abler Judges, and consequently by more enlightened proceedings? Much of the distrust of these departments in the States, which prevailed when the National Constitution was formed has already been removed. Were they filled everywhere, as they are in some of the States, one of which I need not name, their decisions at once indicating & influencing the sense of their Constituents, and founded on united interpretations of constitutional points, could scarcely fail to frustrate an assumption of unconstitutional powers by the federal tribunals.

Is it too much to anticipate even that the federal & State Judges, as they become more & more co-ordinate in talents, with equal integrity, and feeling alike the impartiality enjoined by their oaths, will vary less & less also in their reasonings & opinions on all Judicial subjects; and thereby mutually contribute to the clearer & firmer establishment of the true boundaries of power, on which must depend the success & permanency of the federal republic, the best Guardian, as we believe, of the liberty, the safety, and the happiness of men. In these hypothetical views I may permit my wishes to sway too much my hopes. I submit the whole nevertheless to your perusal, well assured that you will approve the former, if you cannot join fully in the latter.

Under all circumstances I beg you to be assured of my distinguished esteem & sincere regard.

[\[Back to Table of Contents\]](#)

TO JOSEPH GALES.

Montp<sup>r</sup>. August 26, 1821

Mad. Mss.

Dear Sir,—

I thank you for your friendly letter of the 20th, inclosing an extract from notes by Judge Yates, of debates in the Convention of 1787, as published in a N. Y. paper.<sup>1</sup> The letter did not come to hand till yesterday.<sup>2</sup>

If the extract be a fair sample, the work about to be published will not have the value claimed for it. Who can believe that so palpable a misstatement was made on the floor of the Convention, as that the several States were political Societies, *varying* from the *lowest* Corporation to the highest Sovereign; or that the States had vested *all* the essential rights of sovereignty in the Old Congress? This intrinsic evidence alone, ought to satisfy every candid reader of the extreme incorrectness of the passage in question. As to the remark that the States ought to be under the controul of the Gen<sup>l</sup> Gov<sup>t</sup>. at least as much as they formerly were under the King & B. Parliament, it amounts as it stands when taken in its presumable meaning, to nothing more than what actually makes a part of the Constitution; the powers of Cong<sup>s</sup> being much greater, especially on the great points of taxation & trade than the B. Legislature were ever permitted to exercise.

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

I have thought it due to the kind motives of your communication to say thus much; but, I do it in the well founded confidence, that your delicacy will be a safeguard ag<sup>st</sup> my being introduced into the Newspapers. Were there no other objection to it, there would be an insuperable one in the alternative of following up the task, or acquiescing in like errors as they may come before the public.

With esteem & friendly respects

[\[Back to Table of Contents\]](#)

TO JOHN G. JACKSON.

Montp<sup>r</sup>., Dec<sup>r</sup> 27, 1821.

Mad. Mss.

Dear Sir,—

Your favor of the 9th came to hand a few days ago only; and the usages of the season, with some additional incidents have not allowed me time for more promptly acknowledging its friendly contents.

You were right in supposing that some arrangement of the Mass of papers accumulated through a long course of public life would require a tedious attention after my final return to a private station. I regret to say that concurring circumstances have essentially interfered with the execution of the task. Becoming every day more & more aware of the danger of a failure from delay, I have at length set about it in earnest; and shall continue the application as far as health and indispensable avocations will permit.

With respect to that portion of the Mass which contains the voluminous proceedings of the Convention, it has always been my intention that they should, some day or other, see the light. But I have always felt at the same time the delicacy attending such a use of them; especially at an early season. In general I have leaned to the expediency of letting the publication be a posthumous one. The result of my latest reflections on the subject, I cannot more conveniently explain, than by the inclosed extract from a letter confidentially written since the appearance of the proceedings of the Convention as taken from the notes of Chf. Just<sup>c</sup>. Yates.

Of this work I have not yet seen a copy. From the scraps thrown into the Newspapers I cannot doubt that the prejudices of the author guided his pen, and that he has committed egregious errors at least, in relation to others as well as myself.

That most of us carried into the Convention a profound impression produced by the experienced inadequacy of the old Confederation, and by the monitory examples of all similar ones ancient & modern, as to the necessity of binding the States together by a strong Constitution, is certain. The necessity of such a Constitution was enforced by the gross and disreputable inequalities which had been prominent in the internal administrations of most of the States. Nor was the recent & alarming insurrection headed by Shays, in Massachusetts without a very sensible effect on the pub. mind. Such indeed was the aspect of things that in the eyes of all the best friends of liberty a crisis had arrived which was to decide whether the Am<sup>n</sup>. Experiment was to be a blessing to the world, or to blast forever the hopes which the republican cause had inspired; and what is not to be overlooked the disposition to give to a new system all the vigour consistent with Republican principles, was not a little stimulated by a backwardness in some quarters towards a Convention for the purpose, which was ascribed to a secret dislike to popular Gov<sup>t</sup> and a hope that delay would bring it more

into disgrace, and pave the way for a form of Gov<sup>t</sup>. more congenial with Monarchical or Aristocratical Predilections.

This view of the crisis made it natural for many in the Convention to lean more than was perhaps in strictness warranted by a proper distinction between causes temporary as some of them doubtless were, and causes permanently inherent in popular frames of Gov<sup>t</sup>. It is true also, as has been sometimes suggested that in the course of discussions in the Convention, where so much depended on compromise, the patrons of different opinions often set out on negotiating grounds more remote from each other, than the real opinions of either were from the point at which they finally met.

For myself, having from the first moment of maturing a political opinion down to the present one, never ceased to be a votary of the principle of self Gov<sup>t</sup>., I was among those most anxious to rescue it from the danger which seemed to threaten it; and with that view was willing to give to a Gov<sup>t</sup>. resting on that foundation, as much energy as would insure the requisite stability and efficacy. It is possible that in some instances this consideration may have been allowed a weight greater than subsequent reflection within the Convention, or the actual operation of the Gov<sup>t</sup>. would sanction. It may be remarked also that it sometimes happened that opinions as to a particular modification or a particular power of the Gov<sup>t</sup>. had a conditional reference to others which combined therewith would vary the character of the whole.

But whatever might have been the opinions entertained in forming the Constitution, it was the duty of all to support it in its true meaning as understood *by the nation* at the time of its ratification. No one felt this obligation more than I have done; and there are few perhaps whose ultimate & deliberate opinions on the merits of the Constitution accord in a greater degree with that Obligation.

The departures from the true & fair construction of the instrument have always given me pain, and always experienced my opposition when called for. The attempts in the outset of the Gov<sup>t</sup>. to defeat those safe, if not necessary, & those politic if not obligatory amendments introduced in conformity to the known desires of the Body of the people, & to the pledges of many, particularly myself when vindicating & recommending the Constitution, was an occurrence not a little ominous. And it was soon followed by indications of political tenets, and by rules, or rather the abandonment of all rules of expounding it, w<sup>ch</sup>. were capable of transforming it into something very different from its legitimate character as the offspring of the National Will. I wish I could say that constructive innovations had altogether ceased.

Whether the Constitution, as it has divided the powers of Gov<sup>t</sup>. between the States in their separate & in their united Capacities, tends to an oppressive aggrandizement of the Gen<sup>l</sup> Gov<sup>t</sup> or to an Anarchical Independence of the State Gov<sup>ts</sup>. is a problem which time alone can absolutely determine. It is much to be wished that the division as it exists, or may be made with the regular sanction of the people, may effectually guard ag<sup>st</sup>. both extremes; for it cannot be doubted that an accumulation of all Power in the Gen<sup>l</sup>. Gov<sup>t</sup>. w<sup>d</sup>. as naturally lead to a dangerous accumulation in the Executive hands, as that the resumption of all power by the several States w<sup>d</sup>. end in the



calamities incident to contiguous & rival Sovereigns; to say nothing of its effect in lessening the security for sound principles of administration within each of them.

There have been epochs when the Gen<sup>l</sup>. Gov<sup>t</sup>. was evidently drawing a disproportion of power into its vortex. There have been others when States threatened to do the same. At the present moment it w<sup>d</sup>. seem that both are aiming at encroachments, each on the other. One thing however is certain, that in the present condition and temper of the Community, the Gen<sup>l</sup>. Gov<sup>t</sup>. cannot long succeed in encroachments contravening the will of a Majority of the States, and of the people. Its responsibility to these w<sup>d</sup>., as was proved on a conspicuous occasion, quickly arrest its career. If, at this time, the powers of the Gen<sup>l</sup>. Gov<sup>t</sup> be carried to unconstitutional lengths, it will be the result of a majority of the States & of the people, actuated by some impetuous feeling, or some real or supposed interest, overruling the minority, and not of successful attempts by the Gen<sup>l</sup> Gov<sup>t</sup>. to overpower both.

In estimating the greater tendency in the political System of the Union to a subversion, or to a separation of the States composing it, there are some considerations to be taken into the account which have been little Adverted to by the most oracular Authors on the Science of Gov<sup>t</sup>. and which are but imperfectly developed as yet by our own experience. Such are the size of the States, the number of them, the territorial extent of the whole, and the degree of external danger. Each of these, I am persuaded, will be found to contribute its impulse to the practical direction which our great Political Machine is to take.

We learn, for the first time, the second loss sustained by your parental affection. You will not doubt the sincerity with which we partake the grief produced by both. I wish we could offer better consolations, than the condoling expressions of it. These must be derived from other sources. Afflictions of every kind are the onerous conditions charged on the tenure of life; and it is a silencing if not a satisfactory vindication of the ways of Heaven to man that there are but few who do not prefer an acquiescence in them to a surrender of the tenure itself.

We have had for a great part of the last & present years, much sickness in our own family, and among the black members of it not a little mortality. Mrs. Madison & Payne [Todd] were so fortunate as to escape altogether. I was one of the last attacked & that not dangerously. The disease was a typhoid fever, at present we are all well & unite in every good wish to Mrs. J & yourself & to Mary, & the rest of your family.

[\[Back to Table of Contents\]](#)

## JONATHAN BULL & MARY BULL (1821).

*(Written but not published at the period of the Missouri question.)*

Chic. Hist. Soc.  
Mss.

Jonathan Bull & Mary Bull, who were descendants of old Jn<sup>o</sup>. Bull, the head of the family, had inherited contiguous estates in large tracts of land. As they grew up & became well acquainted, a partiality was mutually felt, and advances on several occasions made towards a matrimonial connection. This was particularly recommended by the advantage of putting their two estates under a common superintendence. Old B. however as guardian of both and having long been allowed certain valuable privileges within the Estates with which he was not long content had always found the means of breaking off the match which he regarded as a fatal obstacle to his secret design of getting the whole property into his own hands.

At a moment favorable as he thought for the attempt, he brought suit ag<sup>st</sup>. both, but with a view of carrying it on in a way that would make the process bear on the parties in such different modes times and degrees as might create a jealousy & discord between them. J. & M. had too much sagacity to be duped. They understood well old Bull's character and situation. They knew that he was deeply versed in all the subtleties of the law, that he was of a stubborn & persevering temper, and that he had moreover a very long purse. They were sensible therefore that the more he endeavoured to divide their interests & their defence of the suit the more they ought to make a common cause, and proceed in a concert of measures. As this could best be done by giving effect to the feelings long entertained for each other, an intermarriage was determined on, & solemnized with a deed of settlement as usual in such opulent matches, duly executed, and no event certainly of the sort was ever celebrated by a greater fervor or variety of rejoicings among the respective tenants of the parties. They had a great horror of falling into the hands of old B. and regarded the marriage of their proprietors under whom they held their freeholds as the surest mode of warding off the danger. They were not disappointed. United purses and good advocates compelled old B. after a hard struggle to withdraw the suit, and relinquish forever not only the new pretensions he had set up but the old privileges he had been allowed.

The marriage of J. and M. was not a barren one. On the contrary every year or two added a new member to the family and on such occasions the practice was to set off a portion of land sufficient for a good farm to be put under the authority of the child on its attaining the age of manhood, and these lands were settled very rapidly by tenants going as the case might be from the estates, sometimes of J. sometimes of M. and sometimes partly from one & partly from the other.

It happened that at the expiration of the non-age of the 10<sup>th</sup>. or 11<sup>th</sup> fruit of the marriage some difficulties were started concerning the rules & conditions of declaring the young party of age, and of giving him as a member of the family, the management of his patrimony. Jonathan became possessed with a notion that an arrangement ought

to be made that would prevent the new farm from being settled and cultivated, as in all the latter instances, indiscriminately by persons removing from his and M's estate and confine this privilege to those going from his own; and in the perverse humour which had seized him, he listened moreover to suggestions that M. had some undue advantage from the selections of the Head Stewards which happened to have been made much oftener out of her tenants than his.

Now the prejudice suddenly taken up by J. ag<sup>st</sup>. the equal right of M's tenants to remove with their property to new farms, was connected with a peculiarity in Mary's person not as yet noticed. Strange as it may appear, the circumstance is not the less true, that M. when a Child had unfortunately rec<sup>d</sup> from a certain African dye, a stain on her left arm which had made it perfectly black, and withal somewhat weaker than the other arm. The misfortune arose from a Ship from Africa loaded with the article which had been permitted to enter a river running thro' her estate, and dispose of a part of the noxious cargo. The fact was well known to J. at the time of their marriage, and if felt as an objection, it was in a manner reduced to nothing by the comely form and pleasing features of M. in every other respect, by her good sense and amiable manners; and in part perhaps by the large and valuable estate she brought with her.

In the unlucky fit however which was upon him, he looked at the black arm, and forgot all the rest. To such a pitch of feeling was he wrought up that he broke out into the grossest taunts on M. for her misfortune; not omitting at the same time to remind her of his long forbearance to exert his superior voice in the appointment of the Head Steward. He had now he said got his eyes fully opened, he saw everything in a new light, and was resolved to act accordingly. As to the Head Steward he w<sup>d</sup>. let her see that the appointment was virtually in his power; and she might take her leave of all chance of ever having another of her tenants advanced to that station, and as to the black arm, she should, if the colour could not be taken out, either tear off the skin from the flesh or cut off the limb; For it was his fixed determination, that one or other should be done, or he w<sup>d</sup>. sue out a divorce, & there should be an end of all connection between them and their Estates. I have examined he said well the marriage settlement, and flaws have been pointed out to me, that never occurred before, by which I shall be able to set the whole aside. White as I am all over, I can no longer consort with one marked with such a deformity as the blot on your person.

Mary was so stunned with the language she heard that it was some time before she could speak at all; and as the surprise abated, she was almost choked with the anger & indignation swelling in her bosom. Generous and placable as her temper was, she had a proud sensibility to what she thought an unjust & degrading treatment, which did not permit her to suppress the violence of her first emotions. Her language accordingly for a moment was such as these emotions prompted. But her good sense, and her regard for J. whose qualities as a good husband she had long experienced, soon gained an ascendancy, and changed her tone to that of sober reasoning & affectionate expostulation. Well my dear husband you see what a passion you had put me into. But it is now over, and I will endeavor to express my thoughts with the calmness and good feelings which become the relation of wife & husband.

As to the case of providing for our child just coming of age, I shall say but little. We both have such a tender regard for him and such a desire to see him on a level with his brethren as to the chance of making his fortune in the world, that I am sure the difficulties which have occurred will in some way or other be got over.

But I cannot pass so lightly over the reproaches you cast on the colour of my left arm, and on the more frequent appointment of my tenants than of yours to the head-stewardship of our joint estates.

Now as to the first point, you seem to have forgotten, my worthy partner, that this infirmity was fully known to you before our marriage, and is proved to be so by the deed of settlement itself. At that time you made it no objection whatever to our Union; and indeed how could you urge such an objection, when you were conscious that you yourself was not entirely free from a like stain on your own person. The fatal African dye, as you well know, had found its way into your abode as well as mine; and at the time of our marriage had spots & specks scattered over your body as black as the skin on my arm. And altho' you have by certain abrasions and other applications, taken them in some measure out, there are visible remains which ought to soften at least your language when reflecting on my situation. You ought surely when you have so slowly and imperfectly relieved yourself from the mortifying stain altho' the task was comparatively so easy, to have some forbearance and sympathy with me who have a task so much more difficult to perform. Instead of that you abuse me as if I had brought the misfortune on myself, and could remove it at will; or as if you had pointed out a ready way to do it, and I had slighted your advice. Yet so far is this from being the case that you know as well as I do that I am not to be blamed for the origin of the sad mishap, that I am as anxious as you can be to get rid of it; that you are as unable as I am to find out a safe & feasible plan for the purpose; and moreover that I have done everything I could, in the meantime, to mitigate an evil that cannot as yet be removed. When you talk of tearing off the skin or cutting off the unfortunate limb, must I remind you of what you cannot be ignorant that the most skilful surgeons have given their opinions that if so cruel an operation were to be tried, it could hardly fail to be followed by a mortification or a bleeding to death. Let me ask too whether, should neither of the fatal effects ensue, you would like me better in my mangled or mutilated condition than you do now? And when you threaten a divorce and an annulment of the marriage settlement, may I not ask whether your estate w<sup>d</sup>. not suffer as much as mine by dissolving the partnership between them? I am far from denying that I feel the advantage of having the pledge of your arm, your stronger arm if you please, for the protection of me & mine; and that my interests in general have been and must continue to be the better for your aid & counsel in the management of them. But on the other hand you must be equally sensible that the aid of my purse will have its value, in case old B. or any other rich litigious fellow should put us to the expense of another tedious lawsuit. And now that we are on the subject of loss & gain, you will not be offended if I take notice of a report that you sometimes insinuate that my estate according to the rates of assessment, does not pay its due share into the common purse. I think my dear J. that if you ever entertained this opinion you must have been led into it by a very wrong view of the subject as to the direct income from rents, there can be no deficiency on my part there; the rule of apportionment being clear & founded on a calculation by numbers. And as to what is raised from the

articles bought & used by my tenants, it is difficult to conceive that my tenants buy or use less than yours, considering that they carry a greater amount of crops to market the whole of which it is well known they lay out in articles from the use of which the bailiff regularly collects the sum due. It w<sup>d</sup>. seem then that my tenants selling more, buy more; buying more use more, and using more pay more. Meaning however not to put you in the wrong, but myself in the right, I do not push the argument to that length, because I readily agree that in paying for articles bought & used you have beyond the fruits of the soil on which I depend ways & means which I have not. You draw chiefly the interest we jointly pay for the funds we were obliged to borrow for the fees & costs the suit of Old Bull put us to. Your tenants also turn their hands so ingeniously to a variety of handicrafts & other mechanical productions, that they make not a little money from that source. Besides all this, you gain much by the fish you catch & carry to market; by the use of your teams and boats in transporting and trading on the crops of my tenants; and indeed in doing that sort of business for strangers also. This is a fair statement on your side of the account, with the drawback however, that as your tenants are supplied with a greater proportion of articles made by themselves, than is the case with mine, the use of which articles does not contribute to the common purse, they avoid in the same proportion, the payments collected from my tenants. If I were to look still farther into this matter and refer you to every advantage you draw from the union of our persons & property, I might remark that the profits you make from your teams & boats & which enable you to pay your quota in great part, are drawn from the preference they have in conveying & disposing of the products of my soil; a business that might fall into other hands in the event of our separation. I mention this as I have already s<sup>d</sup>. not by way of complaint for I am well satisfied that your gain is not altogether my loss in this more than in many other instances; and that what profits you immediately may profit me also in the long run. But I will not dwell on these calculations & comparisons of interest which you ought to weigh as well as myself as reasons ag<sup>st</sup> the measure to which you threaten a resort. For when I consult my own heart & call to mind all the endearing proofs you have given of yours going in sympathy with it, I must needs hope that there are other ties than mere interest to prevent us from ever suffering a transient resentment on either side, with or without cause, to bring on both all the consequences of a divorce; consequences too which w<sup>d</sup> be a sad inheritance indeed for our numerous and beloved offspring.

As to the other point relative to the Head Stewards I must own, my worthy husband, that I am altogether at a loss for any cause of dissatisfaction on your part or blame on mine. It is true as you say that they have been oftener taken from among my tenants than yours, but under other circumstances the reverse might as well have happened. If the individ<sup>ls</sup> appointed had made their way to the important trust by corrupt or fallacious means; if they had been preferred merely because they dwelt on my estate, or had succeeded by any interposition of mine contrary to your inclination; or finally if they had administered the trust unfaithfully, sacrificing your interests to mine, or the interests of both to selfish or unworthy purposes in either of these cases you w<sup>d</sup> have ground for your complaints. But I know J. that you are too just and too candid not to admit that no such ground exists. The head Stewards in question c<sup>d</sup>. not have been appointed without your own participation as well as mine. They were recommended to our joint choice by the reputed fairness of their characters, by their

tried fidelity & competency in previous trusts, and by their exemption from all charges of impure & grasping designs, and so far were they from being partial to my interest at the expense of yours, that they were rather considered by my tenants as leaning to a management more favorable to yours than to mine. I need not say that I allude to the bounties direct or indirect to your teams & boats, to the hands employed in your fisheries, and to the looms and other machineries which with<sup>t</sup>. such encouragement w<sup>d</sup>. not be able to meet the threatened rivalships of interfering neighbors. I say only that these ideas were in the heads of some of my tenants. For myself I s<sup>hd</sup> not have mentioned them but as a defence ag<sup>st</sup>. what I must regard as so unfounded that it ought not to be permitted to make a lasting impression. [1](#)

But laying aside all these considerations, I repeat my dear J. that the app<sup>t</sup> of the Head Steward lies as much if not more with you than with me. Let the choice fall where it may, you will find me faithfully abiding by it, whether it be thought the best possible one or not, and sincerely wishing that he may equally improve better opportunities of serving us both than was the lot of any of those who have gone before him.

J. who had a good heart as well as sound head & steady temper was touched with this tender & considerate language of M. and the bickering w<sup>ch</sup> had sprung up ended as the quarrels of lovers *always*, & of married folks *sometimes* do, in increased affection & confidence between the parties.

[\[Back to Table of Contents\]](#)

## TO HEZEKIAH NILES.1

Montpellier Jany 8 1822.

Chic. Hist. Soc.  
Mss.

In Ramsay's History of the American Revolution vol:2, pa. 300-301 is the following passage.

“Mr. Jay was instructed to contend for the right of the U. States to the free navigation of the river Mississippi, and if an express acknowledgement of it could not be obtained, he was restrained from acceding to any stipulation by which it should be relinquished. But in February 1781, when Lord Cornwallis was making rapid progress in overrunning the Southern States, and when the mutiny of the Pennsylvania line and other unfavorable circumstances depressed the spirits of the Americans, Congress, on *the recommendation* of Virginia, directed him to recede from his instructions so far as they insist on the free navigation of that part of the Mississippi which lies below the thirty first degree of North Latitude, provided such cession should be unalterably insisted on by Spain, and provided the free navigation of the said river above the said degree of North Latitude should be acknowledged and guaranteed by his Catholic Majesty, in common with his own subjects.”

In this account of the instruction to Mr. Jay to relinquish the navigation of the Mississippi below the Southern boundary of the U. States, the measure would seem to have had its origin with the State of Virginia.

This was not the case: and the very worthy historian, who was not at that period a member of Congress, was led into his error by the silence of the journals as to what had passed on the subject previous to Feb<sup>y</sup> 15, 1781, when they agreed to the instruction to make the relinquishment, as moved by the Delegates of Virginia in pursuance of instructions from the Legislature. It was not unusual with the Secretary of Congress to commence his entries in the Journal with the stage in which the proceedings assumed a definitive character; omitting, or noting on separate & informal sheets only, the preliminary stages.

The Delegates from Virg<sup>a</sup> had been long under instructions from their State to insist on the right to the navigation of the Mississippi; and Congress had always included it in their ultimatum for peace. As late as the 4th of Oc<sup>r</sup> 1780 (see the secret Journals of that date) they had renewed their adherence to this point by unanimously agreeing to the report of a Committee to whom had been referred “certain instructions to the delegates of Virg<sup>a</sup> by their constituents and a letter of May 29 from Mr. Jay at Madrid,” which report<sup>1</sup> prohibited him from relinquishing the right of the U. States to the free navigation of the River Mississippi into and from the sea, as asserted in his former instructions. And on the 17th of the same month, October (see the secret Journals of that date) Congress agreed to the report of a Committee explaining the reasons & principles on which the instructions of October the 4th were founded.

Shortly after this last measure of Congress, the Delegates of S. Carolina & Georgia, seriously affected by the progress and views of the Enemy in the Southern States, and by the possibility that the interference of the Great neutral powers might force a peace on the principle of *Uti possidetis*, whilst those States or parts of them might be in the military occupancy of G. Britain, urged with great zeal, within & without doors, the expediency of giving fresh vigour to the means of driving the enemy out of their country by drawing Spain into an alliance, and into pecuniary succours, believed to be unattainable without yielding our claim to the navigation of the Mississippi. The efforts of those Delegates did not fail to make proselytes till at length it was ascertained that a number was disposed to vote for the measure sufficient without the vote of Virginia and it happened that one of the two delegates from that State concurred in the policy of what was proposed [see the annexed letter of Nov<sup>r</sup> 25 & extract of Dec<sup>r</sup> 5, 1788, from J. Madison to Jos. Jones].

In this posture of the business, Congress was prevailed on to postpone any final decision untill the Legislature of Virginia could be consulted; it being regarded by all as very desirable, when the powers of Congress depended so much on the individual wills of the States, that an important member of the Union, on a point particularly interesting to it, should receive every conciliatory mark of respect, and it being calculated also that a change in the councils of that State might have been produced by the causes producing it in others.

A joint letter bearing date Dec<sup>r</sup> 13, 1780 [which see annexed] was accordingly written by the Delegates of Virginia to Governor Jefferson to be laid before the Legislature then in session simply stating the case and asking instructions on the subject; without any expression of their own opinions, which being at variance could not be expressed in a letter to be signed by both.

The result of these communications from the Delegates was a repeal of the former instructions and a transmission of different ones, the receipt of which, according to an understanding when the decision of Congress was postponed, made it incumbent on the two Delegates to bring the subject before Congress. This they did by offering the instruction to M. Jay agreed to on the 15th of Feb<sup>y</sup>. 1781 and referred to in the historical passage above cited.

It is proper to add that the instant the menacing crisis was over the Legislature of Virginia revoked the instruction to her Delegates to cede the navigation of the Mississippi and that Congress seized the first moment also for revoking theirs to M<sup>r</sup>. Jay.

I have thought a statement of these circumstances due to truth; and that its accuracy may be seen to depend not on memory alone the copies of contemporary documents verifying it are annexed.

In the hope that this explanation may find its way to the notice of some future Historian of our Revolutionary transactions I request for it a place, if one can be afforded, in your Register, where it may more readily offer itself to his researches than in publications of more transient or diffusive contents.



## With Friendly Respects

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpellier, May 6, 1822.

Mad. Mss.

Dear Sir,

This will probably arrive at the moment for congratulating you on the close of the scene in which your labours are blended with those of Congress. When will your recess from those which succeed commence; and when & how much of it will be passed in Albemarle? We hope for the pleasure of halts with us, & that Mrs. M & others of your family will be with us.

Mr. Anduaga I observe casts in our teeth the postponement of the recognition of Spanish America til the cession of Florida was secured, and taking that step immediately after.<sup>1</sup> This insinuation will be so readily embraced by suspicious minds, and particularly by the wily Cabinets of Europe, that I cannot but think it might be well to take away that pretext against us, by an Exposé, brought before the public in some due form, in which our conduct would be seen in its true light. An historical view of the early sentiments expressed here in favor of our neighbours, the successive steps openly taken, manifesting our sympathy with their cause, & our anticipation of its success, more especially our declarations of neutrality towards the contending parties as engaged in a civil, not an insurrectionary, war, would shew to the world that we never concealed the principles that governed us, nor the policy which terminated in the decisive step last taken. And the time at which this was taken, is surely well explained, without reference to the Florida Treaty, by the greater maturity of the Independence of some of the new States, & particularly by the recent revolution in Mexico which is able not only to maintain its own Independence, but to turn the scale if it were doubtful, in favor of the others. Altho' there may be no danger of hostile consequences from the Recognising act, it is desirable that our Republic should stand fair in the eyes of the world, not only for its own sake, but for that of Republicanism itself. Nor would perhaps a conciliatory appeal to the candour & liberality of the better part of Europe be a superfluous precaution, with a view to the possible collisions with Spain on the Ocean, & the backing she may receive from some of the great powers friendly to her or unfriendly to us. Russia has, if I mistake not, heretofore gone far in committing herself against a separation of the Colonies from Spain. And her enterprising policy ag<sup>t</sup>. revolutionary events every where make it the more probable that she may resent the contrast to it in that of the U. S. I am aware that these ideas cannot be new to you, & that you can appreciate them much better than I can. But having the pen in my hand I have permitted them to flow from it. It appears that the Senate have been discussing the precedents relating to the appointment of public Ministers. One question is, whether a Public Minister be an officer in the strict constitutional sense.<sup>1</sup> If he is, the appointment of him must be authorized by *law*, not by the President & Senate. If on the other hand, the appointment creates the office, the office must expire with the appointment, as an office created by Law expires with the law; & there can be no difference between Courts to which a Public Minister had been

sent, & those to which one was sent for the first time. According to my recollection this subject was on some occasion carefully searched into, & it was found that the practice of the Gov<sup>t</sup>. had from the beginning been regulated by the idea that the places or offices of Pub. Ministers & Consuls existed under the law & usages of Nations, and were always open to receive appointments as they might be made by competent authorities.

Other questions may be started as to Commissions for making Treaties; which when given to a public Minister employ him in a *distinct* capacity; but this is not the place, nor am I the person, to pursue the subject.

We had a hard winter & our wheat fields exhibit the proof of it. To make the matter worse, the fly has commenced its ravages in a very threatening manner, a dry cold spell will render them very fatal. I know not the extent of the evil. There has been of late a reanimation of prices for the last crop, occasioned by the expected opening of the W. India Trade; but there is so little remaining in the hands of the Farmers, that the benefit will be scarcely felt by them.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montpellier, May 18, 1822.

Mad. Mss.

Dear Sir,

I am just favored with yours of the 12th, in which you ask whether I recollect any case of a “nomination of an officer of the Army to a particular office, to take rank from a certain date, in which the Senate have interposed to give rank from another date?” and again, whether I recollect “any instances of filling original vacancies, in civil or military Offices in the recess of the Senate, where authority was not given by law?”

On the first point I have no particular recollection, but it is possible that there may have been cases such as you mention.<sup>1</sup> The journals of the Senate will of course present them if they ever existed. Be the fact as it may, it would seem that such an interposition of the Senate, would be a departure from the naked authority to decide on nominations of the Executive. The tenure of the officer, in the interval between the two dates, where that of the Senate was the prior one would be altogether of the Senate’s creation; or if understood to be made valid by the Commission of the President, would make the appointment *originate* with the Senate, not with the President; nor would a posteriority of the date of the Senate, possibly be without some indirect operation beyond the competency of that Body.

On the second point, although my memory cannot refer to any particular appointments to original vacancies in the recess of the Senate, I am confident that such have taken place under a pressure of circumstances, where no legal provision had authorized them. There have been cases where offices were created by Congress, and appointments to them made with the sanction of the Senate, which were notwithstanding found to be vacant in consequence of refusals to accept them, or of unknown death of the party at the time of the appointment, and thence filled by the President alone. I have a faint impression that instances of one or both occurred within the Mississippi Territory. These however were cases of necessity. Whether others not having that basis have occurred my present recollections do not enable me to say.

In the inclosed English Newspaper is sketched a debate in the House of Commons throwing light on the practice there with respect to filling military vacancies in certain cases. If I understand the sketch from a very slight perusal, the rule of promotion is not viewed as applicable to original vacancies. In the abstract it has always appeared to me desirable that the door to special merit should be widened as far as could possibly be reconciled with the general Rules of promotion. The inconveniency of a rigid adherence to this Rule gave birth to Brevets; and favors every permitted mode of Relaxing it, in order to do justice to superior capacity for public service.

The aspect of things at Washington to which you allude could escape the notice of no one who ever looks into the Newspapers. The only effect of a political rivalry among the members of the Cabinet which I particularly anticipated & which I believe I mentioned once in conversation with you, was an increased disposition in each to cultivate the good will of the President. The object of such rivalry on & through the proceedings of Congress is to be ascribed I hope to a peculiarity and Combination of circumstances not likely often to recur in our Annals.[1](#)

I am afraid you are too sanguine in your inferences from the absence here of causes which have most engendered & embittered the spirit of party in former times & in other Countries. There seems to be a propensity in free Gov<sup>ts</sup>. which will always find or make subjects, on which human opinions & passions may be thrown into conflict. The most, perhaps that can be counted on, & that will be sufficient, is, that the occasions for party contests in such a Country & Gov<sup>t</sup>. as ours, will be either so slight or so transient, as not to threaten any permanent or dangerous consequences to the character & prosperity of the Republic. But I must not forget that I took up my pen merely to answer your two inquiries, and to remind you that you omitted to answer mine as to your intended movements after the release from your confinement at Washington.

[\[Back to Table of Contents\]](#)

## TO EDWARD LIVINGSTON.

Montp<sup>r</sup>., July 10, 1822

Mad. Mss.

D<sup>R</sup> Sir,

I was favored some days ago with your letter of May 19, accompanied by a copy of your Report to the Legislature of the State on the subject of a penal Code.<sup>1</sup>

I should commit a tacit injustice if I did not say that the Report does great honor to the talents and sentiments of the Author. It abounds with ideas of conspicuous value and presents them in a manner not less elegant than persuasive.

The reduction of an entire code of criminal jurisprudence, into statutory provisions, excluding a recurrence to foreign or traditional codes, and substituting for technical terms, more familiar ones with or without explanatory notes, cannot but be viewed as a very arduous task. I sincerely wish your execution of it may fulfil every expectation.

I cannot deny, at the same time, that I have been accustomed to doubt the practicability of giving all the desired simplicity to so complex a subject, without involving a discretion, inadmissible in free Gov<sup>t</sup>. to those who are to expound and apply the law. The rules and usages which make a part of the law, tho' to be found only in elementary treatises, in respectable commentaries, and in adjudged cases, seem to be too numerous & too various to be brought within the requisite compass; even if there were less risk of creating uncertainties by defective abridgments, or by the change of phraseology.

This risk w<sup>d</sup> seem to be particularly incident to a substitution of new words & definitions for a technical language, the meaning of which had been settled by long use and authoritative expositions. When a technical term may express a very simple idea, there might be no inconveniency or rather an advantage in exchanging it for a more familiar synonyme, if a precise one could be found. But where the technical terms & phrases have a complex import, not otherwise to be reduced to clearness & certainty, than by practical applications of them, it might be unsafe to introduce new terms & phrases, tho' aided by brief explanations. The whole law expressed by single terms, such as "trial by jury, evidence, &c. &c." fill volumes, when unfolded into the details which enter into their meaning.

I hope it will not be thought by this intimation of my doubts I wish to damp the enterprize from which you have not shrunk. On the contrary I not only wish that you may overcome all the difficulties which occur to me; but am persuaded that if compleat success sh<sup>d</sup>. not reward your labors, there is ample room for improvements in the criminal jurisprudence of Louisiana as elsewhere which are well worthy the exertion of your best powers, and wh will furnish useful examples to other members of the Union. Among the advantages distinguishing our compound Gov<sup>t</sup>. it is not the

least that it affords so many opportunities and chances in the local Legislatures, for salutary innovations by some, which may be adopted by others; or for important experiments, which, if unsuccessful, will be of limited injury, and may even prove salutary as beacons to others. Our political system is found also to have the happy merit of exciting a laudable emulation among the States composing it, instead of the enmity marking competitions among powers wholly alien to each other.

I observe with particular pleasure the view you have taken of the immunity of Religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; and it was not with my approbation, that the deviation from it took place in Cong<sup>s</sup>., when they appointed Chaplains, to be paid from the Nat<sup>l</sup>. Treasury. It would have been a much better proof to their Constituents of their pious feeling if the members had contributed for the purpose, a pittance from their own pockets. As the precedent is not likely to be rescinded, the best that can now be done, may be to apply to the Const<sup>n</sup>. the maxim of the law, *de minimis non curat*.

There has been another deviation from the strict principle in the Executive Proclamations of fasts & festivals, so far, at least, as they have spoken the language of *injunction*, or have lost sight of the equality of *all* religious sects in the eye of the Constitution. Whilst I was honored with the Executive Trust I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the Proclamations absolutely indiscriminate, and merely recommendatory; or rather mere *designations* of a day, on which all who thought proper might *unite* in consecrating it to religious purposes, according to their own faith & forms. In this sense, I presume you reserve to the Gov<sup>t</sup>. a right to *appoint* particular days for religious worship throughout the State, without any penal sanction *enforcing* the worship. I know not what may be the way of thinking on this subject in Louisiana. I should suppose the Catholic portion of the people, at least, as a small & even unpopular sect in the U. S., would rally, as they did in Virg<sup>a</sup>. when religious liberty was a Legislative topic, to its broadest principle. Notwithstanding the general progress made within the two last centuries in favour of this branch of liberty, & the full establishment of it, in some parts of our Country, there remains in others a strong bias towards the old error, that without some sort of alliance or coalition between Gov<sup>t</sup>. & Religion neither can be duly supported. Such indeed is the tendency to such a coalition, and such its corrupting influence on both the parties, that the danger cannot be too carefully guarded ag<sup>st</sup>. And in a Gov<sup>t</sup>. of opinion, like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject. Every new & successful example therefore of a perfect separation between ecclesiastical and civil matters, is of importance. And I have no doubt that every new example, will succeed, as every past one has done, in shewing that religion & Gov<sup>t</sup>. will both exist in greater purity, the less they are mixed together. It was the belief of all sects at one time that the establishment of Religion by law, was right & necessary; that the true religion ought to be established in exclusion of every other; And that the only question to be decided was which was the true religion. The example of Holland proved that a toleration of sects, dissenting from the established sect, was safe & even useful. The example of the Colonies, now States, which rejected religious establishments altogether, proved that all Sects might be safely & advantageously put

on a footing of equal & entire freedom; and a continuance of their example since the declaration of Independence, has shewn that its success in Colonies was not to be ascribed to their connection with the parent Country. If a further confirmation of the truth could be wanted, it is to be found in the examples furnished by the States, which have abolished their religious establishments. I cannot speak particularly of any of the cases excepting that of Virg<sup>a</sup>. where it is impossible to deny that Religion prevails with more zeal, and a more exemplary priesthood than it ever did when established and patronised by Public authority. We are teaching the world the great truth that Gov<sup>ts</sup>. do better without Kings & Nobles than with them. The merit will be doubled by the other lesson that Religion flourishes in greater purity, without than with the aid of Gov<sup>t</sup>.

My pen I perceive has rambled into reflections for which it was not taken up. I recall it to the proper object of thanking you for your very interesting pamphlet, and of tendering you my respects and good wishes.

J. M. presents his respects to Mr. [Henry B(?)]. Livingston and requests the favor of him to forward the above inclosed letter to N. Orleans or to retain it as his brother may or may not be expected at N. York.



[\[Back to Table of Contents\]](#)

TO W. T. BARRY.

Aug 4, 1822

Mad. Mss.

D<sup>R</sup> Sir,

I rec<sup>d</sup>. some days ago your letter of June 30, and the printed Circular to which it refers.

The liberal appropriations made by the Legislature of Kentucky for a general system of Education cannot be too much applauded. A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

I have always felt a more than ordinary interest in the destinies of Kentucky. Among her earliest settlers were some of my particular friends and Neighbors. And I was myself among the foremost advocates for submitting to the Will of the "District" the question and the time of its becoming a separate member of the American family. Its rapid growth & signal prosperity in this character have afforded me much pleasure; which is not a little enhanced by the enlightened patriotism which is now providing for the State a Plan of Education embracing every class of Citizens, and every grade & department of Knowledge. No error is more certain than the one proceeding from a hasty & superficial view of the subject: that the people at large have no interest in the establishment of Academies, Colleges, and Universities, where a few only, and those not of the poorer classes can obtain for their sons the advantages of superior education. It is thought to be unjust that all should be taxed for the benefit of a part, and that too the part least needing it.

If provision were not made at the same time for every part, the objection would be a natural one. But, besides the consideration when the higher Seminaries belong to a plan of general education, that it is better for the poorer classes to have the aid of the richer by a general tax on property, than that every parent should provide at his own expence for the education of his children, it is certain that every Class is interested in establishments which give to the human mind its highest improvements, and to every Country its truest and most durable celebrity.

Learned Institutions ought to be favorite objects with every free people. They throw that light over the public mind which is the best security against crafty & dangerous encroachments on the public liberty. They are the nurseries of skilful Teachers for the schools distributed throughout the Community. They are themselves schools for the particular talents required for some of the Public Trusts, on the able execution of which the welfare of the people depends. They multiply the educated individuals from among whom the people may elect a due portion of their public Agents of every

description; more especially of those who are to frame the laws; by the perspicuity, the consistency, and the stability, as well as by the just & equal spirit of which the great social purposes are to be answered.

Without such Institutions, the more costly of which can scarcely be provided by individual means, none but the few whose wealth enables them to support their sons abroad can give them the fullest education; and in proportion as this is done, the influence is monopolized which superior information every where possesses. At cheaper & nearer seats of Learning parents with slender incomes may place their sons in a course of education putting them on a level with the sons of the Richest. Whilst those who are without property, or with but little, must be peculiarly interested in a System which unites with the more Learned Institutions, a provision for diffusing through the entire Society the education needed for the common purposes of life. A system comprizing the Learned Institutions may be still further recommended to the more indigent class of Citizens by such an arrangement as was reported to the General Assembly of Virginia, in the year 1779, by a Committee<sup>1</sup> appointed to revise laws in order to adapt them to the genius of Republican Government. It made part of a “Bill for the more general diffusion of knowledge” that wherever a youth was ascertained to possess talents meriting an education which his parents could not afford, he should be carried forward at the public expence, from seminary to seminary, to the completion of his studies at the highest.

But why should it be necessary in this case, to distinguish the Society into classes according to their property? When it is considered that the establishment and endowment of Academies, Colleges, and Universities are a provision, not merely for the existing generation, but for succeeding ones also; that in Governments like ours a constant rotation of property results from the free scope to industry, and from the laws of inheritance, and when it is considered moreover, how much of the exertions and privations of all are meant not for themselves, but for their posterity, there can be little ground for objections from any class, to plans of which every class must have its turn of benefits. The rich man, when contributing to a permanent plan for the education of the poor, ought to reflect that he is providing for that of his own descendants; and the poor man who concurs in a provision for those who are not poor that at no distant day it may be enjoyed by descendants from himself. It does not require a long life to witness these vicissitudes of fortune.

It is among the happy peculiarities of our Union, that the States composing it derive from their relation to each other and to the whole, a salutary emulation, without the enmity involved in competitions among States alien to each other. This emulation, we may perceive, is not without its influence in several important respects; and in none ought it to be more felt than in the merit of diffusing the light and the advantages of Public Instruction. In the example therefore which Kentucky is presenting, she not only consults her own welfare, but is giving an impulse to any of her sisters who may be behind her in the noble career.

Throughout the Civilized World, nations are courting the praise of fostering Science and the useful Arts, and are opening their eyes to the principles and the blessings of Representative Government. The American people owe it to themselves, and to the

cause of free Government, to prove by their establishments for the advancement and diffusion of Knowledge, that their political Institutions, which are attracting observation from every quarter, and are respected as Models, by the new-born States in our own Hemisphere, are as favorable to the intellectual and moral improvement of Man as they are conformable to his individual & social Rights. What spectacle can be more edifying or more seasonable, than that of Liberty & Learning, each leaning on the other for their mutual & surest support?

The Committee, of which your name is the first, have taken a very judicious course in endeavouring to avail Kentucky of the experience of elder States, in modifying her Schools. I enclose extracts from the laws of Virginia on that subject; though I presume they will give little aid; the less as they have as yet been imperfectly carried into execution. The States where such systems have been long in operation will furnish much better answers to many of the enquiries stated in your Circular. But after all, such is the diversity of local circumstances, more particularly as the population varies in density & sparseness, that the details suited to some may be little so to others. As the population however, is becoming less & less sparse, and it will be well in laying the foundation of a Good System, to have a view to this progressive change, much attention seems due to examples in the Eastern States, where the people are most compact, & where there has been the longest experience in plans of popular education.

I know not that I can offer on the occasion any suggestions not likely to occur to the Committee. Were I to hazard one, it would be in favour of adding to Reading, Writing, & Arithmetic, to which the instruction of the poor, is commonly limited, some knowledge of Geography; such as can easily be conveyed by a Globe & Maps, and a concise Geographical Grammar. And how easily & quickly might a general idea even, be conveyed of the Solar System, by the aid of a Planatarium of the Cheapest construction. No information seems better calculated to expand the mind and gratify curiosity than what would thus be imparted. This is especially the case, with what relates to the Globe we inhabit, the Nations among which it is divided, and the characters and customs which distinguish them. An acquaintance with foreign Countries in this mode, has a kindred effect with that of seeing them as travellers, which never fails, in uncorrupted minds, to weaken local prejudices, and enlarge the sphere of benevolent feelings. A knowledge of the Globe & its various inhabitants, however slight, might moreover, create a taste for Books of Travels and Voyages; out of which might grow a general taste for History, an inexhaustible fund of entertainment & instruction. Any reading not of a vicious species must be a good substitute for the amusements too apt to fill up the leisure of the labouring classes.

I feel myself much obliged Sir by your expressions of personal kindness, and pray you to accept a return of my good wishes, with assurances of my great esteem & respect.

P. S. On reflection I omit the extracts from the laws of Virg<sup>a</sup>, which it is probable may be within your reach at home. Should it be otherwise, and you think them worth the transmission by the mail, the omission shall be supplied.

[\[Back to Table of Contents\]](#)

TO THOMAS RITCHIE.

Aug. 13, 1822.

Mad. Mss.

D<sup>R</sup> Sir

Your favor of Aug 7 is so full & satisfactory an answer to my request of July 2, that I ought not to withhold my thanks for it. The delay was immaterial. But I lament most sincerely the afflicting causes of it.

With much esteem & friendly respects.

*Confidential*

The Enquirer of the 6th, very properly animadverts on the attempts to pervert the historical circumstances relating to the Draught of the Declaration of Independence.<sup>1</sup> The fact that Mr. Jefferson was the author and the nature of the alterations made in the Original, are too well known and the proofs are too well preserved, to admit of successful misrepresentation.

In one important particular, the truth, tho' on record, seems to have escaped attention; and justice to be so far left undone to Virg<sup>a</sup>. It was in obedience to *her positive instruction*, to her Delegates in Cong<sup>s</sup>. that the motion for Independence was made. The instruction passed *unanimously* in her Convention on the 15 of May, 1776<sup>2</sup> and the Mover was of course, the Mouth only of the Delegation, as the Delegation was of the Convention. Had P. Randolph the first named not been cut off by Death, the motion w<sup>d</sup>. have been made by him. The duty, in consequence of that event devolved on the next in order R. H. Lee, who had political merits of a sort very different from that circumstantial distinction.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Montp<sup>r</sup>, Sep<sup>r</sup> 24, 1822.

Mad. Mss.

Dear Sir,

The mail of saturday brought me your favor of the 16th. The letters inclosed in it are returned. Accept my thanks for the odd Vol: of Cong<sup>l</sup>. Journals.

As I understand the case presented in the other paper inclosed, it turns on the simple question, whether the Senate have a right in their advice & consent to vary *the date* at which, according to the nomination of the President, an appointment to office is to take effect.

The subject continues to appear to me in the light which I believe I formerly intimated. The power of appointment, when not otherwise provided by the Constitution is vested in the President & the Senate. Both must concur in the act, but the act must originate with the President. He is to nominate, and their advice & consent are to make the nomination an appointment. They cannot give their advice & consent without his nomination, nor of course, differently from it. In so doing they would originate or nominate, so far as the difference extended, and it would be his, not their advice & consent which consummated the appointment. If the President sh<sup>d</sup> nominate A, to be an officer from the 1st day of May, and the Senate sh<sup>d</sup>. advise that he be an officer from the 1st day of Jany preceding, it is evident that for the period not embraced by the nomination of the P. the nomination w<sup>d</sup> originate with the Senate, and would require his subsequent sanction to make it a joint act. During that period therefore it would be an app<sup>t</sup>. made by the nomination of the Senate with the advice & consent of the President; not of the President with the advice & consent of the Senate.

The case is not essentially changed by supposing the Presid<sup>t</sup>. to nominate A to be an officer from the 1st day of Jan<sup>y</sup>, and the Senate to confirm it from the 1st day of May following. Here also the nomination of the P. would not be pursued; and the Constitutional order of app<sup>t</sup>. would be transposed. Its intention would be violated, and he would not be bound by his nomination to give effect to the advice & consent of the Senate. The proceeding would be a nullity. Nor w<sup>d</sup> this result from pure informality. The P. might have as just objections to a postponement of the date of an app<sup>t</sup>. for three months as good reasons for its immediate commencement. The change in the date might have an essential bearing on the public service; and a collateral or consequential one on the rights or pretensions of others in the public service. In fact, if the Senate in disregard of the nomination of the P. would postpone the commencement of an app<sup>t</sup>. for a single day, it could do it for any period however remote, & whatever might be the intermediate change of things. The date may be as material a part of the nomination, as the person named in it.

We are still suffering under the intense drought of which you witnessed its increasing effects. *Ten* weeks have now passed since we had any rain of sensible value. On some of our farms it may be s<sup>d</sup> there has been none at all. Our crops of Corn, notwithstanding, they were *forward* were so favored by the early part of the season, as to promise support, until the next summer harvest. The Tob<sup>o</sup>. crop is in a sad plight, and no weather now can repair it. Your neighborhood, in Albemarle, I understand, has fared much better.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Jan<sup>y</sup> 15, 1823.

Mad. Mss.

Dear Sir—

I have duly received yours of the 6th, with the letters of Mr. Cabell, Mr. Gerry, and Judge Johnson. The letter from Mr. C. proposing an Extra Meeting of the Visitors, & referred to in yours was not sent, and of course is not among those returned.

The friends of the University in the Assembly seem to have a delicate task on their hands. They have the best means of knowing what is best to be done, and I have entire confidence in their judgment as well as their good intentions. The idea of Mr. Cabell, if successful will close the business handsomely. One of the most popular objections to the Institution, I find is the expence added by what is called the ornamental style of the Architecture. Were this additional expence as great as is supposed, the objection ought the less to be regarded as it is short of the sum saved to the public by the private subscribers who approve of such an application of their subscriptions. I shall not fail to join you on receiving the expected notice from Mr. Cabell, if the weather & my health will permit; but I am persuaded it will be a supernumerary attendance, if the money be obtained, and the sole question be on its application to the new Edifice.

The two letters from Mr. Gerry are valuable documents on a subject that will fill some interesting pages in our history. The disposition of a party among us to find a cause of rupture with France, and to kindle a popular flame for the occasion, will go to posterity with too many proofs to leave a doubt with them. I have not looked over Mr. Gerry's letters to me which are very numerous, but may be of dates not connected with the period in question.<sup>1</sup> No resort has been had to them for materials for his biography, perhaps from the idea that his correspondence with me may contain nothing of importance or possibly from a displeasure in the family at my disappointing the expectations of two of them. Mr. Austen the son in law, was anxious to be made Comptroller instead of Anderson, who had been a Revolutionary officer, a Judge in Tennessee, and a Senator from that State in Congress; and with equal pretensions only had in his scale the turning weight of being from the West, which considers itself without a fair proportion of National appointments. Mr. Austen I believe a man of very respectable talents, & had erroneously inferred from Mr. Gerry's communications, that I was under a pledge to name him for the vacancy when it should happen. Thinking himself thus doubly entitled to the office, his alienation has been the more decided. With every predisposition in favor of young Gerry, he was represented to me from the most friendly quarters as such a dolt, that if his youth could have been got over, it was impossible to prefer him to the place (in the Customs) to which he aspired. I believe that some peculiarities in his manner led to an exaggeration of his deficiencies and that he acquits himself well eno' in the subordinate place he now holds.

Judge Johnson's letter was well entitled to the perusal you recommended. I am glad you have put him in possession of such just views of the course that ought to be pursued by the Court in delivering its opinions.<sup>1</sup> I have taken frequent occasions to impress the necessity of the seriatim mode; but the contrary practice is too deeply rooted to be changed without the injunction of a law, or some very cogent manifestation of the public discontent. I have long thought with the Judge also that the Supreme Court ought to be relieved from its circuit duties, by some such organization as he suggests. The necessity of it is now rendered obvious by the impossibility, in the same individual, of being a circuit Judge in Missouri &c, and a Judge of the supreme Court at the seat of Government. He is under a mistake in charging, on the Executive at least, an inattention to this point. Before I left Washington I recommended to Congress the importance of establishing the Supreme Court at the seat of Gov<sup>t</sup>., which would at once enable the Judges to go thro' the business, & to qualify themselves by the necessary studies for doing so, with justice to themselves & credit to the Nation. The reduction of the number of Judges would also be an improvement & might be conveniently effected in the way pointed out. It cannot be denied that there are advantages in uniting the local & general functions in the same persons if permitted by the extent of the Country. But if this were ever the case, our expanding settlements put an end to it. The organization of the Judiciary Department over the extent which a Federal system can reach involves peculiar difficulties. There is scarcely a limit to the distance which Turnpikes & steamboats may, at the public expence, convey the members of the Gov<sup>t</sup>. & distribute the laws. But the delays & expence of suits brought from the extremities of the Empire, must be a severe burden on individuals. And in proportion as this is diminished by giving to local Tribunals a final jurisdiction, the evil is incurred of destroying the uniformity of the law.

I hope you will find an occasion for correcting the error of the Judge in supposing that I am at work on the same ground as will be occupied by his historical view of parties, and for *animating* him to the completion of what he has begun on that subject. Nothing less than full-length likenesses of the two great parties which have figured in the National politics will sufficiently expose the deceptive colours under which they have been painted. It appears that he has already collected materials, & I infer from your acc<sup>t</sup>. of his biography of Green which I have not yet seen, that he is capable of making the proper use of them.<sup>1</sup> A good work on the side of truth, from his pen will be an apt & effective antidote to that of his Colleague which has been poisoning the Public mind, & gaining a passport to posterity.

I was afraid the Doc<sup>r</sup>. was too sanguine in promising so early a cure of the fracture in your arm. The milder weather soon to be looked for, will doubtless favor the vis medicatrix which nature employs in repairing the injuries done her.

Health & every happiness.



[\[Back to Table of Contents\]](#)

## TO EDWARD EVERETT.

Mont<sup>r</sup>., Feb<sup>y</sup> 18, 1823.

Mad. Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup>., your favor of the 9th, and with it the little pamphlet forwarded at the request of your Brother, for which you will please to accept & to make my acknowledgments.2

The pamphlet appears to have very ably & successfully vindicated the construction in the Book on "Europe," to the provision[al] article in Mr. Jay's Treaty. History, if it sh<sup>d</sup>. notice the subject, will assuredly view it in the light in which the "Notes" have placed it; and as affording to England a ground for intercepting American supplies of provisions to her Enemy, and to her Enemy a ground for charging on America a collusion with England for the purpose. That the B. Gov<sup>t</sup>. meant to surrender gratuitously a maritime right of confiscation & to encourage a neutral in illegal supplies of provisions to an Enemy, by adding to their chance of gain an insurance ag<sup>st</sup>. loss, will never be believed. The necessary comment will be that Mr. Jay tho' a man of great ability & perfect rectitude was diverted by a zeal for the object of his Mission, from a critical attention to the terms on which it was accomplished. The Treaty was fortunate in the sanction it obtained, and in the turn which circumstances gave to its fate.

Nor was this the only instance of its good fortune. In two others it was saved from mortifying results: in one by the Integrity of the British Courts of Justice, in the other by a cast of the die.

The value of the Article opening our trade with India, depended much on the question whether it authorized an *indirect* trade thither. The question was carried into the Court of King's Bench, where it was decided in our favor; the Judges stating at the same time that the decision was forced upon them by the particular structure of the article against their private conviction as to what was intended. And this decision of that Court was confirmed by the 12 Judges.

In the other instance the question was, whether the Board of Commissioners for deciding on spoliations could take cognizance of American claims, which had been rejected by the British Tribunal in the last resort. The two British Com<sup>rs</sup>. contended that G. B. could never be understood to submit to any extraneous Tribunal a revision of cases decided by the highest of her own. The American Com<sup>rs</sup>. Mr. Pinkney & Mr. Gore, argued with great & just force against a construction, which as the Treaty confined the Jurisdiction of the Board to cases where redress was unattainable in the ordinary course of Judicial proceedings would have been fatal not only to the claims which had been rejected by the Tribunal in the last resort but to the residue, which it would be necessary to carry thither through the ordinary course of Justice. The four

Com<sup>rs</sup>. being equally divided; the lot for the 5<sup>th</sup> ., provided by the Treaty for such a contingency, fell on Mr. Trumbull whose casting vote obtained for the American sufferers the large indemnity at stake.

I speak on these points from Memory alone. There may be therefore if no substantial error, inaccuracies which a sight of the Archives at Washington, or the reports of adjudged Cases in England, would have prevented.

The remarks on the principle, “free ships, free Goods,” I take to be fair & well considered. The extravagance of Genet drove our Sec<sup>y</sup>. of State to the ground of the British doctrine. And the Gov<sup>t</sup>. finding it could not depart from that ground without a collision or rather war with G. B. and doubting at least whether the old law of Nations on that subject did not remain in force, never contested the practice under it. The U. S. however in their Treaties have sufficiently thrown their weight into the opposite scale. And such is the number & character of like weights now in it from other powers, that it must preponderate; unless it be admitted that no authority of that kind, tho’ coinciding with the dictates of reason, the feelings of humanity & the interest of the civilized world can make or expound a Law of Nations.

With regard to the rule of 1756, it is to be recollected that its original import was very different from the subsequent extensions & adaptations given to it by the belligerent policy of its parent. The rule commenced with confiscating neutral vessels trading between another Belligerent nation & its colonies, on the inference that they were hostile vessels in neutral disguise; and it ended in spoliations on neutrals trading to any ports or in any productions, of belligerents, who had not permitted such a trade in time of peace. The Author of the “Notes” is not wrong in stating that the U. S. did in some sort acquiesce in the exercise of the rule ag<sup>st</sup>. them, that they did not make it a cause of war, and that they were willing on considerations of expediency, to accede to a compromise on the subject. To judge correctly of the Course taken by the Gov<sup>t</sup>. a historical view of the whole of it would be necessary. In a glancing search over the State papers, for the document from which the extract in the pamphlet was made, (it is referred to in a wrong vol: & page, being found in Vol. VI p. 240, & the extract itself not being one free from typographical change of phrase,) my eye caught a short letter of intructions to Mr. Monroe, (vol. VI, p. 180-1,) in which the stand taken by the Government is distinctly marked out. The illegality of the British principle is there asserted, nothing *declaratory* in its favor as applied even ag<sup>st</sup>. a neutral trade *direct* between a belligerent Country & its colonies, is permitted; and a stipulated concession on the basis of compromise, is limited by a reference to a former instruction of Jan<sup>y</sup>., 1804, to that of the Russian Treaty of 1781 which protects all colonial produce converted into neutral property. This was in practice all that was essential; the American Capital being then adequate and actually applied to the *purchase* of the colonial produce transported in American vessels.

“The Examination of the subject &c” referred to in the letter of instruction as being forwarded to Mr Monroe, was a stout pamphlet drawn up by the Secretary of State.<sup>1</sup> It was undertaken in consequence of the heavy losses & complaints of Merchants in all our large sea ports under the predatory operation of the extended Rule of 1756. The pamphlet went into a pretty ample & minute investigation of the subject, w<sup>ch</sup>.

terminated in a confirmed conviction both of the heresy of the doctrine, and of the enormity of the practice growing out of it. I must add that it detracted much also from the admiration I had been led to bestow on the distinguished Judge of the High Court of Admiralty; not from any discovery of defect in his intellectual Powers, or Judicial Eloquence; but on account of his shifting decisions and abandonment of his independent principles. After setting out w<sup>th</sup>. the lofty profession of abiding by the same rules of Pub: Law when sitting in London as if a Judge at Stockholm, he was not ashamed to acknowledge that, in expounding that law he sh<sup>d</sup>. regard the Orders in Council of his own Gov<sup>t</sup>. as his Authoritative Guide. These are not his words but do him I believe no injustice. The acknowledgment ought to banish him as “Authority” from every Prize Court in the World.

I ought to have premised to any remarks on the controversy into which your brother has been drawn, that I have never seen either the Review in w<sup>ch</sup>. his book is criticised, or the pamphlet in w<sup>ch</sup>. it is combated. Having just directed the British Quarterly Review now sent me, to be discontinued, and the N. Amer: Review substituted with the back N<sup>os</sup>. for the last year, I may soon be able to do a fuller justice to his reply.

On adverting to the length of this letter, I fear that my pen has rec<sup>d</sup>. an impulse from awakened recollections which I ought more to have controuled. The best now to be done is to add not a word, more than an assurance of my cordial respect & esteem.

[\[Back to Table of Contents\]](#)

## TO EDWARD EVERETT.

Montpellier, March 19, 1823

Mad. Mss

Dear Sir

I received, on the 15th, your favour of the 2d inst., with the little pamphlet of remarks on your brother's "Europe."<sup>1</sup>

The pamphlet w<sup>d</sup>. have been much improved by softer words and harder arguments. To support its construction of Art. 18, of the Treaty of 1794, the writer ought to have shewn that there are cases in which provisions become contraband according to the Law of Nations; and that the cases are of such recurrence and importance as to make them a probable object of such an article. He does not point at a single one.

If he be not right in contending that the U. S. always resisted the Rule of 1756 he is still more astray in saying that G. B. relinquished it. The indemnities for violations of the Rule allowed by the Joint Commissioners can be no evidence of the fact. This award might be the result of the casting vote on the American side; or the concurrence of the British side, the result of the individual opinions of honest Umpires. That the British Gov<sup>t</sup>. made no such relinquishment is demonstrated by the reasonings & adjudications of Sir W<sup>m</sup> Scott, whether he be regarded as the Organ, or as the Oracle of his Gov<sup>t</sup>., There is no question of public law, on which he exerts his talents with more pertinacity than he does in giving effect to the rule of, 56, in all its ductile applications to emerging cases. His testimony on this point admits no reply. The payment of the awards of the Board of Com. by the British Gov<sup>t</sup>. is an evidence merely of its good faith; the more to its credit, the more they disappointed its calculations & wishes.

Our University has lately rec<sup>d</sup> a further loan from the Legislature which will prepare the Buildings for ten Professors and about 200 Students. Should all the loans be converted into donations, at the next Session, as is generally expected, but for which no pledge has been given, the Visitors, with an annuity of \$15,000 settled on the Institution, will turn their thoughts towards opening it, and to the preliminary engagement of Professors.

I am not surprised at the dilemma produced at your University by making theological professorships an integral part of the System. The anticipation of such an one led to the omission in ours; the Visitors being merely authorized to open a public Hall for religious occasions, under *impartial* regulations; with the opportunity to the different sects to establish Theological schools so near that the Students of the University may respectively attend the religious exercises in them. The village of Charlottesville also, where different religious worships will be held, is also so near, that resort may conveniently be had to them.

A University with sectarian professorships, becomes, of course, a Sectarian Monopoly: with professorships of rival sects, it would be an Arena of Theological Gladiators. Without any such professorships, it may incur for a time at least, the imputation of irreligious tendencies, if not designs. The last difficulty was thought more manageable than either of the others.

On this view of the subject, there seems to be no alternative but between a public University without a theological professorship, and sectarian Seminaries without a University.

I recollect to have seen, many years ago, a project of a prayer, by Gov<sup>f</sup>. Livingston father of the present Judge, intended to comprehend & conciliate College Students of every X<sup>n</sup> denomination, by a Form composed wholly of texts & phrases of scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect from the single cause that many sects reject all set forms of Worship.

The difficulty of reconciling the X<sup>n</sup> mind to the absence of a religious tuition from a University established by law and at the common expence, is probably less with us than with you. The settled opinion here is that religion is essentially distinct from Civil Gov<sup>t</sup>. and exempt from its cognizance; that a connexion between them is injurious to both; that there are causes in the human breast, which ensure the perpetuity of religion without the aid of the law; that rival sects, with equal rights, exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or overheated maginations, the proper remedies lie in time, forbearance and example; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet & harmony, but rather a source itself of discord & animosity; and finally that these opinions are supported by experience, which has shewn that every relaxation of the alliance between Law & religion, from the partial example of Holland, to its consummation in Pennsylvania Delaware N. J., &c, has been found as safe in practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of independence it was left with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change; and particularly in the Sect which enjoyed the legal patronage. This proves rather more than, that the law is not necessary to the support of religion.

With such a public opinion, it may be expected that a University with the feature peculiar to ours will succeed here if anywhere. Some of the Clergy did not fail to arraign the peculiarity; but it is not improbable that they had an eye to the chance of introducing their own creed into the professor's chair. A late resolution for establishing an Episcopal school within the College of William & Mary, tho' in a very guarded manner, drew immediate animadversions from the press, which if they have not put an end to the project, are a proof of what would follow such an experiment in the University of the State, endowed and supported as this will be, altogether by the Public authority and at the common expence.

I know not whence the rumour sprang of my being engaged in a Pol<sup>l</sup> History of our Country. Such a task, c<sup>d</sup> I presume on a capacity for it, belongs to those who have more time before them than the remnant to w<sup>ch</sup>. mine is limited.

On reviewing my political papers & correspondence, I find much that may deserve to be put into a proper state for preservation; and some things that may not in equal amplitude be found elsewhere. The case is doubtless the same with other individuals whose public lives have extended thro' the same long & pregnant period. It has been the misfortune of history, that a personal knowledge and an impartial judgment of things rarely meet in the historian. The best history of our Country therefore must be the fruit of contributions bequeathed by cotemporary actors & witnesses, to successors who will make an unbiassed use of them. And if the abundance & authenticity of the materials which still exist in the private as well as public repositories among us sh<sup>d</sup> descend to hands capable of doing justice to them, the American History may be expected to contain more truth, and lessons, certainly not less valuable, than those of any Country or age.

I have been so unlucky as not yet to have received the N<sup>os</sup>. of the N. Am<sup>n</sup> Review written for the NA. I expect them every moment, but the delay has deprived me as yet of the criticism in that work on Your Brother's Book.

The difference to w<sup>ch</sup>. you allude between the profits of authorship in England & in the U. S. is very striking. It proceeds, mainly, no doubt from the difference of the area over w<sup>ch</sup>. the population is spread, and of the manner in w<sup>ch</sup>. the aggregate wealth is distributed in the 2 Countries. The number of people in this is perhaps equal to that in England, and the number of readers of popular works at least, probably not less, if not greater. But in their scattered situation here, they are with more difficulty supplied with new publications than when they are condensed within an easy reach of them, and where indeed a vast proportion, being in the Metropolis, are on the same spot with the printing offices. But the unequal division of wealth in Eng<sup>d</sup>. enters much into the advantage given there to Authors & Editors. With us there are more readers than buyers of books. In England there are more buyers than readers. Hence those Gorgeous Editions, which are destined to sleep in the private libraries of the Rich whose vanity aspires to that species of furniture, or who give that turn to their public spirit & patronage of letters.

Whatever may be the present obstacles to the diffusion of literature in our Country, it is a consolation that its growing improvements are daily diminishing them, and that in the meantime individuals are seen making generous efforts to overcome them. With my wishes for the success of yours, I repeat assurances of my esteem & cordial respect.

[\[Back to Table of Contents\]](#)

## ANSWERS TO QUESTIONS CONCERNING SLAVERY. 1 [1823].

Mad. Mss.

1. Yes.
2. Employs an overseer for that number of slaves with few exceptions
3. —
4. Not uncommonly the land, sometimes the slaves, very rarely both together
5. The common law as in England governs the relation between land & debts; Slaves are often sold under execution for debt; the proportion to the whole, cannot be great within a year, and varies of course, with the amount of debts, and the urgency of creditors.
6. Yes.
- 7-10. Instances are rare where the Tobacco planters do not raise their own provisions.
11. The proper comparison not between the culture of Tob<sup>o</sup>. & that of Sugar and Cotton, but between each of these cultures & that of provisions. The Tob<sup>o</sup> planter finds it cheaper to make them a part of his crop than to buy them. The Cotton & Sugar planters to buy them, where this is the case, than to raise them. The term cheaper embraces the comparative facility & certainty, of procuring the supplies.
12. Generally best clothed, when from the household manufactures, which are increasing.
- 14, 15. Slaves seldom employed in regular task work. They prefer it only when rewarded with the surplus time gained by their industry.
16. Not the practice to substitute an allowance of time for the allowance of provisions.
17. Very many & increasing with the progressive subdivisions of property; the proportion cannot be stated.
- 18, 19. The fewer the slaves & the fewer the holders of slaves, the greater the indulgence & familiarity. In districts comprising large masses of slaves; there is no difference in their condition whether held in small or large numbers, beyond the difference in the dispositions of the owners, and the greater strictness of attention where the number is greater.
20. There is no general system of religious instruction. There are few spots where religious worship is not within reach, and to which they do not resort. Many are

regular members of Congregations chiefly Baptist; and some Preachers also, tho' rarely able to read.

21. Not common; but the instances are increasing.

22. The accommodation not unfrequent where the plantations are very distant. The slaves prefer wives on a different plantation; as affording occasions & pretexts for going abroad, and exempting them on holidays from a share of the little calls to which those at home are liable.

23. The remarkable increase of slaves, as shewn by the Census, results from the comparative defect of moral and prudential restraint on the Sexual connexion; and from the absence at the same time, of that counteracting licentiousness of intercourse, of which the worst examples are to be traced where the African trade as in the W. Indies keeps the number of females, less than of the males.

24. The annual expense of food & raiment in rearing a child, may be stated at about 8, 9, or 10 dollars; and the age at which it begins to be gainful to its owner, about 9 or 10 years.

25. The practice here does not furnish data for a comparison of cheapness, between these two modes of cultivation.

26. They are sometimes hired for field labour in time of harvest, and on other particular occasions.

27. The examples are too few to have established any such relative prices.

28. See the Census.

29. Rather increases.

30.—

31. More closely with the slaves, and more likely to side with them in a case of insurrection.

32. Generally idle and depraved; appearing to retain the bad qualities of the slaves with whom they continue to associate, without acquiring any of the good ones of the whites, from whom [they] continue separated by prejudices ag<sup>st</sup>. their colour & other peculiarities.

33. There are occasional instances in the present legal condition of leaving the State.

34. None.

35. —



J. M. presents his respects to Dr. Morse, with the annexed answers to the Queries accompanying his letter of the 14th inst: so far as they were applicable to this State. The answers c. not conveniently be extended as much as might perhaps be desired. Their brevity and inadequacy will be an apology for requesting, that if any use be made of them, it may be done without a reference to the source furnishing them.

Montp<sup>r</sup>., Mar. 28, 1823.

[\[Back to Table of Contents\]](#)

## TO WILLIAM EUSTIS.

Montp<sup>r</sup>, May 22, 1823.

Mad. Mss.

Dear Sir

I rec<sup>d</sup> by the last mail, your welcome fav<sup>r</sup> of the 10th instant. The newspapers had prepared me for the triumphant vote which restores a prodigal sister to the bosom of the Republican family, and evinces a return of grateful feelings for a revolutionary worthy. 1 I congratulate you very sincerely on this event, with every wish that your administration may be as happy to yourself as I am confident it will be propitious to the welfare of those who have called you into it; & I may add of those who resisted the call. The people are now able every where to compare the principles & policy of those who have borne the name of Republicans or Democrats, with the career of the adverse party; and to see & feel that the former are as much in harmony with the spirit of the nation & the genius of the Gov<sup>t</sup> as the latter was at variance with both.

A great effort has been made by the fallen party to proclaim & eulogize an amalgamation of political sentiments & views. Who could be duped by it, when unmasked by the electioneering violence of the party where strong, and intrigues where weak?

The effort has been carried even farther. It has been asserted that the Republicans have abandoned their Cause, and gone over to the policy of their opponents. Here the effort equally fails. It is true that under a great change of foreign circumstances, and with a doubled population, & more than doubled resources, the Republican party has been reconciled to certain measures & arrangements which may be as proper now as they were premature and suspicious when urged by the Champions of federalism. But they overlook, the overbearing & vindictive spirit, the apocryphal doctrines, & rash projects, which stamped on federalism its distinctive character; and which are so much in contrast with the unassuming & unavenging spirit which has marked the Republican Ascendency.

There has been in fact a deep distinction between the two parties or rather, between the mass of the Nation, and the part of it which for a time got possession of the Gov<sup>t</sup>.. The distinction has its origin in the confidence of the former, in the capacity of mankind for self Gov<sup>t</sup>. and in a distrust of it by the other or by its leaders; and is the key to many of the phenomena presented by our political History. In all free Countries somewhat of this distinction must be looked for; but it can never be dangerous in a well informed Community and a well constructed Gov<sup>t</sup>. both of which I trust will be found to be the happy lot of the U. S. The wrong paths into which the fathers may stray will warn the sons into the right one; according to the example under your own eye, which has touched your heart with such appropriate feelings.

As you say nothing of the state of your health I flatter myself it has undergone no unfavorable change, and that it will more than suffice for the labors thrown on your hands. Mrs. M. who shares largely in the gratification afforded by your letter, joins in this, and in every other wish that can express an affectionate esteem for yourself & Mrs. Eustis.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, June 27, 1823.

Mad. Mss.

Dear Sir

I return the copy of your letter to Judge Johnson inclosed in your favor of the — instant.<sup>1</sup> Your statement relating to the farewell Address of Gen<sup>l</sup>. Washington is substantially correct. If there be any circumstantial inaccuracy, it is in imputing to him more agency in composing the document than he probably had. Taking for granted that it was drawn up by Hamilton, the best conjecture is that the General put into his hands his own letter to me suggesting his general ideas, with the paper prepared by me in conformity with them; and if he varied the draught of Hamilton at all, it was by a few verbal or qualifying amendments only.<sup>2</sup> It is very inconsiderate in the friends of Gen<sup>l</sup> Washington to make the merit of the Address a question between him & Col: Hamilton, & somewhat extraordinary, if countenanced by those who possess the files of the General where it is presumed the truth might be traced. They ought to claim for him the merit only of cherishing the principles & views addressed to his Country, & for the Address itself the weight given to it by his sanction; leaving the literary merit whatever it be to the friendly pen employed on the occasion, the rather as it was never understood that Washington valued himself on his writing talent, and no secret to some that he occasionally availed himself of the friendship of others whom he supposed more practised than himself in studied composition. In a general view it is to be regretted that the Address is likely to be presented to the public not as the pure legacy of the Father of his Country, as has been all along believed, but as the performance of another held in different estimation. It will not only lose the charm of the name subscribed to it; but it will not be surprizing if particular passages be understood in new senses, & with applications derived from the political doctrines and party feelings of the discovered Author.

At some future day it may be an object with the curious to compare the two draughts made at different epochs with each other, and the letter of Gen<sup>l</sup> W. with both. The comparison will shew a greater conformity in the first with the tenor & tone of the letter, than in the other; and the difference will be more remarkable perhaps in what is omitted, than in what is added in the Address as it stands.

If the solicitude of Gen<sup>l</sup>. Washington's connexions be such as is represented, I foresee that I shall share their displeasure, if public use be made of what passed between him & me at the approaching expiration of his first term. Altho' it be impossible to question the facts, I may be charged with indelicacy, if not breach of confidence, in making them known; and the irritation will be the greater, if the Authorship of the Address continue to be claimed for the signer of it; since the call on me on one occasion, will favor the allegation of a call on another occasion. I hope therefore that the Judge will not understand your communication as intended for the new work he has in hand. I do not know that your statement would justify all the complaint its

public appearance might bring on me; but there certainly was a species of confidence at the time in what passed, forbidding publicity, at least till the lapse of time should wear out the seal on it, & the truth of history should put in a fair claim to such disclosures.

I wish the rather that the Judge may be put on his guard, because with all his good qualities, he has been betrayed into errors which shew that his discretion is not always awake. A remarkable instance is his ascribing to Gouverneur Morris the Newburg letters written by Armstrong, which has drawn from the latter a corrosive attack which must pain his feelings, if it should not affect his standing with the Public. Another appears in a stroke at Judge Cooper in a letter to the Education Committee in Kentucky, which has plunged him into an envenomed dispute with an antagonist, the force of whose mind & pen you well know. And what is worse than all, I perceive from one of Cooper's publications casually falling within my notice, that, among the effects of Judge Johnson's excitement, he has stooped to invoke the religious prejudices circulated ag<sup>st</sup>. Cooper.

Johnson is much indebted to you for your remarks on the definition of parties. The radical distinction between them has always been a confidence of one, and distrust of the other, as to the capacity of Mankind for self Government. He expected far too much, in requesting a precise demarkation of the boundary between the Federal & the State Authorities. The answer would have required a critical commentary on the whole text of the Constitution. The two general Canons you lay down would be of much use in such a task; particularly that which refers to the sense of the State Conventions, whose ratifications alone made the Constitution what it is. In exemplifying the other Canon, there are more exceptions than occurred to you, of cases in which the federal jurisdiction is extended to controversies between Citizens of the same State. To mention one only: In cases arising under a Bankrupt law, there is no distinction between those to which Citizens of the same & of different States are parties.

But after surmounting the difficulty in tracing the boundary between the General & State Gov<sup>ts</sup>. the problem remains for maintaining it in practice; particularly in cases of Judicial cognizance. To refer every point of disagreement to the people in Conventions would be a process too tardy, too troublesome, & too expensive; besides its tendency to lessen a salutary veneration for an instrument so often calling for such explanatory interpositions. A paramount or even a definitive Authority in the individual States, would soon make the Constitution & laws different in different States, and thus destroy that equality & uniformity of rights & duties which form the essence of the Compact; to say nothing of the opportunity given to the States individually of involving by their decisions the whole Union in foreign Contests. To leave conflicting decisions to be settled between the Judicial parties could not promise a happy result. The end must be a trial of strength between the Posse headed by the Marshal and the Posse headed by the Sheriff. Nor would the issue be safe if left to a compromise between the two Gov<sup>ts</sup>. the case of a disagreement between different Gov<sup>ts</sup>. being essentially different from a disagreement between branches of the same Gov<sup>t</sup>. In the latter case neither party being able to consummate its will without the concurrence of the other, there is a necessity on both to consult and to accommodate.

Not so, with different Gov<sup>ts</sup>. each possessing every branch of power necessary to carry its purpose into compleat effect. It here becomes a question between Independent Nations, with no other *dernier* resort than physical force. Negotiation might indeed in some instances avoid this extremity; but how often would it happen, among so many States, that an unaccommodating spirit in some would render that resource unavailing.

We arrive at the agitated question whether the Judicial Authority of the U. S. be the constitutional resort for determining the line between the federal & State jurisdictions. Believing as I do that the General Convention regarded a provision within the Constitution for deciding in a peaceable & regular mode all cases arising in the course of its operation, as essential to an adequate System of Gov<sup>t</sup>. that it intended the Authority vested in the Judicial Department as a final resort in relation to the States, for cases resulting to it in the exercise of its functions, (the concurrence of the Senate chosen by the State Legislatures, in appointing the Judges, and the oaths & official tenures of these, with the surveillance of public Opinion, being relied on as guarantying their impartiality); and that this intention is expressed by the articles declaring that the federal Constitution & laws shall be the supreme law of the land, and that the Judicial Power of the U. S. shall extend to all cases arising under them: Believing moreover that this was the prevailing view of the subject when the Constitution was adopted & put into execution; that it has so continued thro' the long period which has elapsed; and that even at this time an appeal to a national decision would prove that no general change has taken place: thus believing I have never yielded my original opinion indicated in the "Federalist" N<sup>o</sup> 39 to the ingenious reasonings of Col: Taylor ag<sup>st</sup>. this construction of the Constitution.[1](#)

I am not unaware that the Judiciary career has not corresponded with what was anticipated. At one period the Judges perverted the Bench of Justice into a rostrum for partizan harangues. And latterly the Court, by some of its decisions, still more by extrajudicial reasonings & dicta, has manifested a propensity to enlarge the general authority in derogation of the local, and to amplify its own jurisdiction, which has justly incurred the public censure. But the abuse of a trust does not disprove its existence. And if no remedy of the abuse be practicable under the forms of the Constitution, I should prefer a resort to the Nation for an amendment of the Tribunal itself, to continual appeals from its controverted decisions to that Ultimate Arbitrator.

In the year 1821, I was engaged in a correspondence with Judge Roane, which grew out of the proceedings of the Supreme Court of the U. S.[1](#) Having said so much here I will send you a copy of my letters to him as soon as I can have a legible one made, that a fuller view of my ideas with respect to them may be before you.

I agree entirely with you on the subject of seriatim opinions by the Judges, which you have placed in so strong a light in your letter to Judge Johnson, whose example it seems is in favor of the practice. An argument addressed to others, all of whose dislikes to it are not known, may be a delicate experiment. My particular connexion with Judge Todd, whom I expect to see, may tempt me to touch on the subject; and, if encouraged, to present views of it w<sup>ch</sup>. thro' him may find the way to his intimates.

In turning over some bundles of Pamphlets, I met with several Copies of a very small one which at the desire of my political associates I threw out in 1795. As it relates to the state of parties I inclose a Copy. It had the advantage of being written with the subject full & fresh in my mind, and the disadvantage of being hurried, at the close of a fatiguing session of Cong<sup>s</sup>. by an impatience to return home, from which I was detained by that Job only. The temper of the pamphlet is explained if not excused by the excitements of the period.

Always & Affectionately yours.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

July—1823.

Chic. Hist. Soc.  
Mss.

D<sup>R</sup> Sir,—

I am giving you more trouble & of a more disagreeable sort than I c<sup>d</sup> wish, but an enquiry into the case of Jackson's app<sup>t</sup>. in May 1814 involves circumstances not to be fully elucidated without a resort which you have kindly permitted. 1

The Secy. of War proposed on the 14th May in my absence from Washington to make him a Brig<sup>r</sup>. with a brevet of Maj<sup>r</sup> Gen<sup>l</sup> till Hampton's vacancy c<sup>d</sup> be filled by the Senate. I answered on the 17th send me the Com<sup>n</sup>.. On the 20th He mentioned *nakedly* among other things that Harrison had resigned and enclosed one Com<sup>n</sup> with<sup>t</sup> alluding to any enclosure. My ans<sup>r</sup>. on the 24 shews that I understood it to be for the brevet, as it intimated the omission of the preliminary one of Brig<sup>r</sup>.. The Sec<sup>y</sup> was silent & no other Comission sent.

What then was the identical Com<sup>n</sup>. of Maj<sup>r</sup>. Gen<sup>l</sup>. sent to J—n by the Se<sup>y</sup> on the 28th of May?

Was it the Com<sup>n</sup>. enclosed to me on the 20 and understood to be for the Brevet: and if so was it a blank one or filled up with the Brevet app<sup>t</sup> if the former it was used for a purpose contrary to the known intention of the P<sup>t</sup>..: if the latter there must have been an erasure w<sup>ch</sup> c<sup>d</sup> only be ascertained by the Com<sup>n</sup>. itself in the hands of J—n.

C<sup>d</sup> it have been a blank Comn signed & left in the Dept for ordinary contingencies & inferior grades? This is rendered the more improbable by the apparent necessity of my calling for Com. to be signed—and by the one actually enclosed to me the 20th. If any lights can be properly obtained on this point I s<sup>d</sup>. be glad of them. The point itself is more than of mere curiosity.

When do you make your next visit to Albemarle?



[\[Back to Table of Contents\]](#)

## TO GEORGE HAY.

Montpellier, August 23, 1823.

Mad. Mss.

Dear Sir

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

The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U. S. was deeply felt by the Convention; and as the final arrangement of it took place in the latter stage of the Session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such Bodies, tho' the degree was much less than usually prevails in them.<sup>1</sup>

The part of the arrangement which casts the eventual appointment on the House of Rep<sup>s</sup> voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate. The agency of the H. of Rep<sup>s</sup> was thought safer also than that of the Senate, on account of the greater number of its members. It might indeed happen that the event would turn on one or two States having one or two Rep<sup>s</sup>. only; but even in that case, the representations of most of the States being numerous, the House would present greater obstacles to corruption than the Senate with its paucity of Members. It may be observed also, that altho' for a certain period the evil of State votes given by one or two individuals, would be extended by the introduction of new States, it would be rapidly diminished by growing populations within extensive territories. At the present period, the evil is at its maximum. Another Census will leave none of the States existing or in Embryo, in the numerical rank of R. I. & Del, nor is it impossible, that the progressive assimilation of local Institutions, laws & manners, may overcome the prejudices of those particular States against an incorporation with their neighbours.

But with all possible abatements, the present rule of voting for President by the H. of Rep<sup>s</sup>. is so great a departure from the Republican principle of numerical equality, and even from the federal rule which qualifies the numerical by a State equality, and is so pregnant also with a mischievous tendency in practice, that an amendment of the Constitution on this point is justly called for by all its considerate & best friends.

I agree entirely with you in thinking that the election of Presidential Electors by districts, is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the H. of Rep<sup>s</sup>. The district mode was mostly, if not exclusively in view when the Constitution was framed and adopted; & was exchanged for the general ticket & the legislative election, as the only

expedient for baffling the policy of the particular States which had set the example. A constitutional establishment of that mode will doubtless aid in reconciling the smaller States to the other change which they will regard as a concession on their part. And it may not be without a value in another important respect. The States when voting for President by general tickets or by their Legislatures, are a string of beads; when they make their elections by districts, some of these differing in sentiment from others, and sympathizing with that of districts in other States, they are so knit together as to break the force of those geographical and other noxious parties which might render the repulsive too strong for the cohesive tendencies within the Political System.

It may be worthy of consideration whether in requiring elections by districts, a discretion might not be conveniently left with the States to allot two members to a single district. It would manifestly be an important proviso, that no new arrangement of districts should be made within a certain period previous to an ensuing election of President.

Of the different remedies you propose for the failure of a majority of Electoral votes for any one Candidate, I like best that which refers the final choice, to a joint vote of the two Houses of Congress, restricted to the two highest names on the Electoral lists. It might be a question, whether the *three* instead of the *two* highest names might not be put within the choice of Congress, inasmuch as it not unfrequently happens, that the Candidate third on the list of votes would in a question with either of the two first outvote him, and, consequently be the real preference of the voters. But this advantage of opening a wider door & a better chance to merit, may be outweighed by an increased difficulty in obtaining a prompt & quiet decision by Congress with three candidates before them, supported by three parties, no one of them making a majority of the whole.

The mode which you seem to approve, of making a *plurality* of Electoral votes a definitive appointment would have the merit of avoiding the Legislative agency in appointing the Executive; but might it not, by multiplying hopes and chances, stimulate intrigue & exertion, as well as incur too great a risk of success to a very inferior candidate? Next to the propriety of having a President the real choice of a majority of his Constituents, it is desirable that he should inspire respect & acquiescence by qualifications not suffering too much by comparison.

I cannot but think also that there is a strong objection to undistinguishing votes for President & Vice President; the highest number appointing the former the next the latter. To say nothing of the different services (except in a rare contingency) which are to be performed by them, occasional *transpositions* would take place, violating equally the mutual consciousness of the individuals, & the public estimate of their comparative fitness.

Having thus made the remarks to which your communication led, with a frankness which I am sure you will not disapprove, whatever errors you may find in them, I will sketch for your consideration a substitute which has occurred to myself for the faulty part of the Constitution in question

“The Electors to be chosen in districts, not more than two in any one district, and the arrangement of the districts not to be alterable within the period of — previous to the election of President. Each Elector to give two votes, one naming his first choice, the other his next choice. If there be a majority of all the votes on the first list for the same person, he of course to be President; if not, and there be a majority, (which may well happen) on the other list for the same person, he then to be the final choice; if there be no such majority on either list, then a choice to be made by joint ballot of the two Houses of Congress, from the two names having the greatest number of votes on the two lists taken together.” Such a process would avoid the inconvenience of a second resort to the Electors; and furnish a double chance of avoiding an eventual resort to Congress. The same process might be observed in electing the Vice President.

Your letter found me under some engagements which have retarded a compliance with its request, and may have also rendered my view of the subject presented in it more superficial than I have been aware. This consideration alone would justify my wish not to be brought into the public discussion. But there is another in the propensity of the Moment, to view everything, however abstract from the Presidential election in prospect, thro’ a medium connecting it with that question; a propensity the less to be excused as no previous change of the Constitution can be contemplated, and the more to be regretted, as opinions and commitments formed under its influence, may become settled obstacles at a practicable season.

Be pleased to accept the expression of my esteem and my friendly respects.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Montp<sup>r</sup>, Sept<sup>r</sup> 6, 1823.

Mad. Mss.

Dear Sir,—

I return the two communications from the President inclosed in your letter of Aug. 30.

I am afraid the people of Spain as well as of Portugal need still further light & heat too from the American example before they will be a Match for the armies, the intrigues & the bribes of their Enemies, the treachery of their leaders, and what is most of all to be dreaded, their Priests & their Prejudices. Still their cause is so just, that whilst there is life in it, hope ought not to be abandoned.

I am glad you have put on paper a correction of the Apocryphal tradition, furnished by Pickering, of the Draught of the Declaration of Independence. If he derived it from the misrecollections of Mr. Adams, it is well that the alterations of the original paper proposed by the latter in his own handwriting attest the fallibility of his Aged Memory. Nothing can be more absurd than the cavil that the Declaration contains known & not new truths. The object was to assert not to discover truths, and to make them the basis of the Revolutionary Act. The merit of the Draught could only consist in a lucid communication of human Rights, a condensed enumeration of the reasons for such an exercise of them, and in a style & tone appropriate to the great occasion, & to the spirit of the American people.

The friends of R. H. Lee have shewn not only injustice in underrating the Draught, but much weakness in overrating the Motion in Cong<sup>s</sup> preceding it; all the merit of which belongs to the Convention of Virg<sup>a</sup>. which gave a positive instruction to her Deputies to make the Motion. It was made by him as next in the list to P. Randolph then deceased. Had Mr. Lee been absent the task would have devolved on you. As this measure of Virg<sup>a</sup>. makes a link in the history of our National birth, it is but right that every circumstance attending it, should be ascertained & preserved. You probably can best tell where the instruction had its origin & by whose pen it was prepared. The impression at the time was, that it was communicated in a letter from you to (Mr. Wythe) a member of the Convention.

[\[Back to Table of Contents\]](#)

TO JAMES MONROE.

Oct. 30, 1823

Mad. Mss.

D<sup>R</sup>. Sir,—

I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning & Mr. Rush, sent for his & my perusal and our opinions on the subject of it.1

From the disclosures of Mr. Canning it appears, as was otherwise to be inferred, that the success of France ag<sup>st</sup> Spain would be followed by an attempt of the Holy Allies to reduce the Revolutionized Colonies of the latter to their former dependence.

The professions we have made to these neighbours, our sympathies with their liberties & independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the Great Powers confederated ag<sup>st</sup>. the rights & reforms, of which we have given so conspicuous & persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly fortunate that the policy of G. Britain, tho' guided by calculations different from ours, has presented a co-operation for an object the same with ours. With that co-operation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed; keeping in view of course, the spirit & forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail.

It cannot be doubted that Mr. Canning's proposal thō made with the air of *consultation*, as well as concert, was founded on a predetermination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to divert us from what is just & proper in itself. Our co-operation is due to ourselves & to the world; and whilst it must ensure success, in the event of an appeal to force, it doubles the chance of success without that appeal. It is not improbable that G. Britain would like best to have the merit of being the sole Champion of her new friends, notwithstanding the greater difficulty to be encountered, but for the dilemma in which she would be placed. She must in that case, either leave us as neutrals to extend our commerce & navigation at the expence of hers, or make us enemies, by renewing her paper blockades & other arbitrary proceedings on the Ocean. It may be hoped that such a dilemma will not be without a permanent tendency to check her proneness to unnecessary wars.

Why the B. Cabinet should have scrupled to arrest the calamity it now apprehends, by applying to the threats of France ag<sup>st</sup>. Spain, "the small effort" which it scruples not to employ in behalf of Spanish America, is best known to itself. It is difficult to find any

other explanation than that interest in the one case has more weight in its casuistry, than principle had in the other.

Will it not be honorable to our Country, & possibly not altogether in vain to invite the British Gov<sup>t</sup>. to extend the “avowed disapprobation” of the project ag<sup>st</sup>. the Spanish Colonies, to the enterprise of France ag<sup>st</sup>. Spain herself, and even to join in some declaratory Act in behalf of the Greeks. On the supposition that no form could be given to the Act clearing it of a pledge to follow it up by war, we ought to compare the good to be done with the little injury to be apprehended to the U. S., shielded as their interests would be by the power and the fleets of G. Britain united with their own. These are questions however which may require more information than I possess, and more reflection than I can now give them.

What is the extent of Mr. Canning’s disclaimer as to “the remaining possessions of Spain in America?” Does it exclude future views of acquiring Porto Rico &c, as well as Cuba? It leaves G. Britain free as I understand it in relation to other Quarters of the Globe.

I return the correspondence of Mr. Rush & Mr. Canning, with assurances, &c.

[\[Back to Table of Contents\]](#)

## TO RICHARD RUSH

Montp<sup>r</sup> Nov<sup>r</sup>. 13, 1823

Mad. Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup>. your favor of Sep<sup>r</sup> 10, with a Copy of the printed documents on the subject of the slave trade. The mask of humane professions covering an indifference in some & a repugnance in others to its effectual abolition, is as obvious as it is disgusting. G. B. alone, whatever may be her motives, seems to have the object really at heart. It is curious at the same time to observe her experiment for bringing about a change in the law of Nations by denominating the trade Piracy, without the *universal* consent, w<sup>ch</sup>. she held essential to the Code of the armed neutrality dissented from solely by herself. Her Cabinet is chargeable with a like inconsistency, in its readiness to interpose between the Allied Powers & Spanish Am<sup>a</sup> & its scruples to do so ag<sup>st</sup> the invasion of Spain herself. Nor is it easy to reconcile the advances made to you in behalf of our Southern neighbors, with a disrelish of your proposition that their Independence be immediately acknowledged, a right to do which appears to have been publicly asserted. In point of mere policy, it excites surprize, that if the Brit. Gov<sup>t</sup>. dreads the foreseen extension of the views of the Holy Alliance to Span. Am<sup>a</sup>. in the event of success in the invasion of Spain, it did not arrest the invasion, as it might have done, by a like interposition with that which is to stifle the projected resubjugation of her former Colonies. It can excite no surprize, indeed, that our co-operation should be courted in measures that may lead to war; it being manifest that in such an issue G. B. would be under the dilemma, of seeing our neutral commerce & navigation aggrandized at the expence of hers, or of adding us to her enemies by renewing her Paper blockades, and other maritime provocations. May it not be hoped that a foresight of this dilemma will be a permanent check to her warlike propensity?

But whatever may be the motives or the management of the B. Gov<sup>t</sup>. I cannot pause on the question whether we ought to join her in defeating the efforts of the Holy Alliance to restore our Independent neighbors to the condition of Spanish Provinces. Our principles & our sympathies,—the stand we have taken in their behalf, the deep interest we have in friendly relations with them, and even our security ag<sup>st</sup>. the Great Powers, who having conspired ag<sup>st</sup>. national rights & reforms must point their most envenomed wrath ag<sup>st</sup>. the U. S. who have given the most formidable example of them; all concur in enjoining on us a prompt acceptance of the invitation to a communion of counsels, and if necessary of arms in so righteous & glorious a cause. [1](#) Instead of holding back, I should be disposed rather to invite, in turn, the B. Gov<sup>t</sup> to apply at least “the small effort” of Mr. Canning to the case of the French Invasion of Spain, and even to extend it to that of the Greeks. The good that w<sup>d</sup> result to the World from such an invitation if accepted, and the honor to our Country even if declined, outweigh the sacrifices that would be required, or the risks that w<sup>d</sup>. be incurred. With the British fleets & fiscal resources associated with our own we should

be safe ag<sup>st</sup>. the rest of the World, and at liberty to pursue whatever course might be prescribed by a just estimate of our moral & political obligations.

You ask my view of the claim of the U. S. to the navigation of the S<sup>t</sup> Lawrence thro' the Brit. territory, and my recollection of the grounds on which they claimed that of the Mississippi thro' Spanish territory. On the latter point I may refer to a Report of a Committee of the Revolutionary Congress in 1780<sup>1</sup> in which among other things the right of the U. S. is argumentatively touched on; and to the extract now inclosed from a letter I wrote to Mr. Jefferson then at Paris in the year 1784, in which there is a glance at the cases having more or less of analogy to that of the Mississippi. It being more easy to obtain by another hand the extract as it stands than to separate the irrelevant matter by my own, I must trust to that apology for obtruding a perusal of the latter. At the dates referred to the navigation of the Mississippi was a cardinal object of national policy; and Virg<sup>a</sup>. feeling a particular interest in it, thro' Kentucky then a part of the State, the claim was warmly espoused by her Public Councils of which I was a member at the last date and one of her Delegates to Congress at the first.

As a question turning on Natural right & Public law I think the navigation of the S<sup>t</sup>. Lawrence a fair claim for the U. S.

Rivers were given for the use of those inhabiting the Country of which they make a part; and a primary use of the navigable ones is that of external commerce. Again, the public good of Nations is the object of the Law of Nations, as that of individuals composing the same nation, is of municipal law. This principle limits the rights of ownership in the one case as well as in the other; and all that can be required in either is that compensation be made for individual sacrifices for the general benefit. This is what is done in the case of roads & the right of way under a municipal jurisdiction, and is admitted to be reasonable, in the form of tolls, where a foreign passage takes place thro' a channel protected & kept in repair by those holding its shores. Vattel allows a right even in Armies marching for the destructive purposes of war, to pass thro' a neutral Country with due precautions. How much stronger the claim for the beneficial privileges of commerce?

In applying these principles it is doubtless proper to compare the general advantage with the particular inconvenience and to require a sufficient preponderance of the former. But was there ever a case in which the preponderance was greater than that of the Mississippi; and the view of it might be strengthened by supposing an occupancy of its mouth limited to a few acres only, and by adding to the former territory of the U. S. the vast acquisition lately made on the waters of that River. The case of the S<sup>t</sup>. Lawrence is not equally striking, but it is only in comparison with the most striking of all cases, that its magnitude is diminished to the eye. The portion of the U. S. connected with the River & the inland seas, through which it communicates with the Ocean, forms a world of itself, and after every deduction suggested by the *artificial* channels which may be substituted for the natural, they will have a sufficient interest in the *natural* to justify their claim and merit their attention. It will be a question with some perhaps whether the use of the River by citizens of the U. States will not be attended with facilities for smuggling, and a danger of collisions with a friendly



power, which render its attainment little desirable. But if any considerable body of Citizens feel a material interest in trading thro' that channel, and there be a public right to it, the Gov<sup>t</sup>. will feel much delicacy in forbearing to contend for it.

How far it may be expedient to appeal from the transitory calculations to the permanent policy of G. B. in relation to Canada, as was done with respect to Spain & Louisiana, you can best judge. I have noticed allusions in Parliament to the considerations recommending an alienation of the Province; and it is very possible that they may be felt by the Gov<sup>t</sup>. But it may well be expected that the solid interest of the Nation will be overruled by the respect for popular prejudices, & by the colonial pasturage for hungry favorites. It is very certain that Canada is not desirable to the U. S. as an enlargement of Domain. It could be useful to them only, as shutting a wide door to smuggling, as cutting off a pernicious influence on our savage neighbours, and as removing a serious danger of collisions with a friendly power.

Having made these observations as due to your request I must not decline saying, that whatever just bearing any of them may have on the point of right, in the case of the S<sup>t</sup>. Lawrence I consider the moment for asserting it not the most propitious, if a harmony of views be attainable with the B. Gov<sup>t</sup>. on the great subject of Spanish America, to say nothing of other subjects in principle akin to it. I doubt not however that eno' will be left to your discretion, and that there will be more than eno' of that to so manage the discussion as to prevent an interference of one object with another.

Just as the above was closed, the fall of Cadiz & the Cortes are confirmed to us. What next is the question. Every great event in the present state of the world may be pregnant with a greater. As the Holy Alliance will premise negotiation & terror to force ag<sup>st</sup>. the new States South of us, it is to be hoped they will not be left in the dark as to the Ultimate views of G. B. in their favor. To conceal these w<sup>d</sup>. be to betray them as Spain has been betrayed.

[\[Back to Table of Contents\]](#)

TO WILLIAM TAYLOR.

Montp<sup>r</sup>. Nov. 22 1823.

Chic. Hist. Soc.  
Mss.

Dear Sir,—

I have rec<sup>d</sup>. your favor of the 15th inst. which affords me an oppy. of thanking you at the same time for your letter from Mexico, valuable both for the facts stated in it, & for the prophetic remarks which events confirmed.

Mexico must always have been made interesting by its original history, by its physical peculiarities, and by the form & weight of its colonial yoke. The scenes thro' which it has latterly passed, and those of which it is now the Theatre, have given a new force to the public feeling, and this is still further enlivened by the prospect before it, whether left to itself or doomed as it probably is to encounter the interference of the powerful Gov<sup>ts</sup>. confederated ag<sup>st</sup>. the rights of man and the reforms of nations. With the U. S. Mexico is now connected not only by the ties of neighbourhood & of commercial interests but of political affinities & prudential calculations. We necessarily therefore turn an anxious eye to everything that can effect its career and its destiny.

These observations make it needless to say that the communications you offer, whilst stationed in that country will be rec<sup>d</sup>. with a due sense of your kindness. I feel some scruple nevertheless in saying so of a correspondence which on one side must be passive only. The scruple would be decisive if I did not trust to your keeping in mind that the mere gratification of a private friend is lighter than a feather when weighed ag<sup>st</sup>. your private business or your official attentions.

Your friends in this quarter w<sup>d</sup>. have rec<sup>d</sup>. much pleasure from a visit if you c<sup>d</sup> have conveniently made it. They are all, I believe, in good health, with the exception of M<sup>rs</sup> J. Taylor, who has laboured under a tedious complaint which appears to have very nearly finished its fatal task.

I am glad to learn that the President has given you so acceptable a proof of the value he sets on your services. It augurs a continuance of his friendly attention as far as may consist with his estimates of other public obligations. In whatever circumstances you may be placed I wish you health & success; in which M<sup>rs</sup>. M. joins, as she does in the esteem & regard of which I beg you to be assured.

[\[Back to Table of Contents\]](#)

## TO EDWARD EVERETT.

Montpellier, Nov<sup>r</sup> 26th, 1823.

Mad. Mss.

D<sup>R</sup>. Sir,—

I rec<sup>d</sup>. several weeks ago your favor of Oc<sup>r</sup>. 30, accompanied by the little Treatise on population analyzing & combating the Theory of Malthus, which Till within a few days I have been deprived of the pleasure of reading. 1 Its reasoning is well entitled to the commendation you bestow on its ingenuity which must at least contribute to a more accurate view of the subject; and on its style, which is characterized by the artless neatness always pleasing to the purest tastes. Be so obliging as to convey my debt of thanks to the Author, and to accept the share of them due to yourself.

Notwithstanding the adverse aspects under which the two Authors present the question discussed, the one probably with an eye altogether to the case of Europe, the other chiefly to that of Am<sup>a</sup>, I should suppose that a thorough understanding of each other ought to narrow not a little the space which divides them.

The American admits the capacity of the prolific principle in the human race to exceed the sources of attainable food; as is exemplified by the occasions for colonization. And the European could not deny that as long as an increase of the hands and skill in procuring food should keep pace with the increase of mouths, the evils proceeding from a disproportion could not happen.

It may be presumed also that Mr. Malthus would not deny that political institutions and social habits, as good or bad, would have a degree of influence on the exertion & success of labour in procuring food: Whilst his opponent seems not unaware of the tendency of a scanty or precarious supply of it, to check the prolific principle by discouraging marriages, with a consequent increase of the moral evils of licentious intercourse among the unmarried, & to produce the physical evils of want & disease, with the moral evils engendered by the first.

An essential distinction between the U. S. and the more crowded parts of Europe lies in the greater number of early marriages here than there, proceeding from the greater facility of providing subsistence; this facility excluding a certain portion of the Physical evils of Society, as the marriages do a certain portion of the moral one. But that the rate of increase in the population of the U. S. is influenced at the same time by their political & social condition is proved by the slower increase under the vicious institutions of Spanish America where Nature was not less bountiful. Nor can it be doubted that the actual population of Europe w<sup>d</sup>. be augmented by such reforms in the systems as would enlighten & animate the efforts to render the funds of subsistence more productive. We see everywhere in that quarter of the Globe, the people increasing in number as the ancient burdens & abuses have yielded to the progress of light & civilization.

The Theory of Mr. Godwin, if it deserves the name, is answered by the barefaced errors both of fact and of inference which meet the eye on every page.

Mr. Malthus has certainly shewn much ability in his illustrations & applications of the principle he assumes, however much he may have erred in some of his positions. But he has not all the merit of originality which has been allowed him. The principle was adverted to & reasoned upon, long before him, tho' with views & applications not the same with his. The principle is indeed inherent in all the organized beings on the Globe, as well of the animal as the vegetable classes; all & each of which when left to themselves, multiply till checked by the limited fund of their pabulum, or by the mortality generated by an excess of their numbers. A productive power beyond a mere continuance of the existing Stock was in all cases necessary to guard ag<sup>st</sup>. the extinction which successive casualties would otherwise effect; and the checks to an indefinite multiplication in any case, were equally necessary to guard ag<sup>st</sup>. too great a disturbance of the general symmetry & economy of nature. This is a speculation however, diverging too much from the object of a letter chiefly intended to offer the acknowledgments & thanks which I beg leave to repeat with assurances of my continued esteem and respect.

[\[Back to Table of Contents\]](#)

## TO JAMES BARBOUR.

Dec<sup>r</sup> 5, 1823

Mad. Mss.

Dear Sir

Your favor of the 2d was duly rec<sup>d</sup> the evening before the last. I thank you for it and return as desired the Pamphlet of Cunningham, your remarks on which appear very just.

You ask my views of a Resolution to be proposed to the Senate advising a Treaty of Co-operation with G. B. ag<sup>st</sup>. an interference of the Allied powers for resubjugating S. America.<sup>1</sup> You will take them for what they are worth, which can be but little with my imperfect knowledge of the facts & circumstances that may be known to yourself.

The Message of the Presid<sup>t</sup>. which arrived by an earlier mail than usual, has I observe distinctly indicated the sentiments of the U. S. with respect to such an interference.<sup>2</sup> But in a case of such peculiarity & magnitude, a fuller manifestation of the National will may be expedient, as well to bear out the Executive in measures within his Department, as to make the desirable impressions abroad. The mode you have thought of would certainly be of great avail for the first purpose, and if promulged for the second also; But would not declaratory Resolutions by the two Houses of Congress be of still greater avail for both? They would be felt by the Executive as the highest sanction to his views, would inspire G. B. with the fullest confidence in the policy & determination of the U. S. and would have all the preventive effect on the Allied powers of which they are susceptible from a monitory measure from this quarter.

It can hardly be doubted that G. B. will readily co-operate with this Country, or rather that she wishes our co-operation with her ag<sup>st</sup>. a foreign interference for subverting the Independence of Spanish America. If the attempt can be prevented by remonstrance she will probably unite with us in a proper one. If she begins with that, she will not hesitate, to proceed, if necessary, to the last resort, with us fighting by her side. If any consideration were to restrain her from that resort even without our co-operation, it would be the dilemma of seeing our *neutral* commerce & navigation flourishing at the expence of hers; or of throwing us into a war ag<sup>st</sup>. her by renewing her maritime provocations.

On the whole I think we ought to move hand in hand with G. B. in the experiment of awing the Confederated Powers into forbearance; and if that fail in following it by means which cannot fail, and that we cannot be too prompt or too decisive in coming to an understanding & concert with her on the subject. This hemisphere must be protected ag<sup>st</sup>. the doctrines & despotisms which degrade the other. No part of it can be as secure as it ought to be, if the whole be not so. And if the whole be sound & safe, the example of its principles will triumph gradually every where.

How much is it to be regretted that the Brit. Gov<sup>t</sup>. shrunk from even remonstrance ag<sup>st</sup>. the invasion of old Spain and that it has not the magnimity to interpose, late as it is in behalf of the Greeks. No nation ever held in its hand in the same degree the destiny of so great a part of the civilized world, and I cannot but believe that a glorious use would be made of the opportunity, if the head of the Nation was worthy of its heart.

[\[Back to Table of Contents\]](#)

TO THOMAS JEFFERSON.

Montp<sup>r</sup>., Jan<sup>y</sup> 14, 1824,

Mad. Mss.

D<sup>R</sup> Sir

I return the letters from Doc<sup>r</sup>. Cooper inclosed in yours of the 7th. It is truly to be lamented that at his stage of life, and in the midst of his valuable labours, he should experience the persecutions which torment and depress him. Should he finally wish to exchange his present berth for one in our University, and make the proposition without any advances on our part, there could be no indelicacy in our receiving him. What I should dread would be that notwithstanding his pre-eminent qualifications, there might be difficulties to be overcome among ourselves in the first instance; and what is worse that the spirit which persecutes him where he is, would find a co-partner here not less active in poisoning his happiness and impairing the popularity of the Institution. We must await the contingency, and act for the best.

You have probably noticed that the manner in which the Constitution as it stands may operate in the approaching election of President, is multiplying projects for amending it. If electoral districts, and an eventual decision by joint ballot of the two Houses of Congress could be established, it would, I think, be a real improvement; and as the smaller States would approve the one, and the larger the other, a spirit of compromise might adopt both.

An appeal from an abortive ballot in the first meeting of the Electors, to a reassemblage of them, a part of the several plans, has something plausible, and in comparison with the existing arrangement, might not be inadmissible. But it is not free from material objections. It relinquishes, particularly, the policy of the Constitution in allowing as little time as possible for the Electors to be known & tampered with. And beside the opportunities for intrigue furnished by the interval between the first and second meeting, the danger of having one electoral Body played off against another, by artful misrepresentations rapidly transmitted, a danger not to be avoided, would be at least doubled. It is a fact within my own knowledge, that the equality of votes which threatened such mischief in 1801 was the result of false assurances despatched at the critical moment to the Electors of one State, that the votes of another would be different from what they proved to be.

Having received letters from certain quarters on the subject of the proposed amendments, which I could not decline answering, I have suggested for consideration, "that each Elector should give two votes, one naming his first choice, the other naming his next choice. If there be a majority for the first, he to be elected; if not, and a majority for the next, he to be elected: If there be not a majority for either, then the names having the two highest number of votes on the two lists taken together, to be referred to a joint ballot of the Legislature." It is not probable that this modification will be relished by either of those to whom it has been suggested; both of them having

in hand projects of their own. Nor am I sure that there may not be objections to it which have been overlooked. It was recommended to my reflections by its avoiding the inconvenes of a second meeting of Electors, and at the same time doubling the chance of avoiding a final resort to Congress. I have intimated to my correspondents my disinclination to be brought in any way into the public discussion of the subject; the rather as every thing having a future relation only to a Presidential Election may be misconstrued into some bearing on that now depending.



[\[Back to Table of Contents\]](#)

TO ROBERT S. GARNETT.

Montpellier, Feb. 11, 1824.

Mad. Mss.

Dear Sir.

The mail brought me the evening before the last, your favor of the 5th, with the copy of the "New Views, &c," for which I tender my acknowledgments.<sup>1</sup> I must put off the reading of such a work till it may be subject to less interruption than would at this time be unavoidable. From a glance at a few passages in the outset, I do not doubt that more competent lights as to the proceedings of the Convention would have saved the distinguished author from much error into which he may have been led by the faint or refracted rays to which he trusted. The general terms or phrases used in the introductory propositions, and now a source of so much constructive ingenuity, were never meant to be inserted in their loose form in the text of the Constitution. Like resolutions preliminary to legal enactments it was understood by all, that they were to be reduced by proper limitations and specifications, into the form in which they were to be final and operative; as was actually done in the progress of the session.

Whether the Constitution in any of its stages or as it now stands, be a National or a federal one, is a question, which ought to be premised by a definition of the terms, and then the answer must be, that it is neither the one nor the other, but possessing attributes of both. It is a system of Government emphatically *sui generis* for designating which there consequently was no appropriate term or denomination pre-existing.

If there be any thing in these hasty remarks which is rendered inapplicable by parts of the volume into which I have not yet looked, you will be as ready to excuse as sure to detect the misconception.

With friendly respects and good wishes.

[\[Back to Table of Contents\]](#)

## TO THOMAS COOPER. 1

Montpellier, Mar. 23, 1824.

Dear Sir.

I have rec'd the little pamphlet on the Tariff before Congress, which you were so good as to send me. 1 I had previously read its contents in the Newspapers; but they are well worth possessing in the other form you have given them.

I have always concurred in the general principle that industrious pursuits of individuals ought to be left to individuals, as most capable of choosing & managing them. And this policy is certainly most congenial with the spirit of a free people, & particularly due to the intelligent & enterprising citizens of the U. States.

The true question to be decided therefore is, what are the exceptions to the rule, not incompatible with its generality; and what the reasons justifying them. That there are such cases, seems to be not sufficiently impressed on some of the opponents of the Tariff. Its votaries on the other hand, some of them at least, convert the exceptions into the rule, & would make the Government, a general supervisor of individual concerns. The length to which they push their system, is involving it in complexities & inconsistencies, which can hardly fail to end in great modifications, if not total miscarriage. What can be more incongruous than to tax raw material in an act for encouraging manufactures, or than to represent a temporary protection of them, as ensuring an early competition & reduction of prices; and at the same time to require for their safety, a progressive augmentation of the protecting import. I know not a better service, that could be rendered to the science of political economy, than a judicious explanation of the 3 cases constituting exceptions to the principle of free industry which as a general principle, has been so unanswerably established. You have glanced at some of them, among others that may be added. I would admit cases in which there could be scarce a doubt, that a manufacture, once brought into activity, would support itself, & be profitable to the nation. An example is furnished by the Cotton branch among ourselves, which if it had not been stimulated by the effect of the late war, might not for a considerable time have sprung up, and which with that impulse, has already reached a maturity, which not only supplies the home market, but faces its rivals in foreign ones. To guard the example however, against fallacious inferences, it has been well observed, that the manufactories in this case, owe their great success to the advantage they have, in the raw material, and to the extraordinary proportion of the work, which is performed by mechanical agency. Is it not fair also, in estimating the comparative cost of domestic and foreign products, to take into view the effect of wars, even foreign wars, on the latter?

Were there a certainty of perpetual peace, & still more, a universal freedom of commerce, the theory might hold good without exception, that Government should never bias individuals in the choice of their occupation. But such a millenium has not

yet arrived, and experience shows, that if peace furnishes supplies from abroad, cheaper than they can be made at home, the cost in war, may exceed that at which they could be afforded at home, whilst it can not be expected, that a home provision will be undertaken in war, if the return of peace is to break down the undertakers. It would seem reasonable therefore, that the war price should be compared with the peace price, and the war periods with the peace periods, which in the last century have been nearly equal, & that from these data, should be deduced the tax, that could be afforded in peace, in order to avoid the tax imposed by war.

In yielding thus much to the patrons of domestic manufacturers, they ought to be reminded in every doubtful case, the Government should forbear to intermeddle; and that particular caution should be observed, where one part of the community would be favored at the expense of another. In Governments, independent of the people, the danger of oppression is from the will of the former. In Governments, where the will of the people prevails, the danger of injustice arises from the interest, real or supposed, which a majority may have in trespassing on that of the minority. This danger, in small Republics, has been conspicuous.

The extent & peculiar structure of ours, are the safeguards on which we must rely, and altho' they may occasionally somewhat disappoint us, we have a consolation always, in the greater abuses inseparable from Governments less free, and in the hope also, that the progress of political Science, and the lessons of experience will not be lost on the National Council.

With great esteem & cordial respect.

[\[Back to Table of Contents\]](#)

## TO JOHN CARTWRIGHT. 1

Mad. Mss.

1824.

It is so long since I rec<sup>d</sup> your volume on the English Constitution with the letter accompanying it that I must add to my thanks for the favors, an apology for the delay in returning them. I perceived at once that to do justice to such a Work it ought to be read with a continued attention which happened to be impossible till within a short time past.

I am now able to say that I have found in your pages not a little to admire, very much to approve, but some things in which I cannot concur. Were I to name instances of the last, I should not omit your preference of a single to a double Legislature.

The infirmities most besetting Popular Governments, even in the Representative Form, are found to be defective laws which do mischief before they can be mended, and laws passed under transient impulses, of which time & reflection call for a change. These causes, render the Statute Book complex and voluminous, multiply disputed cases between individuals, increase the expence of Legislation, and impair that certainty & stability which are among the greatest beauties, as well as most solid advantages of a well digested Code.

A second Branch of the Legislature, consisting of fewer and riper members, deliberating separately & independently of the other, may be expected to correct many errors and inaccuracies in the proceedings of the other, and to controul whatever of passion or precipitancy may be found in them; and being in like manner with the other, elective & responsible, the probability is strengthened that the Will & interest of their Common Constituents will be duly pursued.

In support of this view of the subject, it may be remarked that there is no instance among us of a change of a double for a single Legislature, whilst there is more than one of a contrary change; and it is believed, that if all the States were now to form their Gov<sup>ts</sup>. over again, with lights derived from experience, they would be unanimous in preferring two Legislative Chambers to a single one.

I hope you will have no occasion to regret your early patronage of the Independence of this Country, or your approbation of the principles on which its Gov<sup>ts</sup>. have been established. Thus far the Trees can be safely tested by their fruits.

It affords sincere pleasure to find your Gov<sup>t</sup>. & Nation relaxing their prejudices ag<sup>st</sup>. us. Experience has proved what a few on your side as well as on this foresaw, that the separation of the Colonies tho' a gain to them, would be no loss of *retainable* Commerce to the Parent State, whilst it would be a gain to its Treasury in the diminished demands on it. It remains for the two Countries now, but to cultivate mutual good will, to enrich & improve each other by all the interchanges having these

tendencies, and to promote by their examples the improvement & happiness of all other Countries.

I beg you to accept my acknowledg<sup>ts</sup>. for the friendly sentiments you have addressed to me, & to be assured of my great respects & good wishes.

[\[Back to Table of Contents\]](#)

TO HENRY CLAY.

Montpellier, Ap<sup>l</sup>, 1824.

Mad. Mss.

D<sup>R</sup>. Sir,—

I have rec<sup>d</sup>. the copy of your speech on “American Industry” for which I pray you to accept my thanks. I find in it a full measure of the Ability & Eloquence so often witnessed on preceding occasions. But whilst doing this justice to the task you have performed, which I do with pleasure as well as sincerity, candor obliges me to add that I cannot concur in the extent to which the pending Bill carries the Tariff, nor in some of the reasonings by which it is advocated.

The Bill, I think loses sight too much of the general principle which leaves to the judgment of individuals the choice of profitable employments for their labor & capital; and the arguments in favor of it, from the aptitudes of our situation for manufacturing Establishments, tend to shew that these would take place without a legislative interference. The law would not say to the Cotton planter you overstock the Market, and ought to plant Tobacco; nor to the Planter of Tob<sup>o</sup>., you would do better by substituting Wheat. It presumes that profit being the object of each, as the profit of each is the wealth of the whole, each will make whatever change the state of the Markets & prices may require. We see, in fact, changes of this sort frequently produced in Agricultural pursuits, by individual sagacity watching over individual interest. And why not trust to the same guidance in favor of manufacturing industry, whenever it promises more profit than any of the Agricultural branches, or more than mercantile pursuits, from which we see Capital readily transferred to manufacturing establishments likely to yield a greater income.

With views of the subject such as this, I am a friend to the *general* principle of “free industry” as the basis of a sound system of political Economy. On the other hand I am not less a friend to the legal patronage of domestic manufactures, as far as they come within particular reasons for exceptions to the general rule, not derogating from its generality. If the friends of the Tariff, some of them at least, maintain opinions subversive of the rule, there are, among its opponents, views taken of the subject which exclude the fair exceptions to it.

For examples of these exceptions I take 1. the case of articles necessary for national defence. 2. articles of a use too indispensable to be subjected to foreign contingencies. 3. Cases where there may be sufficient certainty, that a *temporary* encouragement will introduce a particular manufacture, which once introduced will flourish without that encouragement. That there are such cases is proved by the Cotton manufacture, introduced by the impulse of the war & the patronage of the law, without w<sup>ch</sup>. it might not for a considerable time have effectually sprung up. It must not be forgotten however that the great success in this case was owing to the advantage in the raw material, and to the extraordinary degree in which manual labor is abridged by

mechanical agency. 4. A very important exception results from the frequency of wars among the manufacturing nations, the effect of a state of war on the price of their manufactures, and the improbability that domestic substitutes will be provided by establishments which could not outlast occasions of such uncertain duration. I have not noticed any particular reference to this consideration, in the printed discussions; the greater cheapness of imported fabrics being assumed from their cost in time of peace. Yet it is clear that if a yard of imported cloth which costs 6 dollars in peace, costs 8 in war, & the two periods should be as for the last two Centuries taken together, nearly equal, a tax of nearly one dollar a yard in time of peace, could be afforded by the Consumer, in order to avoid the tax imposed by the event of war.

Without looking for other exceptions to the principle restraining Legislative interference with the industrious pursuits of individuals, those specified give sufficient scope for a moderate tariff that would at once answer the purpose of revenue, and foster domestic manufactures.

With respect to the operation of the projected Tariff, I am led to believe that it will disappoint the calculations both of its friends & of its adversaries. The latter will probably find that the increase of duty on articles which will be but partially manufactured at home, with the annual increment of consumers, will balance at least, the loss of the Treasury from the diminution of tariffed imposts: Whilst the sanguine hopes of the former will be not less frustrated by the increase of smuggling, particularly thro' our East & North frontiers, and by the attraction of the labouring classes to the vacant territory. This is the great obstacle to the spontaneous establishment of Manufactories, and will be overcome with the most difficulty wherever land is cheapest, and the ownership of it most attainable.

The Tariff, I apprehend, will disappoint those also, who expect it to put an end to an unfavorable balance of trade. Our imports, as is justly observed, will not be short of our exports. They will probably exceed them. We are accustomed to buy not only as much as we can pay for, but as much more as can be obtained on credit. Until we change our habits therefore, or manufacture the articles of luxury, as well as the useful articles; we shall be apt to be in arrears, in our foreign dealing, and have the exchange bearing ag<sup>st</sup>. us. As long as our exports consist chiefly of food & raw materials, we shall have the advantage in a contest of privations with a nation supplying us with superfluities. But in the ordinary freedom of intercourse the advantage will be on the other side; the wants on that being limited by the nature of them, and ours as boundless as fancy and fashion.

Excuse a letter which I fear is much too long, and be assured of my great esteem & sincere regard.

[\[Back to Table of Contents\]](#)

## TO EDWARD LIVINGSTON.

Montpellier April 17, 1824.

Mad. Mss.

Dear Sir

I have been retarded in thanking you for the copy of your speech on the subject of internal improvement, by a necessary absence from home, and by successive occurrences since my return. I now beg you to accept that debt to your kindness. [1](#)

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

In forbearing to exercise doubtful powers, especially when not immediately and manifestly necessary, I entirely agree with you. I view our political system also, as you do, as a combination and modification of powers without a model; as emphatically *sui generis*, of which one remarkable feature is, its *annihilation* of a power inherent in some branch of all other governments, that of taxing exports. I wish moreover that you might be followed in the example of defining the terms used in argument, the only effectual precaution against fruitless and endless discussion. This logical precept is peculiarly essential in debating Constitutional questions, to which for want of more appropriate words, such are often applied as lead to error and confusion. Known words express known ideas; and new ideas, such as are presented by our novel and unique political system, must be expressed either by new words, or by old words with new definitions. Without attention to this circumstance, volumes may be written which can only be answered by a call for definitions; and which answer themselves as soon as the call is complied with.

It cannot be denied without forgetting what belongs to human nature, that in consulting the contemporary writings, which vindicated and recommended the



Constitution, it is fair to keep in mind that the authors might be sometimes influenced by the zeal of advocates: But in expounding it now, is the danger of bias less from the influence of local interests, of popular currents, and even from an estimate of national utility.

Having rambled thus far I venture on another devious step, by alluding to your inference from a passage in one of my messages, that in a subsequent one, my objection was not to the power, but to the details of the Bill in which it was exercised. If the language was not more carefully guarded against such an inference it must have been because I relied on a presumed notoriety of my opinion on the subject; and probably considered the terms, "existing powers," as essentially satisfied by the uncontested authority of Congress over the Territories.

[\[Back to Table of Contents\]](#)

## TO HENRY LEE.

Montpellier, June 25, 1824.

Mad. Mss.

I have received, Sir, your letter of the 18th, inclosing the proposal of a new publication, under the title of "American Gazette & Literary Journal." Of the prospectus I cannot say less than that it is an interesting specimen of cultivated talents.

I must say at the same time that I think it concedes too much to a remedial power in the press over the spirit of party.

Besides the occasional and transient subjects on which parties are formed, they seem to have a permanent foundation in the variance of political opinions in free States, and of occupations and interests in all civilized States. The Constitution itself, whether written or prescriptive, influenced as its exposition and administration will be, by those causes, must be an unfailing source of party distinctions. And the very peculiarity which gives pre-eminent value to that of the United States, the partition of power between different governments, opens a new door for controversies and parties. There is nevertheless sufficient scope for combating the spirit of party, as far as it may not be necessary to fan the flame of liberty, in efforts to divert it from the more noxious channels; to moderate its violence, especially in the ascendant party; to elucidate the policy which harmonizes jealous interests; and particularly to give to the Constitution that just construction, which, with the aid of time and habit, may put an end to the more dangerous schisms otherwise growing out of it.

With a view to this last object, I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that be not the guide in expounding it, there can be no security for a consistent and stable, more than for a faithful exercise of its powers. If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government must partake of the changes to which the words and phrases of all living languages are constantly subject. What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense. And that the language of our Constitution is already undergoing interpretations unknown to its founders, will I believe appear to all unbiased Enquirers into the history of its origin and adoption. Not to look farther for an example, take the word "consolidate" in the Address of the Convention prefixed to the Constitution. It there and then meant to give strength and solidity to the Union of the States. In its current & controversial application it means a destruction of the States, by transfusing their powers into the government of the Union.

On the other point touched in your letter, I fear I shall not very soon be able to say anything. Notwithstanding the importance of such a work as that of Judge Johnson, and the public standing of the author, I have never given it a reading. I have put it off,

as in several other voluminous cases, till I could go through the task with a less broken attention. While I find that the span of life is contracting much faster than the demands on it can be discharged, I do not however abandon the proposed perusal of both the "Life of Greene," and "the Campaign of 1781."

[\[Back to Table of Contents\]](#)

## TO HENRY WHEATON.

Montp<sup>r</sup>. July 11, 1824.

Chic. Hist. Soc.  
Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup>. your letter of the 3 inst: referring to a penciled note of mine on a letter from M<sup>f</sup>. Pinkney.

It is a fact as there noted, that when the Embargo was recommended to Cong<sup>s</sup>. Dec<sup>r</sup>. 18, 1807, a copy of the British orders in Council of Nov<sup>r</sup>. 11, 1807, as printed in an English newspaper, stating them to be ready in that form to be signed and issued, lay on the President's table. From what quarter the Newspaper came, or whether known, I do not recollect. But the measure it threatened could not be doubted, and manifestly required, if there had been no other grounds for apprehending the danger, that American property & seamen should not be exposed to it. Besides the precise warning contained in the Newspaper, it was generally understood that some such outrage was contemplated by the British Cabinet. I do not pretend to recollect the several grounds for the belief. The files of the Department of State may contain some of them. In a private letter of Oc<sup>r</sup>. 5, 1807 from an intelligent & close observer in London of the indicated views of the Cabinet towards the U. S. I find the following passage "The Gazette of Saturday has gone by without announcing the injurious Blockade of all French ports & all ports under the influence of France, which was threatened all the week and very generally expected. Another letter from the same of Oc<sup>r</sup>. 11, adds. "Two more Gazettes have been published without announcing the rigorous blockade, one of them as late as last night. I hope they have thought better of it."

Altho' it is true therefore that no official evidence existed of the Orders in Council when the Embargo was recommended, there was a moral certainty in the evidence described by M<sup>f</sup>. Pinkney (vol. 6, p. 190 of State papers) which included "the Newspapers of this Country (G. B.) rec<sup>d</sup> in the U. S. some days before the Message of the President."

To this view of the case the language of the Message was accommodated. And the subsequent message of Feb<sup>y</sup>. 2, 1808, founded on the official rec<sup>g</sup>. of the Orders in Council squares with the idea that they had been unofficially known when the provident measure of the Embargo was recommended. If the files of Cong of that period are in preservation, the papers communicated with the Message may throw light on the subject. I cannot, I think, be mistaken in saying that the information in the English Newspaper was republished in the National Intelligencer; and if so that alone must settle the question.

I am glad to find you turning a critical attention to this subject. No part of the public proceedings during the two last administrations is less understood, or more in danger of historical misinterpretations, than the Embargo and the other restrictions of our

external commerce. It has become the fashion to decry the whole as inefficacious and unworthy substitutes for war. That immediate war under existing circumstances was inexpedient & that experimental measures short of war were preferable to naked submission can not well be doubted. It is equally clear That the Embargo as a precaution ag<sup>st</sup>. the surprise and devastation of our trade, was proper, even if war had been intended, and the presumption is strengthened by late experience that if faithfully executed it would have produced a crisis in the Brit: W. Indies that might have extorted justice without a resort to war. If it failed, it was because the Gov<sup>t</sup>. did not sufficiently distrust those in a certain quarter whose successful violations of the law led to the general discontent witch called for its repeal. Could the bold and combined perfidies have been anticipated, an expence which would have proved economical, might have prevented or quickly subdued them. The patriotic fishermen of Marblehead at one time offered their services; and if they c<sup>d</sup>. at an early day have been employed in armed vessels, with a right to their prizes, and an authority to carry them into ports where the Tribunals would have enforced the law, the smuggling would have been crushed.

With respect to the restrictive laws generally, it is a known fact that under all the disadvantages which they encountered their pressure on the manufactures of G. Britain as reported to the Parl<sup>t</sup>. and painted by Mr. Brougham ultimately brought about a revocation of the predatory orders. It is remarkable that this revocation bearing date June 23d followed at no very long interval the letter of Castlereagh to Foster communicated in extenso to the American Gov<sup>t</sup>. in which it was haughtily declared that the Orders in Council would not be repealed; and consistently with other engagements could not be repealed; a declaration which leaving no alternative to the U. S. but submission or war, was met of course by the latter. Had the repeal of the orders taken place a few weeks sooner, it is to be presumed that the declaration of war which preceded the repeal would at least have been suspended by that event, with an experiment under its auspices of further negotiations for a discontinuation of impressments, the other great obstacle to pacific relations; and that the success of the restrictive laws in obtaining the repeal without a resort to war, would have been followed by songs of praise, instead of the criticisms to which an oblivion of their efficacy has given rise.

July 21, 1824.

P. S. After writing the above it occurred that it might be well to consult the recollections & memoranda of M<sup>r</sup> Jefferson. His answer just rec<sup>d</sup>. says "there is no fact in the course of my life which I recollect more strongly than that of my being at the date of the message in possession of an English Newspaper containing a copy of the proclamation [Orders] &c. which I think came to me thro' a private channel." The answer extracts from his notes on the occasion circumstances in full accordance with his memory, and he does not doubt that the general fact is remembered by all the then members of the Cabinet and probably attested by the papers communicated to Congress with the Message. Mr. J. thinks also as I do myself that the turn of the arg<sup>ts</sup>. of the opposition party will be found not to deny the fact, but the propriety of acting on Newspaper authority.

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montp<sup>r</sup>., August 5, 1824.

Mad. Mss.

D<sup>R</sup>. Sir

I have just had the pleasure of receiving yours of the 2<sup>d</sup>. We had looked for the greater pleasure of giving a welcome about this time to you & Mrs. M. being informed from Albemarle that you were to be there in a few days. We are very sorry for the uncertainty you intimate, but still hope that Mrs. M's health will not only permit you to make the journey, but her to join you in it. It cou<sup>d</sup> not fail to be beneficial to both, and you owe it to yourself as well as to your friends to take some repose with them after the vexations which have beset you. Come I pray you & be not in your usual hurry.

The Convention with Russia is a propitious event as substituting amicable adjustment for the risks of hostile collision. 1 But I give the Emperor however little credit for his assent to the principle of "Mare liberator" in the North Pacific. His pretensions were so absurd, & so disgusting to the Maritime world that he c<sup>d</sup>. not do better than retreat from them thro' the forms of negotiation. It is well that the cautious, if not courteous policy of Eng<sup>d</sup>. towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition. It is as you note an important circumstance in the case, that the principles & views unfolded in your Message were not unknown at St. Petersburg at the date of the Convention. It favors the hope that bold as the allies with Russia at their head, have shewn themselves in their enmity to free Gov<sup>t</sup>. everywhere, the maritime capacities of the U. S. with the naval & pecuniary resources of G. B. have a benumbing influence on all their wicked enterprises.

The advances of France towards a compromise with Colombia, if sincere, is a further indication of the dread of the united strength & councils of this Country & G. Britain. The determination of the latter not to permit foreign interference in the contest between Spain & South America, if confided in with the language of your message on the subject, ought I think to quiet the apprehensions of Colombia; and to parry the question of Mr. Salazar, at least till the meeting of Cong<sup>s</sup>, knowing as he must do the incompetency of the Executive to give a precise answer.

Repeating my exhortations in all which Mrs. M. joins me, we offer Mrs. M. & yourself our affectionate respects & best wishes.

[\[Back to Table of Contents\]](#)

TO PETER S. DUPONCEAU.

Montpellier Aug 1824.

Chic. Hist. Soc.  
Mss.

D<sup>R</sup>. Sir

I rec<sup>d</sup>. the copy of your discourse on the Jurisdiction of the courts of the U. S. with which you favoured me, at a time when I could not conveniently read it; and I have since been obliged to do it with such interruptions that I am not sure of having done entire justice to your investigations. 1 I have certainly found in the volume ample evidence of the distinguished ability of which the public had been made sensible by other fruits of your pen.

I must say at the same time that I have not been made a convert to the doctrine that the "Common Law" as such is a part of the law of the U. S. in their federo-national capacity. I can perceive no legitimate avenue for its admission beyond the portions fairly embraced by the Common law terms used in the Constitution, and by acts 1 of Congress authorized by the Constitution as necessary & proper for executing the powers which it vests in the Government.

A characteristic peculiarity of the Gov<sup>t</sup>. of the U. States is, that its powers consist of special grants taken from the general mass of power, whereas other Gov<sup>ts</sup>. possess the general mass with special exceptions only. Such being the plan of the Constitution, it cannot well be supposed that the Body which framed it with so much deliberation, and with so manifest a purpose of specifying its objects, and defining its boundaries, would, if intending that the Common Law sh<sup>d</sup>. be a part of the national code, have omitted to express or distinctly indicate the intention; when so many far inferior provisions are so carefully inserted, and such appears to have been the public view taken of the Instrument, whether we recur to the period of its ratification by the States, or to the federal practice under it.

That the Constitution is predicated on the existence of the Common Law cannot be questioned; because it borrows therefrom terms which must be explained by Com: Law authorities: but this no more implies a general adoption or recognition of it, than the use of terms embracing articles of the Civil Law would carry such an implication.

Nor can the Common Law be let in through the authority of the Courts. That the whole of it is within their jurisdiction, is never alledged, and a separation of the parts *sui*ted from those *not sui*ted to the peculiar structure & circumstances of the U. States involves questions of *expediency & discretion*, of a Legislative not Judicial character. On questions of criminal law & jurisdiction the strict rule of construction prescribed by the Com: Law itself would seem to bar at once an assumption of such a power by the Courts.

If the Common Law has been called our birthright, it has been done with little regard to any precise meaning. It could have been no more our birthright than the Statute law of England, or than the English Constitution itself. If the one was brought by our ancestors with them, so must the others; and the whole consequently as it stood during the Dynasty of the Stuarts, the period of their emigration, with no other exceptions than such as necessarily resulted from inapplicability to the colonial state of things. As men our birthright was from a much higher source than the common or any other human law and of much greater extent than is imparted or admitted by the common law. And as far as it might belong to us as British subjects it must with its correlative obligations have expired when we ceased to be such. It would seem more correct therefore & preferable in every respect that the common law, even during the Colonial State, was in force not by virtue of its adhesion to the emigrants & their descendants in their individual capacity but by virtue of its adoption in their social & political capacity.

How far this adoption may have taken place through the mere agency of the courts cannot perhaps be readily traced. But such a mode of introducing laws not otherwise in force ought rather to be classed among the irregularities incident to the times & the occasion, than referred to any in G. Britain, where the courts though sometimes making legal innovations per saltus profess that these should grow out of a series of adjudications, gradually accommodating the law to the gradual change of circumstances in the ordinary progress of society. On sound principles, no change whatever in the state of the Law can be made but by the Legislative authority; Judicial decisions being not more competent to it than Executive proclamations.

But whatever may have been the mode or the process by which the Common law found its way into the colonial codes, no regular passage appears to have been opened for it into that of the [U.] S. other than through the two channels above mentioned; whilst every plea for an irregular one is taken away, by the provident article in the constitution for correcting its errors & supplying its defects. And although a frequent resort to this remedy be very undesirable, it may be a happy relief from the alternative of enduring an evil or getting rid of it by an open or surreptitious usurpation.

I must not forget however that it is not my intention to enter into a critical, much less a controversial examination of the subject; and I turn with pleasure from points on which we may differ, to an important one on which I entirely agree with you. It has always appeared to me impossible to digest the unwritten law or even the penal part of it, into a text that would be a complete substitute. A Justinian or Napoleon Code may ascertain, may elucidate, and even improve the existing law, but the meaning of its complex technical terms, in their application to particular cases, must be sought in like sources as before; and the smaller the compass of the text the more general must be its terms & the more necessary the resort to the usual guides in its particular applications.

With assurances of my high esteem I pray you Sir, to accept my unfeigned good wishes



[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Sept<sup>r</sup> 10, 1824.

Mad. Mss.

Dear Sir

On the rec<sup>t</sup>. of yours of Aug. 8, I turned my thoughts to its request on the subject of a Theological Catalogue for the Library of the University; and not being aware that so early an answer was wished, as I now find was the case, I had proceeded very leisurely in noting such Authors as seemed proper for the collection. Supposing also, that altho' Theology was not to be taught in the University, its Library ought to contain pretty full information for such as might voluntarily seek it in that branch of Learning, I had contemplated as much of a comprehensive & systematic selection as my scanty materials admitted; and had gone thro' the five first Centuries of Xnity when yours of the 3d instant came to hand which was the evening before the last. This conveyed to me more distinctly the limited object your letter had in view, and relieved me from a task which I found extremely tedious; especially considering the intermixture of the doctrinal & controversial part of Divinity with the moral & metaphysical part, and the immense extent of the whole. I send you the list I had made out, with an addition on the same paper, of such Books as a hasty glance of a few catalogues & my recollection suggested. 1 Perhaps some of them may not have occurred to you and may suit the blank you have not filled. I am sorry I could not make a fair copy without failing to comply with the time pointed out.

I find by a letter from Fayette, in answer to a few lines I wrote him on his arrival at N. Y., that he means to see us before the 19th of Oc<sup>t</sup>., as you have probably learned from himself. His visit to the United States will make an annus mirabilis in the history of Liberty.

[\[Back to Table of Contents\]](#)

TO A. B. WOODWARD.

Montpellier, Sep<sup>f</sup> 11, 1824.

Mad. Mss.

D<sup>R</sup>. Sir,

I have rec<sup>d</sup>. & return my thanks for the printed communications accompanying your note of the 4th inst.

To appreciate your proposed expedient for a standard of measures & weights would require more time than I can apply, & more mathematical Science than I retain. Justice will doubtless be done to it by competent Judges.

I have given a hasty perusal to the observations “addressed to the Individual Citizen.” Altho’ I cannot concur in some of them, I may say of all that they merit every praise for the perspicuity, the precision, & the force, with which they are presented to the public attention.

You have fallen into a mistake in ascribing the Constitution of Virg<sup>a</sup>. to Mr. Jefferson, as will be inferred from the animadversions on it in his “Notes on Virginia.” Its origin was with George Mason, who laid before the Committee appointed to prepare a plan a very broad outline,<sup>1</sup> which was printed by the Com<sup>e</sup>. for consideration, & after being varied on some points & filled up, was reported to the Convention where a few further alterations, gave it the form in which it now stands. The Declaration of rights was subsequently from the same hand. The Preamble to the Constitution was probably derived in great measure if not wholly from the funds of Mr. Jefferson, the richness of which in such materials is seen in the Declaration of Independence as well as elsewhere. The plan of Mr. Jefferson annexed to one of the Editions of his “Notes on Virg<sup>a</sup>” was drawn up after the Revol<sup>y</sup> war, with a view to correct the faults of the existing Constitution, as well as to obtain the authentic sanction of the people.

Your love of truth will excuse this little tribute to it, or rather would not excuse its omission.

With esteem & good wishes

[\[Back to Table of Contents\]](#)

## TO MRS. MADISON<sup>2</sup>

Monticello Friday morning 7. ocl [November, 1824].

We arrived about sunset, just as they were commencing their Desert the Genl had arrived about 3 o'clock with his son & Secrety the last so sick that he went to bed instead of dinner I have not heard how he is this evening, I found here only the General & his family, Col Campbell & Mr. Roane of the *Council* who will attend him till he goes out of the State & a few of the family. A large crowd had been here, including the individuals appointed to receive the Genrl from Fluvanna & the party escorting him but they did not remain not even Genl Coche to dinner. The Genl does not say yet how many days he stays here. He declines a visit to Staunton & will divide the time not required for the road & the appointed festivities between Mr. Jefferson & myself. It is probable he will not be with us till near or quite the middle of next week He will have with him besides his son & Secrety, the two Councillors & such of the company of Orange meeting, & conducting him as may choose to stop at Montpellier. The Miss Wrights are expected here tomorrow, of Mrs Douglas & her daughters the family here have no notice. The Genl thinks they may make a call as a morning visit only They travel it seems with the Miss Wrights but whether they will precede them in the visit to us is unknown; nor can I learn whether the Miss Wrights will precede, accompany, or follow Genl I may learn more today but not in time to write you. The Genl on finding I had a letter for them proposed to take charge of it & it was given him of course. My old friend embrased me with great warmth, he is in fine health & spirits but so much increased in bulk & changed in aspect that I should not have known him. They are doing their *possible* at the university to do him honor. We shall set out thither about 9 o'clock. I cannot decide till the evening when I shall return, I am not without hope it may be tomorrow.

With devoted affection

[\[Back to Table of Contents\]](#)

## TO FREDERICK BEASLEY.

Montpellier, Virginia, Dec. 22, 1824

Mad. Mss.

Rev<sup>D</sup>. Sir,

I have just received your letter of the 13th, on its return from Charlottesville, and wish I could gratify you with all the information it asks. In place of it, I can only observe that the System of Polity for the University of Virginia being not yet finally digested & adopted I cannot venture to say what it will be in its precise form and details. It is probable that instead of a President or Provost, as chief magistrate, the superintending & Executive duties, so far as not left to the individual Professors over their respective Classes, will be exercised by the Faculty; the Professors presiding in rotation. This regulation however, as experimental, will be at all times alterable by the Board of Visitors. The Code of discipline will be prepared with the aid of all the lights that can be obtained from the most distinguished Seminaries; and some of the innovations will, not improbably, be in the spirit of your judicious observations. As the University, being such in the full extent of the term, will not contain boys under sixteen years of age, and be chiefly filled by youths approaching to manhood, with not a few perhaps arrived at it there is the better chance for self-government in the students, and for the co-operation of many in giving efficacy to a liberal and limited administration.

The peculiarity in the Institution which excited first, most attention & some animadversion, is the omission of a Theological Professorship. The Public Opinion seems now to have sufficiently yielded to its incompatibility with a *State* Institution, which necessarily excludes sectarian Preferences. The best provision which occurred, was that of authorizing the Visitors to open the Public rooms for Religious uses, under *impartial* regulations, (a task that may occasionally involve some difficulties) and admitting the establishment of Theological Seminaries by the respective sects contiguous to the precincts of the University, and within the reach of a familiar intercourse distinct from the obligatory pursuits of the Students. The growing Village of Charlottesville also is not distant more than a mile, and contains already Congregations & Clergymen of the sects to which the students will mostly belong.

You have already noticed in the public Prints the Scientific Scope of the University, and the resort to Europe for some of the Professors. The reasons for the latter step, you may have also seen in Print; as well as the reduction of the number of chairs in the first instance, by annexing Plural functions to some of them. This was rendered necessary by the limited resources, as yet granted by the Legislature, and will be varied as fast as an augmentation of these will permit, by dividing & subdividing the branches of Science now in the same group. Several of the Professors remain to be appointed; among them one for Mental Philosophy including the branches to which you refer. This has always been regarded by us as claiming an important place in so

comprehensive a School of Science. The gentleman in prospect for the station is not yet actually engaged.

You seem to have allotted me a greater share in this undertaking than belongs to me. I am but one of seven Managers, and one of many pecuniary benefactors. Mr. Jefferson has been the great projector & the mainspring of it.

I am sorry that I have never been able to give the volume you kindly favored me with, the reading it doubtless deserves; and I fear that however congenial the task would be with studies relished at former periods, I shall find it difficult to reconcile it with demands on my time, the decrease of which does not keep pace with the contraction of its remaining span. From several dips into the Treatise I think myself authorized to infer that it embraces a scrutinizing & systematic view of the subject, interesting to the best informed, and particularly valuable to those who wish to be informed.

I thank you Sir for the friendly sentiments you have expressed, and beg to accept with my great respect a cordial return of them.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Dec<sup>r</sup> 31, 1824.

Mad. Mss.

Dear Sir

I have received yours without date inclosing the letter of Mr. Cabell & your answer. I approve entirely the course you recommend to the friends of the University at Richmond, on the proposed removal of the College at Williamsburg. It would be fortunate if the occasion could be improved for the purpose of filling up the general Plan of Education, by the introduction of the grade of Seminaries between the Primary Schools and the University. I have little hope however that the College will accede to any arrangement which is to take from it a part of its funds, and subject it to the Legislative Authority. And in resisting this latter innovation, it will probably be supported by all the Sectarian Seminaries, tho' to be adopted as legal establishments of the intermediate grade. It is questionable also whether the sectarian Seminaries would not take side with William & Mary in combating the right of the Public to interfere in any manner with the property it holds. The perpetual inviolability of Charters, and of donations both Public & private, for pious & charitable uses, seems to have been too deeply imprinted on the Public mind to be readily given up. But the time surely cannot be distant when it must be seen by all that what is granted by the Public Authority for the Public good, not for that of individuals, may be withdrawn and otherwise applied, when the Public good so requires; with an equitable saving or indemnity only in behalf of the individuals actually enjoying vested emoluments. Nor can it long be believed that Altho' the owner of property cannot secure its descent but for a short period even to those who inherit his blood, he may entail it irrevocably and forever on those succeeding to his creed however absurd or contrary to that of a more enlightened Age. According to such doctrines, the Great Reformation of Ecclesiastical abuses in the 16<sup>th</sup> Century was itself the greatest of abuses; and entails or other fetters attached to the descent of property by legal acts of its owners, must be as lasting as the Society suffering from them.

It may well be supposed, Should William & Mary be transplanted to Richmond, that those interested in the City will unite with those partial to the College, and both be reinforced by the enemies of the University, in efforts to aggrandize the former into a Rival of the latter; and that their hopes of success will rest a good deal on the advantage presented at Richmond to Medical Students in the better chance of Anatomic subjects; and in the opportunity of Clinical Lectures; and to Law Students in the presence of the Upper Courts. It will not surprize if some of the most distinguished of the Bar and Bench should take the Lecturing Chair either for profit, or to give an attractive eclât to the regenerated Institution. As the Medical & Law Departments may invite the greatest number of Pupils, and of course be the most profitable to Professors, the obligation on us is the greater to engage for the University conspicuous qualifications for those Chairs. I trust this has been done in the Medical appointment actually made, & hope we shall not be unsuccessful in

making the other. In opening the door a little wider for the admission of students of the Ancient Languages, it will be found, I think, that we did well: considering the competition for students that may be encountered, and the importance of filling our Dormitories at an early period.

I return the letter of Mr. Cabell, and as your answer may be a fair Copy for your files I return that also.

Yours always & affectionately

I write a few lines to Gov<sup>f</sup>. Barbour, on the Virg<sup>a</sup>. claim in which the University is interested; tho: it is I believe only applying the spur to a willing steed.

[\[Back to Table of Contents\]](#)

## TO HENRY LEE.

Montp<sup>r</sup>, January 14, 1825.

Mad. Mss.

I have rec<sup>d</sup>. Sir yours of the 6th inst, and have looked over the printed sheet inclosed in it. Of the literary character of the paper I may express a laudatory opinion, without risk of contravening that of others. As a political disquisition, it embraces questions both of magnitude and of nicety, on which opinions may be various, and of which a critical review does not lie within the compass of a letter, were it permitted by leisure and favoured by the circumstances of the moment. 1

The nature & extent of the obligation on a representative to be guided by the known will of his Constituents, though an old question, seems yet to be in a controvertible state. In general it may be said to be often a verbal controversy. That the obligation is not in strictness constitutional or legal, is manifest; since the vote of the Representative is equally valid & operative whether obeying or violating the instruction of his constituents. It can only be a moral obligation to be weighed by the conscience of the Representative, or a prudential one to be enforced by the penal displeasure of his Constituents.

In what degree a plurality of votes is evidence of the will of the Majority of voters, must depend on circumstances more easily estimated in a given case than susceptible of general definition. The greater the number of candidates among whom the votes are divided, the more uncertain, must, of course, be the inference from the plurality with respect to the majority.

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

You will not forget that the above remarks, being thrown out merely in consequence of your application, are for yourself, not for others. Though penned without the most remote allusion to the particular case before the Public, or even a knowledge of its



actual posture & aspects, they might be misconstrued by the propensity of the conjuncture to view things thro' that medium.

I return the two letters inclosed in yours, which I ought not to do without expressing the high respect I entertain for both the writers; Offering to yourself my wishes for your useful success in whatever line of literature you may finally determine to exercise your talents.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Feb<sup>y</sup> 8, 1825.

Mad. Mss.

Dear Sir

The letters from Mr Cabell are herein returned. I just see that he has succeeded in defeating the project for removing the College from Williamsburg.

I hope your concurrence in what I said of Mr Barbour will not divert your thoughts from others. It is possible that the drudgery of his profession, the uncertainty of Judicial appointment acceptable to him, and some other attractions at the University for his young family, might reconcile him to a removal thither; but I think the chance slender.

I have looked with attention over your intended proposal of a text book for the Law School. It is certainly very material that the true doctrines of liberty, as exemplified in our Political System, should be inculcated on those who are to sustain and may administer it. It is, at the same time, not easy to find standard books that will be both guides & guards for the purpose. Sidney & Locke are admirably calculated to impress on young minds the right of Nations to establish their own Governments, and to inspire a love of free ones; but afford no aid in guarding our Republican Charters against constructive violations. The Declaration of Independence, tho' rich in fundamental principles, and saying every thing that could be said in the same number of words, falls nearly under a like observation. The "Federalist" may fairly enough be regarded as the most authentic exposition of the text of the federal Constitution, as understood by the Body which prepared & the Authority which accepted it. Yet it did not foresee all the misconstructions which have occurred; nor prevent some that it did foresee. And what equally deserves remark, neither of the great rival Parties have acquiesced in all its comments. It may nevertheless be admissible as a School book, if any will be that goes so much into detail. It has been actually admitted into two Universities, if not more—those of Harvard and Rh: Island; but probably at the choice of the Professors, without any injunction from the superior authority. With respect to the Virginia Document of 1799, there may be more room for hesitation. Tho' corresponding with the predominant sense of the Nation; being of local origin & having reference to a state of Parties not yet extinct, an absolute prescription of it, might excite prejudices against the University as under Party Banners, and induce the more bigoted to withhold from it their sons, even when destined for other than the studies of the Law School. It may be added that the Document is not on every point satisfactory to all who belong to the same Party. Are we sure that to our brethren of the Board it is so? In framing a political creed, a like difficulty occurs as in the case of religion tho' the public right be very different in the two cases. If the Articles be in very general terms, they do not answer the purpose; if in very particular terms, they divide & exclude where meant to unite & fortify. The best that can be done in our case seems to be, to avoid the two extremes, by referring to selected Standards

without requiring an unqualified conformity to them, which indeed might not in every instance be possible. The selection would give them authority with the Students, and might controul or counteract deviations of the Professor. I have, for your consideration, sketched a modification of the operative passage in your draught, with a view to relax the absoluteness of its injunction, and added to your list of Documents the Inaugural Speech and the Farewell Address of President Washington. They may help down what might be less readily swallowed, and contain nothing which is not good; unless it be the laudatory reference in the Address to the Treaty of 1795 with G. B. which ought not to weigh against the sound sentiments characterizing it.

After all, the most effectual safeguard against heretical intrusions into the School of Politics, will be an Able & Orthodox Professor, whose course of instruction will be an example to his successors, and may carry with it a sanction from the Visitors.

Affectionately Yours.

[\[Back to Table of Contents\]](#)

### *Sketch.*

And on the distinctive principles of the Government of our own State, and of that of the U. States, the best guides are to be found in—1. The Declaration of Independence, as the fundamental act of Union of these States. 2. the book known by the title of the “Federalist,” being an Authority to which appeal is habitually made by all & rarely declined or denied by any, as evidence of the general opinion of those who framed & those who accepted the Constitution of the U. States on questions as to its genuine meaning. 3. the Resolutions of the General Assembly of Virg<sup>a</sup> in 1799, on the subject of the Alien & Sedition laws, which appeared to accord with the predominant sense of the people of the U. S. 4. The Inaugural Speech & Farewell Address of President Washington, as conveying political lessons of peculiar value; and that in the branch of the School of law which is to treat on the subject of Gov<sup>t</sup>., these shall be used as the text & documents of the School.

[\[Back to Table of Contents\]](#)

TO NICHOLAS BIDDLE.

Montp<sup>r</sup>. near O. C. H. Ap. 16. 25

Chic. Hist. Soc.  
Mss.

Dear Sir

Such has been of late years the unfavorableness of the seasons for the staple productions in this quarter, and of the markets also for the main one, and such the disappointment in collecting debts on which I counted, that I find it necessary to resort either to a moderate loan or to a sale of property, which at the present juncture would be made to great disadvantage. The first alternative is of course preferable, the rather as the last, if not finally avoided, is more likely to be alleviated than made worse by delay.

On the ground thus explained, I would ask the favor of you to say whether it be consistent with the views of the Bank of the U. S. to give me a credit for a sum not exceeding six thousand dollars, at the lowest allowable rate of interest; and if so, with what indulgence as to the period or periods for repaying the principal. It is proper to add that for making the Bank secure, real estate of ample amount and without flaw or incumbrance of any sort will be pledged in whatever form may be prescribed.

Should this application be successful may I ask as a further favor that your answer may be accompanied or followed by the documents to be executed on my part, prepared according to the requites of the Bank. I may find it convenient to draw for a part of the fund as soon as the arrangements will permit. [1](#)

[\[Back to Table of Contents\]](#)

## TO BENJAMIN WATERHOUSE.

Montp<sup>r</sup>. July 13, 1825.

Mad. Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup> your friendly letter of June 30, and congratulate you on your safe return from so long a journey. The fact you confirm with respect to Gen: Hull furnishes the best apology for the imbecility which occasioned his downfall; and his friends would shew more discretion in availing themselves of it, than in attempts to decorate him with artificial laurels. I am truly sorry for the injury sustained by our friend, Gen<sup>l</sup> Dearborn; whose character forms such a contrast to that of the Mock Hero of Detroit. 1 I hope, as I am sure you wish, that your ominous inferences may be followed by a proof that his case is an exception to the general rule which suggested them.

You ask whether you are too old or too deficient in political information for public service abroad. To the latter question, none, I presume would say no; and, judging from what I have seen, I could not give a different answer to the former. If there be precedents of an adverse sort, there are so many on the favorable side, that every individual case ought at least to be decided on its own merits. In such an appeal, you will doubtless find better testimony than mine, in those more free from a suspicion of chronological sympathies with three score and ten.

Mrs M. desires me to express for her the respectful & cordial sentiments with which your interesting conversations inspired her, and to include her in all the good wishes, which I tender you with the assurances of my great esteem.

[\[Back to Table of Contents\]](#)

## TO FRANCES WRIGHT.

Montpellier Sep<sup>r</sup> 1, 1825.

Mad. Mss.

Dear Madam

Your letter to Mrs. Madison, containing observations addressed to my attention also, came duly to hand, as you will learn from her, with a printed copy of your plan for the gradual abolition of slavery in the U. States.

The magnitude of this evil among us is so deeply felt, and so universally acknowledged, that no merit could be greater than that of devising a satisfactory remedy for it. Unfortunately the task, not easy under any other circumstances, is vastly augmented by the physical peculiarities<sup>1</sup> of those held in bondage, which preclude their incorporation with the white population; and by the blank in the general field of labour to be occasioned by their exile; a blank into which there would not be an influx of white labourers, successively taking the place of the exiles, and which, without such an influx, would have an effect distressing in prospect to the proprietors of the soil.

The remedy for the evil which you have planned is certainly recommended to favorable attention by the two characteristics, 1. that it requires the voluntary concurrence of the holders of the slaves with or without pecuniary compensation: 2 that it contemplates the removal of those emancipated, either to a foreign or distant region: And it will still further obviate objections, if the experimental establishments should avoid the neighbourhood of settlements where there are slaves.

Supposing these conditions to be duly provided for, particularly the removal of the emancipated blacks, the remaining questions relate to the aptitude & adequacy of the process by which the slaves are at the same time to earn the funds, entire or supplemental, required for their emancipation & removal; and to be sufficiently educated for a life of freedom and of social order.

With respect to a proper course of education no serious difficulties present themselves. And as they are to continue in a state of bondage during the preparatory period, & to be within the jurisdiction of States recognizing ample authority over them, a competent discipline cannot be impracticable. The degree in which this discipline will enforce the needed labour, and in which a voluntary industry will supply the defect of compulsory labour, are vital points on which it may not be safe to be very positive without some light from actual experiment.

Considering the probable composition of the labourers, & the known fact that where the labour is compulsory, the greater the number of labourers brought together (unless indeed where a co-operation of many hands is rendered essential by a particular kind of work or of machinery) the less are the proportional profits, it may be doubted

whether the surplus from that source merely beyond the support of the establishment, would sufficiently accumulate in five or even more years, for the objects in view. And candor obliges me to say that I am not satisfied either that the prospect of emancipation at a future day will sufficiently overcome the natural and habitual repugnance to labour, or that there is such an advantage of united over individual labour as is taken for granted.

In cases where portions of time have been allotted to slaves, as among the Spaniards, with a view to their working out their freedom, it is believed that but few have availed themselves of the opportunity, by a voluntary industry; And such a result could be less relied on in a case where each individual would feel that the fruit of his exertions would be shared by others whether equally or unequally making them; and that the exertions of others would equally avail him, notwithstanding a deficiency in his own. Skilful arrangements might palliate this tendency, but it would be difficult to counteract it effectually.

The examples of the Moravians, the Harmonites and the Shakers in which the United labors of many for a common object have been successful, have no doubt an imposing character. But it must be recollected that in all these Establishments there is a religious impulse in the members, and a religious authority in the head, for which there will be no substitutes of equivalent efficacy in the Emancipating establishment. The code of rules by which Mr. Rap manages his conscientious & devoted flock, & enriches a common treasury, must be little applicable to the dissimilar assemblage in question.<sup>1</sup> His experience may afford valuable aid, in its general organization, and in the distribution & details of the work to be performed: But an efficient administration must, as is judiciously proposed, be in hands practically acquainted with the Propensities & habits of the members of the new Community.

With a reference to this dissimilarity & to the doubt as to the advantages of associated labour, it may deserve consideration whether the experiment would not be better commenced on a scale smaller than that assumed in the prospectus. A less expensive outfit would suffice; labourers in the proper proportions of sex & age would be more attainable; the necessary discipline, and the direction of their labour would be more simple & manageable; and but little time would be lost; or perhaps time gained, as success, for which the chance would according to my calculation be increased, would give an encouraging aspect to the plan, and suggest improvements better qualifying it for the larger scale proposed.

Such, Madam are the general ideas suggested by your interesting communication. If they do not coincide with yours, & imply less of confidence than may be due to the plan you have formed, I hope you will not question either my admiration of the generous philanthropy which dictated it, or my sense of the special regard it evinces for the honor & welfare of our expanding, & I trust rising Republic.

As it is not certain what construction would be put on the view I have taken of the subject, I leave it with your discretion to withhold it altogether, or to disclose it within the limits, you allude to; intimating only that it will be most agreeable to me on all occasions not to be brought before the Public, where there is no obvious call for it.



General Lafayette took his final leave of us a few days ago, expecting to embark about this time in the new frigate with an appropriate name. He carries with him the unanimous blessings of the free nation which has adopted him. If equal honors have not been his portion in that in which he had his birth, it is not because he did not deserve them. This hemisphere at least, & posterity in the other, will award what is due to the nobleness of his mind and the grandeur of his career.

He could add but little to the details explained in the Printed copy of the Abolition Plan, for want of a full knowledge of which justice may not have been done it. Mr. Davis has not yet favoured us with the promised call. I shall receive his communications on the subject, with attention & pleasure.

The date of this letter will shew some delay in acknowledging the favor of yours. But it is expected to be at Nashville by the time noted for your arrival there, and a prolonged stay in the post office was rather to be avoided than promoted.

I join Mrs. M. in the hope that we shall not be without the opportunity of again welcoming you & your sister to Montp<sup>r</sup>. tendering you in the mean time my respectful salutations.

[\[Back to Table of Contents\]](#)

## TO FREDERICK BEASLEY.

Montpellier, Nov<sup>r</sup> 20, 1825.

Mad. Mss.

Dear Sir

I have duly rec<sup>d</sup>. the copy of your little tract on the proofs of the Being & Attributes of God.<sup>1</sup> To do full justice to it, would require not only a more critical attention than I have been able to bestow on it, but a resort to the celebrated work of Dr. Clarke, which I read fifty years ago only, and to that of D<sup>r</sup> Waterland also which I never read.

The reasoning that could satisfy such a mind as that of Clarke, ought certainly not to be slighted in the discussion. And the belief in a God All Powerful wise & good, is so essential to the moral order of the World & to the happiness of man, that arguments which enforce it cannot be drawn from too many sources nor adapted with too much solicitude to the different characters & capacities to be impressed with it.

But whatever effect may be produced on some minds by the more abstract train of ideas which you so strongly support, it will probably always be found that the course of reasoning from the effect to the cause, “from Nature to Nature’s God,” Will be the more universal & more persuasive application.

The finiteness of the human understanding betrays itself on all subjects, but more especially when it contemplates such as involve infinity. What may safely be said seems to be, that the infinity of time & space forces itself on our conception, a limitation of either being inconceivable; that the mind prefers at once the idea of a self-existing cause to that of an infinite series of cause & effect, which augments, instead of avoiding the difficulty; and that it finds more facility in assenting to the self-existence of an invisible cause possessing infinite power, wisdom & goodness, than to the self-existence of the universe, visibly destitute of those attributes, and which may be the effect of them. In this comparative facility of conception & belief, all philosophical Reasoning on the subject must perhaps terminate. But that I may not get farther beyond my depth, and without the resources which bear you up in fathoming efforts, I hasten to thank you for the favour which has made me your debtor, and to assure you of my esteem & my respectful regards

[\[Back to Table of Contents\]](#)

TO THOMAS RITCHIE.

Montpellier, Dec<sup>r</sup>. 18, 1825.

Mad. Mss.

Dear Sir

Yours of the 10th inst: was rec<sup>d</sup> a few days ago & I give it the earliest answer which circumstances have permitted.

It has been impossible not to observe the license of construction applied to the Constitution of the U. States; and that the premises from which powers are inferred, often cover more ground than inferences themselves.

In seeking a remedy for these aberrations, we must not lose sight of the essential distinction, too little heeded, between assumptions of power by the General Government, in opposition to the Will of the Constituent Body, and assumptions by the Constituent Body through the Government as the Organ of its will. In the first case, nothing is necessary but to rouse the attention of the people, and a remedy ensues thro' the forms of the Constitution. This was seen when the Constitution was violated by the Alien and Sedition Acts. In the second case, the appeal can only be made to the recollections, the reason, and the conciliatory spirit of the Majority of the people ag<sup>st</sup>. their own errors; with a persevering hope of success, and an eventual acquiescence in disappointment unless indeed oppression should reach an extremity overruling all other considerations. This second case is illustrated by the apparent call of a majority of the States & of the people for national Roads & Canals; with respect to the latter of which, it is remarkable that Mr. Hamilton, himself on an occasion when he was giving to the text of the Constitution its utmost ductility, (see his Report on the Bank) was constrained to admit that they exceeded the authority of Congress.

All power in human hands is liable to be abused. In Governm<sup>ts</sup>. independent of the people, the rights & interests of the whole may be sacrificed to the views of the Governm<sup>t</sup>. In Republics, where the people govern themselves, and where of course the majority Govern, a danger to the minority, arises from opportunities tempting a sacrifice of their rights to the interests real or supposed of the Majority. No form of Gov<sup>t</sup>. therefore can be a perfect guard ag<sup>st</sup>. the abuse of Power. The recommendation of the Republican form is that the danger of abuse is less than in any other; and the superior recommendation of the federo-Republican system is, that whilst it provides more effectually against external danger, it involves a greater security to the minority against the hasty formation of oppressive majorities.

These general observations lead to the several questions you ask as to the course which, in the present state of things, it becomes Virginia to pursue.

1. "Ought an amendment of the Constitution, giving to Congress a Power as to Roads & Canals, to be proposed on her part; and what part taken by her if proposed from any other quarter?"

Those who think the power a proper one, and that it does not exist, must espouse such an amendment; and those who think the power neither existing nor proper, may prefer a specific grant forming a restrictive precedent, to a moral certainty of an exercise of the power, furnishing a contrary precedent. Of the individual ways of thinking on this point, you can probably make a better estimate than I can.

2. "Ought a proposed amendment to comprize a particular guard ag<sup>st</sup>. the sweeping misconstruction of the terms, 'common defence and general welfare.' "

The wish for such a guard is natural. But the fallacious inferences from a failure however happening, would seem to require for the experiment a very flattering prospect of success. As yet the unlimited power expressed by the terms, if disjoined from the explanatory specifications, seems to have been claimed for Congress rather incidentally & unimpressively, than under circumstances indicating a dangerous prevalence of the heresy. Gov. Van Ness alone appears to have officially adopted it; and possibly with some unexpressed qualification. Has not the Supreme Court of the U. S. on some occasion disclaimed the import of the naked terms as the measure of Congressional authority? In general the advocates of the Road & Canal powers, have rested the claim on deductions from some one or more of the enumerated grants.

The doctrine presenting the most serious aspect is that which limits the claim to the mere "appropriation of money" for the General Welfare. However untenable or artificial the distinction may be, its seducing tendencies & the progress made in giving it a practical sanction, render it pretty certain that a Constitutional prohibition is not at present attainable; whilst an abortive attempt would but give to the innovation a greater stability. Should a specific amendment take place on the subject of roads & canals, the zeal for this appropriating power would be cooled by the provision for the primary & popular object of it; at the same time that the implied necessity of the amendment would have a salutary influence on other points of Construction.

3. "Ought Virg<sup>a</sup>. to protest ag<sup>st</sup>. the Power of internal improvement by Roads & Canals; with an avowal of readiness to acquiesce in a decision ag<sup>st</sup>. her by  $\frac{3}{4}$  of her Sister States?"

By such a decision is understood a mere expression of concurrent opinions by  $\frac{3}{4}$  of the State Legislatures. However conciliatory the motives to such a proposition might be, it could not fail to be criticised as requiring a surrender of the Constitutional rights of the majority in expounding the Constitution, to an extra Constitutional project of a protesting State. May it not be added that such a test, if acceded to, would, in the present state of Public Opinion, end in a riveting decision against Virginia?

Virginia has doubtless a right to manifest her sense of the Constitution, and of proceedings under it, either by protest or other equivalent modes. Perhaps the mode as well suited as any to the present occasion, if the occasion itself be a suitable one,

would be that of instructions to her Representatives in Cong<sup>s</sup> to oppose measures violating her constructions of the Instrument; with a preamble appealing, for the truth of her constructions to the contemporary expositions by those best acquainted with the intentions of the Convention which framed the Constitution; to the Debates & proceedings of the State Conventions which ratified it; to the universal understanding that the Gov<sup>t</sup>. of the Union was a limited not an unlimited one; to the inevitable tendency of the latitude of construction in behalf of internal improvements, to break down the barriers against unlimited power; it being obvious that the ingenuity which deduces the authority for such measures, could readily find it for any others whatever; and particularly to the inconclusiveness of the reasoning from the sovereign character of the powers vested in Cong<sup>s</sup>., and the great utility of particular measures, to the rightful exercise of the powers required for such measures; a reasoning which however applicable to the case of a single Gov<sup>t</sup>. charged with the whole powers of Gov<sup>t</sup>. loses its force in the case of a compound Gov<sup>t</sup>. like that of the U. S., where the delegated sovereignty is divided between the General & the State Gov<sup>ts</sup>; where one sovereignty loses what the other gains; and where particular powers & duties may have been withheld from one, because deemed more proper to be left with the other.

I have thrown out these hasty remarks more in compliance with your request than from a belief that they offer anything new on the beaten subject. Should the topics touched on be thought worthy on any account of being publicly developed, they will be in hands very competent to the task. My views of the Constitutional questions before the public are already known as far as they can be entitled to notice, and I find myself every day more indisposed, and, as may be presumed, less fit, for reappearance on the political Arena.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montp<sup>r</sup>., Dec<sup>r</sup> 28, 1825.

Mad. Mss.

Dear Sir

I rec<sup>d</sup>. yesterday evening yours of the 24th inst: inclosing a paper drawn up with a view to the question of "Roads & Canals," and to the course of proceeding most expedient for the Legislature of Virg<sup>a</sup>, now in session. 1

In my retired position it is difficult to scan the precise tendency of measures addressed to the opinions & feelings of the States & of their Representatives; these being imperfectly understood, and continually undergoing also more or less of modifications. In general, I have doubted the policy of any attempt by Virginia to take the lead, or the appearance of it, in opposing the obnoxious career of Congress, or, rather of their Constituents; considering the prejudices which seem to have been excited of late ag<sup>st</sup> her. And the doubt is now strengthened, by the diversity of opinion apparently taking place among her opponents, which if not checked by interpositions on her part, may break the Phalanx with which she has to deal. Hitherto the encroachments of Congress have not proceeded far enough to rouse the full attention of some of the States; who tho' not opposing the limited expence of Surveying Engineers, or the productive subscriptions to projected improvements by particular States, will unite with Virginia in combating the exercise of Powers which must not only interfere with their local jurisdictions, but expend vast sums of money, from which their share of benefit, would not be proportioned to their share of the burden. To this consideration I refer the recent proposition of Mr. Bailey. It may have had in part, the motives you allude to. But it can be explained by the local calculations under its surface. The members of Cong<sup>s</sup> from N. England have never been entirely united on the subject of National Canals &c. and altho' sundry projects of that sort have lately appeared in that quarter as elsewhere, it is probable that most of them will be found either impracticable, or threatening changes in the channels of trade causing them to be abandoned. It is pretty certain that the progress made by N. England in her internal improvements reduces her interest in the prosecution of them with the national revenue, below her contributions to it, or her portion of a dividend from it. The remark is applicable to the weighty State of N. York, where the power assumed by Congress has always been viewed with a degree of jealousy, and where I believe a decided opposition would be made ag<sup>st</sup>. a claim that w<sup>d</sup> touch her soil or introduce a jurisdiction over it, without the express consent of the State. Her Senator Van Buren, it appears, has already taken up the subject, and no doubt with a purpose of controuling the assumed power. The progress made by other States in like improvements under their own authority, may be expected to enlist some of them on the same side of the question. Were Congress indeed possessed of the undisputed power in the case, it would be a problem, whether it would not be Paralysed by the difficulty of adapting a system of Roads & Canals to the diversified situations of the States, and of making a satisfactory apportionment of the benefits & burdens among

them. As this is a view of the subject however not likely to quiet the apprehensions which prevail, and might yield to fuller information with regard to it, I should suppose Virginia would find an eligible compromise in Mr. Bailey's project; notwithstanding the bearing it may have in favor of a prolonged tariff, as the nurse of the manufacturing system. It may be well at least to know the weakness of the proposition in and out of Congress, before any irrevocable decision be had at Richmond.

Should any strong interposition there be ultimately required, your paper will be a valuable resort. But I must submit to your consideration whether the expedient with which it closes of enacting statutes of Congress into Virginia Statutes, would not be an anomaly without any operative character, besides the objection to a lumping and anticipating enactment. As the Acts in question would not be executed by the ordinary functionaries of Virg<sup>a</sup>, and she could not convert the federal into State functionaries, the whole proceeding would be as exclusively under the federal authority as if the legislative interference of Virg<sup>a</sup> had not taken place; her interference amounting to nothing more than a *recommendation* to her Citizens to acquiesce in the exercise of the power assumed by Congress, for which there is no apparent necessity or obligation.

Previous to the rec<sup>t</sup> of your communication, a letter from Mr. Ritchie, marked with all his warm feelings, on the occasion, made a pressing call for my opinions and advice. I inclose it with my answer, in which you will see the course which occurred to me as most eligible or least questionable; Bailey's proposition being at the time unknown. I was apprehensive that encouragement to a stronger course, in the present stage of the business & temper of the Assembly might lead to a stile & tone irritating rather than subduing prejudices, instead of the true policy as well as dignity of mingling as much of molliter in modo, as would be consistent with the fortiter in re. Whilst Congress feel themselves backed by a Majority of their Constituents, menace or defiance, will never deter them from their purposes; particularly when such language proceeds from the section of the Union, to which there is a habit of alluding as distinguished by causes of internal weakness.

You asked an early answer & I have hurried one, at the risk of crudeness in some of its views of the subject. If there be errors, they can do no harm when under your controul.

Health and all other good wishes

[\[Back to Table of Contents\]](#)

## REMARKS ON AN EXTRACT FROM HAMILTON'S REPORT PUBLISHED IN THE RICHMOND ENQUIRER.

Mad. Mss.

In the Richmond Enquirer of the 21st is an Extract from the Report of Secretary Hamilton, on the Constitutionality of the Bank, in which he opposes a resort, in expounding the Constitution, to the rejection of a proposition in the Convention, or to any evidence extrinsic to the text.<sup>1</sup> Did he not advise, if not draw up, the Message refusing to the House of Rep<sup>s</sup>. the papers relating to Jay's Treaty, in which President Washington combats the right of their Call by appealing to his personal knowledge of the intention of the Convention, having been himself a member of it, to the authority of a rejected proposition appearing on the Journals of the Convention, and to the opinions entertained in the State Conventions? Unfortunately the President had forgotten his sanction to the Bank, which disregarded a rejected proposition on that subject. This case too was far more in point, than the proposition in that of the Treaty papers. Whatever may be the degree of force in some of the remarks of the Secretary, he pushes them too far. But the contradictions between the Report & the message are palpable.

January 25, 1826,



[\[Back to Table of Contents\]](#)

## TO MORRIS ANTHONY. 1

Montplr., Jany. 27, 1826.

Dear Sir:

I have just received your favor of the 24th instant, and am much obliged by the friendly attention of which it is a proof. There must be some mistake in the case it mentions. No dividend or stock of the United States can belong to me. On my first entrance into public life I formed a resolution from which I never departed to abstain whilst in that situation from dealing in any way in public property or transactions of any kind, and I am satisfied that during my respites and since retirement from the public service I never became possessed of any stock that could give me a title to the derelict in question. It is possible that my father whose name was James and who had I believe a few public certificates accruing from property impressed or furnished for public use, may have neglected after funding them, or the unclaimed dividend may possibly belong to the estate of Bishop Madison whose name was also James.

If you will have the goodness to add to the trouble you have taken a discriptive notice of whatever circumstances of date, of place, of amount, etc., may aid in its tracing the ownership of this balance on the Books, I will put it into the hands of the Acting Executor of my father who will make the proper examination of his papers.

Mrs. M. desires me to make the proper return for your kind remembrances, and joins me in assurances of our cordial respects and good wishes, and of the pleasure we should feel in repeating them within our domicil.

[\[Back to Table of Contents\]](#)

## TO THOMAS JEFFERSON.

Montpellier, Feb<sup>y</sup> 24, 1826.

Mad. Mss.

Dear Sir,

Yours of the 17th was duly rec<sup>d</sup>.<sup>1</sup> The awkward state of the Law Professorship is truly distressing, but seems to be without immediate remedy. Considering the hopeless condition of Mr. Gilmour, a temporary appointment, if an acceptable successor were at hand, whilst not indelicate towards the worthy moribond incumbent, might be regarded as equivalent to a permanent one. And if the hesitation of our Colleagues at Richmond has no reference to Mr. Terril, but is merely tenderness towards Mr. Gilmour, I see no objection to a communication to Mr. T. that would bring him to Virg<sup>a</sup>. at once, and thus abridge the loss of time. The hardheartedness of the Legislature towards what ought to be the favorite offspring of the State, is as reproachful as deplorable. Let us hope that the reflections of another year, will produce a more parental sensibility.

I had noticed the disclosures at Richmond with feelings which I am sure I need not express; any more than the alleviation of them by the sequel. I had not been without fears, that the causes you enumerate were undermining your estate. But they did not reach the extent of the evil. Some of these causes were indeed forced on my attention by my own experience. Since my return to private life (and the case was worse during my absence in Public) such have been the unkind seasons, & the ravages of insects, that I have made but one tolerable crop of Tobacco, and but one of Wheat; the proceeds of both of which were greatly curtailed by mishaps in the sale of them. And having no resources but in the earth I cultivate, I have been living very much throughout on borrowed means. As a necessary consequence, my debts have swelled to an amount, which if called for at the present conjuncture, would give to my situation a degree of analogy to yours. Fortunately I am not threatened with any rigid pressure, and have the chance of better crops & prices, with the prospect of a more leisurely disposal of the property which must be a final resort.

You do not overrate the interest I feel in the University, as the Temple thro which alone lies the road to that of Liberty. But you entirely do my aptitude to be your successor in watching over its prosperity. It would be the pretension of a mere worshipper “remplacer” the Tutelary Genius of the Sanctuary. The best hope is, in the continuance of your cares, till they can be replaced by the stability and selfgrowth of the Institution. Little reliance can be put even on the fellowship of my services. The past year has given me sufficient intimation of the infirmities in wait for me. In calculating the probabilities of survivorship, the inferiority of my constitution forms an equation at least with the seniority of yours.

It would seem that some interposition is meditated at Richmond against the assumed powers of Internal Improvement; and in the mode recommended by Gov<sup>f</sup>. Pleasants,

in which my letter to Mr. Ritchie concurred, of instructions to the Senators in Congress. No better mode, can perhaps be taken, if an interposition be likely to do good; a point on which the opinion of the Virginia members at Washington ought to have much weight. They can best judge of the tendency of such a measure at the present moment. The public mind is certainly more divided on the subject than it lately was. And it is not improbable that the question, whether the powers exist, will more & more give way to the question, how far they ought to be granted.

You cannot look back to the long period of our private friendship & political harmony, with more affecting recollections than I do. If they are a source of pleasure to you, what ought they not to be to me? We cannot be deprived of the happy consciousness of the pure devotion to the public good with which we discharged the trusts committed to us. And I indulge a confidence that sufficient evidence will find its way to another generation, to ensure, after we are gone, whatever of justice may be withheld whilst we are here. The political horizon is already yielding in your case at least, the surest auguries of it. Wishing & hoping that you may yet live to increase the debt which our Country owes you, and to witness the increasing gratitude, which alone can pay it, I offer you the fullest return of affectionate assurances.

[\[Back to Table of Contents\]](#)

## TO NOAH WEBSTER. 1

Montpelier, March 10, 1826

Dear Sir—

In my letter of Oct. 12, 1804, answering an inquiry of yours of Aug. 20, it was stated that “in 1785, I made a proposition with success in the legislature, (of Virginia,) for the appointment of commissioners, to meet at Annapolis such commissioners as might be appointed by other states, in order to form some plan for investing Congress with the regulation and taxation of commerce.” In looking over some of my papers having reference to that period, I find reason to believe that the impression, under which I made the statement, was erroneous; and that the proposition, though probably growing out of efforts made by myself to convince the legislature of the necessity of investing Congress with such powers, was introduced by another member, more likely to have the ear of the legislature on the occasion, than one whose long and late service in Congress, might subject him to the suspicion of a bias in favor of that body. The journals of the session would ascertain the fact. But such has been the waste of the printed copies, that I have never been able to consult one.

I have no apology to make for the error committed by my memory, but my consciousness, when answering your inquiry, of the active part I took in making on the legislature the impressions from which the measure resulted, and the confounding of one proposition with another, as may have happened to your own recollection of what passed.

It was my wish to have set you right on a point to which your letter seemed to attach some little interest, as soon as I discovered the error into which I had fallen. But whilst I was endeavouring to learn the most direct address, the newspapers apprised me that you had embarked for Europe. Finding that your return may be daily looked for, I lose no time in giving the proper explanation. I avail myself of the occasion to express my hopes that your trip to Europe, has answered all your purposes in making it, and to tender you assurances of my sincere esteem and friendly respects.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST.

Montpellier, July 6, 1826.

Mad. Mss.

Dear Sir—

I have just rec<sup>d</sup> yours of the 4th. A few lines from Dr. Dunglison had prepared me for such a communication; and I never doubted that the last Scene of our illustrious friend would be worthy of the life which it closed. 1 Long as this has been spared to his Country & to those who loved him, a few years more were to have been desired for the sake of both. But we are more than consoled for the loss, by the gain to him; and by the assurance that he lives and will live in the memory and gratitude of the wise & good, as a luminary of Science, as a votary of liberty, as a model of patriotism, and as a benefactor of human kind. In these characters, I have known him, and not less in the virtues & charms of social life, for a period of fifty years, during which there has not been an interruption or diminution of mutual confidence and cordial friendship, for a single moment in a single instance. What I feel therefore now, need not, I should say, cannot, be expressed. If there be any possible way, in which I can *usefully* give evidence of it, do not fail to afford me an opportunity. I indulge a hope that the unforeseen event will not be permitted to impair *any* of the beneficial measures which were in progress or in project. It cannot be unknown that the anxieties of the deceased were for others, not for himself.

Accept my dear Sir, my best wishes for yourself, & for all with whom we sympathize; in which Mrs. M. most sincerely joins.

[\[Back to Table of Contents\]](#)

## TO GEORGE MASON. 1

Montpellier, July 14, 1826.

I have received, Sir, your letter of the 6<sup>th</sup>. inst. requesting such information as I may be able to give as to the origin of the document, a copy of which was inclosed in it. The motive and manner of the request would entitle it to respect if less easily complied with than by the following statement.

During the session of the General Assembly 1784-5 a bill was introduced into the House of Delegates providing for the legal support of Teachers of the Christian Religion, and being patronized by the most popular talents in the House, seemed likely to obtain a majority of votes. In order to arrest its progress it was insisted with success that the bill should be postponed till the evening session, and in the meantime be printed for public consideration. That the sense of the people might be the better called forth, your highly distinguished ancestor Col. Geo. Mason, Col. Geo. Nicholas also possessing much public weight and some others thought it advisable that a remonstrance against the bill should be prepared for general circulation and signature and imposed on me the task of drawing up such a paper. The draught having received their sanction, a large number of printed copies were distributed, and so extensively signed by the people of every religious denomination that at the ensuing session the projected measure was entirely frustrated; and under the influence of the public sentiment thus manifested the celebrated bill "Establishing Religious Freedom" enacted into a permanent barrier against Future attempts on the rights of conscience as declared in the Great Charter prefixed to the Constitution of the State. Be pleased to accept my friendly respects.

[\[Back to Table of Contents\]](#)

TO HENRY COLMAN.

Montp<sup>r</sup>, August 25, 1826.

Mad Mss.

D<sup>R</sup> Sir

I have read with pleasure the copy of your Oration on the 4th of July, obligingly sent me, and for which I beg you to accept my thanks.

With the merits which I have found in the Oration, may I be permitted to notice a passage, which tho' according with a language often held on the subject, I cannot but regard as at variance with reality.

In doing justice to the virtue and valour of the revolutionary army, you add as a signal proof of the former, their readiness in laying down their arms at the triumphant close of the war, "when they had the liberties of their Country within their grasp."

Is it a fact that they had the liberties of their country within their grasp; that the troops then in command, even if led on by their illustrious chief, and backed by the apostates from the revolutionary cause, could have brought under the Yoke the great body of their fellow Citizens, most of them with arms in their hands, no inconsiderable part fresh from the use of them, all inspired with rage at the patricidal attempt, and not only guided by the federal head, but organized & animated by their local Governments possessing the means of appealing to their interests, as well as other motives, should such an appeal be required?

I have always believed that if General Washington had yielded to a usurping ambition, he would have found an insuperable obstacle in the incorruptibility of a sufficient portion of those under his command, and that the exalted praise due to him & them, was derived not from a forbearance to effect a revolution within their power, but from a love of liberty and of country which there was abundant reason to believe, no facility of success could have seduced. I am not less sure that General Washington would have spurned a sceptre if within his grasp, than I am that it was out of his reach, if he had secretly sighed for it. It must be recollected also that the practicability of a successful usurpation by the army cannot well be admitted, without implying a folly or pusillanimity reproachful to the American character, and without casting some shade on the vital principle of popular Government itself.

If I have taken an undue liberty in these remarks, I have a pledge in the candour of which you have given proofs, that they will be pardoned, and that they will not be deemed, inconsistent with the esteem and cordial respect, which I pray you to accept.

[\[Back to Table of Contents\]](#)

TO MARTIN VAN BUREN.

Montpellier, September 20, 1826.

Mad. Mss.

Dear Sir,

Your letter of Aug. 30. has been longer unanswered than I could have wished; but the delay has been unavoidable.<sup>1</sup> And I am sensible now that the subject invited more of development, than successive occurrences calling off my attention have permitted. The brief view taken of it, will at least be a proof of my disposition to comply with your request, which I regard as a private one, as you will be pleased to regard the answer to it.

I should certainly feel both gratification and obligation in giving any aid in my power towards making the Constitution more appropriate to its objects, & more satisfactory to the nation. But I feel also the arduousness of such a task, arising as well from the difficulty of partitioning and defining Legislative powers, as from the existing diversity of opinions concerning the proper arrangement of the power in question over internal improvements.

Give the power to the General Government as possessing the means most adequate, and the objections are, 1. the danger of abuses in the application of the means to objects so distant from the eye of a Government, itself so distant from the eye of the people, 2. the danger, from an increase of the patronage and pecuniary transactions of the General Government, that the equilibrium between that and the State Governments may not be preserved.

Leave the power exclusively with the States, and the objections are: 1. that being deprived by the Constitution, and even by their local relations (as was generally experienced before the present Constitution was established) of the most convenient source of revenue, the impost on commerce, improvements might not be made even in cases wholly within their own limits. 2. that in cases where roads, & canals ought to pass through contiguous States, the necessary co-operation might fail from a difficulty in adjusting conditions and details, from a want of interest in one of them, or possibly from some jealousy or rivalry in one towards the other. 3. that where roads and canals ought to pass thro' a number of States, particular views of a single State might prevent improvements deeply interesting to the whole nation.

This embarrassing alternative has suggested the expedient which you seem to have contemplated, of dividing the power between the General & State Govern<sup>ts</sup>., by allotting the appropriating branch to the former, & reserving the jurisdiction to the latter. The expedient has doubtless a captivating aspect. But to say nothing of the difficult of defining such a division, and maintaining it in practice will the nation be at the expence of constructing roads & canals, without such a jurisdiction over them as will ensure their constant subservience to national purposes? Will not the utility and



popularity of these improvements lead to a constructive assumption of the jurisdiction by Congress, with the same sanction of their constituents, as we see given to the exercise of the appropriating power, already stretching itself beyond the appropriating limit.

It seems indeed to be understood, that the policy & advantage of roads & canals have taken such extensive & permanent hold of the public will, that the constructive authority of Congress to make them, will not be relinquished, either by that, or the Constituent Body. It becomes a serious question therefore, whether the better course be not to obviate the unconstitutional precedent, by an amendatory article expressly granting the power. Should it be found as is very possible, that no effective system can be agreed on by Congress, the amendment will be a recorded precedent against constructive enlargements of power; and in the contrary event, the exercise of the power will no longer be a precedent in favour of them.

In all these cases, it need not be remarked I am sure, that it is necessary to keep in mind, the distinction between a usurpation of power by Congress against the will, and an assumption of power with the approbation, of their constituents. When the former occurs, as in the enactment of the alien & sedition laws, the appeal to their Constituents sets everything to rights. In the latter case, the appeal can only be made to argument and conciliation, with an acquiescence, when not an extreme case, in an unsuccessful result.

If the sole object be to obtain the aid of the federal treasury for internal improvements by roads & canals, without interfering with the jurisdiction of the States, an amendment need only say, "Congress may make appropriations of moneys for roads and canals, to be applied to such purposes by the Legislatures of the States within their respective limits, the jurisdiction of the States remaining unimpaired."

If it be thought best to make a constitutional grant of the entire Power, either as proper in itself, or made so by the moral certainty, that it will be constructively assumed, with the sanction of the national will, and operate as an injurious precedent, the amendment cannot say less, than that "Congress may make roads & canals, with such jurisdiction as the cases may require."

But whilst the terms "common defence & general welfare," remain in the Constitution unguarded ag<sup>st</sup>. the construction which has been contended for, a fund of power, inexhaustible & wholly subversive of the equilibrium between the General and the State Gov<sup>ts</sup> is within the reach of the former. Why then, not precede all other amendments by one, expunging the phrase which is not required for any harmless meaning; or making it harmless by annexing to it the terms, "in the cases required by this Constitution."

With this sketch of ideas, which I am aware may not coincide altogether with yours, I tender renewed assurances of my esteem & friendly wishes.[1](#)

[\[Back to Table of Contents\]](#)

## TO SAMUEL HARRISON SMITH.1

Montpellier, Nov<sup>r</sup>. 4, 1826.

Dear Sir

I have rec<sup>d</sup>. your letter of Oc<sup>r</sup>. 25 requesting from me any information which would assist you in preparing a memoir of M<sup>t</sup> Jefferson for the Columbian Institute. Few things would give me more pleasure than to contribute to such a task; and the pleasure would certainly be increased by that of proving my respect for your wishes. I am afraid however, I can do little more than refer you to other sources, most of them probably already known to you.

It may be proper to remark that M<sup>t</sup>. Th<sup>s</sup>. Jefferson Randolph, Legatee of the Manuscripts of M<sup>t</sup>. Jefferson, is about to publish forthwith a Memoir left by his grandfather in his own hand writing, and if not in every part intended by him for the press, is thought to be throughout in a state well fitted for it. The early parts are I believe purely, and in some instances, minutely biographical; and the sequel, embracing a variety of matter, some of it peculiarly valuable, is continued to his acceptance of the Secretaryship of State under the present constitution of the U. States. Should this work appear in time, it would doubtless furnish your pencil with some of the best materials for your portrait.1

The period between his leaving Congress in 1776, and his mission to France, was filled chiefly by his labours on the Revised Code,—the preparation of his “Notes on Virginia” (an obiter performance):—his Governorship of that State:—and by his services as a member of Congress, and of the Committee of the States at Annapolis.

The Revised code in which he had a masterly share, exacted perhaps the most severe of his public labours. It consisted of 126 Bills, comprizing and recasting the whole statutory code, British & Colonial, then admitted to be in force, or proper to be adopted, and some of the most important articles of the unwritten law, with original laws on particular subjects; the whole adapted to the Independent & Republican form of Government. The work tho’ not enacted in the mass, as was contemplated, has been a mine of Legislative wealth, and a model of statutory composition, containing not a single *superfluous* word, and preferring always words & phrases of a meaning fixed as much as possible by oracular treatises, or solemn adjudications.

His “Notes on Virginia” speak for themselves.

For his administration of the Gov<sup>t</sup>. of Virginia, the latter chapters of the 4th vol. of Burke’s history continued by Gerardine, may be consulted. They were written with the advantage of M<sup>t</sup>. Jefferson’s papers opened fully by himself to the author. To this may now be added his letter just published from M<sup>t</sup>. Jefferson to Maj<sup>r</sup>. H. Lee, which

deserves particular notice, as an exposure & correction of historical errors, and rumoured falsehoods, assailing his reputation.

His services at Annapolis will appear in the Journals of Congress of that date. The answer of Congress to the resignation of the Commander in Chief, an important document, attracts attention by the shining traces of his pen.

His diplomatic agencies in Europe are to be found only in the unpublished archives at Washington, or in his private correspondence, as yet under the seal of confidence. The Memoir in the hands of his Grandson will probably throw acceptable lights on this part of his history.

The University of Virginia, as a temple dedicated to science & Liberty, was after his retirement from the political sphere, the object nearest his heart, and so continued to the close of his life. His devotion to it was intense, and his exertions unceasing. It bears the stamp of his genius, and will be a noble monument of his fame. His general view was to make it a nursery of Republican patriots as well as genuine scholars. You will be able to form some idea of the progress and scope of the Institution from the 2 inclosed Reports from the Rector for the Legislature (the intermediate Report is not at hand) which as they belong to official sets, you will be so good as to send back at your entire leisure. I may refer also to a very graphic & comprehensive exposé of the present state of the University, lately published in the "National Intelligencer," which will have fallen under your eye.

Your request includes "his general habits of study." With the exception of an intercourse in a session of the Virginia Legislature in 1776, rendered slight by the disparity between us, I did not become acquainted with M<sup>r</sup>. Jefferson till 1779, when being a member of the Executive Council, and he the Governor, an intimacy took place. From that date we were for the most part separated by different walks in public & private life, till the present Gov<sup>r</sup>. brought us together, first when he was Secretary of State and I a member of the House of Rep<sup>s</sup>.; and next, after an interval of some years, when we entered, in another relation, the service of the U. S. in 1801. Of his earlier habits of study therefore I can not particularly speak. It is understood that whilst at College [Wm. & Mary] he distinguished himself in all the branches of knowledge taught there; and it is known that he never after ceased to cultivate them. The French language he had learned when very young, and became very familiar with it, as he did with the literary treasures which it contains. He read, and at one time spoke the Italian also; with a competent knowledge of Spanish; adding to both the Anglo-Saxon, as a root of the English, and an element in legal philosophy. The Law itself he studied to the bottom, and in its greatest breadth, of which proofs were given at the Bar which he attended for a number of years, and occasionally throughout his career. For all the fine arts, he had a more than common taste; and in that of architecture; which he studied in both its useful, and its ornamental characters, he made himself an adept; as the variety of orders and stiles, executed according to his plan founded on the Grecian & Roman models and under his superintendance, in the Buildings of the University fully exemplify. Over & above these acquirements, his miscellaneous reading was truly remarkable, for which he derived leisure from a methodical and indefatigable application of the time required for indispensable

objects, and particularly from his rule of never letting the sun rise before him. His relish for Books never forsook him, not even in his infirm years and in his devoted attention to the rearing of the University, which led him often to express his regret that he was so much deprived of that luxury, by the epistolary tasks, which fell upon him, and which consumed his health as well as his time. He was certainly one of the most learned men of the age. It may be said of him as has been said of others that he was a “walking Library,” and what can be said of but few such prodigies, that the Genius of Philosophy ever walked hand in hand with him.

I wish, Sir, I could have made you a communication less imperfect. All I say beyond it is that if in the progress of your pen, any particular point should occur on which it may be supposed I could add to your information from other sources, I shall cheerfully obey your call as far as may be in my power.

The subject of this letter reminds me of the “History of the administration of M<sup>r</sup>. Jefferson,” my copy of which, with other things disappeared from my collection during my absence from the care of them. It would be agreeable to me now to possess a copy and if you can *conveniently* favor me with one, I shall be greatly obliged.

Accept, Sir, assurances of my continued esteem & regard, with a tender of my best respects to M<sup>rs</sup>. Smith.

[\[Back to Table of Contents\]](#)

## TO MARQUIS DE LAFAYETTE.

Montpellier, Nov<sup>r</sup>, 1826.

Mad. Mss.

### Dear Friend

I received some days ago your letter of Aug<sup>t</sup> 28. If I did not invite an earlier one by my example it was because I often heard of you, and was unwilling to add a feather to the oppressive weight of correspondence which I well know to be your unavoidable lot. You will never doubt that your happiness is very dear to me; and I feel the sentiment growing stronger as the loss of others dear to us both shortens the list to which we belong. That which we have lately sustained at Monticello is irreparable; but was attended with every circumstance that could soothe us under it. I wish I was not obliged to add, “with one affecting exception.” His family so long in the lap of all the best enjoyments of life, is threatened with the contrast of pinching poverty. The expences of his numerous household, his extensive hospitalities, and a series of short crops and low markets, to which are to be added old debts contracted in public service abroad and new ones for which private friendship had made him responsible; all these causes together, had produced a situation of which he seems not to have been fully aware, till it was brought home to his reflections by the calls of creditors, (themselves pressed by the difficulties of the times,) and by the impossibility of satisfying them without a complete sacrifice of his property, perhaps not even by that at such a crisis. In this posture of things, he acquiesced in an appeal to the Legislature for the privilege of a Lottery. This was granted, and arrangements made which promised relief, with a residuary competence for his beloved daughter & her children. The general sensation produced by the resort to a Lottery, and by the occasion for it, unfortunately led some of his most enthusiastic admirers, to check the progress of the measure by attempting to substitute patriotic subscriptions, which they were so sanguine as to rely on, till the sad event on the 4 of July, benumbed, as it ought not to have done, the generous experiment; with a like effect, which ought still less to have happened, on the Lottery itself. And it is now found that the subscriptions do not exceed ten or twelve thousand dollars, and the tickets, but a very inconsiderable number, whilst the debts are not much short of one hundred thousand dollars; an amount which a forced sale, under existing circumstances, of the whole estate, (*negroes* included,) would not perhaps reach. Faint hopes exist that renewed efforts may yet effectuate such a sale of tickets as may save something for the family; and fainter ones that the Legislature of the state may interpose a saving hand. God grant it! But we are all aware of the difficulties to be encountered there. I well know my dear Sir, the pain which this melancholy picture will give you, by what I feel at the necessity of presenting it. I have duly adverted to the generous hint as to the E. Florida location. But for any immediate purpose, it is, in any form whatever, a resource perfectly dormant, and must continue so too long for the purpose in question. Your allusion to it is nevertheless a proof of the goodness which dwells in your heart; and whenever known will be so regarded. The urgency of particular demands has induced the Executor Thomas Jefferson Randolph, who is the Legatee of the Manuscripts, to undertake an immediate publication of a Memoir,

partly biographical, partly political and miscellaneous, left in the handwriting of his Grandfather, the proceeds of which he hopes will be of critical use; and if prompt & extensive opportunities be given for subscriptions, there may be no disappointment. The work will recommend itself not only by personal details interwoven into it, but by *Debates in Congress* on the *question of Independence*, and other very important subjects coeval with its Declaration, as the Debates were taken down and preserved by the illustrious member. The memoir will contain also very interesting views of the origin of the French Revolution, and its progress & phenomena, during his Diplomatic residence at Paris, with reflections on its tendencies & consequences. A trial will probably be made to secure the copyright of the publication, both in England and in France. In the latter case your friendly counsel will of course be resorted to and I mention it that you may in the mean time be turning the subject in your thoughts. The manuscripts of which the Memoir makes a part are great in extent, and doubtless rich in matter; and *discreet* extracts may perhaps prove a further pecuniary resource, from time to time, but how soon and in what degree, I have not the means of judging. Mrs. Randolph with her two youngest children, left Montpellier some days ago, on her way to pass the winter with Mrs. Coolidge. Such a change of scene had become essential to her health as well as to her feelings. She has made up her mind for the worst results; a merit which quickens the sympathy otherwise so intense. She was accompanied by her son, Th<sup>s</sup>. J. Randolph who will endeavor to make arrangements with the Northern Printers for the volume to be published. It will be an Octavo of about three hundred pages.

Your sketch of European prospects is valuable for its facts, & especially for its authenticity. The contents of the foreign Gazettes find their way to us thro' our own; but do not convey every thing as ours do to you. You will have seen the mortifying scenes produced in Congress by the Panama Mission. The fever of party spirit was an endemic which drew into it every ill humour, till the whole body was infected. The malady however was far less malignant out of doors than within; and I hope our S. American friends will make allowances till a development of the real feelings here shall be seen. The Congress at Panama, after a partial execution of its business, has adjourned to Mexico. One of our envoys, Mr. Anderson died on his way there, and Mr. Sergeant the other is still here. Who is to be his associate in the place of Mr. A. is not known; nor is it known when he or they are to set out. Bolivar appears to have given a Constitution to the new State in Peru, of a countenance not altogether belonging to the American family. I have not yet seen its details; whether it shews him an apostate, or the people there, in his view, too benighted as yet for self-government, may possibly be a question.

Another mortifying topic is the Greek equipment at N. York. It appears the ample fund for two Frigates at an early day has procured but one which has but recently sailed. The indignation of the public is highly excited; and a regular investigation of the lamentable abuse is going on. In the mean time Greece is bleeding in consequence of it, as is every heart that sympathizes with her noble cause. You will see by our Gazettes also that the community is drawn into a premature ferment by the partisans of the Presidential Candidates, the actual incumbent, & Gen<sup>l</sup>. Jackson in whose favor, all the opponents of the other are at present concentrating all their efforts. The race,

according to appearances is likely to be a close one. But there is time enough for the political vicissitudes which often occur.

You possess, notwithstanding your distance, better information concerning Miss Wright and her experiment than we do here.<sup>1</sup> We learn only that she has chosen for it a remote spot in the western part of Tennessee, & has commenced her enterprise; but with what prospects we know not. I wrote to her without delay according to my purpose intimated to you, a letter of some length, in answer to one from her. Mrs. Madison wrote at the same time. I hope those letters, mine at least, reached her; not because it contained anything of much importance, but because it was dictated by the respect we feel for her fine genius and exalted benevolence. Her plan contemplated a provision for the expatriation of her Elèves, but without specifying it; from which I infer the difficulty felt in devising a satisfactory one. Could this part of the plan be ensured the other essential part, would come about of itself. Manumissions now more than keep pace with the outlets provided, and the increase of them is checked only by their remaining in the country. This obstacle removed and all others would yeild to the emancipating disposition. To say nothing of partial modes, what would be more simple, with the requisite grant of power to Congress, than to purchase all female infants at their birth, leaving them in the service of the holder to a reasonable age, on condition of their receiving an elementary education. The annual number of female births may be stated at twenty thousand, and the cost at less than one hundred dollars each, at the most; a sum which would not be felt by the nation, and be even within the compass of State resources. But no such effort would be listened to, whilst the impression remains, and it seems to be indelible, that the two races cannot co-exist, both being free & equal. The great sine qua non, therefore is some external asylum for the coloured race. In the mean time the taunts to which this misfortune exposes us in Europe are the more to be deplored, because it impairs the influence of our political example; tho' they come with an ill grace from the quarter most lavish of them, the quarter which obtruded the evil, and which has but lately become a penitent, under suspicious appearances. . . .

[\[Back to Table of Contents\]](#)

## TO THOMAS COOPER. 1

Montpellier, Dec. 26, 1826.

Dear Sir,

. . . Have you ever adverted to the alledged minuteness of the Roman farms, & the impossibility of accounting for their support of a family. All the ancient authors, agricultural & Historical, speak of the ordinary size as not exceeding duo jugera, equal according to the ascertained measure, to about one & a quarter of our acres, & none of the modern writers, I have met with, question the statement. Neither Hume nor Wallace, tho' led to a critical investigation of it, in comparing the populousness of ancient & modern nations, notice the difficulty. Dixon too in his elaborate researches into ancient husbandry, if I do not misrecollect, starts no doubt on the subject. Now it is impossible that a family, say of six persons could procure from such a speck of earth, by any known mode of culture, a supply of food such as then used with the materials for clothing or a surplus from the soil that would purchase it, to say nothing of fuel and the wood necessary for the other wants of the farm. We hear much also of the plough & the oxen on the Roman farms. How were these fed? A yoke would devour more than the whole product.

Cincinnatus himself is reported to have owned but 8 jugera, if I mistake not, one half of which, he lost, by a suretyship. Even that aristocratic allowance is not free from the remarks here made. The subject is curious, and involves 3 questions, 1. Whether the size of the farm, tho' never called in question, has been rightly stated? 2. If rightly stated & no extraneous resources existed, how were the families subsisted? 3. If there were extraneous resources what were they? We read of no pastures or forests in common, and their warlike expeditions, tho' in the neighborhood, as it were, and carried on by the farmers themselves, could yield no adequate supplies to solve the problem.

The mail has furnished me with a copy of your Lectures on Civil Government, and on the Constitution of the U. S. I find in them much in which I concur; parts on which I might say non liquet, and others, from which I should dissent: but none, of which interesting views are not presented. What alone I mean to notice, is a passage in which you have been misled by the authorities before you, & by a misunderstanding of the term "national," used in the early proceedings of the Convention 1787. Both Mr. Yates and Mr. Martin brought to the Convention, predispositions against its object, the one from Maryland, representing the party of Mr. Chase opposed to federal restraints on State Legislation; the other from New York the party unwilling to lose the power over trade, through which the State levied a tribute on the consumption of its neighbours. Both of them left the Convention long before it completed its work, and appear to have reported in angry terms what they had observed with jaundiced eyes. Mr. Martin is said to have recanted at a later day, and Mr. Yates, to have



changed his politics & joined the party adverse to that, which sent him to the Convention.

With respect to the term “national” as contradistinguished from the term “federal” it was not meant to express the extent of power, but the mode of its operation which was to be, not like the power of the old confederation operating on States but like that of ordinary government operating on individuals; and the substitution of “United States” for “National,” noted on the journal was not designed to change the meaning of the latter, but to guard against a mistake or misrepresentation of what was intended. The term “national” was used in the original propositions offered on the part of the Virginia Deputies, not one of whom attached to it, any other meaning than that here explained. Mr. Randolph himself, the organ of the Deputation on the occasion, was a strenuous advocate for the federal quality of limited & specified powers; and finally refused to sign the Constitution, because its powers were not sufficiently limited and defined.

We feel great pleasure in inferring from your communication, that your health, so severely assailed at Richmond, has been effectually restored. With the best wishes for its continuance, and the addition of all other blessings, I renew to you the expression of my great esteem & friendly regards.

[\[Back to Table of Contents\]](#)

## TO SAMUEL HARRISON SMITH.1

Montpellier, Feb<sup>y</sup> 2, 1827.

Dear Sir

I have received, with your favour of Jan<sup>y</sup>. 24, a copy of your biographical Memoir of Th<sup>s</sup>. Jefferson delivered before the Columbian Institute; and I can not return my thanks without congratulating the Institute, on its choice of the hand to which the preparation of the Memoir was assigned. The subject was worthy of the Scientific and patriotic Body which espoused it, and the manner in which it has been treated, worthy of the subject. The only blemishes to be noted on the face of the memoir are the specks, in which the partiality of the friend betrays itself towards one of the names occasionally mentioned.

I have great respect for your suggestion with respect to the season for making public what I have preserved of the proceedings of the Revolutionary Congress, and the General Convention of 1787. But I have not yet ceased to think that publications of them, posthumous to others as well as myself, may be most delicate, and most useful too, if to be useful at all. As no personal or party views can then be imputed, they will be read with less of personal or party feelings, and consequently with whatever profit may be promised by them. It is true also that after a certain date, the older such things grow, the more they are relished as new; the distance of time like that of space from which they are received, giving them that attractive character.

It cannot be very long however before the living obstacles to the forthcomings in question will be removed. Of the members of Congress during the period embraced, the lamps of all are extinct, with the exception I believe of R<sup>d</sup> Peters & myself, and of the signers of the Constitution of all but R. King, W<sup>m</sup>. Few & myself; and of the lamps still burning, none can now be far from the socket.

It will be long before this can be said of yours, & that which pairs with it; and I pray you both to be assured of the sincere wish, in which M<sup>rs</sup>. M. joins me, that in the mean time every happiness may await you.

[\[Back to Table of Contents\]](#)

TO JONATHAN ELLIOT.

Montpellier, Feb'y 14, 1827.

Mad. Mss.

Dear Sir

I have just rec<sup>d</sup> your letter of the 12th ins<sup>t</sup>, and with it a copy of the first Vol. of the Debates &c. of the State Conventions which decided on the constitution of the U. States. The Vol. appears a favorable specimen of the manner in which the work is to be executed.

The proceedings of those Assemblies however defective they may be in some respects & inaccurate in others being highly interesting in a political as well as Historical view, a rescue of them from the increasing difficulty of procuring copies, & the possibility of their disappearance altogether, is among the cares which may reasonably be expected from the existing generation by those which are to follow. The obvious provision in the case is that of multiplying copies in individual hands, and in public depositories; and I wish you may find due encouragement in a task which will provide the means for both these safeguards.

I send you a copy as you request of what was published, and is in my possession, of the Debates in the Pennsylvania Convention. These being on one side only, it may be proper to search for the cotemporary publications on the other. I send also the proceedings of the *first* of the two N. Carolina conventions. If those of the second were ever published, no copy of them has come into my hands.

With friendly respect.

[\[Back to Table of Contents\]](#)

## TO HENRY WHEATON.

Montp<sup>r</sup>, Feb<sup>y</sup>. 26 & 27 [1827].

Chic. Hist. Soc.  
Mss.

D<sup>R</sup>. Sir

Since I answered your letter of — it has occurred that I should not shew a respect for your wishes if I failed to fulfil them by suggesting for your consideration the following topics, as far as they may fall within the range of your enlarged edition of the “Life of M<sup>r</sup>. Pinkney.”

Without discussing the general character of the Treaty with G. B. in 1794, or wishing to revive animosities which time has soothed to rest, it may be recollected that among the great merits claimed for the Treaty were the indemnity for spoliations on our commerce, and the privilege of trading with British India.

On the first plea of merit, it may be remarked that such was the structure of the article stipulating indemnity, that but for the powerful exertions of our commissioners particularly M<sup>r</sup> Pinkney, and finally, the turn of the die that gave them the choice of the Umpire, the Treaty would have failed on that great point. It may be said therefore to have provided for one half only of what was obtained, the chance being equal of losing or gaining the whole.

On the other plea it is to be remarked that the value of the privileged trade depended very materially on its being open to *indirect* as well as direct voyages to India. Yet in a case turning on this point, which was carried before the Court of King’s Bench, the Chief Justice although he decided in our favour, declared at the same time his belief that the real intention of the negotiators was otherwise, and his regret that the article happened to be so worded that the legal rules of interpretation constrained him to decide as he did. The twelve Judges confirmed the decision, presumably, *perhaps avowedly*, with the same impressions. My memory cannot refer to the source of my information on the subject. The whole case if not already known to you will doubtless be within your reach. Thus had fortune, or the fairness of the British Courts, failed us, the Treaty would have lost much of its favour with not a few of its warmest partizans.

In none of the Comments on the Declaration of the last war, has the more immediate impulse to it been sufficiently brought into view. This was the letter from Castlereagh to Foster, which according to the authority given, the latter put into the hands of the Secretary of State, to be read by him, and by the President also. In that letter it was distinctly & emphatically stated that the orders in Council, to which we had declared we would not submit, would not be repealed, without a repeal of internal measures of France, which not violating any neutral right of the U. S. they had no right to call on France to repeal, and which of course could give to G. B. no imaginable right agst. the U. S. (see the passages in the War Message and in the Committee’s Report in 1812 both founded on the letter without naming it). With this formal notice, no choice

remained but between war and degradation, a degradation inviting fresh provocations & rendering war sooner or later inevitable.

It is worthy of particular remark that notwithstanding the peremptory declaration of the British Cabinet in the letter of Castlereagh, such was the distress of the British manufacturers, produced by our prohibitive and restrictive laws, as pressed on the House of Commons by M<sup>r</sup> Broughton & others, that the orders in Council were soon after repealed, but not in time to prevent the effect of the declaration that they would not be repealed. The cause of the war lay therefore entirely on the British side. Had the repeal of the orders been substituted for the declaration that they would not be repealed, or had they been repealed but a few weeks sooner, our declaration of war as proceeding from that cause would have been stayed, and negociations on the subject of improvements, the other great cause, would have been pursued with fresh vigor & hopes, under the auspices of success in the case of the orders in council.

The Declaration of War has been charged by G. B. & her partizans with being made in subserviency to the views of Napoleon. The charge is as foolish as it is false. If the war coincided with the views of the Enemy of G. B. and was favored by his operations against her, that assuredly could be no sound objection to the time chosen for extorting justice from her. On the contrary, the co-incidence, tho' it happened not to be the moving consideration, would have been a rational one; especially as it is not pretended that the U. S. acted in concert with that Chief, or precluded themselves from making peace without any understanding with him; or even from making war on France, in the event of peace with her enemy, and her continued violation of our neutral rights. It was a fair calculation, indeed, when war became unavoidable, or rather after it had commenced, that Napoleon whether successful or not ag<sup>st</sup> Russia, would find full employment for her and her associates, G. B. included; and that it would be required of G. B. by all the powers with whom she was leagued, that she should not divert any part of her resources from the common defence to a war with the U. S. having no adequate object, or rather having objects adverse to the maritime doctrines and interests of every nation combined with her. Had the French Emperor not been broken down as he was, to a degree at variance with all human probability, and which no human sagacity could anticipate, can it be doubted that G. B. would have been constrained by her own situation and the demands of her allies, to listen to our reasonable terms of reconciliation. The moment chosen for the war would therefore have been well chosen if chosen with a reference to the French expedition ag<sup>st</sup>. Russia; and although not so chosen, the coincidence between the war & the expedition promised at the time to be as favorable as it was fortuitous.

But the war was commenced without due preparation: this is another charge. Preparations in all such cases are comparative. The question to be decided is whether the adversary was better prepared than we were; whether delay on our side, after the approach of war would be foreseen on the other, would have made the comparative preparations better for us. As the main theatre of the war was to be in our neighbourhood, and the augmented preparations of the enemy were to be beyond the Atlantic, promptitude of attack was the evident policy of the U. S. It was in fact not the suddenness of the war as an Executive policy, but the tardiness of the Legislative provisions, which gave whatever colour existed for the charge in question. The

recommendation of military preparations went from the Executive on the 5<sup>th</sup>. day of November; and so impressed was that Department of the Government with the advantage of dispatch in the measures to be adopted by Congress, that the Recommendation as was known contemplated a force of a kind and extent only which it was presumed might be made ready within the requisite period. Unfortunately this consideration had not its desired effect on the proceedings in Congress. The laws passed on the subject were delayed, that for filling up the peace establish till Dec<sup>r</sup>. 24, and that for the new army to be raised till Jan<sup>y</sup> 14 and such were the extent and conditions prescribed for the latter, that it could scarcely under any circumstances and by no possibility under the circumstances existing, be forthcoming within the critical season. It may be safely affirmed that the force contemplated by the Executive if brought into the field as soon as it might have been would have been far more adequate to its object than that enacted by the Legislature could have been if brought into the field at the later day required for the purpose. When the time arrived for appointing such a catalogue of officers very few possessing a knowledge of military duty, and for enlisting so great a number of men for the repulsive term of five years and without the possibility of a prompt distribution in the midst of winter throughout the union of the necessary equipments & the usual attractions to the recruiting standards, the difference between the course recommended & that pursued was felt in its distressing force.

The Journals of Congress will shew that the Bills which passed into laws were not even reported till the [14th] of [April] by a Committee which was appointed on the [12th] of [November], a tardiness as strange in its appearance as it was painful in its consequences. Yet with all the disadvantages under which hostilities were commenced, their progress would have been very different, under a proper conduct of the initiative expedition into Upper Canada. The individual at the head of it had been pointed out for the service by very obvious considerations. He had acquired during the war of the Revolution the reputation of a brave & valuable officer: He was of course an experienced one: He had been long the chief magistrate in the quarter contiguous to the Theatre of his projected operation; with the best opportunities of being acquainted with the population and localities on the hostile as well as his own side of the dividing straight: He had also been the Superintendent of our affairs with the Indian tribes holding intercourse with that district of country; a trust which afforded him all the ordinary means of understanding, conciliating, and managing their dispositions. With such qualifications and advantages which seemed to give him a claim above all others to the station assigned to him, he sunk before obstacles at which not an officer near him would have paused; and threw away an entire army, in the moment of entering a career of success, which would have made the war as prosperous in its early stages, and promising in its subsequent course as it was rendered by that disaster oppressive to our resources, and flattering to the hopes of the enemy. By the surrender of Gen<sup>l</sup> Hull the people of Canada, not indisposed to favor us, were turned against us; the Indians were thrown into the service of the enemy; the expence & delay of a new armament were incurred; the western militia & volunteers were withheld from offensive co-operation with the troops elsewhere by the necessity of defending their own frontiers and families ag<sup>st</sup> incursions of the Savages; and a general damp spread over the face of our affairs. What a contrast would the success so easy at the outset of the war have presented! A triumphant army would have seized on

Upper Canada and hastened to join the armies at the points below; the important command of Lake Erie would have fallen to us of course; the Indians would have been neutral or submissive to our will; the general spirit of the country would have been kindled into enthusiasm; enlistments would have been accelerated; volunteers would have stepped forward with redoubled confidence & alacrity; and what is not of small moment, the intrigues of the disaffected would have been smothered in their embryo state.<sup>1</sup>

But in spite of the early frowns of fortune, the war would have pressed with a small portion of its weight but for the great military Revolution in Europe, the most improbable of contingencies, which turned upon us such a body of veteran troops, enured to combat and flushed with victory. Happily this occurrence, so menacing in its aspect, led to exploits which gained for the arms of our Country a reputation invaluable as a guaranty against future aggressions, or a pledge for triumphs over them.

There is a circumstance relating to the Treaty of Ghent which seems to have escaped the notice to which it is entitled. After the close of the British war on the Continent of Europe, and during the negotiations for closing it with us, the question arose in the House of Commons, whether the war taxes were to cease with the European war, or to be continued on account of the war with the U. S.; the British Minister having given an assurance previous to the latter that those obnoxious taxes should be repealed on the return of peace. The question was put home to M. Vansittart the Exchequer Minister, who well knowing that the nation would not support at that oppressive expence a war reduced as the objects of it had become, shunned an answer, got the Parliament prorogued till the month of February, and in the meantime the Treaty was concluded at Ghent. I have not the means of refreshing or correcting my memory, but believe you will find on consulting the parliamentary annals of that period that what is stated is substantially true.

Permit me to repeat generally that these paragraphs are intended for your *examination*, as well as consideration. They may be neither free from errors, nor have a sufficient affinity to your biographical text; and if admitted into it, will need from your pen both developments and adaptations making them your own. Whether admissible or not, they will prove the sincerity of my promise to suggest anything that might occur to my thoughts. And that I may not be without some proofs also that I have not forgotten the other promise of whatever might be caught by my eye, I inclose a small pamphlet published within the period of M<sup>r</sup>. Pinkney's public life, and throwing light on the then state of parties in the U. States. It was drawn up at the pressing instances of my political friends, at the end of a fatiguing session of Congress, and under a great impatience to be with my family on the road homeward but with the advantage of having the whole subject fresh in my memory and familiar to my reflections. The tone pervading it will be explained if not excused by the epoch which gave birth to it.

[\[Back to Table of Contents\]](#)

TO J. K. PAULDING.

Montp<sup>r</sup>, Mar. 10, 1827.

Mad. Mss.

Dear Sir,

I have rec<sup>d</sup>. your favor of Feb<sup>y</sup> 28, and read the pamphlet under the same cover. It is a powerful and a piercing lesson on the subject which it exposes. I was not before aware of the abuses committed by the Law-makers or the law-breakers of your State. The picture you give of both, tho' intended for N. York alone, is a likeness in some degree of what has occurred elsewhere, and I wish it could be in the hands of the Legislators, or, still better, of their Constituents everywhere. Incorporated Companies with proper limitations and guards, may in particular cases, be useful; but they are at best a necessary evil only. Monopolies and perpetuities are objects of just abhorrence. The former are unjust to the existing, the latter usurpations on the rights of future generations. Is it not strange that the Law, which will not permit an individual to bequeath his property to the descendants of his own loins for more than a short and a strictly defined term, should authorize an associated few to entail perpetual and indefeasible appropriations; and that not only to objects visible and tangible, but to particular opinions, consisting, sometimes of the most metaphysical niceties; as is the case with Ecclesiastical Corporations.

With regard to Banks, they have taken too deep and wide a root in social transactions to be got rid of altogether, if that were desirable. In providing a convenient substitute, to a certain extent, for the metallic currency, and a fund of credit which prudence may turn to good account, they have a hold on public opinion, which alone would make it expedient to aim rather at the improvement than the suppression of them. As now generally constituted their advantages whatever they be, are outweighed by the excesses of their paper emissions, and by the partialities and corruption with which they are administered.

What would be the operation of a Bank so modified that the Subscribers should be individually liable pro tanto and pro rata for its obligations, and that the Directors, with adequate salaries paid out of the profits of the Institution should be prohibited from holding any interest in or having any dealings whatever with, the Bank, and be bound moreover by the usual solemnity, to administer their trust with fidelity and impartiality? The idea of some such a modification occurred to me formerly, when the subject engaged more of my attention than it has latterly done. But there was then, as there probably is now, little prospect that such an innovation would be viewed with public favor if thought by better judges to have pretensions to it. . . .



[\[Back to Table of Contents\]](#)

TO MARTIN VAN BUREN.

Montpellier, Mar. 13, 1827.

Mad. Mss.

Dear Sir,

I have rec<sup>d</sup> your favor of the 3d inst., covering the Report to the Senate on the "Georgia Business." 1 The Report is drawn with the ability which might be expected from the Committee making it. The views which it presents on the subject cannot certainly be complained of by Georgia. The occurrence has been a most painful one, whether regarded in its tendency abroad, or at home. And God grant that it may have a termination at once healing & preventive.

If it be understood that our political System contains no provision for deciding questions between the Union & its members, but that of negotiation, this failing, but that of war, as between separate & Independent Powers, no time ought to be lost in supplying, by some mode or other, the awful omission. What has been called a Government is on that supposition a mere league only; a league with too many Parties, to be uniformly observed, or effectively maintained.

You did well I think in postponing the attempt to amend the phraseology of the Constitution on a point essentially affecting its operative character. The state of the political atmosphere did not promise that discussion and decision on the pure merits of such an amendment, which ought to be desired.

Be pleased to accept with my cordial salutation the renewed expression of my great esteem

[\[Back to Table of Contents\]](#)

TO JOSEPH C. CABELL.

Montpellier, Mar. 22<sup>d</sup>, 1827.

Mad. Mss.

My Dear Sir,

. . . I had noticed the loss of the proposed amendment to the Resolution on the subject of the Tariff, and the shaft levelled at yourself. Intemperance in politics is bad enou<sup>r</sup>; Intolerance has no excuse. The extreme to which the Resolution goes in declaring the protecting duty as it is called unconstitutional is deeply to be regretted. <sup>1</sup> It is a ground which cannot be maintained, on which the State will probably stand alone, and which by lessening the confidence of other States in the wisdom of its Councils, must impede the progress of its sounder doctrines. In compliance with your request I offer a few hasty remarks on topics and sources of information which occur to me.

1. The meaning of the Power to regulate commerce is to be sought in the general use of the phrase, in other words, in the objects generally understood to be embraced by the power, when it was inserted in the Constitution.
2. The power has been applied in the form of a tariff, to the encouraging of particular domestic occupations by every existing Commercial Nation.
3. It has been so used & applied particularly & systematically by G. Britain whose commercial vocabulary is the Parent of ours.
4. The inefficacy of the power in relation to manufactures as well as to other objects, when exercised by the States separately, was among the arguments & inducements for revising the Old Confederation, and transferring the power from the States to the Gov<sup>t</sup>. of the U. S. Nor can it be supposed that the States actually engaged in certain branches of Manufactures, and foreseeing an increase of them, would have surrendered the whole power [over] commerce to the General Gov<sup>t</sup>. unless expected to be more effectual for that as well as other purposes, in that depository, than in their own hands. Nor can it be supposed that *any of the States*, meant to *annihilate* such a power, and thereby disarm the Nation from protecting occupations & establishments, important to its defence & independence, ag<sup>st</sup> the subversive policy of foreign Rivals or Enemies. To say that the States may respectively encourage their own manufactures, and may therefore have looked to that resource when the Constitution was formed, is by no means satisfactory. They could not protect them by an impost, if the power of collecting one had been reserved, a *partial* one having been found impracticable; so, also as to a prohibitory regulation. Nor can they do it by an excise on foreign articles, for the same reason, the trade being necessarily open with other States which might concur in the plan. They could only do it by a *bounty*, and that bounty procured *by a direct tax*, a tax unpopular for any purpose, and obviously inadmissible for that. Such a state of things could never have been in contemplation when the Constitution was formed.

5. The Printed Journal of the Convention of 1787 will *probably* shew positively or negatively that the Commercial power given to Congress embraced the object in question.
6. The proceedings of the State Conventions may also deserve attention.
7. The proceedings & debates of the first Congress under the present Constitution, will shew that the power was generally, *perhaps* universally, regarded as indisputable.
8. Throughout the succeeding Congresses, till a very late date, the power over commerce has been exercised or admitted, so as to bear on internal objects of utility or policy, without a reference to revenue. The University of Virginia very lately had the benefit of it in a case where revenue was relinquished; a case not questioned, if liable to be so. The Virginia Resolutions, as they have been called, which were proposed in Congress in 1793-4, and approved throughout the State, may perhaps furnish examples.
9. Every President from Gen<sup>l</sup>. W. to Mr. J. Q. Adams inclusive has recognised the power of a tariff in favor of Manufactures, without indicating a doubt, or that a doubt existed anywhere.
10. Virginia appears to be the only State that now denies, or ever did deny the power; nor are there perhaps more than a very few individuals, if a single one, in the State who will not admit the power in favor of internal fabrics or productions necessary for public defence on the water or the land. To bring the protecting duty in those cases, within the war power would require a greater latitude of construction, than to refer them to the power of regulating trade.
11. A construction of the Constitution practised upon or acknowledged for a period, of nearly forty years, has received a national sanction not to be reversed, but by an evidence at least equivalent to the National will. If every new Congress were to disregard a meaning of the instrument uniformly sustained by their predecessors, for such a period there would be less stability in that fundamental law, than is required for the public good, in the ordinary expositions of law. And the case of the Chancellor's foot, as a substitute for an established measure, would illustrate the greater as well as the lesser evil of uncertainty & mutability.
12. In expounding the Constitution, it is as essential as it is obvious, that the distinction should be kept in view, between the usurpation, and the abuse of a power. That a Tariff for the encouragement of Manufactures may be abused by its excess, by its partiality, or by a noxious selection of its objects, is certain. But so may the exercise of every constitutional power; more especially that of imposing indirect taxes, though limited to the object of revenue. And the abuse cannot be regarded as a breach of the fundamental compact, till it reaches a degree of oppression, so iniquitous and intolerable as to justify civil war, or disunion pregnant with wars, then to be foreign ones. This distinction may be a key to the language of Mr J——n, in the letter you alluded to. It is known that he felt and expressed strongly, his disapprobation of the existing Tariff and its threatened increase.

13. If mere *inequality*, in imposing taxes, or in other Legislative Acts, be synonymous with *unconstitutionality*, is there a State in the Union whose constitution would be safe? Complaints of such abuses are heard in every Legislature, at every session; and where is there more of them than in Virginia, or of pretext for them than is furnished by the diversity of her local & other circumstances; to say nothing of her constitution itself, which happens to divide so unequally the very power of making laws?

I wish I could aid the researches to which some of the above paragraphs may lead. But it would not be in my power, if I had at my command, more than I have, the means of doing it. It is a satisfaction to know that the task, if thought worth the trouble, will be in better hands. . . .

[\[Back to Table of Contents\]](#)

## TO NICHOLAS BIDDLE.

Montp<sup>r</sup>, May 17, 1827

Mad. Mss.

D<sup>R</sup> Sir

I thank you very sincerely for the copy of your “Eulogium on Th<sup>s</sup>. Jefferson.” I have derived from it the peculiar pleasure, which so happy a portraiture could not fail to afford one, who intimately knew, & feelingly admired, the genius, the learning, the devotion to public liberty and the many private virtues of the distinguished original. Ably & eloquently as the subject has been handled, all must see that it had not been exhausted; and you are, I am sure, alone in regretting that what remained for some other hand, fell into yours.

Pardon me for remarking that you have been led into an error, in the notice you take of the Revised Code provided for, by the first Independent Legislature of Virg<sup>a</sup>.. The Revisors, were in number not three but five, viz Mr. Jefferson, Mr. Pendleton, Mr. Wythe, Col. Geo. Mason & Col. Th<sup>s</sup>. L. Lee. The last died & Col. Mason resigned; but not before they had joined in a Consultative meeting. In the distribution of the work among the others Mr. W. was charged with the British Statutes, Mr. P. with the Colonial laws, & Mr. J. with certain parts of the common Law, and the new laws called for by the new State of the Country.

The portion executed by Mr. Jefferson was perhaps the severest of his many intellectual labours. The entire report, as a Model of technical precision, and perspicuous brevity and particularly as comprising samples of the philosophical spirit which ennobled his Legislative policy, may, in spite of its Beccarian Illusions, be worthy of a place among the collections of the Society of which he was once the Presiding Member; and if a Copy be not already there, it will be a pleasure to me to furnish one. . . .

[\[Back to Table of Contents\]](#)

TO THOMAS J. WHARTON.

Montp<sup>r</sup>., Aug. [     ], 1827.

Mad. Mss.

Dear Sir

I have duly rec<sup>d</sup> the copy of your Oration on the 4th of July last. In making my acknowledgments, with the passage under my eye, ascribing to me “the first public proposal for the meeting of the Convention to which we are indebted for our present Constitution,” it may be proper to state in a few words the part I had in bringing about that event.

Having witnessed, as a member of the Revolutionary Congress, the inadequacy of the Powers conferred by the “Articles of Confederation,” and having become, after the expiration of my term of service there, a member of the Legislature of Virginia, I felt it to be my duty to spare no efforts to impress on that Body the alarming condition of the U. S. proceeding from that cause, and the evils threatened by delay, in applying a remedy. With this view, propositions were made vesting in Congress the necessary powers to regulate trade then suffering under the monopolising policy abroad, and State collisions at home, and to draw from that source the convenient revenue it was capable of yielding. The propositions tho’ rec<sup>d</sup>. with favorable attention, and at one moment agreed to in a crippled form, were finally frustrated or, rather abandoned. Such however were the impressions which the public discussions had made, that an alternative proposition which had been kept in reserve, being seasonably brought forward by a highly respected member, who having long served in the State Councils without participating in the federal had more the ear of the Legislature on that account, was adopted with little opposition. The proposition invited the other States to concur with Virginia in a Convention of Deputies commissioned to devise & report a uniform system of commercial regulations. Commissioners on the part of the State were at the same time appointed myself of the number. The Convention proposed took place at Annapolis in August, 1786. Being however very partially attended, and it appearing to the members that a rapid progress, aided by the experiment on foot, had been made in ripening the public mind for a radical reform of the Federal polity, they determined to waive the object for which they were appointed, and recommend a Convention with enlarged Powers to be held, the year following in the city of Phila<sup>da</sup>. The Legislature of Virg<sup>a</sup>. happened to be the first that *acted on* the recommendation, and being a member, the only one of the attending Commissioners at Annapolis, who was so, my best exertions were used in promoting a compliance with it, and in giving to the example the most conciliating form, & all the weight that could be derived from a list of deputies having the name of Washington at its head.

In what is here said of the agency of Virginia and of myself particularly, it is to be understood that no comparison is intended that can derogate from what occurred elsewhere, and may, of course, be less known to me than what is here stated.

I pray you, Sir, to pardon this intrusive explanation, with which I tender you my respectful salutations.

[\[Back to Table of Contents\]](#)

TO JONATHAN ELLIOT.

Montp<sup>r</sup>., Nov<sup>r</sup>.. [     ], 1827.

Mad. Mss.

D<sup>R</sup>. Sir,

I have rec<sup>d</sup>. your letter of the 12th, in which you observe that you are committing to the Press the 2d Vol of Debates in the State Conventions on the question of adopting the federal Constn; that the Vol will include the debates of the Virg<sup>a</sup>. Convention, and you request of me a correct Copy of the part I bore in them.

On turning to the several pages containing it, in the 2d & 3d Vol<sup>s</sup> of the Original Edition, (the 1st not being at hand,) I find passages, some appearing to be defective, others obscure, if not unintelligible, others again which must be more or less erroneous. These flaws in the Report of my observations may doubtless have been occasioned in part by want of care in expressing them; but probably in part also by a feebleness of voice caused by an imperfect recovery from a fit of illness, or by a relaxed attention in the Stenographer himself incident to long & fatiguing discussions, of his general intelligence & intentional fidelity, no doubt has been suggested.

But in whatever manner the faulty passages are to be accounted for, it might not be safe, nor deemed fair, after a lapse of 40 years, lacking a few months, and without having in the meantime ever revised them, to undertake to make them what it might be believed they ought to be. If I did not confound subsequent ideas, and varied expressions, with the real ones, I might be supposed to do so.

These considerations induce me to leave my share of those debates, as they now stand in print; not doubting that marks of incorrectness on the face of them will save me from an undue degree of responsibility.

I have never seen nor heard of any publication of the Debates in the 2d Convention of N. Carolina, and think it probable that if taken down, they never went to the Press.

I am glad to find you are encouraged to proceed in your plan of collecting & republishing in a convenient form, the proceedings of the State Conventions as far as they are to be obtained; and with my best wishes that you may be duly rewarded for the laudable undertaking, I tender you my friendly respects.

Mrs. Madison desires me to express her acknowledgments for the little volume, 1 you politely sent her.



[\[Back to Table of Contents\]](#)

## TO GEORGE MASON.

Montpellier, Dec. 29, 1827.

Va. Hist. Soc.  
Mss.

Dear Sir:—

I am much obliged by your polite attention in sending me the Copies of the Remonstrance in behalf of Religious Liberty which with your letter of the 10th came duly to hand. I had supposed they were to be preserved at the office which printed them and referred M<sup>rs</sup>. Cutts to that source. Her failure there occasioned the trouble you so kindly assumed. I wished a few copies on account of applications now & then made to me and I preferred the Edition of which you had sent me a sample, as being in the simplest of forms, and for the further reason that the pamphlet edition had inserted in the caption, the term “toleration” not in the Article declaring the Right. The term being of familiar use in the English Code had been admitted into the original Draught of the Declaration of Rights but on a suggestion from myself was readily exchanged for the phraseology excluding it. <sup>1</sup> The Biographical tribute you meditate is justly due to the merits of your ancestor Col. Geo. Mason. It is to be regretted that highly distinguished as he was the memorials of them we record, or perhaps otherwise attainable are more scanty than of many of his contemporaries far inferior to him in intellectual powers and in public services. It would afford me much pleasure to be a tributary to your undertaking; but tho’ I had the advantage of being on the list of his personal friends and in several instances of being associated with him in public life I can add little for the pages of your work.

My first acquaintance of him was in the convention of Va. in 1776 which instructed her delegates to propose in Congress a Declaration of Independence and which formed the Declaration of rights and the Constitution for the State. Being young and inexperienced I had of course but little agency in those proceedings. I retain however a perfect impression that he was a leading champion for the Instruction; that he was the author of the Declaration as originally drawn and with very slight variations adopted; and that he was the Master Builder of the Constitution & its main expositor & supporter throughout the discussions which ended in the establishment. How far he may have approved it in all its features as established I am not able to say; and it is the more difficult now to discern unless the private papers left by him should give the information as at that day no debates were taken down and as the explanatory votes, if such there were, may have occurred in Committee of whole only, and of course not appear in the Journals. I have found among my papers a printed copy of the Constitution in one of its stages, which compared with the Instrument finally adopted, shews some of the changes it underwent, but in no instance at whose suggestion or by whose votes.

I have also a printed copy of a sketched constitution which appears to have been the primitive draft on the subject. It is so different in several respects from the other copy in point & from the Constitution finally passed that it may be more than doubted

whether it was from the hand of your grandfather. There is a tradition that it was from that of Meriwether Smith whose surviving papers if to be found among his descendants might throw light on the question. I ought to be less at a loss than I am in speaking of these circumstances having been myself an added member to the committee. But such has been the lapse of time that without any notes of what passed and with the many intervening scenes absorbing my attention my memory can not do justice to my wishes. Your grandfather as the Journals shew was at a later day added to the committee being doubtless absent when it was appointed or he never would have been overlooked.

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

My private intercourse with him was chiefly on occasional visits to Gunston when journeying to & fro from the North, in which his conversations were always a feast to me. But tho' in a high degree such, my recollection after so long an interval can not particularize them in a form adapted to biographical use. I hope others of his friends still living who enjoyed much more of his Society will be able to do more justice to the fund of instructive observations & interesting anecdotes for which he was celebrated. . . .

[\[Back to Table of Contents\]](#)

## TO JARED SPARKS.

Montpellier, January 5, 1828.

Mad. Mss.

Dear Sir,

I received two days ago your favor of December 29. That of August 25 came also safe to hand. I did not acknowledge it, because I expected soon to have an occasion for doing it on the receipt of the letters since put into the hands of Col. Storrow. Having heard nothing from him on the subject, I conclude that he retains them for a better conveyance than he had found; although I am not without apprehension of some casualty to the packet on the way.

For a reason formerly glanced at, namely, the advantage of having before me the whole of my correspondence with General Washington, in estimating his purpose as to particular portions of it, I did not make use of the suggested opportunity to Washington by my neighbour Mr. P. P. Barbour. I shall now conform to your last suggestion, and await your return from Europe. In the mean time I thank you for your promise to send me copies of letters from Gen<sup>l</sup>. Washington to me, which are missing on my files. This I hope can be done before your departure.

It would afford me particular pleasure to favour in any way, your interesting objects in visiting Europe, and especially by letters to correspondents who could be of service to you. It happens however that I have not a single one either in Great Britain or Holland. Our Consul Mr. Maury at Liverpool, is an old and intimate friend, and if you intend to take that place in your route to London, and you think it worth while, I shall gladly give you a line of introduction to his hospitality, and such little services as he may be able to render. In France, you will doubtless be able to obtain through Gen<sup>l</sup>. Lafayette alone, every proper key to the documentary treasures attainable there; besides what his own files may furnish.

I have given a hasty look at Gen<sup>l</sup>. Washington's letters, with an eye to your request for such autographic specimens as might be proper for depositories in Europe. As letters of little significancy in themselves, might not be worthy of such a use, my attention was chiefly directed to those of high character; and I am not sure that there is one such, which is not of too confidential a stamp, or which does not contain personalities too delicate, for the purpose in question. You will be aware also that some of his letters, especially when written in haste, shew specks of inaccuracy which though not derogating at all from the greatness of his character, might disappoint readers abroad accustomed to regard him as a model even in the performances of the pen. It is to be presumed that his correspondence with me, as with a few others, has more references to subjects and occasions involving confidential traits, than his correspondence with those less intimate with him. I will again turn to his letters and see whether there be any free from the objection hinted at.

You wish me to say whether I believe “that at the beginning of the Revolution, or at the assembling of the first Congress, the leaders of that day were resolved on Independence?” I readily express my entire belief that they were not, tho’ I must admit that my means of information were more limited than may have been the case with others still living to answer the enquiry. My first entrance on public life was in May, 1776, when I became a member of the Convention in Virginia, which instructed her delegates in Congress to propose the Declaration of Independence. Previous to that date, I was not in sufficient communication with any under the denomination of leaders, to learn their sentiments or views on the cardinal subject. I can only say therefore, that so far as ever came to my knowledge, no one of them ever avowed, or was understood to entertain a pursuit of independence at the assembling of the first Congress, or for a very considerable period thereafter. It has always been my impression that a re-establishment of the Colonial relations to the parent country previous to the Controversy, was the real object of every class of people, till despair of obtaining it, and the exasperating effects of the war, and the manner of conducting it, prepared the minds of all for the event declared on the 4th of July, 1776, as preferable with all its difficulties and perils, to the alternative of submission to a claim of power, at once external, unlimited, irresponsible, and under every temptation to abuse, from interest, ambition, & revenge. If there were individuals who originally aimed at Independence, their views must have been confined to their own bosoms or to a very confidential circle.

Allow me Sir to express anew, my best wishes for a success in your historical plan commensurate with its extent and importance; and my disposition to contribute such mites towards it as may be in my power.

Do me the favour to say when and from what port you propose to embark. May I venture to add a request of the result of your inquiry at Philadelphia on the subject of the paper in the hands of Claypole, as far as it may be proper to disclose it, and trust it to the mail.

With great esteem & friendly respects.

[\[Back to Table of Contents\]](#)

TO THOMAS S. GRIMKE.

Montp<sup>r</sup>, Jan<sup>y</sup> 15, 1828.

Mad. Mss.

I return my thanks, Sir for a copy of a Report on the question of reducing the Laws of S. Carolina to the form of a Code.

The Report, presents certainly very able & interesting views of the subject, and can leave no doubt of the practicability & utility of such a digest of the Statute law as would prune it of its redundancies of every sort, clear it of its obscurities, and introduce whatever changes in its provisions might improve its general character. Within a certain extent, the remark is applicable to the unwritten law also, which must be susceptible of many improvements not yet made by Legislative enactments. How far a reduction of the entire body of unwritten Law into a systematic text be practicable & eligible, is the only question on which doubts can be entertained. And here there seems to be no insuperable difficulty, in classifying & defining every portion of that law, provided the terms employed be at once sufficiently general & sufficiently technical; the first requisite, avoiding details too voluminous, the last avoiding new terms, always liable more or less till made technical by practice, to discordant interpretations. It has been observed that in carrying into effect the several codified digests not excepting the Napoleon, the most distinguished of them, the former resort in the Tribunals has been necessarily continued to the course of precedents and other recognized authorities. What indeed would the Justinian Code be without the explanatory comments & decrees which make a part of the Civil Law?

One of the earliest acts of the Virginia Legislature, after the State became Independent provided for a revisal of the Laws in force, with a view to give it a systematic character accommodated to the Republican form of Gov<sup>t</sup>. and a meliorated spirit of Legislation. The task was committed to five Com<sup>missioners</sup>, and executed by three of them, Mr. Jefferson, Mr. Wythe & Mr. Pendleton. In a consultative meeting of the whole number, the question was discussed whether the Common Law at large, or such parts only as were to be changed, should be reduced to a text law. It was decided by a majority that an attempt to embrace the whole was unadvisable; and the work, as executed, was accordingly limited to the Old British Statutes admitted to be in force, to the Colonial Statutes, to the penal law in such parts as needed reform, and to such new laws as would be favorable to the intellectual & moral condition of the community. In the changes made in the penal law, the Revisors were unfortunately misled into some of the specious errors of Beccaria, then in the zenith of his fame as a Philosophical Legislator.

The work employed the Commissioners several years, and was reported in upwards of a hundred Bills, many of which were readily, as others have been from time to time passed into laws; the residue being a fund still occasionally drawn on in the course of Legislation. The work is thought to be particularly valuable as a model of statutory composition. It contains not a superfluous word, and invariably prefers technical terms & phrases having a settled meaning where they are applicable. The Copies of

the Report printed were but few, and are now very rare, or I should be happy in forwarding one in return for your politeness. I may mention however that many years ago, at the request of Judge H. Pendleton of S. Carolina, then engaged in revising the laws of the State, I lent him a Copy, which not having been returned, may possibly be traced to the hands into which his death threw it.

Be pleased to accept, Sir, the expression of my great respect.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST

Montp<sup>r</sup>, Jan<sup>y</sup>. 26, 1828.

Mad. Mss.

Dear Sir

Your favors of the 18<sup>th</sup>. have been duly rec<sup>d</sup>. I am sorry you thought an apology necessary for the delay in sending me the residue of my letters to Mr. Jefferson; and rather surprized that you should be scrupulous of reading any of them. I took for granted that you would regard them, as on his files equally open tho' less entitled to inspection than his to me. In forwarding the parcels you are so obliging as to gather for me, it may be best to wait for a private & direct conveyance, if such an one be near in prospect. Otherwise there is so little risk in so short a distance by the mail, that I have no objection to that conveyance.

Before I rec<sup>d</sup> your letter I had not adverted to the criticism in the Advocate on Mr. Rush; nor even read the criticism on the criticism, being diverted from it by the signature, which, I ascribed to the author who has published so much under it, and whose views of every branch of the subject I thought myself sufficiently acquainted with.

I had indeed read but skimmingly the Treasury Report itself. I was certainly not struck with the passage in question as a heresy, and suspect that it must have been misunderstood by those who denounce it as such. [1](#)

How far or in what mode it may be proper to countervail by encouragements to Manufactures, the invitations given to Agriculture, by superadding to other lands in the Market the vast field of cheap & fertile lands opened by Cong<sup>s</sup>, is assuredly a fair subject for discussion. But that such a field is attractive to Agriculture as much as an augmentation of profits is to Manufactures, I conceive to be almost luce clarius. It is true that as the enlarged sale of fertile lands may be increasing the food & other articles in Market cheapen them to the manufacturer, and so far operate for a time at least as an encouragement to him; but the advantage bears in this case no proportion to the effect of a redundancy of cheap & fertile lands in drawing of capital as well as that class of population from which manufactories are to be recruited.

The actual fall in the price of land particularly in Virginia may be attributed to several causes 1. to the uncertainty & low prices of the crops. 2. to the quantity of land thrown into market by debtors, and the defect of purchasers, both owing to the general condition of the people, not difficult but unnecessary to be explained. But the 3 and main cause is the low price at which fertile lands in the Western market are attainable; tempting the owners here to sell out & convert the proceeds, or as much of them as they can spare, into cheaper & better lands there.

Nothing would be further from my wishes than to withhold at proper prices, a fair supply, of the Nat<sup>l</sup>. domain to Emigrants, whether of choice or of necessity: But how can it be doubted that in proportion as the supply should be reduced in quantity or raised in price, emigration would be checked and the price of land here augmented.

Put the case that the dividing mountains were to become, an impassable barrier to further emigrations, is it not obvious that the price of land on this side, except so far as other temporary causes might be a check, would spring up the moment the fact was known. Or take another case: that the population on the other side, instead of being there had remained & been added to the number on this, can it be believed that the price of land on this would be as low as it is. Suppose finally a general reflux of the Western population into the old States, a like effect on the price of land can be still less doubted.

That the redundancy & cheapness of land is unfavorable to manufactures, in a degree even beyond the comparative profitableness of the labour bestowed, is shewn by experience, and is easily explained. The pride of ownership when this exists or is expected, the air of great freedom, the less of constancy & identity of application, are known to seduce to rural life the drudges in workshops. What w<sup>d</sup>. be the condition of Birmingham or Manchester were 40 or 50 millions of fertile acres placed at an easy distance and offered at the price of our Western lands? What a transfer of capital, & difficulty of retaining or procuring operatives w<sup>d</sup>. ensue! And altho' the addition to the products of the earth, by cheapening the necessaries of life, might seem to favor manufactures, the advantage would be vastly overbalanced by the increased price of labour produced by the new demand for it, and by the superior attractiveness of the agricultural demand.

Why do such numbers flee annually from the more populous to less populous parts of the U. S. where land is cheaper? Evidently Because less labour, is more competent to supply the necessaries & comforts of life. Can an instance be produced of emigrants from the soil of the West, to the manufactories of Mass<sup>ts</sup> or Pen<sup>a</sup>.

Among the effects of the transmigration from the Atlantic region to the ultra-montane, it is not to be overlooked that besides reducing the price of land in the former by diminishing the proportion of inhabitants; it reduces it still further by reducing the value of its products in glutted markets. This is the result at which the reasoning of the—1 fairly arrived, and justifies the appeal made to the interest of the Southern farmers & planters on the question of having the same people for consumers of their vendibles, or rival producers of them.

But whilst I do justice to the successful reasoning in the case, I take the liberty of remarking, that in comparing land with machinery or materials an important distinction sh<sup>d</sup>. be kept in view. Land unlike the latter, is a co-operating *self-agent*, with a surface not extendible by art, as machines & in many cases materials also, may be multiplied by it. Arkwright's machine, which co-operates a thousand times as much with human agency as the Earth does, being multipliable indefinitely, soon sinks in the price to the mere cost of construction. Were the surface or the fertility of the earth Equally susceptible of increase, artificial & indefinite the cases would be



parallel. The earth is rather a source; than an instrument or material for the supplies of manufactūg, except when used in potting & brick work.

Having thus undertaken to criticise a criticism on a point of some amount I will indulge the mood as to a very minute one. You use the word “doubtlessly.” As you may live long, and may write much, it might be worth while to save the reiterated trouble of two supernumerary letters if they were merely such. But if there be no higher authority than the Lexicography of Johnson, the ly is apocryphal: And if not so, the cacophony alone of the elongated word ought to banish it; *doubtless* being, without doubt, an adverb, as well as an adjective, and more used in the former than the latter character.

[\[Back to Table of Contents\]](#)

## TO MARQUIS DE LA FAYETTE.

Montp<sup>r</sup>, Feb<sup>y</sup> 20, 1828

Mad. Mss.

My Dear Friend,

Your favor of Oc<sup>r</sup>. 27 has been some time on hand, tho' it met with delays, after it got into port. My health in which you take so kind an interest was as reported interrupted by a severe, tho' short attack, but is now very good. I hope yours is so without having suffered any interruption.

I wish I could give you fuller & better accounts of the Monticello affairs. Neither Virginia, nor any other State has added to the provision made for Mrs. Randolph by S. Carolina & Louisiana; and the Lottery, owing to several causes, has entirely failed. The property sold, consisting of *all* the Items except the lands & a few pictures & other ornaments, was fortunate in the prices obtained. I know not the exact amount. But a balance of debt remains, which I fear, in the sunken value and present unsalableness of landed property, will require for its discharge a more successful use of the manuscripts proper for the Press, than is likely to be soon effected. A prospectus has been lately published by Mr. Jefferson Randolph, extending to 3 or 4 8<sup>o</sup> vol<sup>s</sup>., and considerable progress is made, I understand, in selecting (a very delicate task) and transcribing (a tedious one) the materials for the Edition. In this country also, subscriptions in the extent hoped for, will require time, and arrangements are yet to be made for cotemporary publications in England & France, in both of which they are as they ought to be contemplated. I have apprized Mr. Randolph of your friendly dispositions with respect to a French Edition &c, for which he is very thankful, and means to profit by. From this view of the matter, we can only flatter ourselves that the result, will be earlier, than the promise, and prove adequate to the occasion. If the difficulties in the way of the enlarged plan of publication can be overcome, and the work have a sale corresponding with its intrinsic merits, it cannot fail to be very productive. A memoir making a part of it will be particularly attractive in France, portraying as it does the Revolutionary scenes, whilst Mr. Jefferson was in Paris. Is there not some danger that a censorship, may shut the press against such a publication? I fear the translator will be obliged to skip over parts at least, and those perhaps among the most interesting.

Mrs. M. has just rec<sup>d</sup>. a letter from Mrs. Randolph, in which she manifests a fixed purpose of returning to Virginia, in the month of May. Her health has been essentially improved since she left it.

I was aware, when I saw the printed letter of Mr. Jefferson in wh<sup>ch</sup>. he animadverts on licentious printers, that if seen in Europe, it would receive the misconstruction, or rather perversion to which you allude. Certain it is that no man more than Mr. Jefferson, regarded the freedom of the press, as an essential safeguard to free Gov<sup>t</sup>., to

which no man c<sup>d</sup>. be more devoted than he was, and that he never could therefore have expressed a syllable or entertained a thought unfriendly to it.

I have not supposed it worth while to notice at so late a day the misprint in the "Enquirer" to which you refer, because I take for granted that a correct expression of what you said on the 4th of July, will be preserved in depositories more likely to be resorted to than a Newspaper.

We learn with much gratification that the Greeks are rescued from the actual atrocities suffered, & the horrible doom threatened from the successes of their savage Enemy. The disposition to be made of them by the mediating Powers is a problem full of anxiety. We hope for the best, after their escape from the worst. We are particularly gratified also by the turn given to the elections in France, so little expected at the date of your letter, and which must give some scope for your patriotic exertions. If the event does not mean all that we wish it to do, it marks a progress of the public sentiment in a good direction. Your speech on the tomb of Manuel is well calculated to nourish & stimulate it.

I well knew the painful feelings with which you would observe the extravagances produced by the Presidential contest. They have found their way into the discussions of Congress & the State Legislatures, and have assumed forms that cannot be too much deplored. It happens too unfortunately, that the questions of Tariff & of Roads & Canals, which divide the public, on the grounds both of the Const<sup>n</sup>. & of justice, come on at the same time, are blended with & greatly increase the flame kindled by the Electioneering zeal. In Georgia fuel was derived from a further source, a discontent at the tardy removal of the Indians from lands within her State limits. Resolutions of both Georgia & S. Carolina have been passed & published which abroad may be regarded as striking at the Union itself, but they are ebullitions of the moment, and so regarded here. I am sorry that Virginia has caught too much of the prevailing fever. I think that with her at least its symptoms are abating.

Your answer to Mr. Clay was included in the voluminous testimony published by him, in repelling charges made ag<sup>st</sup>. him. Your recollections could not fail to be of avail to him, and were so happily stated as to give umbrage to no party.

In the zeal of party, a large & highly respectable meeting at Richmond, in recommending Presidential Electors, were led by a misjudging policy to put on their ticket the names of Mr. Monroe & myself, not only without our sanction, but on sufficient presumptions that they would be withdrawn. In my answer to that effect, I have ventured to throw in a dehortation from the violent manner in which the contest is carried on. How it may be relished by the parties I know not. [1](#)

You sympathize too much with a Country that continues its affection for you, without abatement, not to be anxious to know the probable result, as well as the present state of the ardent Contest. I can only say that the Party for Gen<sup>l</sup>. Jackson are quite confident, and that for Mr. Adams, apparently with but faint hopes. Whether any change, for which there is time, will take place in the prospect, cannot be foreseen. A good deal will depend on the vote of N. York, and I see by the Newspapers that the

sudden death of Mr. Clinton is producing in both parties rival appeals thro' obituary Eulogies, to the portion of the people particularly attached to him.

Miss F. Wright has just returned in good health, via N. Orleans, to her Establishment in Tennessee, and has announced a change in the plan of it, probably not unknown to you. With her rare talents & still rarer disinterestedness she has I fear created insuperable obstacles to the good fruits of which they might be productive by her disregard or rather defiance of the most established opinion & vivid feelings. Besides her views of amalgamating the white & black population so universally obnoxious, she gives an éclat to her notions on the subject of Religion & of marriage, the effect of which your knowledge of this Country can readily estimate. Her sister in her absence had exchanged her celibacy for the state of wedlock, with what companion I am not informed, nor whether with the new or old ideas of the conjugal knot.

Our University is doing, tho' not as well as we c<sup>d</sup>. wish, as well as could be reasonably expected. An early laxity of discipline, had occasioned irregularities in the habits of the students which were rendering the Institution unpopular. To this evil an effectual remedy has been applied. The studious & moral conduct of the young men will now bear a comparison with the best examples in the U. S. But we have been unfortunate in losing a Professor of Mathematics, who was a valuable acquisition, and are soon to lose the Professor of Ancient Languages, whose distinguished Competency we can scarcely hope to replace. Both of them were from England, & tho' professing to be friendly to this Country, and doing well in their respective stations, preferred a return to their native home; one of them seduced by an appointment in the new University in London; and the other, it is supposed, by the hope of obtaining an appointment. But the great cause which retards the growth of the Institution, is the pecuniary distress of the State, the effect of scanty crops & reduced prices, with habits of expence the effect of a better state of things. The mass of our people as you know, consists of those who depend on their Agricultural resources, and the failure of these, leaves it in the power of but few parents, to give the desired education to their sons, cheap as it has been made to them. We cherish the hope of a favorable change, but the immediate prospect is not flattering.

My mother, little changed since you saw her rec<sup>d</sup>. with much sensibility your kind remembrance, and charges me with the due returns. Mrs. M. joins me in assurances of every good wish for yourself, your son, and the whole household, with an extension to Mr. Le Vasseur. Most affectionately yr<sup>s</sup>.

[\[Back to Table of Contents\]](#)

TO WILLIAM WIRT.

Montp<sup>r</sup>, May 5, 1828.

Mad. Mss.

Dear Sir,

I cannot better comply with the wish of Mr. Eppes, than by committing to your perusal the inclosed letter just rec<sup>d</sup>. from him. You are probably not ignorant of his great worth, and the entire confidence due to whatever facts he may state; and will I am sure feel every appropriate disposition to favor the young friend he so warmly recommends as far as propriety will admit.

Will you permit me to remind you of the letters from Mr. Pendleton, sent you some years ago when you were gathering materials for the Biography of Mr. Henry. I am now putting into final arrangement the letters of my Correspondents, and those in question, tho' as far as I recollect, of no peculiar importance will fill a gap left in a series from a peculiarly valued friend. You will oblige me therefore by enabling me to make that use of them. I ask the favor of you also, to return at due time the letter from Mr. Eppes, which I may have occasion to answer.

I beg you my dear Sir to be assured of my continued esteem & accept my cordial salutations.

[\[Back to Table of Contents\]](#)

TO MARTIN VAN BUREN.

May 13 1828.

Mad. Mss.

D<sup>R</sup> Sir,

Perceiving that I am indebted to you for a Copy of the Report to the Senate relating to the "Colonization of persons of Colour" I return the thanks due to your politeness. The Document contains much interesting matter, and denotes an able hand in the preparation of it. I find it more easy however, to accede to its conclusion ag<sup>st</sup>. the Power claimed for Cong<sup>s</sup> than to some of the positions & reasonings employed on the occasion.

You will not I am sure, take it amiss if I here point to an *error of fact* in your "observations on Mr. Foot's amendment." <sup>1</sup> It struck me when first reading them, but escaped my attention when thanking you for the copy with which you favored me. The *threatening contest* in the Convention of 1787 did not, as you supposed, turn on the degree of power to be granted to the Federal Gov<sup>t</sup>. but on the rule by which the States should be represented and vote in the Gov<sup>t</sup>; the smaller States insisting on the rule of equality in all respects; the larger on the rule of proportion to inhabitants; and the compromise which ensued was that which established an equality in the Senate, and an inequality in the House of Representatives.

The contests & compromises turning on the grants of power, tho' very important in some instances, were Knots of a less "Gordian" character.

[\[Back to Table of Contents\]](#)

## TO THOMAS LEHRE. 1

August 2d, 1828.

Mad. Mss.

D<sup>R</sup> Sir,

I have rec<sup>d</sup>. your letter of July 21, and offer my acknowledgments for its friendly enquiries concerning my health, a blessing which I enjoy in as great a degree as could be reasonably looked for at the stage of life to which I am now advanced.

It gives me much pain to find you confirming the spirit of disunion said to prevail in your State. From the high reputation enjoyed by S. Carolina, for a political Department, marked not less by a respect for order than, a love of liberty, from the warm attachment she has ever evinced to the Union, and from her full share of interest in its preservation, I must say she is among the last States within which I could have anticipated sentiments & scenes, such as are described. I cannot but hope that they will be as transient as they are intemperate; and that a foresight of the awful consequences which a separation of the States portends, will soon reclaim all well meaning but miscalculating Citizens to a tone of feeling within the limits of the occasion; the sooner as it does not appear that any other State, certainly not this; however disapproving the measures, complained of, is observed to sympathize with the effect they are producing in S. Carolina.

All Gov<sup>ts</sup>. even the best, as I trust ours will prove itself to be, have their infirmities. Power wherever lodged, is liable more or less to abuse. In Gov<sup>ts</sup>. organized on Republican principles it is necessarily lodged in the majority; which sometimes from a deficient regard to justice, or an unconscious bias of interest, as well as from erroneous estimates of public good, may furnish just ground of complaint to the minority. But those who would rush at once into disunion as an Asylum from offensive measures of the Gen<sup>l</sup>. Gov<sup>t</sup>. would do well to examine how far there be such an identity of interests, of opinions, and of feelings, present & permanent, throughout the States individually considered, as, in the event of their separation, w<sup>d</sup>. in all cases secure minorities ag<sup>st</sup>. wrongful proceedings of majorities. A recurrence to the period anterior to the adoption of the existing Constitution, and to some of the causes which led to it, will suggest salutary reflections on this subject.

[\[Back to Table of Contents\]](#)

TO JOSEPH C. CABELL.

Montp<sup>r</sup> Sep<sup>r</sup> 18 1828.

Mad. Mss.

Dear Sir

Your late letter reminds me of our Conversation on the constitutionality of the power in Cong<sup>s</sup>. to impose a tariff for the encouragem<sup>t</sup>. of Manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed that it was among the powers vested in that Body. I had not forgotten my promise, & had even begun the task of fulfilling it; but frequent interruptions from other causes, being followed by a bilious indisposition, I have not been able sooner to comply with your request. The subjoined view of the subject, might have been advantageously expanded; but I leave that improvement to your own reflections and researches. [1](#)

The Constitution vests in Congress expressly “the power to lay & collect taxes duties imposts & excises;” and “the power to regulate trade”

That the former Power, if not particularly expressed, would have been included in the latter, as one of the objects of a general power to regulate trade, is not necessarily impugned, as has been alledged, by its being so expressed. Examples of this sort, cannot sometimes be easily avoided, and are to be seen elsewhere in the Constitution. Thus the power “to define & punish offences ag<sup>st</sup>. the law of Nations” includes the power, afterward particularly expressed “to make rules concerning captures &c., from offending Neutrals.” So also, a power “to coin money,” would doubtless include that of “regulating its value,” had not the latter power been expressly inserted. The term taxes, if standing *alone*, would certainly have included, duties, imposts & excises. In another clause it is said, “no tax or duty shall be laid on imports [exports],” &c. Here the two terms are used as synonymous. And in another clause where it is said, “no State shall lay any imposts or duties” &c, the terms imposts & duties are synonymous. Pleonasm, tautologies & the promiscuous use of terms & phrases differing in their shades of meaning, (always to be expounded with reference to the context and under the controul of the general character & manifest scope of the Instrument in which they are found) are to be ascribed sometimes to the purpose of greater caution; sometimes to the imperfections of language; & sometimes to the imperfection of man himself. In this view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue authorized by the Constitution. In few cases could the “*ex majori cautela*” occur with more claim to respect.

Nor can it be inferred, as has been ingeniously attempted, that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with G. Britain, between a power to regulate trade with the Colonies & a power to tax them. A power to regulate trade between different parts of the Empire was confessedly *necessary*; and was admitted to lie, as far as that was the case in the



British Parliament, the taxing part being at the same time denied to the Parliament, & asserted to be necessarily inherent in the Colonial Legislatures, as sufficient & the only safe depositories of the taxing power. So difficult was it nevertheless to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations; as in the duty on sugar & Molasses imported into the Colonies. And it was fortunate that the attempt at an internal and direct tax in the case of the Stamp Act, produced a radical examination of the subject, before a regulation of trade with a view to revenue had grown into an established Authority. One thing at least is certain, that the main & admitted object of the Parliamentary *regulations* of trade with the Colonies, was the encouragement of *manufactures* in G. B.

But the present question is unconnected, with the former relations between G. B. and her Colonies, which were of a peculiar, a complicated, and, in several respects, of an undefined character. It is a simple question under the Constitution of the U. S. whether “the power to regulate trade with foreign nations” as a distinct & substantive item in the enumerated powers, embraces the object of encouraging by duties restrictions and prohibitions the manufactures & products of the Country? And the affirmative must be inferred from the following considerations:

1. The meaning of the Phrase “to regulate trade” must be sought in the general use of it, in other words in the objects to which the power was generally understood to be applicable, when the Phrase was inserted in the Const<sup>n</sup>.
2. The power has been understood and used by all commercial & manufacturing Nations as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.
3. This has been particularly the case with G. B., whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures.
4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, while retaining the power over their foreign trade. It was the aim of Virginia herself, as will presently appear, tho’ at the time among the least prepared for such a use of her power to regulate trade.
5. Such a use of the power by Cong accords with the intention and expectation of the States in transferring the power over trade from themselves to the Gov<sup>t</sup>. of the U. S. This was emphatically the case in the Eastern, the more manufacturing members of the Confederacy. Hear the language held in the Convention of Mass<sup>ts</sup>. p. 84, 86, 136.

By Mr. Dawes an advocate for the Constitution, it was observed: “our manufactures are another great subject which has rec<sup>d</sup>. no encouragement by national Duties on foreign manufactures, and they never can by any authority in the Old Confed<sup>n</sup>” again “If we wish to *encourage our own manufactures*, to preserve our own commerce, to raise the value of our own lands, we must give Cong<sup>s</sup>. the powers in question.

By Mr. Widgery, an opponent, “All we hear is, that the merch<sup>t</sup>. & farmer will flourish, & that the mechanic & tradesman are to make their fortunes directly, if the Constitution goes down.

The Convention of Mass<sup>ts</sup>. was the only one in N. Eng<sup>d</sup>. whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other States in that quarter, more especially to Connecticut & Rh Isl<sup>d</sup>., the most thickly peopled of all the States, and having of course their thoughts most turned to the subject of manufactures. A like inference may be confidently applied to N. Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing State of P<sup>a</sup>., a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point. But ample evidence may be found elsewhere, that regulations of trade for the encouragement of manufactures, were considered as within the power to be granted to the new Congress, as well as within the scope of the National Policy. Of the States south of Pen<sup>a</sup>., the only two in whose Conventions the debates have been preserved are Virg<sup>a</sup> & N. Carol<sup>a</sup>., and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two States farthest South, whose debates in Convention if preserved have not been made public, viewed the encouragement of manufactures as not within the general power over trade to be transferred to the Gov<sup>t</sup>. of the U. S.

6. If Congress have not the power it is annihilated for the nation; a policy without example in any other nation, and not within the reason of the solitary one in our own. The example alluded to is the prohibition of a tax on exports which resulted from the apparent impossibility of raising in that mode a revenue from the States proportioned to the ability to pay it; the ability of some being derived in a great measure, not from their exports, but from their fisheries, from their freights and from commerce at large, in some of its branches altogether external to the U. S.; the profits from all which being invisible & intangible would escape a tax on exports. A tax on imports, on the other hand, being a tax on consumption which is in proportion to the ability of the consumers whencesoever derived was free from that inequality.

7. If revenue be the sole object of a legitimate impost, and the encourag<sup>t</sup>. of domestic articles be not within the power of regulating trade it w<sup>d</sup>. follow that no monopolizing or unequal regulations of foreign Nations could be counteracted; that neither the staple articles of subsistence nor the essential implements for the public safety could under any circumstances be ensured or fostered at home by regulations of commerce, the usual & most convenient mode of providing for both; and that the American navigation, tho the source of naval defence, of a cheapening competition in carrying our valuable & bulky articles to Market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned or speedily destroyed; it being evident that a tonnage duty merely in foreign ports ag<sup>st</sup>. our vessels, and an exemption from such a duty in our ports in favor of foreign vessels, must have the inevitable effect of banishing ours from the Ocean.

To assume a power to protect our navigation, & the cultivation & fabrication of all articles requisite for the Public safety as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade; a power which has been exercised by all Nations for those purposes; and which effects those purposes with less of interference with the authority & conveniency of the States, than might result from internal & direct modes of encouraging the articles, any of which modes would be authorized as far as deemed “necessary & proper,” by considering the Power as an incidental Power.

8. That the encouragement of Manufactures, was an object of the power, to regulate trade, is proved by the use made of the power for that object, in the first session of the first Congress under the Constitution; when among the members present were so many who had been members of the federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed & who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of Congress on that occasion that the power was denied by any of them. And it may be remarked that members from Virg<sup>a</sup>. in particular, as well of the antifederal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties, & to suggest even prohibitions, in favor of several articles of her production. By one a duty was proposed on mineral Coal in favor of the Virginia Coal-Pits; by another a duty on Hemp was proposed to encourage the growth of that article; and by a third a prohibition even of foreign Beef was suggested as a measure of sound policy. (See *Lloyd's Debates*.)

A further evidence in support of the Cons, power to protect & foster manufactures by regulations of trade, an evidence that ought of itself to settle the question, is the uniform & practical sanction given to the power, by the Gen<sup>l</sup>. Gov<sup>t</sup>. for nearly 40 years with a concurrence or acquiescence of every State Gov<sup>t</sup>. throughout the same period; and it may be added thro all the vicissitudes of Party, which marked the period. No novel construction however ingeniously devised, or however respectable and patriotic its Patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged & universal a practice. And well it is that this cannot be done without the intervention of the same authority which made the Constitution. If it could be so done, there would be an end to that stability in Gov<sup>t</sup>. and in Laws which is essential to good Gov<sup>t</sup>. & good Laws; a stability, the want of which is the imputation which has at all times been levelled ag<sup>st</sup>. Republicanism with most effect by its most dexterous adversaries. The imputation ought never therefore to be countenanced, by innovating constructions, without any plea of a precipitancy or a paucity of the constructive precedents they oppose; without any appeal to material facts newly brought to light; and without any claim to a better knowledge of the original evils & inconveniences, for which remedies were needed, the very best keys to the true object & meaning of all laws & constitutions.

And may it not be fairly left to the unbiased judgment of all men of experience & of intelligence, to decide which is most to be relied on for a sound and safe test of the meaning of a Constitution, a uniform interpretation by all the successive authorities

under it, commencing with its birth, and continued for a long period, thro' the varied state of political contests, or the opinion of every new Legislature heated as it may be by the strife of parties, or warped as often happens by the eager pursuit of some favourite object; or carried away possibly by the powerful eloquence, or captivating address of a few popular Statesmen, themselves influenced, perhaps, by the same misleading causes. If the latter test is to prevail, every new Legislative opinion might make a new Constitution; as the foot of every new Chancellor would make a new standard of measure.

It is seen with no little surprize, that an attempt has been made, in a highly respectable quarter, and at length reduced to a resolution formally proposed in Congress, to substitute for the power of Cong<sup>s</sup>. to regulate trade so as to encourage manufactures, a power in the several States to do so, with the consent of that Body; and this expedient is derived from a clause in the 10 sect. of Art: I. of the Const; which says: [“No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports and exports shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.”]

To say nothing of the clear indications in the Journal of the Convention of 1787, that the clause was intended merely to provide for expences incurred by particular States in their inspection laws, and in such improvements as they might chuse to make in their Harbours & rivers with the sanction of Cong<sup>r</sup>., objects to which the reserved power has been applied in several instances, at the request of Virginia & of Georgia, how could it ever be imagined that any State would wish to tax its own trade for the encouragement of manufactures, if possessed of the authority, or could in fact do so, if wishing it?

A tax on imports would be a tax on its own consumption; and the nett proceeds going, according to the clause, not into its own treasury, but into the treasury of the U. S., the State would tax itself separately for the equal gain of all the other States; and as far as the manufactures so encouraged might succeed in ultimately increasing the Stock in Market, and lowering the price by competition, this advantage also, procured at the sole expence of the State, would be common to all the others.

But the very suggestion of such an expedient to any State would have an air of mockery, when its *experienced* impracticability is taken into view. No one who recollects or recurs to the period when the power over Commerce was in the individual States, & separate attempts were made to tax or otherwise regulate it, needs be told that the attempts were not only abortive, but by demonstrating the necessity of general & uniform regulations gave the original impulse to the Constitutional reform which provided for such regulations.

To refer a State therefore to the exercise of a power as reserved to her by the Constitution, the impossibility of exercising which was an inducement to adopt the Constitution, is, of all remedial devices the last that ought to be brought forward. And what renders it the more extraordinary is that, as the tax on commerce as far as it

could be separately collected, instead of belonging to the treasury of the State as previous to the Const<sup>n</sup>. would be a tribute to the U. S.; the State would be in a worse condition, after the adoption of the Constitution, than before, in relation to an important interest, the improvement of which was a particular object in adopting the Constitution.

Were Congress to make the proposed declaration of consent to State tariffs in favour of State manufactures, and the permitted attempts did not defeat themselves, what would be the situation of States deriving their foreign supplies through the ports of other States? It is evident that they might be compelled to pay, in their consumption of particular articles imported, a tax for the common treasury not common to all the States, without having any manufacture or product of their own to partake of the contemplated benefit.

Of the impracticability of separate regulations of trade, & the resulting necessity of general regulations, no State was more sensible than Virg<sup>a</sup>. She was accordingly among the most earnest for granting to Congress a power adequate to the object. On more occasions than one in the proceedings of her Legislative Councils, it was recited, "that the relative situation of the States had been found on *trial* to require *uniformity* in their commercial regulations as the *only* effectual policy for obtaining in the ports of foreign nations a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the U. S., for preventing animosities which cannot fail to arise among the several States from the interference of partial & separate regulations; and for *deriving from commerce* such aids to the public *revenue* as it ought to contribute," &c.

During the delays & discourag<sup>ts</sup>. experienced in the attempts to invest Cong<sup>s</sup>. with the necessary powers, the State of Virg<sup>a</sup>. made various trials of what could be done by her individual laws. She ventured on duties & imposts as a source of Revenue; Resolutions were passed at one time to encourage & protect her own navigation & ship-building; and in consequence of complaints & petitions from Norfolk, Alex<sup>a</sup>. & other places, ag<sup>st</sup>. the monopolizing navigation laws of G. B., particularly in the trade *between the U. S. & the British W. Indies*, she deliberated with a purpose controuled only by the inefficacy of separate measures, on the experiment of forcing a reciprocity by prohibitory regulations of her own. (See Journal of H<sup>s</sup>. of Delegates in 1785.)

The effect of her separate attempts to raise revenue by duties on imports, soon appeared in Representations from her Merch<sup>ts</sup>., that the commerce of the State was banished by them into other channels, especially of Mary<sup>d</sup>., where imports were less burdened than in Virginia. (See d<sup>o</sup>. 1786.)

Such a tendency of separate regulations was indeed too manifest to escape anticipation. Among the projects prompted by the want of a federal auth<sup>y</sup>. over Commerce, was that of a concert, first proposed on the part of Mary<sup>d</sup>. for a uniformity of regulations between the 2 States, and commissioners were appointed for that purpose. It was soon perceived however that the concurrence of Pen<sup>a</sup>. was as necess<sup>y</sup>. to Mary<sup>d</sup>. as of Mary<sup>d</sup>. to Virg<sup>a</sup>., and the concurrence of Pennsylvania was accordingly

invited. But P<sup>a</sup>. could no more concur with<sup>t</sup>. N. Y. than M<sup>d</sup>. with<sup>t</sup>. P<sup>a</sup>. nor N. Y. with<sup>t</sup>. the concurrence of Boston &c.

These projects were superseded for the moment by that of the Convention at Annapolis in 1786, and forever by the Conv<sup>n</sup> at Ph<sup>a</sup> in 1787, and the Cons<sup>n</sup>. which was the fruit of it.

There is a passage in Mr. Necker's work on the finances of France which affords a signal illustration of the difficulty of collecting, in contiguous communities, indirect taxes when not the same in all, by the violent means resorted to against smuggling from one to another of them. Previous to the late revolutionary war in that Country, the taxes were of very different rates in the different Provinces; particularly the tax on salt which was high in the interior Provinces & low in the maritime; and the tax on Tobacco, which was very high in general whilst in some of the Provinces the use of the article was altogether free. The consequence was that the standing army of Patrols ag<sup>st</sup> smuggling, had swollen to the number of twenty three thousand; the annual arrests of men women & children engaged in smuggling, to five thousand five hundred & fifty; and the number annually arrested on account of Salt & Tobacco alone, to seventeen or eighteen hundred, more than three hundred of whom were consigned to the terrible punishment of the Gallies.

May it not be regarded as among the Providential blessings to these States, that their geographical relations multiplied as they will be by artificial channels of intercourse, give such additional force to the many obligations to cherish that Union which alone secures their peace, their safety, and their prosperity. Apart from the more obvious & awful consequences of their entire separation into Independent Sovereignities, it is worthy of special consideration, that divided from each other as they must be by narrow waters & territorial lines merely, the facility of surreptitious introductions of contraband articles, would defeat every attempt at revenue in the easy and indirect modes of impost and excise; so that whilst their expenditures would be necessarily & vastly increased by their new situation, they would, in providing for them, be limited to direct taxes on land or other property, to arbitrary assessments on invisible funds, & to the odious tax on persons.

You will observe that I have confined myself, in what has been said to the constitutionality & expediency of the power in congress to encourage domestic products by regulations of commerce. In the exercise of the power, they are responsible to their Constituents, whose right & duty it is, in that as in all other cases, to bring their measures to the test of justice & of the general good.

[\[Back to Table of Contents\]](#)

TO JOHN QUINCY ADAMS.

Montp<sup>r</sup>., Feb<sup>y</sup> 24, 1829.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. in your kind letter of the 21st instant, the little pamphlet containing the correspondence between yourself and “several citizens of Massachusetts,” with “certain additional papers.”<sup>1</sup>

The subjects presented to view by the pamphlet will doubtless, not be overlooked in the history of our country. The Documents not previously published are of a very interesting cast. The letter of Gov<sup>r</sup>. Plumer, particularly, if nowise impaired by adverse authority, must receive a very marked attention and have a powerful effect.

As what relates to Col: Hamilton, however, is stated on a solitary information only, I cannot but think there may be some material error at the bottom of it. That the leading agency of such a man, & from a State in the position of New York, should, in a project for severing the Union, be anxiously wished for by its authors is not to be doubted; and an experimental invitation of him to attend a select meeting may without difficulty, be supposed. But obvious considerations oppose a belief that such an invitation would be accepted; and if accepted, the supposition would remain, that his intention might be to dissuade his party & personal friends, from a conspiracy as rash as wicked and as ruinous to the party itself as to the country. The lapse of time must have extinguished lights by which alone the truth in many cases could be fully ascertained. It is quite possible that this may be found an exception. I pray you Sir, to accept a renewed assurance of my esteem and my best wishes.

[\[Back to Table of Contents\]](#)

TO JOSEPH C. CABELL.

Montpellier, Aug<sup>t</sup> 16, 1829.

Mad. Mss.

Dear Sir,—

Your letter of the 5<sup>th</sup> found me under a return of indisposition which has not yet left me.<sup>1</sup> To this cause you must ascribe the tardiness of my attention to it.

Your speech with the accompanying notes and documents will make a very interesting and opportune publication. I think with Mr. Johnson that your view of the Virginia doctrine in 98-99 is essentially correct and easily guarded against any honest misconstructions. I have pencilled a very few interlineations and erasures, (easily removed if not approved) having that object. I wish you to revise them with an eye to the language of Virginia in her proceedings of that epoch, happening to be without a remaining copy of them. I make the same request as to my remarks below, involving a reference to those proceedings. As to the two paragraphs in brackets, disliked by Mr. J. I am at some loss what to say. Tho' they may certainly be spared without leaving a flaw, the first of them, at least, is so well calculated to rescue the authority of Mr. Jefferson on the constitutionality of the Tariff, from the perverted and disrespectful use made of it, that I should hesitate in advising a suppression of it.

On the subject of an Arbiter or Umpire, it might not be amiss, perhaps, to note at some place, that there can be none, external to the U. S. more than to individual States; nor within either, for those extreme cases, or questions of passive obedience & non-resistance, which justify and require a resort to the original rights of the parties to the compact. But that in all cases, not of that extreme character, there is an Arbiter or Umpire, as within the Governments of the States, so within that of the U. S. in the authority constitutionally provided for deciding, controversies concerning boundaries of right and power. The provision in the U. S. is particularly stated in the Federalist, N<sup>o</sup> 39, pa. 241, Gideon's ed<sup>n</sup>.

The tonnage and other duties for encouraging navigation are, in their immediate operation, as locally partial to Northern Ship-owners, as a tariff on particular imports is partial to Northern manufacturers. Yet, South Carolina has uniformly favored the former as ultimately making us independent of foreign navigation, and, therefore, in reality of a National character. Ought she not in like manner, to concur in encouraging manufactures, tho' immediately partial to some local interests, in consideration of their ultimate effect in making the Nation independent of foreign supplies; provided the encouragement be not *unnecessarily* unequal in the immediate operation, nor extended to articles not *within the reason* of the policy?

On comparing the doctrine of Virginia in 98-99, with that of the present day in S. C. will it not be found that Virginia asserted that the States, as parties to the Constitutional compact, had a right and were bound, in extreme cases only, and after a



failure of all efforts for redress under the forms of the Constitution, to interpose in their sovereign capacity, for the purpose of arresting the evil of usurpation, and preserving the Constitution and Union: Whereas the doctrine of the present day in S. C. asserts that in a case of not greater magnitude than the degree of inequality in the operation of a tariff in favor of manufactures, she may of herself finally decide, by virtue of her sovereignty, that the Constitution has been violated; and that if not yielded to by the Federal Government, tho' supported by all the other States, she may rightfully resist it and withdraw herself from the Union.

Is not the resolution of the Assembly at their last Session against the Tariff a departure from the ground taken at the preceding session? If my recollection does not err, the power of Congress, to lay imposts, was restricted at this session, to the sole case of revenue. Their late resolution denies it only in the case of manufactures, tacitly admitting, according to the modifications of S. Carolina, tonnage duties, and duties counteracting foreign regulations. If the inconsistency be as I suppose, be so good as to favor me with a transcript of the Resolutions of the penult session. 1 Your letter returning those borrowed was duly received some time ago.

[\[Back to Table of Contents\]](#)

TO THOMAS S. HINDE.

Montp<sup>r</sup> Aug. 17 1829.

Mad. Mss.

Dear Sir,—

Your letter of July 23 was duly rec<sup>d</sup> but at a time when I was under an indisposition, remains of which are still upon me. I know not whence the error originated that I was engaged in writing the history of our Country. It is true that some of my correspondences during a prolonged public life, with other manuscripts connected with important public transactions, are on my files, and may contribute materials for a historical pen. But a regular history of our Country, even during its Revolutionary & Independent character, would be a task forbidden by the age alone at which I returned to private life, and requiring lights on various subjects, w<sup>ch</sup>. are gradually to be drawn from sources not yet opened for public use. The friendly tone of your letter has induced me to make these explanatory remarks; which being meant for yourself only, I must request may be so considered.

The authentic facts which it appears you happen to possess relating to the criminal enterprise in the west during the administration of Mr. Jefferson, must merit preservation as belonging to a history of that period; and if no repository more eligible occurs to you, a statement of them may find a place among my political papers. The result of that enterprise is among the auspicious pledges given by the genius of Republican institutions & the spirit of a free people, for future triumphs over dangers of every sort that may be encountered in our national career.

I cannot be insensible to the motives which prompted the too partial views you have taken of my public services; and which claim from me the good wishes which I tender you.

[\[Back to Table of Contents\]](#)

TO JOSEPH C. CABELL.

Montp<sup>r</sup> Sept<sup>r</sup> 7 1829.

Mad. Mss.

Dear Sir,—

I rec<sup>d</sup>. on the evening of Friday your two letters of Aug<sup>t</sup> 30 & Sep<sup>r</sup> 1, with the copy of the Virg<sup>a</sup>. proceedings in 98-99, and the letters of “Hampden.”

When I looked over your manuscript pamphlet. lately returned to you, my mind did not advert to a discrepancy in your recorded opinions, nor to the popularity of the rival jurisdiction claimed by the Court of Appeals. Your exchange of a hasty opinion for one resulting from fuller information & matured reflection, might safely defy animadversion. But it is a more serious question how far the advice of the two friends you have consulted, founded on the unanimous claim of the Court having Judge Roane at its head, ought to be disregarded; or how far it might be expedient in the present temper of the Country, to mingle that popular claim w<sup>th</sup>. the Tariff heresy, which is understood to be tottering in the public opinion, & to which your observations & references are calculated to give a very heavy blow. It were to be wished that the two Judges [Cabell & Coalter] cou’d read your manuscript, and then decide on its aptitude for public use. Would it be impossible so to remould the Essay as to drop what might be offensive to the opponents of the necessary power of the Supreme Court of the U. States, but who are sound as to the Tariff power; retaining only what relates to the Tariff; or, at most, to the disorganizing doctrine which asserts a right in every State to withdraw itself from the Union. Were this a mere league, each of the parties would have an equal right to expound it; and of course there would be as much right in one to insist on the bargain, as in another to renounce it. But the Union of the States is, according to the Virg<sup>a</sup>. doctrine in 98-99, a *Constitutional Union*; and the right to judge *in the last resort*, concerning usurpations of power, affecting the validity of the Union, referred by that doctrine to the parties to the compact. On recurring to original principles, and to extreme cases, a single State might indeed be so oppressed as to be justified in shaking off the yoke; so might a single county of a State be, under an extremity of oppression. But until such justifications can be pleaded, the compact is obligatory in both cases. It may be difficult to do full justice to this branch of the subject, without involving the question between the State and Federal Judiciaries: But I am not sure that the plan of your pamphlet will not admit a separation. On this supposition, it might be well, as soon as the Tariff fever shall have spent itself, to take up both the Judicial & the anti-union heresies; on each of which you will have a field for instructive investigation, with the advantage of properly connecting them in their bearings. ? A political system that does not provide for a peaceable and effectual decision of all controversies arising among the parties is not a Government, but a mere Treaty between independent nations, without any resort for terminating disputes but negotiation, and that failing, the sword. That the system of the U. States, is what it professes to be, a real Govern<sup>t</sup> and not a nominal one only, is proved by the fact that it has all the practical attributes & organs of a real tho’ limited

Gov<sup>t</sup>; a Legislative, Executive, & Judicial Department, with the physical means of executing the particular authorities assigned to it, on the individual citizens, in like manner as is done by other Govern<sup>ts</sup>. Those who would substitute negotiation for Governmental authority, and rely on the former as an adequate resource, forget the essential difference between disputes to be settled by two Branches of the same Gov<sup>t</sup>. as between the House of Lords & Commons in England, or the Senate & H. of Representatives here; and disputes between different Gov<sup>ts</sup>. In the former case, as neither party can act without the other, necessity produces an adjustment. In the other case, each party having in a Legislative, Executive, & Judicial Department of its own, the compleat means of giving an independent effect to its will, no such necessity exists; and physical collisions are the natural result of conflicting pretensions.

In the years 1819 & 1821, I had a very cordial correspondence with the author of "Hampden" & "Algernon Sydney," [Judge Roane.]<sup>1</sup> Although we agreed generally in our views of certain doctrines of the Supreme Court of the U. S. I was induced in my last letter to touch on the necessity of a definitive power on questions between the U. S. and the individual States, and the necessity of its being lodged in the former, where alone it could preserve the essential uniformity. I received no answer, which, indeed, was not required, my letter being an answer.

I shall return the printed pamphlet as soon as I have read the letters of "Hampden" making a part of it.

I have not the acts of the Sessions in question; & will thank you, when you have the opportunity to examine the Preambles to the polemic Resolutions of the Assembly, & let me know whether or not they present an Inconsistency. If I mistake not, Governor Tylers message emphatically denounced all imposts on commerce not *exclusively* levied for the purposes of *revenue*.

I return the letter of Mr. Morris, inclosed in yours rec<sup>d</sup>. some time ago. M<sup>r</sup>. Pollard ought to have been at no loss for my wish to ascertain the authorship of "The danger not over," the tendency, if not the object of the republication, with the suggestion that I had a hand in the paper, being to shew an inconsistency between my opinion then & now on the subject of the Tariff power. It may not be amiss to receive the further explanations of Mr. Pollard. But I learn from Mr. Robert Taylor, who was a student of law at the time with Mr. Pendleton, that he saw a letter to him from Mr. Jefferson expressing a desire that he would take up his pen at the crisis; but without, as Mr. Taylor recollects, furnishing any particular ideas for it, or naming me on the occasion. I believe a copy of the letter is among Mr. Jefferson's papers, and that it corresponds with Mr. T's account of it.

I comply with your request to destroy your two letters; and, as this has been written in haste and with interruptions of company, it will be best disposed of in the same way. Some of the passages in it called for more consideration & precision than I could bestow on them.

P. S. Since the above was written, I have rec<sup>d</sup>. yours of the 3<sup>d</sup>. inst. There could not be a stronger proof of the obscurity of the passage it refers to than its not being

intelligible to you. Its meaning is expressed in the slip of paper inclosed. The passage may be well eno' dispensed with, as being developed in that marked above by.?

Copy of the slip: Note that there can of course be no regular Arbiter or Umpire, under any Governmental system, applicable to those extreme cases, or questions of passive obedience & non-resistance, which justify & require a resort to the original rights of the parties to the system or compact; but that in all cases not of that extreme character, there is & must be an Arbiter or Umpire in the constitutional authority provided for deciding questions concerning the boundaries of right & power. The particular provision, in the Constitution of the U. S. is in the authority of the Supreme Court, as stated in the "Federalist," No. 39.

[\[Back to Table of Contents\]](#)

## OUTLINE.

Sep<sup>r</sup>. 1829.

Mad. Mss.

The compound Gov<sup>t</sup> of the U. S. is without a model, and to be explained by itself, not by similitudes or analogies. The terms Union, Federal, National not to be applied to it without the qualifications peculiar to the system. The English Gov<sup>t</sup> is in a great measure *sui generis*, and the terms Monarchy used by those who look at the executive head only, and Commonwealth, by those looking at the representative member chiefly, are inapplicable in a strict sense.

A fundamental error lies in supposing the State Governments to be the parties to the Constitutional compact from which the Govt. of the U. S. results.

It is a like error that makes the General Gov<sup>t</sup> and the State governments the parties to the compact, as stated in the 4<sup>th</sup> letter of “Algernon Sidney,” [Judge Roane]. They may be parties in a judicial controversy, but are not so in relation to the original constitutional compact.

In N<sup>o</sup>. XI of “Retrospects,” [by Gov<sup>r</sup>. Giles], in the Richmond Enquirer of Sept. 8, 1829, Mr. Jefferson is misconstrued, or rather *mistated*, as making the State Gov<sup>ts</sup> & the Gov<sup>t</sup> of the U. S. *foreign* to each other; the evident meaning, or rather the express language of Mr. J, being “the *States* are foreign to each other, in the portions of sovereignty not granted, as they were in the entire sovereignty before the grant,” and not that the State Gov<sup>ts</sup> and the Gov<sup>t</sup> of the U. S. are foreign to each other. As the State Gov<sup>ts</sup> participate in appointing the Functionaries of the Gen<sup>l</sup>. Gov<sup>t</sup> it can no more be said that they are altogether foreign to each other, than that the people of a State & its Gov<sup>t</sup> are foreign.

The real parties to the const<sup>l</sup> compact of the U. S. are the *States*—that is, the people thereof respectively in their sovereign character, and they *alone*, so declared in the Resolutions of 98, and so explained in the Report of 99. In these Resolutions as originally proposed, the word *alone*, w<sup>ch</sup>. guarded ag<sup>st</sup>. error on this point, was struck out, [see printed debates of 98] and led to misconceptions & misreasonings concerning the true character of the pol: system, and to the idea that it was a compact between the Gov<sup>ts</sup> of the States and the Gov<sup>t</sup> of the U. S. an idea promoted by the familiar one applied to Gov<sup>ts</sup> independent of the people, particularly the British, of [?] a compact between the monarch & his subjects, pledging protection on one side & allegiance on the other.

The plain fact of the case is that the Constitution of the U. S. was created by the people composing the respective States, who alone had the right; that they organized the Gov<sup>t</sup> into Legis. Ex. & Judic<sup>y</sup>. depart<sup>s</sup>. delegating thereto certain portions of power to be exercised over the whole, and reserving the other portions to themselves respectively. As these distinct portions of power were to be exercised by the General Gov<sup>t</sup> & by the State Gov<sup>ts</sup>; by each within limited spheres; and as of course

controversies concerning the boundaries of their power w<sup>d</sup> happen, it was provided that they should be decided by the Supreme Court of the U. S. so constituted as to be as impartial as it could be made by the mode of appointment & responsibility for the Judges.

Is there then no remedy for usurpations in which the Supreme C<sup>t</sup>. of the U. S. concur? Yes: constitutional remedies such as have been found effectual; particularly in the case of alien & sedition laws, and such as will in all cases be effectual, whilst the responsibility of the Gen<sup>l</sup>. Gov<sup>t</sup> to its constituents continues:—Remonstrances & instructions—recurring elections & impeachments; amend<sup>t</sup>. of Const. as provided by itself & exemplified in the 11th article limiting the suability of the States.

These are resources of the States ag<sup>st</sup>. the Gen<sup>l</sup>. Gov<sup>t</sup>. resulting from the relations of the States to that Gov<sup>t</sup>: whilst no corresponding controul exists in the relations of the Gen<sup>l</sup> to the individual Gov<sup>ts</sup> all of whose functionaries are independent of the United States in their app<sup>t</sup> and responsibility.

Finally should all the constitutional remedies fail, and the usurpations of the Gen<sup>l</sup> Gov<sup>t</sup> become so intolerable as absolutely to forbid a longer passive obedience & non-resistance, a resort to the original rights of the parties becomes justifiable; and redress may be sought by shaking off the yoke, as of right, might be done by part of an individual State in a like case; or even by a single citizen, could he effect it, if deprived of rights absolutely essential to his safety & happiness. In the defect of their ability to resist, the individual citizen may seek relief in expatriation or voluntary exile<sup>1</sup> a resort not within the reach of large portions of the community.

In all the views that may be taken of questions between the State Gov<sup>ts</sup> & the Gen<sup>l</sup>. Gov<sup>t</sup>. the awful consequences of a final rupture & dissolution of the Union sh<sup>d</sup>. never for a moment be lost sight of. Such a prospect must be deprecated, must be shuddered at by every friend to his country, to liberty, to the happiness of man. For, in the event of a dissolution of the Union, an impossibility of ever renewing it is brought home to every mind by the difficulties encountered in establishing it. The propensity of all communities to divide when not pressed into a unity by external danger, is a truth well understood. *There is no instance of a people inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile tribes.* The happy Union of these States is a wonder; their Const<sup>n</sup>. a miracle; their example the hope of Liberty throughout the world. Woe to the ambition that would meditate the destruction of either!

[\[Back to Table of Contents\]](#)

## SPEECH IN THE VIRGINIA CONSTITUTIONAL CONVENTION.1

December 2, 1829.

Although the actual posture of the subject before the Committee might admit a full survey of it, it is not my purpose, in rising, to enter into the wide field of discussion, which has called forth a display of intellectual resources and varied powers of eloquence, that any country might be proud of, and which I have witnessed with the highest gratification. Having been, for a very long period, withdrawn from any participation in proceedings of deliberative bodies, and under other disqualifications now of which I am deeply sensible, though perhaps less sensible than others may perceive that I ought to be, I shall not attempt more than a few observations, which may suggest the views I have taken of the subject, and which will consume but little of the time of the Committee, become precious. It is sufficiently obvious, that persons now and property are the two great subjects on which Governments are to act; and that the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted. These rights cannot well be separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right. The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse. In monarchies, the interests and happiness of all may be sacrificed to the caprice and passions of a despot. In aristocracies, the rights and welfare of the many may be sacrificed to the pride and cupidity of the few. In republics, the great danger is, that the majority may not sufficiently respect the rights of the minority. Some gentlemen, consulting the purity and generosity of their own minds, without adverting to the lessons of experience, would find a security against that danger, in our social feelings; in a respect for character; in the dictates of the monitor within; in the interests of individuals; in the aggregate interests of the community. But man is known to be a selfish, as well as a social being. Respect for character, though often a salutary restraint, is but too often overruled by other motives. When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safe-guard; and besides, that conscience itself may be deluded; may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is often found to be an overmatch for those considerations. These favourable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provision belonging to Government and Law. They will always, in proportion as they prevail, be favourable to a mild administration of both: but they can never be relied on as a guaranty of the rights of the minority against a majority disposed to take unjust advantage of its power. The only effectual safeguard to the rights of the minority, must be laid in such a basis and structure of the Government



itself, as may afford, in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side.

To come more nearly to the subject before the Committee, viz.: that peculiar feature in our community, which calls for a peculiar division in the basis of our government, I mean the coloured part of our population. It is apprehended, if the power of the Commonwealth shall be in the hands of a majority, who have no interest in this species of property, that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners. It would seem, therefore, if we can incorporate that interest into the basis of our system, it will be the most apposite and effectual security that can be devised. Such an arrangement is recommended to me by many very important considerations. It is due to justice; due to humanity; due to truth; to the sympathies of our nature; in fine, to our character as a people, both abroad and at home, that they should be considered, as much as possible, in the light of human beings, and not as mere property. As such, they are acted upon by our laws, and have an interest in our laws. They may be considered as making a part, though a degraded part, of the families to which they belong.

If they had the complexion of the Serfs in the North of Europe, or of the Villeins formerly in England; in other terms, if they were of our own complexion, much of the difficulty would be removed. But the mere circumstance of complexion cannot deprive them of the character of men. The Federal number, as it is called, is particularly recommended to attention in forming a basis of Representation, by its simplicity, its certainty, its stability, and its permanency. Other expedients for securing justice in the case of taxation, while they amount in pecuniary effect, to the same thing, have been found liable to great objections: and I do not believe that a majority of this Convention is disposed to adopt them, if they can find a substitute they can approve. Nor is it a small recommendation of the Federal number, in my view, that it is in conformity to the ratio recognized in the Federal Constitution. The cases, it is true, are not precisely the same, but there is more of analogy than might at first be supposed. If the coloured population were equally diffused through the State, the analogy would fail; but existing as it does, in large masses, in particular parts of it, the distinction between the different parts of the State, resembles that between the slave-holding and non-slave-holding States: and, if we reject a doctrine in our own State, whilst we claim the benefit of it in our relations to other States, other disagreeable consequences may be added to the charge of inconsistency, which will be brought against us. If the example of our sister States is to have weight, we find that in Georgia, the Federal number is made the basis of Representation in both branches of their Legislature; and I do not learn, that any dissatisfaction or inconvenience has flowed from its adoption. I wish we could know more of the manner in which particular organizations of Government operate in other parts of the United States. There would be less danger of being misled into error, and we should have the advantage of their experience, as well as our own. In the case I mention, there can, I believe, be no error.

Whether, therefore, we be fixing a basis of Representation, for the one branch or the other of our Legislature, or for both, in a combination with other principles, the Federal ratio is a favourite resource with me. It entered into my earliest views of the

subject, before this Convention was assembled: and though I have kept my mind open, have listened to every proposition which has been advanced, and given to them all a candid consideration, I must say, that in my judgment, we shall act wisely in preferring it to others, which have been brought before us. Should the Federal number be made to enter into the basis in one branch of the Legislature, and not into the other, such an arrangement might prove favourable to the slaves themselves. It may be, and I think it has been suggested, that those who have themselves no interest in this species of property, are apt to sympathise with the slaves, more than may be the case with their masters; and would, therefore, be disposed, when they had the ascendancy, to protect them from laws of an oppressive character, whilst the masters, who have a common interest with the slaves, against undue taxation, which must be paid out of their labour, will be their protectors when they have the ascendancy.

The Convention is now arrived at a point, where we must agree on some common ground, all sides relaxing in their opinions, not changing, but mutually surrendering a part of them. In framing a Constitution, great difficulties are necessarily to be overcome; and nothing can ever overcome them, but a spirit of compromise. Other nations are surprised at nothing so much as our having been able to form Constitutions in the manner which has been exemplified in this country. Even the union of so many States, is, in the eyes of the world, a wonder; the harmonious establishment of a common Government over them all, a miracle. I cannot but flatter myself, that without a miracle, we shall be able to arrange all difficulties. I never have despaired, notwithstanding all the threatening appearances we have passed through. I have now more than a hope—a consoling confidence, that we shall at last find, that our labours have not been in vain.

[\[Back to Table of Contents\]](#)

## TO GEORGE McDUFFIE.1

Montpellier, May 8, 1830.

Dear Sir

I have recd. a copy of the late Report, on the Bank of the U. S. and finding by the name on the envelope, that I am indebted for the communication to your politeness, I tender you my thanks for it.2 The document contains very interesting & instructive views of the subject; particularly of the objectionable features in the substitute proposed for the existing Bank.

I am glad to find that the Report sanctions the sufficiency of the course and character of the precedents which I had regarded as overruling individual judgments in expounding the Constitution. You are not aware perhaps of a circumstance, weighing against the plea that the chain of precedents was broken by the negative on a Bank bill by the casting vote of the President of the Senate, given expressly on the ground that the Bill was not authorized by the Constitution. The circumstance alluded to is that the equality of votes which threw the casting one on the Chair, was the result of a union of a number of members who objected to the expediency only of the Bill, with those who opposed it on constitutional grounds. On a naked question of constitutionality, it was understood that there would have been a majority who made no objection on that score, [the journal of the Senate may yet test the fact.]

Will you permit me Sir to suggest for consideration whether the Report (pg.-10) in the position & reasoning applied to the effect of a change in the quantity on the value of a currency, sufficiently distinguishes between a special currency, and a currency not convertible into specie. The latter being of local circulation only, unless the local use for it increase or diminish, with the increase or decrease of its quantity, [will] be changeable in its value, as the quantity of the currency changes. The metals on the other hand, having a universal currency, would not be equally affected by local changes in their circulating amount, a surplus producing a proportional depreciation at home, might bear the expense of transportation, and avail itself of its current value abroad.

If I have misconceived the meaning of the Report, you will be good enough to pardon the error, and to accept, with a repetition of my thanks, assurances of my great & cordial respect.

[\[Back to Table of Contents\]](#)

## TO JAMES HILLHOUSE.

Montp<sup>r</sup>May 1830.

Mad. Mss.

Dear Sir—

I have received your letter of the 10<sup>th</sup> inst: with the pamphlet containing the proposed amendments of the Constitution of the U. States, on which you request my opinion & remarks.1

Whatever pleasure might be felt in a fuller compliance with your request, I must avail myself of the pleas of the age I have reached, and of the controul of other engagements, for not venturing on more than the few observations suggested by a perusal of what you have submitted to the public.

I readily acknowledge the ingenuity which devised the plan you recommend, and the strength of reasoning with which you support it. I cannot however but regard it as liable to the following remarks:

1. The first that occurs is, that the large States would not exchange the proportional agency they now have in the appointment of the Chief Magistrate, for a mode placing the largest & smallest States on a perfect equality in that cardinal transaction. N. York has in it, even now more than 13 times the weight of several of the States, and other States according to their magnitudes w<sup>d</sup> decide on the change with correspondent calculations & feelings.

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

2. As the President elect would generally be without any previous evidence of national confidence, and have been in responsible relations only to a particular State, there might be danger of State partialities, and a certainty of injurious suspicions of them.

3. Considering the ordinary composition of the Senate, and the number (in a little time nearly 50) out of which a single one was to be taken by pure chance; it must often happen, that the winner of the prize would want some of the qualities necessary to command the respect of the nation, and possibly be marked with some of an opposite tendency. On a review of the composition of that Body thro' the successive periods of its existence, (antecedent to the present which may be an exception) how often will names present themselves, which would be seen with mortified feelings at the head of the nation. It might happen, it is true, that, in the choice of Senators, an eventual

elevation to that important trust might produce more circumspection in the State Legislatures. But so remote a contingency could not be expected to have any great influence; besides that there might be States not furnishing at the time, characters which would satisfy the pride and inspire the confidence of the States & of the People.

4. A President not appointed by the nation and without the weight derived from its selection & confidence, could not afford the advantage expected from the qualified negative on the act of the Legislative branch of the Gov<sup>t</sup>. He might either shrink from the delicacy of such an interposition, or it might be overruled with too little hesitation by the body checked in its career.

5. In the vicissitudes of party, adverse views & feelings will exist between the Senate & President. Under the amendments proposed, a spirit of opposition in the former to the latter would probably be more frequent than heretofore. In such a state of things, how apt might the Senate be to embarrass the President, by refusing to concur in the removal of an obnoxious officer; how prone would be a refractory officer, having powerful friends in the Senate, to take shelter under that authority, & bid defiance to the President; and, with such discord and anarchy in the Ex. Department, how impaired would be the security for a due execution of the Laws!

6. On the supposition that the above objection would be overbalanced by the advantage of reducing the power and the patronage now attached to the Presidential office; it has generally been admitted, that the Heads of Dep<sup>ts</sup> at least who are at once the associates & the organs of the Chief Magistrate, ought to be well disposed towards him, and not independent of him. What would be the situation of the President, and what might be the effect on the Executive business, if those immediately around him, and in daily consultation with him, could, however adverse to him in their feelings & their views, be fastened upon him, by a Senate disposed to take side with them? The harmony so expedient between the P. & Heads of Departments, and among the latter themselves, has been too liable to interruption under an organization apparently so well providing against it.

I am aware that some of these objections might be mitigated, if not removed; but not I suspect in a degree to render the proposed modification of the Executive Department an eligible substitute for the one existing. At the same time, I am duly sensible of the evils incident to the existing one, and that a solid improvement of it is a desideratum that ought to be welcomed by all enlightened patriots.

In the mean time, I cannot feel all the alarm you express at the prospect for the future as reflected from the mirror of the past. It will be a rare case that the Presidential contest will not issue in a choice that will not discredit the station, and not be acquiesced in by the unsuccessful party, foreseeing, as it must do, the appeal to be again made at no very distant day to the will of the nation. As long as the country shall be exempt from a military force powerful in itself and combined with a powerful faction, liberty & peace will find safeguards in the elective resource and the spirit of the people. The dangers which threaten our political system least remote are perhaps of other sorts and from other sources.

I will only add to these remarks, what is indeed sufficiently evident, that they are too hasty & too crude for any other than a private, and that an indulgent eye.

Mrs. M. is highly gratified by your kind expressions towards her, & begs you to be assured that she still feels for you that affectionate friendship with which you impressed her many years ago. Permit me to join her in best wishes for your health & every other happiness.

[\[Back to Table of Contents\]](#)

TO M. L. HURLBERT.

Montp<sup>r</sup> May 1830.

Mad. Mss.

I rec<sup>d</sup>. Sir, tho' not exactly in the due time, your letter of April 25, with a copy of your pamphlet, on the subject of which you request my opinions.

With a request opening so wide a field, I could not undertake a full compliance, without forgetting the age at which it finds me, and that I have other engagements precluding such a task. I must hope therefore you will accept in place of it, a few remarks which tho' not adapted to the use you had contemplated, may manifest my respect for your wishes, and for the subject which prompted them.

The pamphlet certainly evinces a very strong pen, & talents adequate to the discussion of constitutional topics of the most interesting class. But in doing it this justice, and adding with pleasure, that it contains much matter with which my views of the Constitution of the U. S. accord; I must add also that it contains views of the Constitution from which mine widely differ.

I refer particularly to the construction you seem to put on the introductory clause "We the people" and on the phrases "common defence & gen<sup>l</sup>. welfare." Either of these, if taken as a measure of the powers of the Gen<sup>l</sup> Gov<sup>t</sup> would supersede the elaborated specifications which compose the Body of the Instrument, in contravention to the fairest rules of interpretation. And if I am to answer your appeal to me as a witness, I must say that the real measure of the powers meant to be granted to Congress by the Convention, as I understood and believe, is to be sought in the specifications, to be expounded indeed not with the strictness applied to an ordinary statue by a Court of Law; nor on the other hand with a latitude that under the name of means for carrying into execution a limited Government, would transform it into a Government without limits.

But whatever respect may be thought due to the intention of the Convention, which prepared & proposed the Constitution, as presumptive evidence of the general understanding at the time of the language used, it must be kept in mind that the only authoritative intentions were those of the people of the States, as expressed thro' the Conventions which ratified the Constitution.

That in a Constitution, so new, and so complicated, there should be occasional difficulties & differences in the practical expositions of it, can surprize no one; and this must continue to be the case, as happens to new laws on complex subjects, until a course of practice of sufficient uniformity and duration to carry with it the public sanction shall settle doubtful or contested meanings.

As there are legal rules for interpreting laws, there must be analogous rules for interpreting const<sup>ns</sup>. and among the obvious and just guides applicable to the Const<sup>n</sup>. of the U. S. may be mentioned—

1. The evils & defects for curing which the Constitution was called for & introduced.
2. The comments prevailing at the time it was adopted.
3. The early, deliberate & continued practice under the Constitution, as preferable to constructions adapted on the spur of occasions, and subject to the vicissitudes of party or personal ascendencies.

On recurring to the origin of the Constitution and examining the structure of the Gov<sup>t</sup>. we perceive that it is neither a Federal Gov<sup>t</sup>. created by the State Gov<sup>ts</sup>. like the Revolutionary Congress; nor a consolidated Gov<sup>t</sup>. (as that term is now applied,) created by the people of the U. S. as one community, and as such acting by a numerical majority of the whole.

The facts of the case which must decide its true character, a character without a prototype, are that the Constitution was created by the people, but by the people as composing distinct States, and acting by a majority in each:

That, being derived from the same source as the constitutions of the States, it has within each State, the same authority as the Constitution of the State, and is as much a Constitution, in the strict sense of the term, as the constitution of the State:

That, being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it is not revocable or alterable at the will of the States individually, as the constitution of a State is revocable & alterable at its individual will:

That the sovereign or supreme powers of Gov<sup>t</sup>. are divided into the separate depositories of the Gov<sup>t</sup>. of the U. S. and the Gov<sup>ts</sup>. of the individual States:

That the Gov<sup>t</sup>. of the U. S. is a Gov<sup>t</sup>. in as strict a sense of the term, as the Gov<sup>ts</sup>. of the States; being, like them, organized into Legislative, Executive & Judiciary dep<sup>ts</sup>. operating, like them, directly on persons & things, and having like them the command of a physical force for executing the powers committed to it:

That the supreme powers of Gov<sup>t</sup> being divided between different Gov<sup>ts</sup>. and controversies as to the landmarks of jurisdiction being unavoidable, provision for a peaceable & authoritative decision of them was obviously essential:

That, to leave this decision to the States, numerous as they were & with a prospective increase, would evidently result in conflicting decisions subversive of the common Gov<sup>t</sup> and of the Union itself:

That, according to the actual provision against such calamities, the Constitution & laws of the U. S. are declared to be paramount to those of the individual States, & an appellate supremacy is vested in the Judicial power of the U. S.:

That as safeguards ag<sup>st</sup>. usurpations and abuses of power by the Gov<sup>t</sup> of the U. S. the members of its Legislative and the head of its Executive Department, are eligible by



& responsible to, the people of the States or the Legislatures of the States; and as well the Judicial as the Executive functionaries including the head, are impeachable by the Representatives of the people in one branch of the Legislature of the U. S. and triable by the Representatives of the States in the other Branch:

States can, through forms of the const<sup>l</sup>. elective provisions, controul the Gen<sup>l</sup>. Gov<sup>t</sup>. This has no agency in electing State Gov<sup>ts</sup>., & can only controul them through the functionaries particularly the Judiciary of the General Government:

That in case of an experienced inadequacy of these provisions, an ulterior resort is provided in amendments attainable by an intervention of the States, which may better adapt the Constitution for the purposes of its creation.

Should all these provisions fail, and a degree of oppression ensue, rendering resistance & revolution a lesser evil than a longer passive obedience, there can remain but the ultima ratio, applicable to extreme cases, whether between nations or the component parts of them.

Such, Sir, I take to be an outline view, tho' an imperfect one, of the pol: system presented in the Constitution of the U. S. Whether it be the best system that might have been devised, or what the improvements that might be made in it, are questions equally beyond the scope of your letter and that of the answer, with which I pray you to accept my respects and good wishes.

[\[Back to Table of Contents\]](#)

## TO MARTIN VAN BUREN.

Montpellier, June 3, 1830.

Mad. Mss.

J. Madison has duly rec<sup>d</sup> the copy of the President's Message forwarded by M<sup>r</sup> Van Buren. In returning his thanks for this polite attention, he regrets the necessity of observing that the Message has not rightly conceived the intention of J. M. in his veto in 1817, on the Bill relating to Internal Improvements. It was an object of the veto to deny to Congress as well the appropriating power, as the executing and jurisdictional branches of it. And it is believed that this was the general understanding at the time, and has continued to be so, according to the references occasionally made to the document. Whether the language employed duly conveyed the meaning of which J. M. retains the consciousness, is a question on which he does not presume to judge for others.

Relying on the candour to which these remarks are addressed, he tenders to M<sup>r</sup>. Van Buren renewed assurances of his high esteem & good wishes.

[\[Back to Table of Contents\]](#)

## TO MARTIN VAN BUREN

Montpellier, July 5, 1830.

Mad. Mss.

Dear Sir,—

Your letter of June 9<sup>th</sup>. came duly to hand. On the subject of the discrepancy between the construction put by the message of the President on the veto of 1817, and the intention of its author, the President will of course consult his own view of the case. For myself, I am aware that the document must speak for itself, and that that intention cannot be substituted for the established rules of interpretation.

The several points on which you desire my ideas are necessarily vague, and the observations on them cannot well be otherwise. They are suggested by a respect for your request, rather than by a hope that they can assist the object of it.

“Point 1. The establishment of some rule which shall give the greatest practicable precision to the power of appropriating money to objects of general concern.”

The rule must refer, it is presumed, either to the objects of appropriation, or to the apportionment of the money.

A specification of the objects of general concern in terms as definite as may be, seems to be the rule most applicable; thus Roads simply, if for all the uses of Roads; or Roads post and military, if limited to those uses; or post roads only, if so limited: thus, Canals, either generally, or for specified uses: so again Education, as limited to a university, or extended to seminaries of other denominations.

As to the apportionment of the money, no rule can exclude Legislative discretion but that of distribution among the States according to their presumed contributions; that is, to their ratio of Representation in Congress. The advantages of this rule are its certainty, and its apparent equity. The objections to it may be that, on one hand, it would increase the comparative agency of the Federal Government, and, on the other that the money might not be expended on objects of general concern; the interests of particular States not happening to coincide with the general interest in relation to improvements within such States.

“2. A rule for the Government of Grants for Light-houses, and the improvement of Harbours and Rivers, which will avoid the objects which it is desirable to exclude from the present action of the Government; and at the same time do what is imperiously required by a regard to the general commerce of the Country.”

National grants in these cases, seem to admit no possible rule of discrimination, but as the objects may be of national or local character. The difficulty lies here, as in all cases where the *degree* and not the *nature* of the case, is to govern the decision. In the extremes, the judgment is easily formed; as between removing obstructions in the

Mississippi, the highway of commerce for half the nation, and a like operation, giving but little extension to the navigable use of a river, itself of confined use. In the intermediate cases, legislative discretion, and, consequently, legislative errors and partialities are unavoidable. Some controul is attainable in doubtful cases, from preliminary Investigations and Reports by disinterested and responsible agents.

In defraying the expense of internal improvements, strict justice would require that a part only and not the whole should be borne by the nation. Take for examples the Harbours of New York and New Orleans. However important in a commercial view they may be to the other portions of the Union, the States to which they belong, must derive a *peculiar* as well as a common advantage from improvements made in them, and could afford therefore to combine with grants from the common treasury, proportional contributions from their own. On this principle it is that the practice has prevailed in the States (as it has done with Congress) of dividing the expense of certain improvements, between the funds of the State, and the contributions of those locally interested in them.

Extravagant and disproportionate expenditures on Harbours, Light-houses and other arrangements on the Seaboard ought certainly to be controuled as much as possible. But it seems not to be sufficiently recollected, that in relation to our *foreign* commerce, the burden and benefit of accomodating and protecting it, necessarily go together, and must do so as long and as far, as the public revenue continues to be drawn thro' the Custom-house. Whatever gives facility and security to navigation, cheapens imports; and all who consume them wherever residing are alike interested in what has that effect. If they consume they ought as they now do to pay. If they do not consume, they do not pay. The consumer in the most inland State derives the same advantage from the necessary and prudent expenditures for the security of our foreign navigation, as the consumer in a maritime State. Other local expenditures, have not of themselves a correspondent operation.

“3. The expediency of refusing all appropriations for internal improvements (other than those of the character last referred to, if they can be so called) until the national debt is paid; as well on account of the sufficiency of that motive, as to give time for the adoption of some constitutional or other arrangement by which the whole subject may be placed on better grounds; an arrangement which will never be seriously attempted as long as scattering appropriations are made, and the scramble for them thereby encouraged.”

The expediency of refusing appropriations, with a view to the previous discharge of the public debt, involves considerations which can be best weighed and compared at the focus of lights on the subject. A distant view like mine, can only suggest the remark: too vague to be of value, that a material delay ought not to be incurred for objects not both important and urgent; nor such objects to be neglected in order to avoid an immaterial delay. This is, indeed, but the amount of the exception glanced at in your parenthesis.

The mortifying scenes connected with a surplus revenue, are the natural offspring of a surplus; and cannot perhaps be entirely prevented by any plan of appropriation which

allows a scope to Legislative discretion. The evil will have a powerful controul in the pervading dislike to taxes even the most indirect. The taxes lately repealed are an index of it. Were the whole revenue expended on internal improvements drawn from direct taxation, there would be danger of too much parsimony rather than too much profusion at the Treasury.

“4. The strong objections which exist against subscriptions to the stock of private companies by the United States.”

The objections are doubtless in many respects strong. Yet cases might present themselves which might not be favored by the State, whilst the concurring agency of an Undertaking Company would be desirable in a national view. There was a time it is said when the State of Delaware, influenced by the profits of a *Portage*, between the Delaware and Chesapeake was unfriendly to the Canal, now forming so important a link of internal communication between the North and the South. Undertakings by private companies carry with them a presumptive evidence of utility, and the private stakes in them, some security for economy in the execution, the want of which is the bane of public undertakings. Still the importunities of private companies cannot be listened to with more caution than prudence requires.

I have, as you know, never considered the powers claimed for Congress over roads and canals, as within the grants of the Constitution. But such improvements being justly ranked among the greatest advantages and best evidences of good Government; and having moreover, with us, the peculiar recommendation of binding the several parts of the Union more firmly together, I have always thought the power ought to be possessed by the common Government; which commands the least unpopular and most productive sources of revenue, and can alone select improvements with an eye to the national good. The States are restricted in their pecuniary resources; and Roads and Canals most important in a national view might not be important to the State or States possessing the domain and the soil; or might even be deemed disadvantageous; and on the most favourable supposition might require a concert of means and regulations among several States not easily effected, nor unlikely to be altogether omitted.

These considerations have pleaded with me in favour of the policy of vesting in Congress an authority over internal improvements. I am sensible at the same time of the magnitude of the trust, as well as of the difficulty of executing it properly and the greater difficulty of executing it satisfactorily.

On the supposition of a due establishment of the power in Congress, one of the modes of using it might be, to apportion a reasonable share of the disposable revenue of the United States among the States to be applied by them to cases of State concern; with a reserved discretion in Congress to effectuate improvements of general concern which the States might not be able or not disposed to provide for.

If Congress do not mean to throw away the rich fund inherent in the public lands, would not the sales of them, after their liberation from the original pledge, be aptly appropriated to objects of internal improvement. And why not also, with a supply of

competent authority, to the removal to better situations the free black as well as red population, objects confessedly of national importance and desirable to all parties. But I am travelling out of the subject before me.

The date of your letter reminds me of the delay of the answer. The delay has been occasioned by interruptions of my health; and the answer such as it is, is offered in the same confidence in which it was asked.

With great esteem & cordial salutations.

[\[Back to Table of Contents\]](#)

## TO EDWARD EVERETT. 1

Aug<sup>st</sup> 28 1830

Mad. Mss.

D<sup>R</sup>. Sir—

I have duly rec<sup>d</sup> your letter in w<sup>ch</sup> you refer to the “nullifying doctrine,” advocated as a constitutional right by some of our distinguished fellow citizens; and to the proceedings of the Virg<sup>a</sup> Legislature in 98 & 99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects. 2

I am aware of the delicacy of the task in some respects; and the difficulty in every respect of doing full justice to it. But having in more than one instance complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the U. S. the error, not uncommon, must be avoided, of viewing it through the medium either of a consolidated Government or of a confederated Gov<sup>t</sup>. whilst it is neither the one nor the other, but a mixture of both. And having in no model the similitudes & analogies applicable to other systems of Gov<sup>t</sup> it must more than any other be its own interpreter, according to its text & *the facts of the case*.

From these it will be seen that the characteristic peculiarities of the Constitution are 1. The mode of its formation, 2. The division of the supreme powers of Gov<sup>t</sup> between the States in their united capacity and the States in their individual capacities.

1. It was formed, not by the Governments of the component States, as the Federal Gov<sup>t</sup> for which it was substituted was formed; nor was it formed by a majority of the people of the U. S. as a single community in the manner of a consolidated Government.

It was formed by the States—that is by the people in each of the States, acting in their highest sovereign capacity; and formed, consequently by the same authority which formed the State Constitutions.

Being thus derived from the same source as the Constitutions of the States, it has within each State, the same authority as the Constitution of the State; and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are within their respective spheres; but with this obvious & essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.

2. And that it divides the supreme powers of Gov<sup>t</sup>. between the Gov<sup>t</sup>. of the United States, & the Gov<sup>ts</sup>. of the individual States, is stamped on the face of the instrument; the powers of war and of taxation, of commerce & of treaties, and other enumerated powers vested in the Gov<sup>t</sup> of the U. S. being of as high & sovereign a character as any of the powers reserved to the State Gov<sup>ts</sup>

Nor is the Gov<sup>t</sup> of the U. S. created by the Constitution, less a Gov<sup>t</sup>. in the strict sense of the term, within the sphere of its powers, than the Gov<sup>ts</sup>. created by the constitutions of the States are within their several spheres. It is like them organized into Legislative, Executive, & Judiciary Departments. It operates like them, directly on persons & things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases is one of the features marking the peculiarity of the system.

Between these different constitutional Gov<sup>ts</sup>.—the one operating in all the States, the others operating separately in each, with the aggregate powers of Gov<sup>t</sup> divided between them, it could not escape attention that controversies would arise concerning the boundaries of jurisdiction; and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceable & authoritative termination of occurring controversies, would not be more than the shadow of a Gov<sup>t</sup>; the object & end of a real Gov<sup>t</sup> being the substitution of law & order for uncertainty confusion, and violence.

That to have left a final decision in such cases to each of the States, then 13 & already 24, could not fail to make the Const<sup>n</sup>. & laws of the U. S. different in different States was obvious; and not less obvious, that this diversity of independent decisions, must altogether distract the Gov<sup>t</sup>. of the Union & speedily put an end to the Union itself. A uniform authority of the laws, is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the States or they could be duly executed in none. An impost or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience w<sup>ch</sup>. had a primary influence in bringing about the existing Constitution. A loss of its general auth<sup>y</sup> would moreover revive the exasperating questions between the States holding ports for foreign commerce and the adjoining States without them, to which are now added all the inland States necessarily carrying on their foreign commerce through other States.

To have made the decisions under the authority of the individual States, co-ordinate in all cases with decisions under the authority of the U. S. would unavoidably produce collisions incompatible with the peace of society, & with that regular & efficient administration which is the essence of free Gov<sup>ts</sup>. Scenes could not be avoided in which a ministerial officer of the U. S. and the correspondent officer of an individual State, would have rencounters in executing conflicting decrees, the result of which would depend on the comparative force of the local posse attending them, and that a casualty depending on the political opinions and party feelings in different States.

To have referred every clashing decision under the two authorities for a final decision to the States as parties to the Constitution, would be attended with delays, with



inconveniences, and with expenses amounting to a prohibition of the expedient, not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the Quorum for deciding it.

To have trusted to negotiation, for adjusting disputes between the Gov<sup>t</sup>. of the U. S. and the State Gov<sup>ts</sup>. as between independent & separate sovereignties, would have lost sight altogether of a Constitution & Gov<sup>t</sup> for the Union; and opened a direct road from a failure of that resort, to the ultima ratio between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment between separate branches of the same Gov<sup>t</sup> the analogy entirely fails. In the case of disputes between independent parts of the same Gov<sup>t</sup> neither part being able to consummate its will, nor the Gov. to proceed without a concurrence of the parts, necessity brings about an accommodation. In disputes between a State Gov<sup>t</sup>. and the Gov<sup>t</sup> of the U. States the case is practically as well as theoretically different; each party possessing all the Departments of an organized Gov<sup>t</sup>. Legisl. Ex. & Judiciary; and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen among so many States, that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature or the evidence of our own political history.

The Constitution, not relying on any of the preceding modifications for its safe & successful operation, has expressly declared on the one hand; 1. "That the Constitution, and the laws made in pursuance thereof, and all Treaties made under the authority of the U. S. shall be the supreme law of the land; 2. That the judges of every State shall be bound thereby, anything in the Const<sup>n</sup> or laws of any State to the contrary notwithstanding; 3. That the judicial power of the U. S. shall extend to all cases in law & equity arising under the Constitution, the laws of the U. S. and Treaties made under their authority &c."

On the other hand, as a security of the rights & powers of the States in their individual capacities, ag<sup>st</sup>. an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on, 1. The responsibility of the Senators and Representatives in the Legislature of the U. S. to the Legislatures & people of the States. 2. The responsibility of the President to the people of the U. States; & 3. The liability of the Ex. and Judiciary functionaries of the U. S. to impeachment by the Representatives of the people of the States, in one branch of the Legislature of the U. S. and trial by the Representatives of the States, in the other branch; the State functionaries, Legislative, Executive, & judiciary, being at the same time in their appointment & responsibility, altogether independent of the agency or authority of the U. States.

How far this structure of the Gov<sup>t</sup> of the U. S. be adequate & safe for its objects, time alone can absolutely determine. Experience seems to have shown that whatever may grow out of future stages of our national career, there is as yet a sufficient controul in the popular will over the Executive & Legislative Departments of the Gov<sup>t</sup>. When the Alien & Sedition laws were passed in contravention to the opinions and feelings of

the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts in the judgment of many of us, it is but true that they have generally accorded with the views of a majority of the States and of the people. At the present day it seems well understood that the laws which have created most dissatisfaction have had a like sanction without doors; and that whether continued varied or repealed, a like proof will be given of the sympathy & responsibility of the Representative Body to the Constituent Body. Indeed, the great complaint now is, not against the want of this sympathy and responsibility, but against the results of them in the legislative policy of the nation.

With respect to the Judicial power of the U. S. and the authority of the Supreme Court in relation to the boundary of jurisdiction between the Federal & the State Gov<sup>ts</sup> I may be permitted to refer to the [thirty-ninth] number of the “Federalist” for the light in which the subject was regarded by its writer, at the period when the Constitution was depending; and it is believed that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time notwithstanding the eminent exceptions to it.

But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when judges in their seats did not abstain from intemperate & party harangues, equally at variance with their duty and their dignity, there have been occasional decisions from the Bench which have incurred serious & extensive disapprobation. Still it would seem that, with but few exceptions, the course of the judiciary has been hitherto sustained by the predominant sense of the nation.

Those who have denied or doubted the supremacy of the judicial power of the U. S. & denounce at the same time nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition & execution of the law; nor to the destruction of all equipoise between the Federal Gov<sup>t</sup>. and the State governments, if, whilst the functionaries of the Fed<sup>l</sup> Gov<sup>t</sup>. are directly or indirectly elected by and responsible to the States & the functionaries of the States are in their appointments & responsibility wholly independent of the U. S. no constitutional control of any sort belonged to the U. S. over the States. Under such an organization it is evident that it would be in the power of the States individually, to pass unauthorized laws, and to carry them into complete effect, anything in the Const<sup>n</sup> and laws of the U. S. to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, thro the Legislative Ex. or Judiciary organ of the State, would be equally fatal to the constitutional relation between the two Gov<sup>ts</sup>.

Should the provisions of the Constitution as here reviewed be found not to secure the Gov<sup>t</sup>. & rights of the States ag<sup>st</sup>. usurpations & abuses on the part of the U. S. the final resort within the purview of the Const<sup>n</sup>. lies in an amendment of the Const<sup>n</sup>. according to a process applicable by the States.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations & abuses, rendering passive obedience & non-resistance a greater evil, than resistance & revolution, there can remain but one resort, the last of all, an appeal from the cancelled obligations of the constitutional compact, to original rights & the law of self-preservation. This is the *ultima ratio* under all Gov<sup>t</sup>. whether consolidated, confederated, or a compound of both; and it cannot be doubted that a single member of the Union, in the extremity supposed, but in that only would have a right, as an extra & ultra constitutional right, to make the appeal.

This brings us to the expedient lately advanced, which claims for a single State a right to appeal ag<sup>st</sup> an exercise of power by the Gov<sup>t</sup>. of the U. S. decided by the State to be unconstitutional, to the parties of the Const compact, the decision of the State to have the effect of nullifying the act of the Gov<sup>t</sup> of the U. S. unless the decision of the State be reversed by three-fourths of the parties.

The distinguished names & high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

If the doctrine were to be understood as requiring the three-fourths of the States to sustain, instead of that proportion to reverse, the decision of the appealing State, the decision to be without effect during the appeal, it w<sup>d</sup> be sufficient to remark, that this extra const<sup>l</sup> course might well give way to that marked out by the Const. which authorizes 7 of the States to institute and 3/4 to effectuate, an amendment of the Const<sup>n</sup>. establishing a permanent rule of the highest auth<sup>y</sup> in place of an irregular precedent of construction only.

But it is understood that the nullifying doctrine imports that the decision of the State is to be presumed valid, and that it overrules the law of the U. S. unless overruled by 3/4 of the States.

Can more be necessary to demonstrate the inadmissibility of such a doctrine than that it puts it in the power of the smallest fraction over 1/4 of the U. S.—that is, of 7 States out of 24—to give the law and even the Const<sup>n</sup> to 17 States, each of the 17 having as parties to the Const<sup>n</sup>. an equal right with each of the 7 to expound it & to insist on the exposition. That the 7 might, in particular instances be right and the 17 wrong, is more than possible. But to establish a positive & permanent rule giving such a power to such a minority over such a majority, would overturn the first principle of free Gov<sup>t</sup>. and in practice necessarily overturn the Gov<sup>t</sup>. itself.

It is to be recollected that the Constitution was proposed to the people of the States as a *whole*, and unanimously adopted by the States as a *whole*, it being a part of the Constitution that not less than 3/4 of the States should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases when peculiar interests were at stake, a proportion even of 3/4 is distrusted, and unanimity required to make an alteration.

When the Constitution was adopted as a whole, it is certain that there were many parts which if separately proposed, would have been promptly rejected. It is far from impossible, that every part of the Constitution might be rejected by a majority, and yet, taken together as a whole be unanimously accepted. Free constitutions will rarely if ever be formed without reciprocal concessions; without articles conditioned on & balancing each other. Is there a constitution of a single State out of the 24 that w<sup>d</sup> bear the experiment of having its component parts submitted to the people & separately decided on?

What the fate of the Constitution of the U. S. would be if a small proportion of States could expunge parts of it particularly valued by a large majority, can have but one answer.

The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the Constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

Is it certain that the principle of that mode w<sup>d</sup>. not reach farther than is contemplated. If a single State can of right require  $\frac{3}{4}$  of its co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

The reply to all such suggestions seems to be unavoidable and irresistible, that the Constitution is a compact; that its text is to be expounded according to the provision for expounding it, making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as it may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

In favour of the nullifying claim for the States individually, it appears, as you observe, that the proceedings of the Legislature of Virg<sup>a</sup> in 98 & 99 ag<sup>st</sup>. the Alien and Sedition Acts are much dwelt upon.

It may often happen, as experience proves, that erroneous constructions, not anticipated, may not be sufficiently guarded against in the language used; and it is due to the distinguished individuals who have misconceived the intention of those proceedings to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the cotemporary indications and impressions.

But it is believed that by keeping in view the distinction between the Gov<sup>t</sup>. of the States & the States in the sense in which they were parties to the Const<sup>n</sup>.; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition ag<sup>st</sup> the abuses of power, and especially between interpositions within the purview of the Const<sup>n</sup> & interpositions appealing

from the Const<sup>n</sup> to the rights of nature paramount to all Constitutions; with these distinctions kept in view, and an attention, always of explanatory use, to the views & arguments which were combated, a confidence is felt, that the Resolutions of Virginia, as vindicated in the Report on them, will be found entitled to an exposition, showing a consistency in their parts and an inconsistency of the whole with the doctrine under consideration.

That the Legislature c<sup>d</sup>. not have intended to sanction such a doctrine is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their constituents on the subject of the resolutions. The tenor of the debates w<sup>ch</sup>. were ably conducted and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State to arrest by force the operation of a law of the U. S. Concert among the States for redress against the alien & sedition laws, as acts of usurped power, was a leading sentiment, and the attainment of a concert the immediate object of the course adopted by the Legislature, which was that of inviting the other States “to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary & proper measures in maintaining unimpaired the authorities rights & liberties reserved to the States respectively & to the people.” That by the necessary and proper measures to be *concurrently* and co-operatively taken, were meant measures known to the Constitution, particularly the ordinary controul of the people and Legislatures of the States over the Gov<sup>t</sup>. of the U. S. cannot be doubted; and the interposition of this controul as the event showed was equal to the occasion.

It is worthy of remark, and explanatory of the intentions of the Legislature, that the words “not law, but utterly null, void, and of no force or effect,” which had followed, in one of the Resolutions, the word “unconstitutional,” were struck out by common consent. Tho the words were in fact but synonymous with “unconstitutional,” yet to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word unconstitutional alone was retained, as not liable to that danger.

The published address of the Legislature to the people their constituents affords another conclusive evidence of its views. The address warns them against the encroaching spirit of the Gen<sup>l</sup> Gov<sup>t</sup>, argues the unconstitutionality of the alien & sedition acts, points to other instances in which the const<sup>l</sup> limits had been overleaped; dwells upon the dangerous mode of deriving power by implications; and in general presses the necessity of watching over the consolidating tendency of the Fed<sup>l</sup> policy. But nothing is s<sup>d</sup>. that can be understood to look to means of maintaining the rights of the States beyond the regular ones within the forms of the Const<sup>n</sup>.

If any farther lights on the subject c<sup>d</sup> be needed, a very strong one is reflected in the answers to the Resolutions by the States which protested ag<sup>st</sup> them. The main objection to these, beyond a few general complaints ag<sup>st</sup> the inflammatory tendency of the resolutions was directed ag<sup>st</sup> the assumed auth<sup>y</sup>. of a State Legis<sup>e</sup> to declare a law of the U. S. unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme C<sup>t</sup> of the U. S. Had the resol<sup>ns</sup>. been regarded as avowing & maintaining a right in an indiv<sup>l</sup> State, to arrest by

force the execution of a law of the U. S. it must be presumed that it w<sup>d</sup> have been a conspicuous object of their denunciation.

[\[Back to Table of Contents\]](#)

## TO MARGARET B. SMITH. 1

Montpellier, September, 1830.

I have received, my dear Madam, your very friendly, and I must add, very flattering letter; in which you wish, from my own hand, some reminiscence marking the early relations between M<sup>r</sup>. Jefferson and myself, and involving some anecdote concerning him that may have a place in a manuscript volume you are preparing as a legacy for your son.

I was a stranger to M<sup>r</sup>. Jefferson till the year 1776, when he took his seat in the first Legislature under the constitution of Virginia then newly formed; being at the time myself a member of that Body, and for the first time a member of any public Body. The acquaintance then made with him was very slight; the distance between our ages being considerable, and other distances much more so. During part of the time whilst he was Governour of the State, a service to which he was called not long after, I had a seat in the Council associated with him. Our acquaintance there became intimate; and a friendship was formed, which was for life, and which was never interrupted in the slightest degree for a single moment.

Among the occasions which made us immediate companions was the trip in 1791, to the borders of Canada to which you refer. According to an understanding between us, the observations in our way through the Northern part of N. York, and the newly settled entirety of Vermont, to be noted by him, were of a miscellaneous cast, and were in part at least noted on the Birch bark of which you speak. The few observations devolving on me, related chiefly to agricultural and economic objects. On recurring to them, I find the only interest they contain is in the comparison they may afford of the infant state with the present growth of the settlements through which we passed, and I am sorry that my memory does not suggest any particular anecdote to which yours must have alluded. The scenes & subjects which had occurred during the session of Congress which had just terminated at our departure from New York, entered of course into our itinerary conversations.

In one of those scenes, a dinner party at which we were both present, I recollect an incident now tho' not perhaps adverted to then, which as it is characteristic of M<sup>r</sup> Jefferson, I will substitute for a more exact compliance with your request.

The new Constitution of the U. States having just been put into operation, forms of Government were the uppermost topics every where, more especially at a convivial board, and the question being started as to the best mode of providing the Executive chief, it was among other opinions, boldly advanced that a hereditary designation was preferable to any elective process that could be devised. At the close of an eloquent effusion against the agitations and animosities of a popular choice and in behalf of birth, as on the whole, affording even a better chance for a suitable head of the Government, M<sup>r</sup>. Jefferson, with a smile remarked that he had heard of a university

somewhere in which the Professorship of Mathematics was hereditary. The reply, received with acclamation, was a coup de grace to the Anti-Republican Heretic.

Whilst your affection is preparing, from other sources, an instructive bequest for your son, I must be allowed to congratulate him on the precious inheritance he will enjoy in the examples on which his filial feelings will most delight to dwell.

M<sup>rs</sup>. Madison failed to obtain the two points she intended for you; but will renew her efforts to fulfil her promise. The only drawing of our House is that by D<sup>r</sup> Thornton, and is without the wings now making part of it.

Be pleased, my dear Madam, to express to M<sup>r</sup>. Smith the particular esteem I have ever entertained for the lights of his mind, and the purity of his principles; and to accept for him, & yourself my cordial salutations. M<sup>rs</sup>. Madison who has lately been seriously ill, but is now recovering, desires me to assure you of her affectionate friendship, and joins me in wishing for the entire circle of your family, every happiness.



[\[Back to Table of Contents\]](#)

TO THOMAS W. GILMER.

Sep<sup>r</sup>. 6, 1830.

Mad. Mss.

D<sup>R</sup> Sir—

I rec<sup>d</sup>. by the last mail yours of Aug. 31. I concur with you entirely in the expediency of promoting as much as possible a sympathy between the incipient and the finishing establishments provided for public education; & in the particular expedient you suggest, of providing for a complete education at the public expence of youths of distinguished capacities, whose parents are too poor to defray the expence. Such a provision made a part of a Bill for the “Diffusion of knowledge,” in the code prepared by Mr. Jefferson Mr. Wythe & Mr. Pendleton, between the years 1776, & 1779.<sup>1</sup> The bill proposed to carry the selected youths thro’ the several gradations of schools, from the lowest to the highest, and it deserves consideration, whether, instead of an immediate transition from the primary schools to the University, it would not be better to substitute a preparatory course at some intermediate seminary, chosen with the approbation of the parents or Guardians. One of the recommendations of this benevolent provision in behalf of native genius is, as you observe, the nursery it would form for competent teachers in the primary schools. But it may be questionable whether a *compulsive* destination of them to that service would, in practice, answer expectation. The other prospects opened to their presumed talents & acquirements might make them reluctant, & therefore the less eligible agents.

As it is probable that the case of the primary schools will be among the objects taken up at the next session of the Legislature, I am glad to find you are turning your attention so particularly to it and that the aid of the Faculty is so attainable. A satisfactory plan for primary schools, is certainly a vital desideratum in our Republics, and is at the same time found to be a difficult one everywhere. It might be useful to consult as far as there may be opportunities, the different modifications presented in the laws of different States. The New England, N. York, & Pennsylvania examples, may possibly afford useful hints. There has lately I believe been a plan discussed, if not adopted by the Legislature of Maryland, where the situation is more analogous than that of the more Northern States, to the situation of Virg<sup>a</sup>. The most serious difficulty in all the Southern States results from the character of their population and the want of density in the free part of it. This I take to be the main cause of the little success of the experiment now on foot with us. I hope that some improvements may be devised, that will render it less inadequate to its object; and I should be proud of sharing in the merit. But my age, the unsettled state of my health, my limited acquaintance with the local circumstances to be accommodated, and my inexperience of the principles dispositions and views which prevail in the Legislative Body, unfit me for the flattering co-operation you would assign me. The task, I am persuaded, will be left in hands much better in all those respects. . . .

[\[Back to Table of Contents\]](#)

TO JARED SPARKS.

October 5th, 1830.

Mad. Mss.

Dear Sir—

Your letter of July 16 was duly rec<sup>d</sup>. The acknowledgment of it has awaited your return from your tour to Quebec, which I presume has by this time taken place.

Inclosed is the exact copy you wish of the draught of an address prepared for President Washington, at his request in the year 1792, when he meditated a retirement at the expiration of his first term.<sup>1</sup> You will observe that (with a few verbal exceptions) it differs from the extract enclosed in your letter only in the *provisional* paragraphs, which had become inapplicable to the period and plan of his communication to Col. Hamilton.

The N<sup>o</sup> of the N. American Review for Jan<sup>y</sup> last, being I find, a duplicate, I return it. The pages to which you refer throw a valuable light on a transaction which was taking historical root, in a shape unjust as well as erroneous. Did you ever notice the “Life of M<sup>r</sup>. Jay” in Delaplaine’s biographical works<sup>2</sup>? The materials of it were evidently derived from the papers, if not the pen of M<sup>r</sup>. Jay, and are marked by the misconceptions into which he had fallen. It may be incidentally noted as one of the confirmations of the fallibility of Hamilton’s memory in allotting the N<sup>os</sup> in the “Federalist” to the respective writers, that one of them, N<sup>o</sup> 64, which appears by Delaplaine, to have been written by Mr. Jay, as it certainly was, is put on the list of Mr. Hamilton, as was not less certainly the case with a number of others, written by another hand.

Previous to the rec<sup>t</sup> of your letter I had rec<sup>d</sup> one from Mr. Monroe, to whom I had mentioned the liberty I had taken with Rayneval’s memoir. I inclose the part of his letter answering that part of mine.

[\[Back to Table of Contents\]](#)

TO HENRY CLAY.

Montp<sup>r</sup>, Oct<sup>r</sup> 9, 1830.

Mad. Mss.

Dear Sir—

I have just been favoured with yours of the 22d ult. inclosing a copy of your address delivered at Cincinnati.

Without concurring in everything that is said I feel what is due to the ability and eloquence which distinguish the whole.<sup>1</sup> The rescue of the Resolutions of Kentucky in -98 & -99, from the misconstructions of them, was very apropos; that authority being particularly relied on as an *ægis* to the nullifying doctrine which, notwithstanding its hideous aspect & fatal tendency, has captivated so many honest minds. In a late letter to one of my correspondents I was led to the like task of vindicating the proceedings of Virginia in those years. I would gladly send you a copy, if I had a suitable one. But as the letter is appended to the N. Am. Review for this month, you will probably have an early opportunity of seeing it.<sup>1</sup>

With my thanks, sir, for your obliging communication, I beg you to accept assurances of my great & cordial esteem, in which Mrs. Madison joins me, as I do her, in the best regards which she offers to Mrs. Clay.

[\[Back to Table of Contents\]](#)

## TO ANDREW STEVENSON.

montp<sup>r</sup>., Nov<sup>r</sup>. 27, 1830.

Mad. Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup> your very friendly favor of the 20th instant, referring to a conversation when I had lately the pleasure of a visit from you, in which you mentioned your belief that the terms “common defence & general welfare” in the 8th section of the first article of the Constitution of the U. S. were still regarded by some as conveying to Congress a substantive & indefinite power, and in which I communicated my views of the introduction and occasion of the terms, as precluding that comment on them, and you express a wish that I would repeat those views in the answer to your letter.<sup>2</sup>

However disinclined to the discussion of such topics at a time when it is so difficult to separate in the minds of many, questions purely constitutional from the party polemics of the day, I yield to the precedents which you think I have imposed on myself, & to the consideration that without relying on my personal recollections, which your partiality over-values, I shall derive my construction of the passage in question from sources of information & evidence known or accessible to all who feel the importance of the subject, and are disposed to give it a patient examination.

In tracing the history & determining the import of the terms “common defence & general welfare,” as found in the text of the Constitution, the following lights are furnished by the printed Journal of the Convention which formed it:

The terms appear in the general propositions offered May 29, as a basis for the incipient deliberations, the first of which “Resolved that the articles of the Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare.” On the day following, the proposition was exchanged for, “Resolved that a Union of the States merely Federal will not accomplish the objects proposed by the Articles of the Confederation, namely, common defence, security of liberty and general welfare.”

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

In the course of the proceedings between the 30<sup>th</sup> of Ma<sup>y</sup> and the 6<sup>th</sup> of Aug<sup>t</sup>., the terms common defence & general welfare, as well as other equivalent terms, must have been dropped; for they do not appear in the Draft of a Constitution, reported on that day by a committee appointed to prepare one in detail, the clause in which those terms were afterward inserted, being in the Draft simply, “The Legislature of the U. S. shall have power to lay & collect taxes duties, imposts, & excises.”

The manner in which the terms became transplanted from the old into the new system of Government, is explained by a course somewhat adventitiously given to the proceedings of the Convention.[1](#)

On the 18<sup>th</sup> of Aug<sup>st</sup> among other propositions referred to the committee which had reported the draft, was one “to *secure* the payment of the public debt” and

On the same day was appointed a committee of eleven members, (one from each State) “to consider the necessity & expediency of *the debts of the several States*, being assumed by the U. States.”

On the 21<sup>st</sup> of Aug<sup>st</sup> this last committee reported a clause in the words following “The Legislature of the U. States *shall have power* to fulfil the engagements *which have been* entered into by Congress, and to discharge as well the debts of the U. States, as the debts incurred by the *several States during the late war*, for the *common defence* and *general welfare*; conforming herein to the 8<sup>th</sup> of the Articles of Confederation, the language of which is, that “all charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the U. S. in Congress assembled, shall be defrayed out of a common Treasury” &c.

On the 22<sup>d</sup> of Aug<sup>st</sup>. the committee of five reported among other additions to the clause *giving power* “to lay and collect taxes imposts & excises,” a clause in the words following, “for payment of the debts and necessary expenses,” with a proviso qualifying the duration of Revenue laws.

This Report being taken up, it was moved, as an amendment, that the clause should read, “The Legislature *shall* fulfill the engagements and discharge the debts of the U. States”

It was then moved to strike out “discharge the debts,” and insert, “liquidate the claims,” which being rejected, the amendment was agreed to as proposed, viz: “The Legislature *shall* fulfill the engagements and discharge the debts of the United States.”

On the 23<sup>d</sup>. of Aug<sup>st</sup> the clause was made to read “The Legislature shall fulfill the engagements and discharge the debts of the U. States, and shall have the power to lay & collect taxes duties imposts & excises’ the two powers relating to taxes & debts being merely transposed.

On the 25<sup>th</sup> of August the clause was again altered so as to read “All debts contracted and engagements entered into by or under the authority of Congress, [the Revolutionary Congress] shall be as valid under this constitution as under the Confederation.”

This amendment was followed by a proposition, referring to the powers to lay & collect taxes, &c. and to discharge the [*old debts*] to add, “for payment of *said debts*, and for defraying the *expenses that shall be incurred for the common defence and general welfare.*” The proposition was disagreed to, one State only voting for it.

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

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

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

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

The variations & vicissitudes in the modification of the clause in which the terms “common defence & general welfare” appear, are remarkable, and to be no otherwise explained than by differences of opinion concerning the necessity or the form of a constitutional provision for the debts of the Revolution; some of the members

apprehending improper claims for losses, by depreciated emissions of bills of credit; others an evasion of proper claims if not positively brought within the authorized functions of the new Gov<sup>t</sup>, and others again considering the past debts of the U. States as sufficiently secured by the principle that no change in the Gov<sup>t</sup> could change the obligations of the nation. Besides the indications in the Journal, the history of the period sanctions this explanation.

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

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

If the *practice* of the Revolutionary Congress be pleaded in opposition to this view of the case, the plea is met by the notoriety that on several accounts the practice of that Body is not the expositor of the “Articles of Confederation.” These articles were not in force till they were finally ratified by Maryland in 1781. Prior to that event, the power of Congress was measured by the exigencies of the war, and derived its sanction from the acquiescence of the States. After that event, habit and a continued expediency, amounting often to a real or apparent necessity, prolonged the exercise of an undefined authority; which was the more readily overlooked, as the members of the body held their seats during pleasure, as its acts, particularly after the failure of the Bills of Credit, depended for their efficacy on the will of the States; and as its general impotency became manifest. Examples of departure from the prescribed rule, are too well known to require proof. The case of the old Bank of N. America might be cited as a memorable one. The incorporating ordinance grew out of the inferred necessity of such an Institution to carry on the war, by aiding the finances which were starving under the neglect or inability of the States to furnish their assessed quotas. Congress was at the time so much aware of the deficient authority, that they recommended it to the State Legislatures to pass laws giving due effect to the ordinance; which was done by Pennsylvania and several other States. In a little time, however, so much dissatisfaction arose in Pennsylvania, where the bank was located, that it was proposed to repeal the law of the State in support of it. This brought on attempts to vindicate the adequacy of the power of Congress to incorporate such an Institution. Mr. Wilson, justly distinguished for his intellectual powers, being deeply impressed with the importance of a bank at such a crisis, published a small pamphlet, entitled “Considerations on the Bank of N. America,” in which he endeavoured to derive the power from the *nature* of the *union* in which the Colonies were declared & became independent States, and also from the tenor of the “Articles of Confederation” themselves.<sup>1</sup> But what is particularly worthy of notice is, that with all his anxious search in those articles for such a power, he never glanced at the terms “common defence & general welfare” as a source of it. He rather chose to rest the claim on a recital in the text, “that for the more convenient management of the *general* interests

of the *United States*, Delegates shall be annually appointed to meet in Congress, which, he said, implied that the *United States* had *general* rights, *general* powers, and *general* obligations, not derived from *any* particular State, nor from *all* the particular States taken separately, but *resulting* from the *union* of the whole,” these general powers not being controuled by the Article declaring that each State retained *all* powers not granted by the articles, because “the *individual* States *never* possessed & could not retain a *general* power over the others.”

The authority & argument here resorted to, if proving the ingenuity & patriotic anxiety of the author on one hand, show sufficiently on the other, that the terms common defence & general welfare c<sup>d</sup> not, according to the known acceptation of them, avail his object.

That the terms in question were not suspected in the Convention which formed the Constitution of any such meaning as has been constructively applied to them may be pronounced with entire confidence. For it exceeds the possibility of belief, that the known advocates in the Convention for a jealous grant & cautious definition of Federal powers, should have silently permitted the introduction of words or phrases in a sense rendering fruitless the restrictions & definitions elaborated by them.

Consider for a moment the immeasurable difference between the Constitution limited in its powers to the enumerated objects; and expounded as it would be by the import claimed for the phraseology in question. The difference is equivalent to two Constitutions, of characters essentially contrasted with each other, the one possessing powers confined to certain specified cases, the other extended to all cases whatsoever; for what is the case that would not be embraced by a general power to raise money, a power to provide for the general welfare, and a power to pass all laws necessary & proper to carry these powers into execution; all such provisions and laws superseding, at the same time, all local laws & constitutions at variance with them. Can less be said, with the evidence before us furnished by the Journal of the Convention itself, than that it is impossible that such a Constitution as the latter would have been recommended to the States by all the members of that Body whose names were subscribed to the instrument.

Passing from this view of the sense in which the terms common defence & general welfare were used by the Framers of the Constitution, let us look for that in which they must have been understood by the Conventions, or rather by the people, who thro' their Conventions, accepted & ratified it. And here the evidence is if possible still more irresistible, that the terms could not have been regarded as giving a scope to federal legislation, infinitely more objectionable than any of the specified powers which produced such strenuous opposition, and calls for amendments which might be safeguards against the dangers apprehended from them.

Without recurring to the published debates of those Conventions, which, as far as they can be relied on for accuracy, would it is believed not impair the evidence furnished by their recorded proceedings, it will suffice to consult the list of amendments proposed by such of the Conventions as considered the powers granted to the new Government too extensive or not safely defined.



Besides the restrictive & explanatory amendments to the text of the Constitution it may be observed, that a long list was premised under the name and in the nature of "Declarations of Rights;" all of them indicating a jealousy of the federal powers, and an anxiety to multiply securities against a constructive enlargement of them. But the appeal is more particularly made to the number & nature of the amendments proposed to be made specific & integral parts of the Constitutional text.

No less than seven States, it appears, concurred in adding to their ratifications a series of amendments w<sup>ch</sup> they deemed requisite. Of these amendments, *nine* were proposed by the Convention of Massachusetts, *five* by that of S. Carolina, *twelve* by that of N. Hampshire, *twenty* by that of Virginia, *thirty-three* by that of N. York, *twenty-six* by that of N. Carolina, *twenty-one* by that of R. Island.

Here are a majority of the States, proposing amendments, in one instance thirty-three by a single State; all of them intended to circumscribe the powers granted to the General Government, by explanations restrictions or prohibitions, without including a single proposition from a single State referring to the terms common defence & general welfare; which if understood to convey the asserted power, could not have failed to be the power most strenuously aimed at, because evidently more alarming in its range, than all the powers objected to put together; and that the terms should have passed altogether unnoticed by the many eyes w<sup>ch</sup> saw danger in terms & phrases employed in some of the most minute & limited of the enumerated powers, must be regarded as a demonstration, that it was taken for granted that the terms were harmless, because explained & limited, as in the "Articles of Confederation," by the enumerated powers which followed them.

A like demonstration, that these terms were not understood in any sense that could invest Congress with powers not otherwise bestowed by the constitutional charter, may be found in what passed in the first session of the first Congress, when the subject of amendments was taken up, with the conciliatory view of freeing the Constitution from objections which had been made to the extent of its powers, or to the unguarded terms employed in describing them. Not only were the terms "common defence and general welfare" unnoticed in the long list of amendments brought forward in the outset; but the Journals of Cong<sup>s</sup>. show that, in the progress of the discussions, not a single proposition was made in either branch of the Legislature which referred to the phrase as admitting a constructive enlargement of the granted powers, and requiring an amendment guarding against it. Such a forbearance & silence on such an occasion, and among so many members who belonged to the part of the nation which called for explanatory & restrictive amendments, and who had been elected as known advocates for them, cannot be accounted for without supposing that the terms "common defence & general welfare" were not at that time deemed susceptible of any such construction as has since been applied to them.

It may be thought, perhaps, due to the subject, to advert to a letter of Oct<sup>r</sup>. 5, 1787, to Samuel Adams, and another of Oct. 16 of the same year to the Governor of Virginia, from R. H. Lee, in both which it is seen that the terms had attracted his notice, and were apprehended by him "to submit to Congress every object of human Legislation." But it is particularly worthy of Remark, that, although a member of the Senate of the

U. States, when amendments of the Constitution were before that house, and sundry additions & alterations were there made to the list sent from the other, no notice was taken of these terms as pregnant with danger. It must be inferred that the opinion formed by the distinguished member at the first view of the Constitution, & before it had been fully discussed & elucidated, had been changed into a conviction that the terms did not fairly admit the construction he had originally put on them, and therefore needed no explanatory precaution ag<sup>st</sup>. it.

Allow me, my dear sir, to express on this occasion, what I always feel, an anxious hope that as our Constitution rests on a middle ground between a form wholly national and one merely federal, and on a division of the powers of Gov<sup>t</sup>. between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view, as a key to the sound interpretation of the instrument, and a warning ag<sup>st</sup> any doctrine that would either enable the States to invalidate the powers of the U. States, or confer all power on them.

I close these remarks which I fear may be found tedious with assurances of my great esteem, and best regards.[1](#)

[\[Back to Table of Contents\]](#)

TO JAMES K. TEFFT.

Mad. Mss.

Dec<sup>r</sup>. 3, 1830.

I have rec<sup>d</sup>. Sir, your letter of Nov<sup>r</sup>. 17 accompanied by one from the Rev<sup>d</sup>. M<sup>r</sup>. Sprague and in compliance with your request,<sup>1</sup> I enclose autographs of certain individuals such as you refer to. I would willingly have given with their names, more of their writings, but could not do it without mutilating the sense, or embracing matter of a private nature. There is a difficulty, particularly where the letter does not close on the first or third page. Several other autographs w<sup>d</sup>. have been added those of Mr. Pat. Henry, George Mason & Geo. Wythe, but I found that their letters on my files, had been taxed to the full in that way.<sup>1</sup>

I avail myself Sir of your proffered kindness, by asking you to procure for me, if it can be conveniently done, such of the numbers of the "Georgian," preceding No. 124, Ap<sup>l</sup>. 21, 1828, & succeeding No. 129, Ap<sup>l</sup>. 26, 1828, as contain notes of Maj<sup>r</sup>. Pierce in that Convention; forwarding with them the charge of the Editors, which will be remitted to them. It will be matter of curiosity at least to compare the notes taken on the same subjects by different members of the Body.

If M<sup>r</sup>. Sprague be still with you, be pleased to make known to him that his letter was rec<sup>d</sup>. & duly appreciated, and to accept for yourself my respects & salutations.

Autographs sent of J. Adams J. Q. Adams James Monroe Ed. Pendleton R. H. Lee Alex<sup>t</sup> Hamilton E. Gerry Alb. Gallatin H. Dearborn Henry Lee (Rev<sup>y</sup> officer) Jacob Brown (Maj<sup>r</sup>. General) A. J. Dallas Wm. Eustis William Pinkney (of Mary<sup>d</sup>) Rob. R. Livingston DeWitt Clinton.

[\[Back to Table of Contents\]](#)

## TO REYNOLDS CHAPMAN.

Jan<sup>y</sup> 6, 1831.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup> yours, enclosing the manuscript of J. M. Patton, on the subject of which it is intimated that my opinion would be acceptable.

The paper affords sufficient indication of the talents ascribed to the author. Of his honourable principles I believe no one doubts. And with these qualifications for serving his country, it may be well for it that he is making its Institutions & interests objects of systematic attention. It is with pleasure, therefore, that I comply, however imperfectly, with the request in your letter, regretting only that the compliance is so imperfect, and that it may less accord in some respects with the ideas of [Mr. Patton] than might be agreeable to both of us. I am persuaded, nevertheless, that his candor will be equal to my frankness.

For my opinion on a Tariff for the encouragement of domestic manufactures I may refer to my letters to M<sup>r</sup>. Cabell in 1828, which will show the ground on which I maintained its constitutionality. It avoids the question *quo animo?* in using an impost for another purpose than revenue; a question which, tho' not in such a case within a judicial purview, would be asked & pressed in discussions appealing to public opinion.

If a duty can be constitutionally laid on imports, not for the purpose of revenue, which may be reduced or destroyed by the duty, but as a means of retaliating the commercial regulations of foreign countries, which regulations have for their object, sometimes their sole object, the encouragem<sup>t</sup> of their manufactures, it would seem strange to infer that an impost for the encouragement of domestic manufactures was unconstitutional because it was not for the purpose of revenue, and the more strange, as an impost for the protection & encouragem<sup>t</sup> of national manufactures is of much more general & familiar practice than as a retaliation of the injustice of foreign regulations of commerce. It deserves consideration whether there be not other cases in which an impost not for revenue must be admitted, or necessary interests be provided for by a more strained construction of the specified powers of Congress.

With respect to the existing tariff, however justly it may be complained of in several respects, I cannot but view the evils charged on it as greatly exaggerated. One cause of the excitement is an impression with many, that the whole amount paid by the consumers goes into the pockets of the manufacturers; whilst that is the case so far only as the articles are actually manufactured in the country, which in some instances is in a very inconsiderable proportion; the residue of the amount passing like other taxes into the Public Treasury, and to be replaced if withdrawn by other taxes. The other cause is the unequal operation of the tax resulting from an unequal consumption

of the article paying it in different sections; and in some instances, this is doubtless a striking effect of the existing tariff. But, to make a fair estimate of the evil, it must be inquired how far the sections, overburdened in some instances, may not be underburdened in others, so as to diminish if not remove the inequality. Unless a tariff be a compound one, it cannot, in such a country as this, be made equal either between different sections or among different classes of citizens; and as far as a compound tariff can be made to approach equality, it must be by such modifications as will balance inequalities against each other. The consumption of coarse woollens used by the negroes in the South may be greater than in the North, and the tariff on them be disproportionately felt in that section. Before the change in the duties on tea coffee & molasses, the greater consumption elsewhere of these articles, and of the article of sugar, from habit, and a population without slaves, might have gone far towards equalizing the burden; possibly have exceeded that effect.

Be this as it may, I cannot but believe, whatever well-founded complaints may be ag<sup>st</sup> the tariff, that, as a cause of the general sufferings of the country, it has been vastly overrated; that if wholly repealed, the limited relief would be a matter of surprize; and that if the portion only having not revenue, but manufactures for its object, were struck off, the general relief would be little felt.

In looking for the great and radical causes of the pervading embarrassments, they present themselves at once 1. in the fall almost to prostration in the price of land, evidently the effect of the quantity of cheap Western land in the market. 2. in the depreciating effect on the products of land, from the increased products resulting from the rapid increase of population, and the transfer of labour from a less productive to a more productive soil, not in effect more distant from the common markets.

It is not wonderful that the price of Tob<sup>o</sup> should fall when the export thro' N. Orleans has for the last three years added an annual average of near thirty thousand Hhds. to the export of the old Tob<sup>o</sup> States, or that the price of cotton should have felt a like effect from like causes. It has been admitted by the "Southern Review" that the fall of cotton occurred prior even to the tariff of 1824. The prices of both Tob<sup>o</sup> & flour have had a greater fall than that of cotton.

To this solution of the problem of the depressed condition of the country may be added the fact not peculiar to Virginia that the fall in the prices of land & its products found the people much in debt, occasioned by the tempting liberality of the banks and the flattering anticipations of crops and prices.

It may not be out of place to observe, that in deciding the general question of a protective policy, the public opinion is in danger of being unduly influenced by the actual state of things, as it may happen to be a period of war or of peace. In the former case, the departure from the "Let alone" theory may be pressed too far. In the latter, the fair exceptions to it may be too much disregarded. The remark will be verified by comparing the public opinion on the subject, during the late war and at the close of it, with the change produced by the subsequent period of peace. It cannot be doubted, that on the return of a state of war, even should the U. S. not be a party, the reasonings ag<sup>st</sup> the protection of certain domestic manufactures would lose much of the public

favour; perhaps too much, considering the increased ability of the U. S. to protect their foreign commerce; which would greatly *diminish* the risks & expence of transportation, though not the war prices in the manufacturing countries.

For my general opinion on the question of Internal Improvements, I may refer to the veto message ag<sup>st</sup> the "Bonus Bill," at the close of the session of Cong<sup>s</sup>. in March 1817.<sup>1</sup> The message denies the constitutionality as well of the appropriating as of the Executing and Jurisdictional branches of the power. And my opinion remains the same, subject, as heretofore, to the exception of particular cases, where a reading of the Constitution, different from mine may have derived from a continued course of practical sanctions an authority sufficient to overrule individual constructions.

It is not to be wondered that doubts & difficulties should occur in expounding the Constitution of the U. States. Hitherto the aim, in well-organized Governments, has been to discriminate & distribute the Legislative, Executive, and Judiciary powers; and these sometimes touch so closely or rather run the one so much into the other, as to make the task difficult, and leave the lines of division obscure. A settled practice, enlightened by occurring cases, and obviously conformable to the public good, can alone remove the obscurity. The case is parallel in new statutes on complex subjects.

In the Constitution of the U. S. where each of these powers is divided, and portions allotted to different Governments, and where a language technically appropriate may be deficient, the wonder w<sup>d</sup> be far greater if different rules of exposition were not applied to the text by different commentators.

Thus it is found that in the case of the Legislative department particularly, where a division & definition of the powers according to their specific objects is most difficult, the Instrument is read by some as if it were a Constitution for a single Gov<sup>t</sup> with powers co-extensive with the general welfare, and by others interpreted as if it were an ordinary statute, and with the strictness almost of a penal one.

Between these adverse constructions an intermediate course must be the true one, and it is hoped that it will finally if not otherwise settled be prescribed by an amendment of the Constitution. In no case is a satisfactory one more desirable than in that of internal improvements, embracing Roads, Canals, Light Houses, Harbours, Rivers, and other lesser objects.

With respect to Post Roads, the general view taken of them in the manuscript, shows a way of thinking on the subject with which mine substantially accords. Roads, when plainly necessary for the march of troops and for military transportations, must speak for themselves, as occasions arise.

Canals as an Item in the general improvement of the Country have always appeared to me not to be embraced by the authority of Cong<sup>s</sup>. It may be remarked that M<sup>t</sup> Hamilton, in his Report on the Bank, when enlarging the range of construction to the utmost of his ingenuity, admitted that Canals were beyond the sphere of Federal Legislation.

Light Houses having a close and obvious relation to navigation and external commerce, and to the safety of public as well as private ships, and having rec<sup>d</sup> a positive sanction and general acquiescence from the commencement of the Federal Government, the constitutionality of them is I presume not now to be shaken if it were ever much contested. It seems, however, that the power is liable to great abuse, and to call for the most careful & responsible scrutiny into every particular case before an application be complied with.

Harbours, within the above character, seem to have a like claim on the Federal authority. But what an interval between such a Harbour as that of N. York or N. Orleans and the mouth of a creek forming an outlet for the trade of a single State or part of a State into a navigable stream; and the principle of which would authorize the improvement of every road leading out of the State towards a destined market.

What again the interval between clearing of its sawyers &c. the Mississippi the commercial highway for half the nation, and removing obstructions by which the navigation of an inconsiderable stream may be extended a few miles only within a single State.

The navigation of the Mississippi is so important in a national view, so essentially belongs to the foreign commerce of many States, and the task of freeing it from obstructions is so much beyond the means of a single State, and beyond a feasible concert of all who are interested in it, that claims on the authority and resources of the nation will continue to be, as they have been irresistible. Those who regard it as a case not brought by these features within the legitimate powers of Congress, must of course oppose the claim, and with it every inferior claim. Those who admit the power as applicable to a case of that description, but disown it in every case not marked by adequate peculiarities, must find, as they can, a line separating this admissible class from the others; a necessity but too often to be encountered in a legislative career.

Perhaps I ought not to omit the remark that altho' I concur in the defect of powers in Congress on the subject of internal improvements, my abstract opinion has been that in the case of Canals particularly, the power would have been properly vested in Congress. It was more than once proposed in the Convention of 1787, & rejected from an apprehension, chiefly that it might prove an obstacle to the adoption of the Constitution. Such an addition to the Federal powers was thought to be strongly recommended by several considerations. 1. As Congress would possess, exclusively, the sources of Revenue most productive and least unpopular, that body ought to provide & apply the means for the greatest & most costly works. 2. There would be cases where Canals would be highly important in a national view, and not so in a local view. 3. Cases where, tho' highly important in a national view, they might violate the interest real or supposed of the State through which they would pass; of which an example might now be cited in the Chesapeake & Delaware canal, known to have been viewed in an unfavourable light by the State of Delaware. 4. There might be cases where Canals, or a chain of Canals, would pass through sundry States, and create a channel and outlet for their foreign commerce, forming at the same time a ligament for the Union, and extending the profitable intercourse of its members, and

yet be of hopeless attainment if left to the limited faculties and joint exertions of the States possessing the authority.

It cannot be denied, that the abuse to which the exercise of the power in question has appeared to be liable in the hands of Congress, is a heavy weight in the scale opposed to it. But may not the evil have grown, in a great degree, out of a casual redundancy of revenue, and a temporary apathy to a burden bearing indirectly on the people, and mingled, moreover, with the discharge of debts of peculiar sanctity. It might not happen, under ordinary circumstances, that taxes even of the most disguised kind, would escape a wakeful controul on the imposition & application of them. The late reduction of duties on certain imports and the calculated approach of an extinguishment of the public debt, have evidently turned the popular attention to the subject of taxes, in a degree quite new; and it is more likely to increase than to relax. In the event of an amendment of the Constitution, guards might be devised against a misuse of the power without defeating an important exercise of it. If I err or am too sanguine in the views I indulge it must be ascribed to my conviction that canals, railroads, and turnpikes are at once the criteria of a wise policy and causes of national prosperity; that the want of them will be a reproach to our Republican system, if excluding them, and that the exclusion, to a mortifying extent will ensue if the power be not lodged where alone it can have its due effect.

Be assured of my great esteem & accept my cordial salutations.



[\[Back to Table of Contents\]](#)

TO CHARLES J. INGERSOLL.

Montpellier, Feb<sup>y</sup>. 2, 1831.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your letter of Jan<sup>y</sup>. 21, asking—

1. Is there any State power to make Banks?
2. Is the Federal power as it has been exercised, or as proposed to be exercised by President Jackson preferable?

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

A virtual and incidental enforcement of the depreciated notes of the State Banks, by their crowding out a sound medium, tho’ a great evil, was not foreseen; and if it had been apprehended, it is questionable whether the Constitution of the U. S. which had so many obstacles to encounter would have ventured to guard against it by an additional obstacle. A virtual and it is hoped an adequate remedy, may hereafter be found in the refusal of State paper, when debased, in any of the Federal transactions; and in the controul of the Federal Bank, this being itself controuled from suspending its specie payments by the public authority.

On the other question I readily decide against the project recommended by the President. Reasons more than sufficient appear to have been presented to the public in the Reviews and other comments which it has called forth. How far a hint for it may have been taken from M<sup>r</sup>. Jefferson I know not. The kindred ideas of the latter may be seen in his Memoirs &c. vol. 4. page 196, 207, 526 and his view of the State Banks vol. 4, p. 199 & 220.1

There are sundry statutes of Virg<sup>a</sup>. prohibiting the circulation of notes payable to bearer, whether issued by individuals, or unchartered banks.

These observations little new or important as they may be, would have been more promptly furnished, but for an indisposition in which your letter found me, and which has not yet entirely left me. I hope this will find you in good health, and you have my best wishes for its continuance, and the addition of every other blessing.

[\[Back to Table of Contents\]](#)

## TO THEODORE SEDGWICK, JR.

Montp<sup>r</sup>, Feb<sup>y</sup> 12, 1831.

Mad. Mss.

Sir,—

I have rec<sup>d</sup> your letter of Jan<sup>y</sup> 27, w<sup>ch</sup> was retarded a few days, by going in the first instance to Richmond.

You ask “whether M<sup>r</sup>. Livingston (formerly Governor of N. Jersey) took an active part in the debates (of the Fed<sup>l</sup>. Convention in 1787) and whether he was considered as having a leaning towards the federal party & principles;” adding “that you will be obliged by any further information it may be in my power to give you.”

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

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

I know not sir that I can give you any of the further information you wish that is not attainable with more authenticity & particularity from other sources. My acquaintance with Gov<sup>r</sup>. Livingston was limited to an exchange of the common civilities, & these to the period of the Convention. In my youth I passed several years in the College of N. Jersey, of which he was a Trustee, and where his two sons, William & the late

member of the Supreme Court of the U. S. were fellow students. I recollect to have seen him there in his capacity of Trustee, and to have heard him always spoken of as among the distinguished lawyers, and as conspicuous among the literary patriots of N. J. I recollect, particularly, that he was understood to be one of the authors of a work entitled "The Independent Reflector," and that some of the papers in it ascribed to him, being admired for the energy & eloquence of their composition, furnished occasionally to the students orations for the Rostrum, which were alternately borrowed from books & composed by themselves.

I regret sir that I have not been able to make a more important contribution for the biographical memoir you meditate. Wishing you all the success in other researches, which the object of them merits, I tender you my respectful and friendly salutations.

[\[Back to Table of Contents\]](#)

## TO C. E. HAYNES.1

Montpellier, Feb. 25, 1831.

Dear Sir,—

I have received the copy of Judge Clayton's Review of the "Report of the Committee of Ways and Means," for which the envelope informs me that I am indebted to your politeness.

A perusal of the review has left an impression highly favourable to the talents of the author and to the accomplishments of his pen. But I cannot concur in his views and reasonings on some of the material points in discussion; and I must be permitted to think he has done injustice in the remark, "that I seem to have surrendered all my early opinions at discretion."

I am far from regarding a change of opinions, under the lights of experience and the results of improved reflection, as exposed to censure; and still farther from the vanity of supposing myself less in need of that privilege than others. But I had indulged the belief that there were few, if any, of my contemporaries, through the long period and varied scenes of my political life, to whom a mutability of opinion was less applicable, on the great constitutional questions which have agitated the public mind.

The case to which the Judge more especially referred was, doubtless, that of the Bank, which I had originally opposed as unauthorized by the Constitution, and to which I at length gave my official assent. But even here the inconsistency is apparent only, not real; inasmuch as my abstract opinion of the text of the Constitution is not changed, and the assent was given in pursuance of my early and unchanged opinion, that, in the case of a Constitution as of a law, a course of authoritative expositions sufficiently deliberate, uniform, and settled, was an evidence of the public will necessarily overruling individual opinions. It cannot be less necessary that the meaning of a Constitution should be freed from uncertainty, than that the law should be so. That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves.

I do not forget that the chain of sanctions to the bank power has been considered as broken by a veto of Vice President Clinton to a bill establishing a bank. But it is believed to be quite certain, that the equality of votes which referred the question to his casting vote was occasioned by a union of some, who disapproved the plan of the bank only, with those who denied its constitutionality; and that, on a naked question of constitutionality, a majority of the Senate would have added another sanction, as at a later period was done, to the validity of such an institution.

If this explanation should be found obtrusive, I hope you will recollect that you have been accessory to it, and that it will not prevent an acceptance of the respectful salutations which are cordially offered.

[\[Back to Table of Contents\]](#)

TO JAMES ROBERTSON.

Mar. 27, 1831.

Mad. Mss.

Dear Sir,—

I have rec<sup>d</sup>. your letter of the 8<sup>th</sup> but it was not until the 23<sup>d</sup>. inst.

The veil which was originally over the draft of the resolutions offered in 1798 to the Virg<sup>a</sup>. Assembly having been long since removed, I may say, in answer to your enquiries, that it was penned by me; and that as it went from me, the 3<sup>d</sup> Resolution contained the word “alone,” which was stricken out by the House of Delegates.<sup>1</sup> Why the alteration was made, I have no particular knowledge, not being a member at the time. I always viewed it as an error. The term was meant to confine the meaning of “*parties* to the constitutional compact,” to the States in the capacity in which they formed the compact, in exclusion of the State Gov<sup>ts</sup>. which did not form it. And the use of the term “States” throughout in the *plural* number distinguished between the rights belonging to them in their collective, from those belonging to them in their individual capacities.

With respect to the terms following the term “unconstitutional”—viz. “not law, but null void and of no force or effect” which were stricken out of the 7<sup>th</sup>. Resol<sup>n</sup>. my memory cannot positively decide whether they were or were not in the original draft, and no copy of it appears to have been retained.<sup>2</sup> On the presumption that they were in the draft as it went from me, I am confident that they must have been regarded only as giving accumulated emphasis to the *declaration*, that the alien & sedition acts had in the opinion of the Assembly violated the Constitution of the U. S. and not that the addition of them could annul the acts or sanction a resistance of them. The Resolution was expressly *declaratory*, and proceeding from the Legislature only which was not even a party to the Constitution, could be declaratory of opinion only.

It may not be out of place here to remark that if the insertion of those terms in the draft could have the effect of showing an inconsistency in its author; the striking them out w<sup>d</sup>. be a protest ag<sup>st</sup>. the doctrine which has claimed the authority of Virginia in its support.

If the 3<sup>d</sup>. Resolution be in any degree open to misconstruction on this point, the language and scope of the 7<sup>th</sup> ought to controul it; and if a more explicit guard against misconstruction was not provided, it is explained in this as in other cases of omission, by the entire absence of apprehension that it could be necessary. Who could, at that day, have foressen some of the comments on the Constitution advanced at the present?

The task you have in hand is an interesting one, the more so as there is certainly room for a more precise & regular history of the Articles of Confederation & of the

Constitution of the U. S. than has yet appeared. I am not acquainted with Pitkin's work, and it was not within the scope of Marshall's Life of Washington to introduce more of Constitutional History than was involved in his main subject. The Journals of the State Legislatures, with the Journal & debates of the State Conventions, and the Journal and other printed accounts of the proceedings of the federal Convention of 1787, are of course the primary sources of information. Some sketches of what passed in that Convention have found their way to the public, particularly those of Judge Yates and of M<sup>r</sup>. Luther Martin. But the Judge tho' a highly respectable man, was a zealous partizan, and has committed gross errors in his desultory notes. He left the Convention also before it had reached the stages of its deliberations in which the character of the body and the views of individuals were sufficiently developed. M<sup>r</sup>. Martin who was also present but a part of the time betrays, in his communication to the Legislature of Maryland, feelings which had a discolouring effect on his statements. As it has become known that I was at much pains to preserve an account of what passed in the Convention, I ought perhaps to observe, that I have thought it becoming in several views that a publication of it should be at least of a posthumous date.

I know not that I could refer you to any other appropriate sources of information w<sup>ch</sup>. will not have occurred to you, or not fall within your obvious researches. The period which your plan embraces abounds with materials in pamphlets & in newspaper essays not published in that form. You would doubtless find it worth while to turn your attention to the Collections of the Historical Societies now in print in some of the States. The library of Phil<sup>a</sup>. is probably rich in pertinent materials. Its catalogue alone might point to such as are otherwise attainable. Although I might with little risk leave it to your own inference, I take the liberty of noting that this hasty compliance with your request is not for the public eye; adding only my sincere wishes for the success of the undertaking which led to it, and the offer of my friendly respects & salutations.

[\[Back to Table of Contents\]](#)

## TO JARED SPARKS.1

Montpellier, April 8, 1831.

Mad. Mss.

Dear Sir,—

I have duly received your letter of March 30. In answer to your enquiries “respecting the part acted by Gouverneur Morris (whose life, you observe, you are writing) in the Federal Convention of 1787, and the political doctrines maintained by him,” it may be justly said that he was an able, an eloquent, and an active member, and shared largely in the discussions succeeding the 1st of July, previous to which, with the exception of a few of the early days, he was absent.

Whether he accorded precisely “with the political doctrines of Hamilton” I cannot say. He certainly did not “incline to the Democratic side,” and was very frank in avowing his opinions when most at variance with those prevailing in the Convention. He did not propose any outline of a Constitution, as was done by Hamilton; but he contended for certain articles, (a Senate for life, particularly,) which he held essential to the stability and energy of a Government capable of protecting the rights of property against the spirit of Democracy. He wished to make the weight of wealth to balance that of numbers, which he pronounced to be the only effectual security to each against the encroachments of the other.

The *finish* given to the style and arrangement of the Constitution fairly belongs to the pen of Mr. Morris; the task having been probably handed over to him by the Chairman of the Committee, himself a highly respectable member, with the ready concurrence of the others. A better choice could not have been made, as the performance of the task proved. It is true that the state of the materials, consisting of a reported draught in detail, and subsequent resolutions accurately penned, and falling easily in their proper places, was a good preparation for the symmetry and phraseology of the instrument; but there was sufficient room for the talents and taste stamped by the author on the face of it. The alterations made by the Committee are not recollected. They were not such as to impair the merit of the composition. Those, verbal and others, made in the Convention, may be gathered from the Journal, and will be found also [to leave] that merit altogether unimpaired.

The anecdote you mention may not be without a foundation, but not in the extent supposed. It is certain that the return of Mr. Morris to the Convention was at a critical stage of its proceedings. The knot felt as the Gordian one was the question between the larger and smaller States on the rule of voting in the Senatorial branch of the Legislature; the latter claiming, the former opposing, the rule of equality. Great zeal and pertinacity had been shewn on both sides; and an equal division of the votes on the question had been reiterated and prolonged till it had become not only distressing but seriously alarming. It was during that period of gloom that D<sup>F</sup> Franklin made the proposition for a religious service in the Convention, an account of which was so



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

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

In making this hastened communication, I have more confidence in the discretion with which it will be used, than in its fulfilment of your anticipations. I hope it will at least be accepted as a proof of my respect for your object, and of the sincerity with which I tender you a reassurance of the cordial esteem and good wishes in which Mrs. Madison always joins me.

I take for granted you have at command all the printed works of Mr. Morris. I recollect that there can be found among my pamphlets a small one by him, intended to prevent the threatened repeal of the law of Pennsylvania which had been passed as necessary to support the Bank of N. America, and when the repeal was viewed as a formidable blow to the establishment. Should a copy be needed, I will hunt it up and forward it.

[\[Back to Table of Contents\]](#)

TO J. K. PAULDING.

Montp<sup>r</sup>., Ap<sup>l</sup>—, 1831.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup> your letter of the 6th inst; and feel myself very safe in joining your other friends in their advice on the Biographical undertaking you meditate. The plan you adopt is a valuable improvement on the prevailing examples, which have too much usurped the functions of the historian; and by omitting the private features of character, and anecdotes, which as condiments, always add flavour, and sometimes nutrition to the repast, have forfeited much of the due attraction. The more historical mode has been recommended, probably by the more ready command of materials, such as abound in the contributions of the Press, & in the public archives. In a task properly biographical, the difficulty lies in the evanescent or inaccessible information which it particularly requires. Autographic memorials are rare, and usually deficient on essential points, if not otherwise faulty; and at the late periods of life the most knowing witnesses may have descended to the tomb, or their memories become no longer faithful depositories. Where oral tradition is the resort, all know the uncertainties, and inaccuracies which beset it.

I ought certainly to be flattered by finding my name on the list of subjects you have selected; and particularly so, as I can say with perfect sincerity, there is no one, to whose justice, judgment, and every other requisite, I could more willingly confide, whatever of posthumous pretension, my career thro' an eventful period, may have, to a conservative notice. Yet I feel the awkwardness of attempting "a sketch of the principal incidents of my life," such as the partiality of your friendship has prompted you to request. Towards a compliance with your object I may avail myself of a paper, tho' too meagre even for the name of a sketch, w<sup>ch</sup>. was very reluctantly but unavoidably drawn up a few years ago for an absortive biography. Whether I shall be able to give it any amplification, is too uncertain to admit a promise. <sup>1</sup> My life has been so much of a public one, that any review of it must mainly consist, of the agency which was my lot in public transactions; and of that agency the portions probably the most acceptable to general curiosity, are to be found in my manuscript preservations of some of those transactions, and in the epistolary communications to confidential friends made at the time & on the spot, whilst I was a member of Political Bodies, General or Local. My judgment has accorded with my inclination that any publicity, of which selections from this miscellany may be thought worthy, should await a posthumous date. The printed effusions of my pen are either known or of but little bulk.

For portraits of the several characters you allude to, I know not that I can furnish your canvas with any important materials not equally within your reach, as I am sure that you do not need if I could supply any aid to your pencil in the use of them. Everything relating to Washington is already known to the world, or will soon be made known

thro' Mr. Sparks; with the exception of some of those inside views of character and scenes of domestic life which are apart from ordinary opportunities of observation. And it may be presumed that interesting lights will be let in even on those exceptions through the private correspondences in the hands of Mr. Sparks.

Of Franklin I had no personal knowledge till we served together in the Federal Convention of 1787, and the part he took there has found its way to the public, with the exception of a few anecdotes which belong to the unveiled part of the proceedings of that Assembly. He has written his own life, and no man had a finer one to write, or a better title to be himself the writer. There is eno' of blank however for a succeeding pen.

With Mr. Jefferson I was not acquainted till we met as members of the first Revolutionary Legislature of Virginia, in 1776. I had of course no personal knowledge of his early life. Of his public career, the records of his Country give ample information and of the general features of his character with much of his private habits, and of his peculiar opinions, his writings before the world to which additions are not improbable, are equally explanatory. The obituary Eulogiums, multiplied by the Epoch & other coincidences of his death, are a field where some things not unworthy of notice may perhaps be gleaned. It may on the whole be truly said of him, that he was greatly eminent for the comprehensiveness & fertility of his genius, for the vast extent & rich variety of his acquirements; and particularly distinguished by the philosophic impress left on every subject which he touched. Nor was he less distinguished for an early & uniform devotion to the cause of liberty, and systematic preference of a form of Gov<sup>t</sup>. squared in the strictest degree to the equal rights of man. In the social & domestic spheres, he was a model of the virtues & manners which most adorn them.

In relation to Mr. John Adams, I had no personal knowledge of him, till he became V. President of the U. S. and then saw no side of his private character which was not visible to all; whilst my chief knowledge of his public Character & career was acquired by means now accessible, or becoming so to all. His private papers are said to be voluminous; and when opened to public view, will doubtless be of much avail to a biographer. His official correspondence during the Revolutionary period, just published will be found interesting both in a historical & biographical view. That he had a mind rich in ideas of his own, as well as its learned store; with an ardent love of Country, and the merit of being a colossal champion of its Independence, must be allowed by those most offended by the alloy in his Republicanism, and the fervors and flights originating in his moral temperament.

Of Mr. Hamilton, I ought perhaps to speak with some restraint, though my feelings assure me, that no recollection of political collisions, could control the justice due to his memory. That he possessed intellectual powers of the first order, and the moral qualifications of integrity & honor in a captivating degree, has been decreed to him by a suffrage now universal. If his Theory of Gov<sup>t</sup> deviated from the Republican Standard, he had the candor to avow it, and the greater merit of co-operating faithfully in maturing & supporting a system which was not his choice. The criticism to which his share in the administration of it, was most liable was, that it had the aspect of an

effort to give to the instrument a constructive & practical bearing not warranted by its true & intended character. It is said that his private files have been opened to a friend who is charged with the task you contemplate. If he be not a Citizen of N. York, it is probable that in collecting private materials from other sources your opportunities may be more than equal to his.

I will, on this occasion take the liberty to correct a statement of Mr. H. which contradicts mine on the same subject; and which as mine, if erroneous could not be ascribed to a lapse of memory, might otherwise be an impeachment of my veracity. I allude to the discrepancy between the memorandum given by Mr. H. to Mr. Benson, distributing the No<sup>s</sup>. of the "Federalist" to the respective writers, and the distribution communicated by me at an early day to a particular friend, & finally to Mr. Gideon for his Edition of the Work at Washington a few years ago.[1](#)

The reality of errors in the statement of Mr. H. appears from an internal evidence in some of the papers. Take for an example N<sup>o</sup>. 49, which contains a Eulogy on Mr. Jn, marking more of the warm feelings of personal friendship in the writer, than at any time belonged to Mr. Hamilton. But there is proof of another sort in N<sup>o</sup>. 64, ascribed in the memorandum to Mr. H. That it was written by Mr. Jay, is shewn by a passage in his Life by Delaplaine, obviously derived directly or indirectly from Mr. Jay himself. There is a like proof that N. 54, ascribed to Mr. Jay, was not written by him. Nor is it difficult to account for errors in the memorandum, if recurrence be had to the moment at which a promise of such a one was fulfilled; to the lumping manner in which it was made out; and to the period of time, not less than NA years, between the date of the "Federalist," and that of the memorandum; And as a proof of the fallibility to which the memory of Mr. H. was occasionally subject, a case may be referred to so decisive as to dispense with every other. In the year [1803] Mr. H., in a letter answering an inquiry of Col. Pickering concerning the plan of Gov<sup>t</sup>. which he had espoused in the Convention of 1787, states that at the close of the Convention he put into my hands a draught of a Constitution; and in that draught he had proposed a "President for three years." [See the letter in Niles's Register.[1](#)] Now the fact is that in that plan, the original of which I ascertained several years ago to be among his papers, *the tenure of office* for the President is not 3 years, but *during good behaviour*. The error is the more remarkable, as the letter apologizes, according to my recollection, for its being not a prompt one; and as it is so much at variance with the known cast of Mr. H's political tenets, that it must have astonished his political & most of all his intimate friends. I sh<sup>d</sup>. do injustice nevertheless to myself as well as to Mr. H. if I did not express my perfect confidence that the misstatement was involuntary, and that he was incapable of any that was not so.

I am sorry sir that I could not make a better contribution to your fund of biographical matter. Accept it as an evidence at least of my respect for your wishes; & with it the cordial remembrances & regards in which Mrs. M. joins me as I do her in the request to be favorably presented to Mrs. Paulding.

Much curiosity & some comment have been excited by the marvellous [similarity] in a Plan of Gov<sup>t</sup> proposed by Ch<sup>s</sup>. Pinckney in the Conv<sup>n</sup> of 1787, as published in the Journals with the text of the Constitution as finally agreed to. I find among my

pamphlets a copy of a small one entitled “Observations on the Plan of Gov<sup>t</sup>. submitted to the Fed<sup>l</sup> Convention in Phil<sup>a</sup> on the 28th of May by Mr. C. P. a Delegate from S. C. delivered at different times in the Convention.”

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

Apl. 1831.[1](#)

[\[Back to Table of Contents\]](#)

## TO JAMES MONROE.

Montpellier, April 21, 1831.

Monroe Mss.

Dear Sir,—

I have duly rec<sup>d</sup> yours of [April 11.]1 I considered the advertisement of your estate in Loudon as an omen that your friends in Virginia were to lose you. It is impossible to gainsay the motives to which you yielded in making N. Y. your residence, tho' I fear you will find its climate unsuited to your period of life and the state of your health. I just observe and with much pleasure, that the sum voted by Congress, however short of just calculations, escapes the loppings to which it was exposed from the accounting process at Washington, and that you are so far relieved from the vexations involved in it. The result will I hope spare you at least the sacrifice of an untimely sale of your valuable property; and I would fain flatter myself, that with an encouraging improvement of your health you might be brought to reconsider the arrangement which fixes you elsewhere. The effect of this in closing the prospect of our ever meeting again afflicts me deeply, certainly not less so, than it can you. The pain I feel at the idea, associated as it is with a recollection of the long, close, and uninterrupted friendship which united us, amounts to a pang which I cannot well express, and which makes me seek for an alleviation in the possibility that you may be brought back to us in the wonted degree of intercourse. This is a happiness my feelings covet, notwithstanding the short period I could expect to enjoy it; being now, tho' in comfortable health, a decad beyond the canonical three score & ten, an epoch which you have but just passed. As you propose to make a visit to Loudon previous to the notified sale, if the state of your health permit; why not, with the like permission, extend the trip to this quarter. The journey, at a rate of your own choice, might cooperate in the reestablishment of your health, whilst it would be a peculiar gratification to your friends, and perhaps enable you to join your colleagues at the University, once more at least. It is much to be desired that you should continue as long as possible a member of the Board, and I hope you will not send in your resignation in case you find your cough and weakness giving way to the influence of the season, & the innate strength of your Constitution. I will not despair of your being able to keep up your connexion with Virginia by retaining Oak hill and making it not less than an occasional residence. Whatever may be the turn of things, be assured of the unchangeable interest felt by Mrs. M. as well as myself, in your welfare, and in that of all who are dearest to you.

In explanation of my microscopic writing, I must remark that the older I grow the more my stiffening fingers make smaller letters, as my feet take shorter steps; the progress in both cases being at the same time more fatiguing as well as more slow.

[\[Back to Table of Contents\]](#)

## TO JARED SPARKS.

June 1, 1831.

Mad. Mss.

Dear Sir,—

I have duly rec<sup>d</sup> yours of 24th Ult, and inclose the little pamphlet by Gov<sup>r</sup>. Morris which it refers to. Unless it is to be printed entire in the vol<sup>s</sup>. you are preparing, I sh<sup>d</sup>. wish to replace it in the collection from which it is taken. Of the other unofficial writings by him, I have but the single recollection that he was a writer for the Newspapers in 1780 (being then a member of Cong<sup>s</sup>) on our public affairs, chiefly I believe, on the currency & resources of the U. S. It was about the time that the scale of 1 for 40, was applied to the 200,000,000 of dol<sup>rs</sup> which had been emitted; and his publications were probably occasioned by the crisis, but of the precise scope of them, I cannot speak. I became a member of Cong<sup>r</sup>. in March of that year, just after the fate of the old Emissions had been decided on; and the subject so far deprived of its interest. In the Phil<sup>a</sup>. newspapers of that period, the writings in question might probably be found, and verified by the style if not the name of the Author. Whether Mr. M. wrote a pamphlet about Deane is a point on w<sup>ch</sup>. I can give no answer.

May I ask of you to let me know the result of your correspondence with Charleston on the subject of Mr. Pinckney's draft of a Const<sup>n</sup>. for the U. S. as soon as it is ascertained.

It is quite certain that since the death of Col. Few I have been the only living signer of the Const<sup>n</sup>. of the U. S. Of the members who were present & did not sign, & of those who were present part of the time, but had left the Convention, it is equally certain, that not one has remained since the death of Mr. Lansing who disappeared so mysteriously not very long ago. I happen also to be the sole survivor of those who were members of the Revol<sup>y</sup> Cong<sup>s</sup>. prior to the close of the war; as I had been for some years, of the members of the Convention in 1776 which formed the first Const<sup>n</sup>. for Virg<sup>a</sup>. Having outlived so many of my cotemporaries, I ought not to forget that I may be thought to have outlived myself.

With cord<sup>l</sup>. esteem & all good wishes.

I had not known that the papers of Mr. Hamilton had passed into the hands of Mr. Bayless. Col. Pickering was the last reported selection for the trust.

[\[Back to Table of Contents\]](#)

## TO TENCH RINGGOLD.

Montpellier, July 12, 1831.

Mad. Mss.

D<sup>R</sup> Sir,—

I rec<sup>d</sup>. in the due times your two favors of July 7, & 8, 1 the first giving the earliest, the last the fullest account that reached me of the death of our excellent friend; and I cannot acknowledge these communications, without adding the thanks which I owe in common with those to whom he was most dear, for the devoted kindness on your part, during the lingering illness which he could not survive.

I need not say to you who so well know, how highly I rated the comprehensiveness & character of his mind; the purity & nobleness of his principles; the importance of his patriotic services; and the many private virtues of which his whole life was a model, nor how deeply therefore I must sympathize, on his loss, with those who feel it most. A close friendship, continued thro' so long a period & such diversified scenes, had grown into an affection very imperfectly expressed by that term; and I value accordingly the manifestation in his last hours that the reciprocity never abated.

I have heard nothing of the state of his affairs, as they descend to those most interested in it, not even as to the result of the advertisement relating to his property in Loudon. I have indulged a hope, but it is too much mingled with my wishes to be relied on, that the last act of Cong<sup>s</sup> might produce a surplus of a consoling amount.

I have written not only in haste, but with Rheumatic fingers, a part of the effect of a general attack, which occasions the date from home, instead of the University, where the Board of Visitors is now in Session.

Mrs. M. joins me in the offer of sincere regards & a return of your good wishes.



[\[Back to Table of Contents\]](#)

## TO MATTHEW CAREY.

Montpellier, July 27, 1831.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup>. your favor of the 21st, with your commencing address to the Citizens of S. Carolina. The strange doctrines and misconceptions prevailing in that quarter are much to be deplored; and the tendency of them the more to be dreaded, as they are patronized by Statesmen of shining talents, and patriotic reputations. To trace the great causes of this state of things out of which these unhappy aberrations have sprung, in the effect of markets glutted with the products of the land, and with the land itself; to appeal to the nature of the Constitutional compact, as precluding a right in any one of the parties to renounce it at will, by giving to all an equal right to judge of its obligations; and, as the obligations are mutual, a right to enforce correlative with a right to dissolve them; to make manifest the impossibility as well as injustice, of executing the laws of the Union, particularly the laws of commerce, if even a single State be exempt from their operation; to lay open the effects of a withdrawal of a Single State from the Union on the *practical* conditions & relations of the others; thrown apart by the intervention of a foreign nation; to expose the obvious, inevitable & disastrous consequences of a separation of the States, whether into alien confederacies or individual nations; these are topics which present a task well worthy the best efforts of the best friends of their country, and I hope you will have all the success, which your extensive information and disinterested views merit. If the States cannot live together in harmony, under the auspices of such a Government as exists, and in the midst of blessings, such as have been the fruits of it, what is the prospect threatened by the abolition of a Common Government, with all the rivalships collisions and animosities, inseparable from such an event. The entanglements & conflicts of commercial regulations, especially as affecting the inland and other non-importing States, & a protection of fugitive slaves, substituted for the present obligatory surrender of them, would of themselves quickly kindle the passions which are the forerunners of war.

My health has not been good for several years, and is at present much crippled by Rheumatism; This with my great age warns me to be as little as possible before the public; and to give way to others who with the same love of their Country, are more able to be useful to it.

[\[Back to Table of Contents\]](#)

## TO JARED SPARKS.<sup>1</sup>

Montpellier, November 25, 1831.

Dear Sir,—

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

“Are you not, to use a full expression, abundantly convinced that the theoretic nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong; that it will, in the end, be the means of bringing our Councils into contempt, and that the Legislatures are the only proper judges of who ought to be elected?”<sup>1</sup>

Other proofs against the identity of the two draughts may be found in Article VIII of the Draught, which, whilst it specifies the functions of the President, contains no provision for the election of any such officer, nor, indeed, for the appointment of any Executive Magistracy, notwithstanding the evident purpose of the author to provide an *entire* plan of a Federal Government.

Again, in several instances where the Draught corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his votes on the Journal of the Convention. Thus, in Article VIII of the Draught, provision is made for removing the President by impeachment, when it appears that in the Convention, July 20, he was opposed to any impeachability of the Executive Magistrate. In Article III, it is required that all money-bills shall originate in the first branch of the Legislature; and yet he voted, on the 8th August, for striking out that provision in the Draught reported by the Committee on the 6th. In Article V, members of each House are made ineligible, as well as incapable, of holding any office under the Union, &c., as was the

case at one stage of the Constitution; a disqualification disapproved and opposed by him August 14th.

Further discrepancies might be found in the observations of Mr. Pinckney, printed in a pamphlet by Francis Childs, in New York, shortly after the close of the Convention. I have a copy, too mutilated for use, but it may probably be preserved in some of your historical repositories.

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

My letter of April 8th was meant merely for your own information and to have its effect on your own view of things. I see nothing in it, however, unfit for the press, unless it be thought that the friends of Mr. Morris will not consider the credit given him a balance for the merit withdrawn, and ascribe the latter to some prejudice on my part.

[\[Back to Table of Contents\]](#)

TO R. R. GURLEY.

Montpellier, Dec<sup>r</sup>. 28, 1831.

Mad. Mss.

Dear Sir,—

I received in due time your letter of the 21 ult<sup>o</sup>. and with due sensibility to the subject of it. Such, however, has been the effect of a painful Rheumatism on my general condition as well as in disqualifying my fingers for the use of the pen, that I could not do justice “to the principles and measures of the Colonization Society in all the great & various relations they sustain to our own Country & to Africa.” If my views of them could have the value which your partiality supposes I may observe in brief that the Society had always my good wishes tho’ with hopes of its success less sanguine than were entertained by others found to have been the better judges, and that I feel the greatest pleasure at the progress already made by the Society and the encouragement to encounter the remaining difficulties afforded by the earlier and greater ones already overcome. Many circumstances at the present moment seem to concur in brightening the prospects of the Society and cherishing the hope that the time will come when the dreadful calamity which has so long afflicted our Country and filled so many with despair, will be gradually removed, & by means consistent with justice, peace, and the general satisfaction; thus giving to our Country the full enjoyment of the blessings of liberty and to the world the full benefit of its great example. I have never considered the main difficulty of the great work as lying in the deficiency of emancipations, but in an inadequacy of asylums for such a growing mass of population, and in the great expence of removing it to its new home. The spirit of private manumission as the laws may permit and the exiles may consent, is increasing and will increase, and there are sufficient indications that the public authorities in slaveholding States are looking forward to interpositions in different forms that must have a powerful effect.

With respect to the new abode for the emigrants all agree that the choice made by the Society is rendered peculiarly appropriate by considerations which need not be repeated, and if other situations should not be found as eligible receptacles for a portion of them, the prospect in Africa seems to be expanding in a highly encouraging degree.

In contemplating the pecuniary resources needed for the removal of such a number to so great a distance my thoughts & hopes have long been turned to the rich fund presented in the Western lands of the Nation which will soon entirely cease to be under a pledge for another object. The great one in question is truly of a national character and it is known that distinguished patriots not dwelling in slaveholding States have viewed the object in that light and would be willing to let the National domain be a resource in effectuating it.

Should it be remarked that the States tho' all may be interested in relieving our Country from the colored population are not equally so, it is but fair to recollect that the sections most to be benefited are those whose cessions created the fund to be disposed of.

I am aware of the Constitutional obstacle which has presented itself but if the general will be reconciled to an application of the territorial fund to the removal of the colored population, a grant to Congress of the necessary authority could be carried with little delay through the forms of the Constitution. [1](#)

Sincerely wishing increasing success to the labors of the Society I pray you to be assured of my esteem, & to accept my friendly salutations.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST.

December, 1831.

Mad. Mss.

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Other, and some not very candid attempts, are made to stamp my political career with discrediting inconsistencies. One of these is a charge that I have on some occasions, represented the supreme Court of the U. S. as the judge in the last Resort, on the boundary of jurisdiction between the several States & the U. S. and on other occasions have assigned this last resort to the parties to the Constitution. It is the more extraordinary that such a charge should have been hazarded; since besides the obvious explanation, that the last resort means in one case, the last within the purview & forms of the Constitution; and in the other, the last resort of all, from the Constitution itself, to the parties who made it, the distinction is presented & dwelt on both in the report on the Virg<sup>a</sup> Resolutions and in the letter to Mr. Everett, the very documents appealed to in proof of the inconsistency. The distinction between these ultimate resorts is in fact the same, within the several States. The *Judiciary there* may in the course of its functions be the last resort within the provisions & forms of the Constitution; and the people, the parties to the Constitution, the last in cases ultra-constitutional, and therefore requiring their interposition.

It will not escape notice that the Judicial authority of the U. S. when overruling that of a State, is complained of as subjecting a Sovereign State, with all its rights & duties, to the will of a Court composed of not more than seven individuals. This is far from a true state of the case. The question w<sup>d</sup>. be between a single State, and the authority of a tribunal representing as many States as compose the Union.

Another circumstance to be noted is that the Nullifiers in stating their doctrine omit the particular form in which it is to be carried into execution; thereby confounding it with the extreme cases of oppression which justify a resort to the original right of resistance, a right belonging to every community, under every form of Government, consolidated as well as Federal. To view the doctrine in its true character, it must be recollected that it asserts, a right in a single State, to stop the execution of a Federal law, altho' in effect stopping the law everywhere, until a Convention of the States could be brought about by a process requiring an uncertain time; and finally in the Convention when formed a vote of 7 States, if in favor of the veto, to give it a prevalence over the vast majority of 17 States. For this preposterous & anarchical pretension there is not a shadow of countenance in the Const<sup>n</sup>. and well that there is not; for it is certain that with such a deadly poison in it, no Const<sup>n</sup> could be sure of lasting a year; there having scarcely been a year, since ours was formed, without a discontent in some one or other of the States which might have availed itself of the nullifying prerogative. Yet this has boldly sought a sanction under the name of Mr. Jefferson, because, in his letter to Maj<sup>r</sup> Cartwright, he held out a Convention of the States, as, with us, a peaceable remedy in cases to be decided in Europe by intestine wars. Who can believe that Mr. J. referred to a Convention summoned at the pleasure

of a single State, with an interregnum during its deliberations; and, above all with a rule of decision subjecting nearly  $\frac{3}{4}$  to  $\frac{1}{4}$ . No man's creed was more opposed to such an inversion of the Repub<sup>n</sup> order of things.

There can be no objection to the reference made to the weakening effect of age on the judgment, in accounting for changes of opinion. But inconsistency at least may be charged on those who lay such stress on the effect of age in one case, and place such peculiar confidence, where that ground of distrust would be so much stronger. What was the comparative age of Mr. Jefferson, when he wrote the letter to Mr. Giles, a few months before his death; in which his language, tho' admitting a construction not irreconcilable with his former opinions is held, in its assumed meaning, to outweigh on the tariff question, opinions deliberately formed in the vigour of life, reiterated in official reasonings & reports; and deriving the most cogent sanction from his Presidential Messages, and private correspondences. What again the age of Gen<sup>l</sup> Sumter, at which the concurrence of his opinion is so triumphantly hailed? That his judgment may be as sound as his services have been splendid, may be admitted; but had his opinion been the reverse of what it proved to be, the question is justified by the distrust of opinions, at an age very far short of his, whether his venerable years would have escaped a different use of them.

But I find that by a sweeping charge, my inconsistency is extended "to my opinions on almost every important question which has divided the public into parties." In supporting this charge, an appeal is made to "Yates's Secret Debates in the Federal Convention of 1787," as proving that I originally entertained opinions adverse to the rights of the States; and to the writings of Col. Taylor, of Caroline; as proving that I was in that Convention "an advocate for a *Consolidated national Government*."

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

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

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

On recurring to the writings of Col. Taylor<sup>1</sup> it will be seen that he founds his imputation ag<sup>st</sup> myself and Gov<sup>t</sup>. Randolph, of favoring a Consolidated National Govern<sup>t</sup> on the Resolutions introduced into the Convention by the latter in behalf of the Virg<sup>a</sup>. Delegates, from a consultation among whom they were the result. The Resolutions imported that a Gov<sup>t</sup>., consisting of a *National Legisl<sup>re</sup>*., Executive & Judiciary, ought to be substituted for the existing Cong<sup>s</sup>. Assuming for the term *national* a meaning co-extensive with a single Consolidated Gov<sup>t</sup>. he filled a number of pages, in deriving from that source a support of his imputation. The whole course of proceedings on those Resolutions ought to have satisfied him that the term *National* as contradistinguished from *Federal*, was not meant to express more than that the powers to be vested in the new Gov<sup>t</sup> were to operate as in a Nat<sup>l</sup> Gov<sup>t</sup>. directly on the people, and not as in the old Confed<sup>cy</sup>. on the States only. The extent of the powers to be vested, also tho’ expressed in loose terms, evidently had reference to limitations & definitions to be made in the progress of the work, distinguishing it from a plenary & Consolidated Gov<sup>t</sup>.

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

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

The general charge which the zeal of party has brought ag<sup>st</sup>. me, “of a change of opinion in almost every important question which has divided parties in this Country,” has not a little surprized me. For, altho’ far from regarding a change of opinion under the lights of experience and the results of improved reflection as exposed to censure, and still farther from the vanity of supposing myself less in need than others, of that privilege, I had indulged the belief that there were few, if any of



my contemporaries thro' the long period & varied services, of my political life, to whom a mutability of opinion on great Constitutional questions was less applicable.

Beginning with the great question growing out of the terms "Common Defence & General Welfare," my early opinion expressed in the Federalist, limiting the Phrase to the specified powers, has been adhered to on every occasion w<sup>ch</sup>. has called for a test of it.

As to the power in relation to roads & canals, my opinion, without any previous variance from it, was formally announced in the veto on the bonus bill in 1817, and no proof of a subsequent change has been given.

On the subject of the Tariff for the encouragem<sup>t</sup> of manufactures, my opinion in favor of its constitutionality has been invariable from the first session of Cong<sup>s</sup> under the new Const<sup>n</sup> of the U. S. to the explicit & public maintenance of it in my letters to Mr. Cabell in 1828.

It will not be contended that any change has been manifested in my opinion of the unconstitutionality of the alien & Sedition laws.

With respect to the supremacy of the Judicial power on questions occurring in the course of its functions, concerning the boundary of Jurisdiction between the U. S. & individual States, my opinion in favor of it was as the 41 N<sup>o</sup> of the Federalist shews, of the earliest date; and I have never ceased to think that this supremacy was a vital principle of the Constitution as it is a prominent feature in its text. A supremacy of the Constitution & laws of the Union, without a supremacy in the exposition & execution of them, would be as much a mockery as a scabbard put into the hand of a Soldier without a sword in it. I have never been able to see, that without such a view of the subject the Constitution itself could be the supreme law of the land; or that the *uniformity* of the Federal Authority throughout the parties to it could be preserved; or that without this *uniformity*, anarchy & disunion could be prevented.

On the subject of the Bank alone is there a color for the charge of mutability on a Constitutional question. But here the inconsistency is apparent, not real, since the change, was in conformity to an early & unchanged opinion, that in the case of a Constitution as of a law, a course of authoritative, deliberate, and continued decisions, such as the Bank could plead was an evidence of the Public Judgment, necessarily superseding individual opinions. There has been a fallacy in this case as indeed in others in confounding a question whether precedents could expound a Constitution, with a question whether they could alter a Const. This distinction is too obvious to need elucidation. None will deny that precedents of a certain description fix the interpretation of a law. Yet who will pretend that they can repeal or alter a law?

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

[\[Back to Table of Contents\]](#)

TO HENRY CLAY.

Mad. Mss.

Mar. 22, 1832.

Confidential.

Dear Sir

I have duly rec<sup>d</sup> yours of the 17th. Altho' you kindly release me from a reply, it may be proper to say, that some of the circumstances to which you refer were not before known to me.

On the great question before Cong<sup>s</sup>. on the decision of w<sup>ch</sup>. so much depends out of Cong<sup>s</sup>. I ought the less to obtrude an opinion as its merits essentially depend on many details which I have never investigated and of which I am an incompetent Judge. I know only that the Tariff in its present amount & form, is a source of deep & extensive discontent, and I fear that without alleviations separating the more moderate from the more violent opponents, very serious effects are threatened. Of these the most formidable & not the least probable w<sup>d</sup>. be a Southern Convention; the avowed object of some, and the unavowed object of others, whose views are, perhaps, still more to be dreaded. The disastrous consequences of disunion, obvious to all will no doubt be a powerful check, on its partisans; but such a Convention, characterized as it w<sup>d</sup> be by selected talents, ardent zeal & the confidence of those represented w<sup>d</sup> not be easily stopped in its career; especially as many of its members, tho' not carrying with them particular aspirations for the honors, &c &c presented to ambition on a new political theatre, would find them germinating in such a hotbed.

To these painful ideas I can only oppose hopes & wishes that notwithstanding, the wide space & warm feelings which divide the parties, some accommodating arrangements may be devised that will prove an immediate anodyne, and involve a lasting remedy to the Tariff discords.

Mrs. M. charges me with her affec<sup>e</sup>. remembrances to Mrs. Clay, to whom I beg to be at the same time respectfully presented, with reassurances to y<sup>r</sup>self, of my high esteem & cordial regards.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST.

Montpellier, May —, 1832.

Mad. Mss.

Dear Sir

I have received your letter of the 8th, with the book referred to and dictate the acknowledgement of it to a pen that is near me. I will read the work as soon as I may be able. When that will be I cannot say. I have been confined to my bed many days by a bilious attack. The fever is now leaving me but in a very enfeebled state, and without any abatement of my Rheumatism; which, besides its general effect on my health, still cripples me in my limbs, and especially in my hands & fingers.

I am glad to find you so readily deciding that the charges against Mr. Jefferson can be duly refuted. I doubt not this will be well done. To be so, it will be expedient to review carefully the correspondences of Mr. Jefferson, to recur to the aspects of things at different epochs of the Government, particularly as presented at its outset, in the unrepugnant formalities introduced and attempted, not by President Washington but by the vitiated political taste of others taking the lead on the occasion; and again in the proceedings which marked the Vice Presidency of Mr. Jefferson.

Allowances also ought to be made for a habit in Mr. Jefferson as in others of great genius of expressing in strong and round terms, impressions of the moment.

It may be added that a full exhibition of the correspondences of distinguished public men through the varied scenes of a long period, would without a *single exception* not fail to involve delicate personalities and apparent if not real inconsistencies.

I heartily wish that something may be done with the tariff that will be admissible on both sides and arrest the headlong course in South Carolina. The alternative presented by the dominant party there is so monstrous that it would seem impossible that it should be sustained by any of the most sympathising States; unless there be latent views apart from Constitutional questions, which I hope cannot be of much extent. The wisdom that meets the crisis with the due effect will greatly signalize itself.

The idea that a Constitution which has been so fruitful of blessings, and a Union admitted to be the only guardian of the peace, liberty and happiness of the people of the States comprizing it should be broken up and scattered to the winds without greater than any existing causes is more painful than words can express. It is impossible that this can ever be the deliberate act of the people, if the value of the Union be calculated by the consequences of disunion.

I am much exhausted and can only add an affectionate adieu.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST.

Montpellier, May 29, 1832.

Mad. Mss.

My Dear Sir,

Whilst reflecting in my sick bed a few mornings ago, on the dangers hovering over our Constitution and even the Union itself, a few ideas which, tho' not occurring for the first time had become particularly impressive at the present. I have noted them by the pen of a friend on the enclosed paper, and you will take them for what they are worth. If that be anything, and they happen to accord with your own view of the subject, they may be suggested where it is most likely they will be well received; but without *naming* or *designating* in any manner, the source of them.

I am still confined to my bed with my malady, my debility, and my age, in triple alliance against me. Any convalescence therefore must be tedious, not to add imperfect.

I have not yet ventured on the perusal of the book you sent me. From passages read to me, I perceive "that the venom of its shafts" are not without "a vigor in the bow."

With all my good wishes.

29 May, 1832.

(The paper referred to as inclosed in the foregoing letter.)

The main cause of the discords which hover over our Constitution and even the union itself, is the tariff on imports; and the great complaint against the tariff is the inequality of the burthen it imposes on the planting and manufacturing States, the latter bearing a less share of the duties on protected articles than the former. This being the case, it seems reasonable that an equality should be restored as far as may be, by duties on unprotected articles consumed in a greater proportion by the manufacturing States. Let then a selection be made of unprotected articles, and such duties imposed on them as will have that effect. The unprotected article of tea for example, known to be more extensively consumed in the manufacturing than in the planting States, might be regarded, as pro tanto, balancing the disproportionate consumption of the protected article of coarse woolens in the South. As the repeal of the duty on tea and some other articles has been represented by southern politicians as more a relief to the North than to the South it follows, that the North in these particulars, has for many years paid taxes not proportionately borne by the South.

Justice certainly recommends some equalizing arrangement; and in a compound tariff, itself necessary to produce an equilibrium of the burthen, (a duty on any single article tho' uniform in law being ununiform in its operation,) such an arrangement might not be impracticable.

Two objections may perhaps be made first, that it might produce an increase of surplus revenue, which there is an anxiety to avoid. But as a *certain* provision for an *adequate* revenue will always produce a surplus to be disposed of, such an addition, if not altogether avoidable, would admit a like disposition. In any view, the evil could not be so great as that for which it is suggested as a remedy.

The second objection is, that such an adjustment between different sections of the nation might increase the difficulty of a proper adjustment between different descriptions of people, particularly between the richer and the poorer. But here again the question recurs, whether the evil as far as it may be unavoidable, be so great as a continuance of the threatening discords which are the alternative.

It cannot be too much inculcated that in a Government like ours, and, indeed, in all governments, and whether in the case of indirect or direct taxes, it is impossible to do perfect justice in the distribution of burthens and benefits, and that equitable estimates and mutual concessions are necessary to approach it.

[\[Back to Table of Contents\]](#)

TO C. E. HAYNES.

Montpellier, August 27, 1832.

Mad. Mss.

.....

The distinction is obvious between, 1st, Such interpositions on the part of the States against unjustifiable acts of the Federal Government as are within the provisions and forms of the Constitution. These provisions & forms certainly do not embrace the nullifying process proclaimed in South Carolina which begins with a single State and ends with the ascendancy of a minority of States over a majority; of 7 over 17; a federal law, during the process, being arrested within the nullifying State; and, if a revenue law, frustrated thro' all the States; 2 interpositions not within the purview of the Constitution by the States in the sovereign capacity in which they were parties to the constitutional compact. And here it must be kept in mind that in a compact like that of the U. S. as in all other compacts, each of the parties has an equal right to decide whether it has or has not been violated and made void. If one contends that it has, the others have an equal right to insist on the validity and execution of it.

It seems not to have been sufficiently noticed that in the proceedings of Virginia referred to, the *plural* terms *States* was invariably used in reference to their interpositions; nor is this sense affected by the object of maintaining within their respective limits the authorities rights and liberties appertaining to them, which could certainly be best effectuated for each by co-operating interpositions.

It is true that in extreme cases of oppression justifying a resort to original rights, and in which passive obedience & non-resistance cease to be obligatory under any Government, a single State or any part of a State might rightfully cast off the yoke. What would be the condition of the Union, and the other members of it, if a single member could at will renounce its connexion and erect itself, in the midst of them, into an independent and foreign power; its geographical relations remaining the same, and all the social & political relations, with the others converted into those of aliens and of rivals, not to say enemies, pursuing separate & conflicting interests? Should the seceding State be the only channel of foreign commerce for States having no commercial ports of their own, such as that of Connecticut, N. Jersey, & North Carolina, and now particularly all the inland States, we know what might happen from such a state of things by the effects of it under the old Confederation among States bound as they were in friendly relations by that instrument. This is a view of the subject which merits more developments than it appears to have received.

I have sketched these few ideas more from an unwillingness to decline an answer to your letter than from any particular value that may be attached to them. You will pardon me therefore for requesting that you will regard them as for yourself, & not for publicity, which my very advanced age renders every day more and more to be avoided.

Accept Sir, a renewal of my respects & regard.

[\[Back to Table of Contents\]](#)

## TO REV. — ADAMS.

*private*

Chic. Hist. Soc.  
Mss. 1832.

Charleston, S. C.

I rec<sup>d</sup> in due time the printed copy of your Convention sermon on the relation of Xnity to Civil Gov<sup>t</sup> with a manuscript request of my opinion on the subject.

There appears to be in the nature of man what insures his belief in an invisible cause of his present existence, and anticipation of his future existence. Hence the propensities & susceptibilities in that case of religion which with a few doubtful or individual exceptions have prevailed throughout the world.

Waiving the rights of Conscience, not included in the surrender implied by the social State, and more or less invaded by all religious Establishments, the simple question to be decided is whether a support of the best & purest religion, the Xn religion itself ought not so far at least as pecuniary means are involved, to be provided for by the Gov<sup>t</sup>. rather than be left to the voluntary provisions of those who profess it. And on this question experience will be an admitted Umpire, the more adequate as the connection between Gov<sup>ts</sup>. & Religion have existed in such various degrees & forms, and now can be compared with examples where connection has been entirely dissolved.

In the Papal System, Government and Religion are in a manner consolidated, & that is found to be the worst of Gov<sup>ts</sup>

In most of the Gov<sup>ts</sup> of the old world, the legal establishment of a particular religion and without or with very little toleration of others makes a part of the Political and Civil organization and there are few of the most enlightened judges who will maintain that the system has been favorable either to Religion or to Gov<sup>t</sup>

Until Holland ventured on the experiment of combining a liberal toleration with the establishment of a particular creed, it was taken for granted, that an exclusive & intolerant establishment was essential, and notwithstanding the light thrown on the subject by that experiment, the prevailing opinion in Europe, England not excepted, has been that Religion could not be preserved without the support of Gov<sup>t</sup>. nor Gov<sup>t</sup> be supported with<sup>t</sup> an established religion that there must be at least an alliance of some sort between them.

It remained for North America to bring the great & interesting subject to a fair, and finally to a decisive test.

In the Colonial State of the Country, there were four examples, R. I. N. J. Penn<sup>a</sup>. and Delaware, & the greater part of N. Y. where there were no religious Establishments; the support of Religion being left to the voluntary associations & contributions of



individuals; and certainly the religious condition of those Colonies, will well bear a comparison with that where establishments existed.

As it may be suggested that experiments made in Colonies more or less under the Controul of a foreign Government, had not the full scope necessary to display their tendency, it is fortunate that the appeal can now be made to their effects under a compleat exemption from any such controul.

It is true that the New England States have not discontinued establishments of Religion formed under very peculiar circumstances; but they have by successive relaxations advanced towards the prevailing example; and without any evidence of disadvantage either to Religion or good Government.

And if we turn to the Southern States where there was, previous to the Declaration of independence, a legal provision for the support of Religion; and since that event a surrender of it to a spontaneous support by the people, it may be said that the difference amounts nearly to a contrast in the greater purity & industry of the Pastors and in the greater devotion of their flocks, in the latter period than in the former. In Virginia the contrast is particularly striking, to those whose memories can make the comparison. It will not be denied that causes other than the abolition of the legal establishment of Religion are to be taken into view in account<sup>s</sup> for the change in the Religious character of the community. But the existing character, distinguished as it is by its religious features, and the lapse of time now more than 50 years since the legal support of Religion was withdrawn sufficiently prove that it does not need the support of Gov<sup>t</sup>. and it will scarcely be contended that Government has suffered by the exemption of Religion from its cognizance, or its pecuniary aid.

The apprehension of some seems to be that Religion left entirely to itself may run into extravagances injurious both to Religion and to social order; but besides the question whether the interference of Gov<sup>t</sup> *in any form* w<sup>d</sup> not be more likely to increase than controul the tendency, it is a safe calculation that in this as in other cases of excessive excitement, Reason will gradually regain its ascendancy. Great excitements are less apt to be permanent than to vibrate to the opposite extreme

Under another aspect of the subject there may be less danger that Religion, if left to itself, will suffer from a failure of the pecuniary support applicable to it than that an omission of the public authorities to limit the duration of their Charters to Religious Corporations, and the amount of property acquirable by them, may lead to an injurious accumulation of wealth from the lavish donations and bequests prompted by a pious zeal or by an atoning remorse. Some monitory examples have already appeared.

Whilst I thus frankly express my view of the subject presented in your sermon, I must do you the justice to observe that you very ably maintained yours. I must admit moreover that it may not be easy, in every possible case, to trace the line of separation between the rights of religion and the Civil authority with such distinctness as to avoid collisions & doubts on unessential points. The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best

guarded ag<sup>st</sup> by an entire abstinence of the Gov<sup>t</sup>. from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect ag<sup>st</sup>. trespasses on its legal rights by others.

I owe you Sir an apology for the delay in complying with the request of my opinion on the subject discussed in your sermon; if not also for the brevity & it may be thought crudeness of the opinion itself. I must rest the apology on my great age now in its 83<sup>d</sup>. year, with more than the ordinary infirmities, and especially on the effect of a chronic Rheumatism, combined with both, which makes my hand & fingers as averse to the pen as they are awkward in the use of it.

Be pleased to accept Sir a tender of my cordial & respectful salutations.

[\[Back to Table of Contents\]](#)

## TO ANDREW STEVENSON<sup>1</sup>

Montp<sup>r</sup>. Nov<sup>r</sup> 20, 1832

My Dear Sir

I return you many thanks for the warm cap which came safe to hand a few days ago. It is as comfortable as it may be fashionable, which is more than can be said of all fashions. I rec<sup>d</sup>. at the same time a duplicate of the excellent pair of gloves as well which M<sup>rs</sup>. Stevenson, allow me rather to say, my cousin Sally has favored me. Being the work of her own hands they will impart the more warmth to mine. As they are a gift not a Gauntlet, I may express thro' her husband, the heartfelt acknowledgments with which they are accepted. M<sup>rs</sup> Madison has also provided well for my feet. I am thus equipt cap-a-pie, for the campaign ag<sup>st</sup>. Boreas, & his allies the Frosts & the snows. But there is another article of covering, which I need most of all & which my best friends can not supply. My bones have lost a sad portion of the flesh which clothed & protected them, and the digestive and nutritive organs which alone can replace it, are too slothful in their functions.

I congratulate Richmond & my friends there on the departure of the atmospheric scourge which carried so many deaths and still more of terror with it. I join in the prayer that as it was the first it may also be the last visit.

M<sup>rs</sup>. Stevenson in her letter to M<sup>rs</sup>. Madison mentions that since you left us, you have had a sharp bilious attack, adding for our gratification that you had quite recovered from it. It is very important that you sh<sup>d</sup> carry a good share of health into the chair at the capitol, we cannot expect that it will be a seat of Roses, whatever our hopes, that it may be without the thorns that distinguished the last season.

Inclosed is a letter from M<sup>rs</sup> M. to M<sup>rs</sup>. S. As she speaks for me as I do for her, M<sup>rs</sup>. S. & yourself will have at once joint & several assurances of our constant affection and of all our good wishes.

[\[Back to Table of Contents\]](#)

TO N. P. TRIST.

Montpellier, Dec<sup>r</sup> 23, 1832.

Mad. Mss.

D<sup>R</sup>. Sir

I have received yours of the 19th, inclosing some of the South Carolina papers. There are in one of them some interesting views of the doctrine of secession; one that had occurred to me, and which for the first time I have seen in print; namely that if one State can at will withdraw from the others, the others can at will withdraw from her, and turn her, nolentem, volentem, out of the union. Until of late, there is not a State that would have abhorred such a doctrine more than South Carolina, or more dreaded an application of it to herself. The same may be said of the doctrine of nullification, which she now preaches as the only faith by which the Union can be saved.

I partake of the wonder that the men you name should view secession in the light mentioned. The essential difference between a free Government and Governments not free, is that the former is founded in compact, the parties to which are mutually and equally bound by it. Neither of them therefore can have a greater right to break off from the bargain, than the other or others have to hold them to it. And certainly there is nothing in the Virginia resolutions of —98, adverse to this principle, which is that of common sense and common justice. The fallacy which draws a different conclusion from them lies in confounding a *single* party, with the *parties* to the Constitutional compact of the United States. The latter having made the compact may do what they will with it. The former as one only of the parties, owes fidelity to it, till released by consent, or absolved by an intolerable abuse of the power created. In the Virginia Resolutions and Report the *plural* number, *States*, is in *every* instance used where reference is made to the authority which presided over the Government. As I am now known to have drawn those documents, I may say as I do with a distinct recollection, that the distinction was intentional. It was in fact required by the course of reasoning employed on the occasion. The Kentucky resolutions being less guarded have been more easily perverted. The pretext for the liberty taken with those of Virginia is the word *respective*, prefixed to the “rights” &c to be secured within the States. Could the abuse of the expression have been foreseen or suspected, the form of it would doubtless have been varied. But what can be more consistent with common sense, than that all having the same rights &c, should unite in contending for the security of them to each.

It is remarkable how closely the nullifiers who make the name of Mr. Jefferson the pedestal for their colossal heresy, shut their eyes and lips, whenever his authority is ever so clearly and emphatically against them. You have noticed what he says in his letters to Monroe & Carrington Pages 43 & 203, vol. 2, [1](#) with respect to the powers of the old Congress to coerce delinquent States, and his reasons for preferring for the purpose a naval to a military force; and moreover that it was not necessary to find a right to coerce in the Federal Articles, that being inherent in the nature of a compact.

It is high time that the claim to secede at will should be put down by the public opinion; and I shall be glad to see the task commenced by one who understands the subject.

I know nothing of what is passing at Richmond, more than what is seen in the newspapers. You were right in your foresight of the effect of the passages in the late Proclamation. They have proved a leaven for much fermentation there, and created an alarm against the danger of consolidation, balancing that of disunion. I wish with you the Legislature may not seriously injure itself by assuming the high character of mediator. They will certainly do so if they forget that their real influence will be in the inverse ratio of a boastful interposition of it.

If you can fix, and will name the day of your arrival at Orange Court House, we will have a horse there for you; and if you have more baggage than can be otherwise brought than on wheels, we will send such a vehicle for it. Such is the state of the roads produced by the wagons hurrying flour to market, that it may be impossible to send our carriage which would answer both purposes.

[\[Back to Table of Contents\]](#)

TO JOSEPH C. CABELL.

Montp<sup>r</sup>. Dec. 27 1832. 4 o'c p. m.

Mad. Mss.

Dear Sir

I have this moment only rec<sup>d</sup>. yours of the 22d. 1 I regret the delay as you wished an earlier answer than you can now have, tho' I shall send this immediately to the P. O. My correspondence with Judge Roane originated in his request that I w<sup>d</sup>. take up the pen on the subject he was discussing or about to discuss. Altho' I concurred much in his views of it, I differed as you will see with regard to the power of the Supreme Court of the U. S. in relation to the State Court. This was in my last letter which being an answer did not require one, and none was rec<sup>d</sup>. My view of the supremacy of the Fed<sup>l</sup>. Court when the Const<sup>n</sup> was under discussion will be found in the Federalist. Perhaps I may, as c<sup>d</sup> not be improper, have alluded to Cases (of which all Courts must judge) within the scope of its functions. Mr. Pendleton's opinion that there ought to be an appeal from the *Supreme Court* of a State to the *Supreme Court* of the U. S. contained in his letter to me, was I find avowed in the Convention of V<sup>a</sup>., and so stated by his Nephew latterly in Cong<sup>s</sup>. I send you a copy of Col. J. Taylor's arg<sup>t</sup>. on the Carriage tax: if I understand the beginning Pages he is not only high-toned as to Jud<sup>l</sup>. power, but regards the Fed<sup>l</sup>. Courts as the *paramount Auth<sup>y</sup>*. Is it possible to resist the nullifying inference from the doctrine that makes the State Courts uncontrollable by the Supr. C<sup>t</sup>. of the U. S.?

I cannot lay my hand on my letter to Judge Roane. The word omitted, I presume, is *arg<sup>t</sup>*. It is a common Comp<sup>t</sup> among the French as you know to say you have given all its lustre &c. Will it not suffice for you to say, You had formerly a sight of the letter or of a Copy of it. Sh<sup>d</sup> the fact be denied, meet it as you please.

My letter was not written to A. Everett, but to his brother in Cong<sup>s</sup> in answer to one from him. It was his Act in handing it to the Review. As his motives were good, I w<sup>d</sup> not wish his feelings to be touched by anything s<sup>d</sup> on the occasion. What is s<sup>d</sup> in that letter, as to the origin of the Const<sup>n</sup> I considered as squaring with the account given in the Fed<sup>list</sup>. of the mixture of Nat<sup>l</sup>. & Federal *features* in the Constitution. That view of it was well rec<sup>d</sup> at the time by its friends, and I believe has not been controverted by the Rep<sup>n</sup> party. A marked & distinctive feature in the Resol<sup>n</sup> of 98 is that the *plural n<sup>o</sup>* is *invariably* used in them & not the singular, and the *course of the reasoning*, required it.

As to my change of opinion ab<sup>t</sup>. the Bank, it was in conformity to an unchanged opinion that a certain course of practice required it.

The tariff is unconnected with the reso<sup>s</sup> of 98. In the first Cong<sup>s</sup>. of 89 I sustained & have in every situation since adhered to it. I had flattered myself, in vain it seems, that whatever my political errors may have been, I was as little chargeable with

inconsistencies, as any of my fellow laborers thro' so long a period of political life. Please return me Taylor's pamphlet, and the letter also w<sup>ch</sup>. I observe is not fit to be preserved; and I will if you think it worth while, send a copy. I have written it with sore eyes & at night as well as In much haste. Yours with cordial regards

[\[Back to Table of Contents\]](#)

## TO ALEXANDER RIVES.1

Montpelier, [January, 1833.]

(Confidential.)

I have received the letter signed “A Friend of Union and State Rights,” enclosing two Essays under the same signature.

It is not usual to answer communications without the proper names to them. But the ability and the motives disclosed in the essay induce me to say, in compliance with the wish expressed, that I do not consider the proceedings of Virginia in '98-99 as countenancing the doctrine that a State may *at will* secede from its constitutional compact with the other states. A rightful secession requires the consent of the others, or an abuse of the compact absolving the seceding party from the obligation imposed by it.

In order to understand the reasoning on one side of the question, it is necessary to keep in view the precise state of the question and the positions and arguments on the other side. This is particularly necessary in questions arising under our novel and compound system of government. Much error and confusion have grown out of a neglect of this precaution.

The case of the alien and sedition acts was a question between the Government and the constituent body, Virginia making an appeal to the latter against the assumption of power by the former.

The case of a claim in a State to secede from its union with the others is a question among the states themselves as parties to a compact.

In the former case it was asserted against Virginia, that the states had no right to interpose legislative declarations of opinion on a constitutional point; nor a right to interpose at all against a decision of the Supreme Court of the United States, which was to be regarded as a tribunal from which there could be no appeal.

The object of Virginia was to vindicate *legislative* declarations of opinion; to designate the several *constitutional* modes of interposition by the states against abuses of power, and to establish the ultimate authority of the states as *parties to and creatures* of the Constitution to interpose against the decisions of the judicial as well as the other branches of the Government—the authority of the judicial being in no sense *ultimate*, out of the purview and form of the Constitution.

Much use has been made of the term “respective” in the third resolution of Virginia, which asserts the right of the *States*, in cases of sufficient magnitude to interpose “for maintaining within their *respective* limits the authorities, and so forth, appertaining to them;” the term “respective” being construed to mean a constitutional right in *each*



State, *separately*, to decide on and resist by force encroachments within its limits. A foresight or apprehension of the misconstruction might easily have guarded against it. But, to say nothing of the distinction between ordinary and extreme cases, it is observable that in this, as in other instances throughout the resolution, the plural number (*States*) is used in referring to them that a concurrence and co-operation of all might well be contemplated in interpositions for effecting the objects within reach; and that the language of the closing resolution corresponds with this view of the third. The course of reasoning in the report on the resolutions requires the distinction between *a State* and *the States*.

It surely does not follow from the fact of the states, or rather the people embodied in them, having, as parties to the constitutional compact, no tribunal above them, that, in controverted meanings of the compact, a minority of the parties can rightfully decide against the majority, still less that a single party can decide against the rest, and as little that it can at will withdraw itself altogether from its compact with the rest.

The characteristic distinction between free Governments, and Governments not free is that the former are founded on compact, not between the Government and those for whom it acts, but among the parties creating the Government. Each of these being equal, neither can have more right to say that the compact has been violated and dissolved than every other has to deny the fact and to insist on the execution of the bargain. An inference from the doctrine that a single state has a right to secede at will from the rest is that the rest would have an equal right to secede from it; in other words, to turn it, against its will, out of its union with them. Such a doctrine would not, till of late, have been palatable anywhere, and nowhere less so than where it is now most contended for.

A careless view of the subject might find an analogy between state secession and individual expatriation. But the distinction is obvious and essential, even in the latter case, whether regarded as a right impliedly reserved in the original social compact, or as a reasonable indulgence, it is not exempt from certain conditions. It must be used without injustice or injury to the community from which the expatriating party separates himself. Assuredly he could not withdraw his portion of territory from the common domain. In the case of a State seceding from the union, its domain would be dismembered, and other consequences brought on not less obvious than pernicious.

I ought not to omit my regret that in the remarks on Mr. Jefferson and myself the names had not been transposed.

Having many reasons for marking this letter *confidential*, I must request that its publicity may not be permitted in any mode or through any channel. Among the reasons is the risk of misapprehensions or misconstructions, so common, without more attention and development that I could conveniently bestow on what is said.

With Respect

Wishing to be assured that the letter has not miscarried, a single line acknowledging its receipt will be acceptable.

[\[Back to Table of Contents\]](#)

## TO THOMAS R. DEW.

Montpellier, Feb<sup>y</sup> 23, 1833

Mad Mss.

I am aware of the impracticability of an immediate or early execution of any plan, that combines deportation, with emancipation; and of the inadmissibility of emancipation without deportation. But I have yielded to the expediency of attempting a gradual remedy by providing for the double operation.

If emancipation was the sole object, the extinguishment of slavery, would be easy, cheap & compleat. The purchase by the public of all female children at their birth, leaving them in bondage, till it w<sup>d</sup> defray the charge of rearing them, would within a limited period be a radical resort.

With the condition of deportation, it has appeared to me, that the great difficulty does not lie either in the expence of emancipation, or in the expence or the means of deportation, but in the attainment 1 of the requisite Asylums, 2, the consent of the individuals to be removed, 3, the labor for the vacuum to be created.

With regard to the expence. 1, much will be saved by voluntary emancipations, increasing under the influence of example, and the prospect of bettering the lot of the slaves. 2, much may be expected in gifts & legacies from the opulent the philanthropic and the conscientious, 3, more still from Legislative grants by the States, of which encouraging examples & indications have already appeared, 4, Nor is there any room for despair of aid from the indirect or direct proceeds of the public lands held in trust by Congress. With a sufficiency of pecuniary means, the facility of providing a naval transportation of the exiles is shewn by the present amount of our tonnage and the promptitude with which it can be enlarged; by the number of emigrants brought from Europe to N. America within the last year; and by the greater number of slaves, which have been within single years brought from the Coast of Africa across the Atlantic.

In the attainment of adequate Asylums, the difficulty, though it may be considerable, is far from being discouraging. Africa is justly the favorite choice of the patrons of colonization; and the prospect there is flattering, 1, in the territory already acquired, 2 in the extent of Coast yet to be explored and which may be equally convenient, 3, the adjacent interior into which the littoral settlements can be expanded under the auspices of physical affinities between the new comers and the natives, and of the moral superiorities of the former, 4, the great inland Regions now ascertained to be accessible by navigable waters, & opening new fields for colonizing enterprises.

But Africa, tho' the primary, is not the sole asylum within contemplation. An auxiliary one presents itself in the islands adjoining this Continent where the colored population is already dominant, and where the wheel of revolution may from time to time produce the like result.

Nor ought another contingent receptacle for emancipated slaves to be altogether overlooked. It exists within the territory under the controul of the U. S. and is not too distant to be out of reach, whilst sufficiently distant to avoid for an indefinite period, the collisions to be apprehended from the vicinity of people distinguished from each other by physical as well as other characteristics.

The consent of the individuals is another pre-requisite in the plan of removal. At present there is a known repugnance in those already in a state of freedom to leave their native homes; and among the slaves there is an almost universal preference of their present condition to freedom in a distant & unknown land. But in both classes particularly that of the slaves the prejudices arise from a distrust of the favorable accounts coming to them through white channels. By degrees truth will find its way to them from sources in which they will confide, and their aversion to removal may be overcome as fast as the means of effectuating it shall accrue.

The difficulty of replacing the labour withdrawn by a removal of the slaves, seems to be urged as of itself an insuperable objection to the attempt. The answer to it is, 1, that notwithstanding the emigrations of the whites, there will be an annual and by degrees an increasing surplus of the remaining mass. 2, That there will be an attraction of whites from without, increasing with the demand, and, as the population elsewhere will be yielding a surplus to be attracted, 3 that as the culture of Tobacco declines with the contraction of the space within which it is profitable, & still more from the successful competition in the west, and as the farming system takes place of the planting, a portion of labour can be spared, without impairing the requisite stock, 4 that altho' the process must be slow, be attended with much inconvenience, and be not even certain in its result, is it not preferable to a torpid acquiescence in a perpetuation of slavery, or an extinguishment of it by convulsions more disastrous in their character & consequences than slavery itself.

In my estimate of the experiment instituted by the Colonization Society I may indulge too much my wishes & hopes, to be safe from error. But a partial success will have its value, and an entire failure will leave behind a consciousness of the laudable intentions with which relief from the greatest of our calamities was attempted in the only mode presenting a chance of effecting it.

I hope I shall be pardoned for remarking that in accounting for the depressed condition of Virginia, you seem to allow too little to the existence of slavery; ascribe too much to the tariff laws, and not to have sufficiently taken into view the effect of the rapid settlement of the W. & S. W. Country.

Previous to the Revolution, when, of these causes, slavery alone was in operation, the face of Virg<sup>a</sup>. was in every feature of improvement & prosperity, a contrast to the Colonies where slavery did not exist, or in a degree only, not worthy of notice. Again, during the period of the tariff laws prior to the latter state of them, the pressure was little if at all, regarded as a source of the general suffering. And whatever may be the degree in which the extravagant augmentation of the tariff may have contributed to the depression the extent of this cannot be explained by the extent of the cause. The great & adequate cause of the evil is the cause last mentioned; if that be indeed an evil

which improves the condition of our migrating citizens & adds more to the growth & prosperity of the whole than it subtracts from a part of the community.

Nothing is more certain than that the actual and prospective depression of Virginia, is to be referred to the fall in the value of her landed property, and in that of the staple products of the land. And it is not less certain that the fall in both cases, is the inevitable effect of the redundancy in the market both of land and of its products. The vast amount of fertile land offered at 125 Cents per acre in the W. & S. W. could not fail to have the effect already experienced of reducing the land here to half its value; and when the labour that will here produce one Hhd. of Tob<sup>o</sup>. and ten barrels of flour, will there produce two Hhd<sup>s</sup> and twenty barrels, now so cheaply transportable to the destined outlets, a like effect on these articles must necessarily ensue. Already more Tob<sup>o</sup>. is sent to N. Orleans, than is exported from Virginia to foreign markets; Whilst the Article of flour exceeding for the most part the demand for it, is in a course of rapid increase from new sources as boundless as they are productive. The great staples of Virg<sup>a</sup>. have but a limited market which is easily glutted. They have in fact sunk more in price, and have a more threatening prospect, than the more Southern staples of Cotton & Rice. The case is believed to be the same with her landed property. That it is so with her slaves is proved by the purchases made here for the market there. . . .

[\[Back to Table of Contents\]](#)

## TO JOHN TYLER. 1

[1833]

Mad. Mss.

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

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

The resolutions proposed by him, were the result of a Consultation among the Deputies, the whole number, seven, being present. The part which Virg<sup>a</sup>. had borne in bring<sup>g</sup> ab<sup>t</sup>. the Convention, suggested the Idea that some such initiative step might be expected from their Deputation; and Mr. Randolph was designated for the task. It was perfectly understood that the Propositions committed no one to their precise tenor or form; and that the members of the Deputation w<sup>d</sup> be as free in discussing and shaping them as the other members of the Convention. Mr. R. was made the organ on the occasion, being then the Governor of the State, of distinguished talents, and in the habit of public Speaking. Gen<sup>l</sup> Washington, tho’ at the head of the list was, for obvious reasons disinclined to take the lead. It was also foreseen that he would be immediately called to the presiding station.

Now what was the plan sketched in the Propositions?

They proposed that “the Articles of Confederation sh<sup>d</sup>. be so corrected and enlarged as to accomplish the objects of their Institution, namely common defence, security of liberty, and general welfare;” (the words of the Confederation.)

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

“That the right of suffrage in the Legislature sh<sup>d</sup> be (not equal among the States as in the Confederation, but) proportioned to quotas of contribution or numbers of free inhabitants as might seem best in different cases. (the same corresponding in principle with the mixed rule adopted.)

“That it should consist of two branches; the first elected by the people of the several States, the second by the first, of a number nominated by the State Legislatures.” (a

mode of forming a Senate regarded as more just to the large States, than the equality which was yielded to the Small States by the compromise with them, but not material in any other view. In reference to the practicable equilibrium between the General & the State authorities, the comparative influence of the two modes will depend on the question whether the small States will incline most to the former or to the latter scale).

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

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

“That provision ought to be made for the admission of new States lawfully arising within the limits of the U. S., w<sup>th</sup> the consent of a number of votes in the Nat<sup>l</sup> Legislature less than the whole.” (This is not at variance w<sup>th</sup>. the existing provisions.)

“That a Republican Gov<sup>t</sup> ought to be guaranteed by the U. S. to each State. (this is among the existing provisions.)

“That provision ought to be made for amending the articles of Union, without requiring the Assent of the National Legislature. (this is done in the Const<sup>n</sup>)

“That the Legisl. Ex. & Judiciary powers of the several States ought to be bound by oath to support the articles of Union (this was provided with the emphatic addition of “anything in the Const<sup>n</sup>. or laws of the States notwithstanding.)

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

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

Let it next be seen what were the powers proposed to be lodged in the Gov<sup>t</sup> as distributed among its several Departments.

The Legislature, each branch possessing a right to originate acts, was to enjoy, 1. the *legislative* rights vested in the Cong<sup>s</sup> of the Confederation. (This must be free from

objection, especially as the powers of that description were left to the selection of the Convention)

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

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

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

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

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

The last of the proposed Legislative Powers was “to call forth the force of the Union ag<sup>st</sup>. any member failing to fulfil its duty under the articles of Union.”

The evident object of this provision was not to enlarge the powers of the proposed Gov<sup>t</sup>. but to secure their efficiency. It was doubtless suggested by the inefficiency of the Confederate system, from the want of such a sanction; none such being expressed in its Articles; and if as Mr. Jefferson<sup>1</sup> argued, necessarily implied, having never been actually employed. The proposition as offered by Mr. R. was in general terms. It might have been taken into Consideration, as a substitute for, or as a supplement to the ordinary mode of enforcing laws by Civil process; or it might have been referred to cases of territorial or other controversies between States and a refusal of the defeated party to abide by the decision; leaving the alternative of a Coercive interposition by the Gov<sup>t</sup> of the Union, or a war between its members, and within its bowels. Neither of these readings nor any other, which the language w<sup>d</sup>. bear, could countenance a just charge on the deputation or on Mr. Randolph, of contemplating a Consolidated Gov<sup>t</sup>. with unlimited powers.

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

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

The trial of Impeach<sup>t</sup> is known to be one of the most difficult of Const<sup>l</sup> arrangem<sup>ts</sup>. The reference of it to the Judicial Dep<sup>t</sup>. may be presumed to have been suggested by the example in the Constitution of Virg<sup>a</sup>. The option seemed to lie between that & the other Dep<sup>ts</sup>. of the Gov<sup>t</sup>. No example of an organization excluding all the Depart<sup>s</sup>. presenting itself. Whether the Judi<sup>l</sup> mode proposed, was preferable to that inserted in the Const: or not, the difference cannot affect the question of a Consolidating aspect or tendency.

By questions involving “the Nat<sup>l</sup> peace and harmony,” no one can suppose more was meant than might be *specified* by the Convention as proper to be referred to the Judiciary, either by the Const<sup>n</sup>. or the Const<sup>l</sup> Authority of the Legislature. They could be no rule, in that latitude, to a court, nor even to a Legislature with limited powers.

That the Convention understood the entire Resolutions of Mr. R to be a mere sketch in which omitted details were to be supplied and the general terms and phrases to be reduced to their proper details, is demonstrated by the use made of them in the Convention. They were taken up & referred to a Com<sup>e</sup> of the whole in that sense; discussed one by one; referred occasionally to special Com<sup>s</sup> to Com<sup>es</sup>. of detail on special points, at length to a Com<sup>e</sup> to digest & report the draught of a Const<sup>n</sup>. and finally to a Com<sup>e</sup> of arrangement and diction.



On this review of the whole subject, candour discovers no ground for the charge, that the Resol<sup>ns</sup>. contemplated a Gov<sup>t</sup>. materially different from or more national than that in which they terminated, and certainly no ground for the charge of consolidating views in those from whom the Resol<sup>ns</sup> proceeded.

What then is the ground on which the charge rests? It c<sup>d</sup> not be on a plea that the plan of Mr. R. gave unlimited powers to the proposed Gover<sup>t</sup> for the plan expressly aimed at a specification, & of course a limitation of the powers.

It c<sup>d</sup> not be on the supremacy of the general Authority over the separate authorities, for that supremacy as already noticed, is more fully & emphatically established by the text of the Constitution.

It c not be on the proposed ratification by the people instead of the States for such is the ratification on w<sup>ch</sup>. the Const<sup>n</sup> is founded.

The charge must rest on the term National prefixed to the organized Dep<sup>ts</sup> in the propositions of Mr. R. yet how easy it is to acc<sup>t</sup>. for the use of the term with<sup>t</sup>. taking it in a consolidating sense.

In the 1st. place. It contradistinguished the proposed Gov<sup>t</sup> from the Confederacy w<sup>ch</sup> it was to supersede.

2. As the System was to be a new & compound one, a nondescript without a technical appellation for it, the term “national” was very naturally suggested by its national features: 1. in being estab. not by the authority of State Leg<sup>s</sup> but by the original auth<sup>d</sup>. of the people. 2. in its organization into Legisl. Ex. & Jud<sup>l</sup> Depart. and 3. in its action on the people of the States immediately, and not on the Gov<sup>ts</sup> of the States, as in a Confederacy.

But what alone would justify & acc<sup>t</sup> for the application of the term National to the proposed Gov<sup>t</sup>. is that it w<sup>d</sup> possess, exclusively all the attributes of a Nat<sup>l</sup> Gov<sup>t</sup> in its relations with other Nations, including the most essential one, of regulating foreign Commerce, with the effective means of fulfilling the oblig. & responsib<sup>y</sup> of the U. S. to other Nations. Hence it was that the term Nat<sup>l</sup> was at once so readily applied to the new Gov<sup>t</sup> and that it has become so universal & familiar. It may safely be affirmed that the same w have been the case, whatever name might have been given to it by the prop<sup>s</sup>. of Mr. R. or by the Convention. A Gov<sup>t</sup>. which alone is known & acknowledged by all foreign nations, and alone charged with the international relations, could not fail to be deemed & called at home, a Nat<sup>l</sup> Gov<sup>t</sup>.

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

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

With regard to Mr. R. particularly, is not some respect due to his public letter to the Speaker of y<sup>e</sup>. H. of D. in which he gives for his refusal to sign the Constit<sup>n</sup>. reasons irreconcilable with the supposition that he c<sup>d</sup>. have proposed the Resol<sup>ns</sup>. in a meaning charged on them? Of Col Mason who also refused, it may be inferred from his avowed reasons, that he c<sup>d</sup>. not have acquiesced in the propositions if understood or intended to effect a Conso Gov.

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

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

[\[Back to Table of Contents\]](#)

## TO WILLIAM CABELL RIVES.

Montp<sup>r</sup>, March 12, 1833.

Mad. Mss.

Dear Sir

I have rec<sup>d</sup> your very kind letter of the 6th, from Washington, and by the same mail a copy of your late Speech in the Senate for which I tender my thanks. I have found as I expected, that it takes a very able and enlightening view of its subject. I wish it may have the effect of reclaiming to the doctrine & language held by all from the birth of the Constitution, & till very lately by themselves, those who now Contend that the States have never parted with an Atom of their sovereignty; and consequently that the Constitutional band which holds them together, is a mere league or partnership, without any of the characteristics of sovereignty or nationality.

It seems strange that it should be necessary to disprove this novel and nullifying doctrine; and stranger still that those who deny it should be denounced as Innovators, heretics & Apostates. Our political system is admitted to be a new Creation—a real nondescript. Its character therefore must be sought within itself; not in precedents, because there are none; not in writers whose comments are guided by precedents. Who can tell at present how Vattel and others of that class, would have qualified (in the Gallic sense of the term) a Compound & peculiar system with such an example of it as ours before them.

What can be more preposterous than to say that the States as united, are in no respect or degree, a Nation, which implies sovereignty; altho' acknowledged to be such by all other Nations & Sovereigns, and maintaining with them, all the international relations, of war & peace, treaties, commerce, &c, and, on the other hand and at the same time, to say that the States separately are compleatly nations & sovereigns; although they can separately neither speak nor harken to any other nation, nor maintain with it any of the international relations whatever and would be disowned as Nations if presenting themselves in that character.

The nullifiers it appears, endeavor to shelter themselves under a distinction between a delegation and a surrender of powers. But if the powers be attributes of sovereignty & nationality & the grant of them be perpetual, as is necessarily implied, where not otherwise expressed, sovereignty & nationality according to the extent of the grant are effectually transferred by it, and a dispute about the name, is but a battle of words. The practical result is not indeed left to argument or inference. The words of the Constitution are explicit that the Constitution & laws of the U. S. shall be supreme over the Constitution & laws of the several States; supreme in their exposition and execution as well as in their authority. Without a supremacy in those respects it would be like a scabbard in the hand of a soldier without a sword in it. The imagination itself is startled at the idea of twenty four independent expounders of a rule that cannot exist, but in a meaning and operation, the same for all.

The conduct of S. Carolina has called forth not only the question of nullification; but the more formidable one of secession. It is asked whether a State by resuming the sovereign form in which it entered the Union, may not of right withdraw from it at will. As this is a simple question whether a State, more than an individual, has a right to violate its engagements, it would seem that it might be safely left to answer itself. But the countenance given to the claim shows that it cannot be so lightly dismissed. The natural feelings which laudably attach the people composing a State, to its authority and importance, are at present too much excited by the unnatural feelings, with which they have been inspired ag<sup>st</sup> their brethren of other States, not to expose them, to the danger of being misled into erroneous views of the nature of the Union and the interest they have in it. One thing at least seems to be too clear to be questioned; that whilst a State remains within the Union it cannot withdraw its citizens from the operation of the Constitution & laws of the Union. In the event of an actual secession without the Consent of the Co-States, the course to be pursued by these involves questions painful in the discussion of them. God grant that the meancing appearances, which obtruded it may not be followed by positive occurrences requiring the more painful task of deciding them!

In explaining the proceedings of Virg<sup>a</sup> in 98-99, the state of things at that time was the more properly appealed to, as it has been too much overlooked. The doctrines combated are always a key to the arguments employed. It is but too common to read the expressions of a remote period thro' the modern meaning of them, & to omit guards ag<sup>st</sup> misconstruction not anticipated. A few words with a prophetic gift, might have prevented much error in the glosses on those proceedings. The remark is equally applicable to the Constitution itself.

Having thrown these thoughts on paper in the midst of interruptions added to other dangers of inaccuracy, I will ask the favor of you to return the letter after perusal. I have latterly taken this liberty with more than one of my corresponding friends. And every lapse of very short periods becomes now a fresh apology for it.

Neither Mrs. M. nor myself have forgotten the promised visit which included Mrs. Rives, and we flatter ourselves the fulfilment of it, will not be very distant. Meanwhile we tender to you both our joint & affect<sup>e</sup>. salutations.

P. Script. I inclose a little pamphlet rec a few days ago, which so well repaid my perusal, that I submit it to yours, to be returned only at your leisure. It is handsomely written, and its matter well chosen & interesting. A like task as well executed in every State w<sup>d</sup>. be of historical value; the more so as the examples might both prompt & guide researches, not as yet too late but rapidly becoming so.

[\[Back to Table of Contents\]](#)

TO HENRY CLAY.

June, 1833.

Mad. Mss.

Dear Sir,

Your letter of May 28, was duly received.<sup>1</sup> In it you ask my opinion on the retention of the Land bill by the President.

It is obvious that the Constitution meant to allow the President an adequate time to consider the Bills &c presented to him, and to make his objections to them; and on the other hand that Cong<sup>s</sup>. should have time to consider and overrule the objections. A disregard on either side of what it owes to the other, must be an abuse, for which it would be responsible under the forms of the Constitution. An abuse on the part of the President, with a view sufficiently manifest, in a case of sufficient magnitude to deprive Cong<sup>s</sup> of the opportunity of overruling objections to their bills, might doubtless be a ground for impeachment. But nothing short of the signature of the President, or a lapse of ten days without a return of his objections, or an overruling of the objections by ? of each House of Cong<sup>s</sup>., can give legal validity to a Bill. In order to qualify (in the French sense of the term) the retention of the Land bill by the President, the first inquiry is, whether a sufficient time was allowed him to decide on its merits; the next whether with a sufficient time to prepare his objections, he unnecessarily put it out of the power of Cong<sup>s</sup> to decide on them. How far an anticipated passage of the Bill ought to enter into the sufficiency of the time for Executive deliberation, is another point for consideration. A minor one may be whether a silent retention or an assignment to Cong<sup>s</sup>. of the reasons for it, be the mode most suitable, to such occasions.

I hope with you that the compromising tariff will have a course & effect avoiding a renewal of the contest between the S. and the North; and that a lapse of nine or ten years will enable the manufacturers to swim without the bladders which have supported them. Many considerations favor such a prospect. They will be saved in future much of the expence in *fixtures*, which they had to encounter, and in many instances unnecessarily incurred. They will be continually improving in the management of their business. They will not fail to improve occasionally on the machinery abroad. The reduction of duties on imported articles consumed by them will be equivalent to a direct bounty. There will probably be an increasing cheapness of food from the increasing redundancy of agricultural labour. There will within the experimental period be an addition of 4 or 5 millions to our population, no part or little of which will be needed for agricultural labour, and which will consequently be an extensive fund of manufacturing recruits. The current experience makes it probable, that not less than 50 or 60 thousand or more, of emigrants will annually reach the U. S. a large portion of whom will have been trained to manufactures and be ready for that employment.

With respect to Virg<sup>a</sup>., it is quite probable from the progress already made in the Western Culture of Tob<sup>o</sup>., and the rapid exhaustion of her virgin soil in which alone it can be cultivated with a chance of profit, that of the 40 or 50 thousand labourers on Tob<sup>o</sup>., the greater part will be released from that employment, and be applicable to that of manufactures. It is well known that the farming system requires much fewer hands than Tob<sup>o</sup>. fields.

Should a war break out in Europe involving the manufacturing nations the rise of the wages there will be another brace to the manufacturing establishments here. It will do more; it will prove to the “absolutists” for free trade that there is in the contingency of war, one exception at least to their Theory.

It is painful to observe the unceasing efforts to alarm the South by imputations ag<sup>st</sup> the North of unconstitutional designs on the subject of the slaves. You are right, I have no doubt in believing that no such intermeddling disposition exists in the Body of our Northern brethren. Their good faith is sufficiently guaranteed by the interest they have, as merchants, as Ship owners, and as manufacturers, in preserving a Union with the slaveholding States. On the other hand, what *madness* in the South, to look for greater safety in disunion. It would be worse than jumping out of the Frying-pan into the fire: it w<sup>d</sup>. be jumping into the fire for fear of the Frying-pan. The danger from the alarm is that the pride & resentment exerted by them may be an overmatch for the dictates of prudence and favor the project of a Southern Convention insidiously revived, as promising by its Councils the best securities ag<sup>st</sup> grievances of every sort from the North.

The case of the Tariff & Land bills cannot fail of an influence on the question of your return to the next session of Cong<sup>s</sup>. They are both closely connected with the public repose.

[\[Back to Table of Contents\]](#)

TO BENJAMIN F. PAPOON.

Montpellier, May 18, 1833.

Mad. Mss.

Dear Sir

Your favor of the 13th ult: was duly rec<sup>d</sup> and I thank you for the communication.

It cannot be doubted that the rapid growth of the individual States in population, wealth and power must tend to weaken the ties which bind them together. A like tendency results from the absence & oblivion of external danger, the most powerful controul on disuniting propensities, in the parts of a political community. To these changes in the condition of the States, impairing the cement of their Union, are now added the language & zeal which inculcate an incompatibility of interests between different Sections of the Country, and an oppression on the minor, by the major section, which must engender in the former a resentment amounting to serious hostility.

Happily these alienating tendencies are not without counter tendencies, in the complicated frame of our political system; in the geographical and commercial relations among the States, which form so many links & ligaments, thwarting a separation of them; in the gradual diminution of conflicting interests between the great Sections of Country, by a surplus of labour in the agricultural section, assimilating it to the manufacturing section; or by such a success of the latter, without obnoxious aids, as will substitute for the foreign supplies which have been the occasion of our discords, those internal interchanges which are beneficial to every section; and, finally, in the obvious consequences of disunion, by which the value of Union is to be calculated.

Still the increasing self-confidence felt by the Members of the Union, the decreasing influence of apprehensions from without, and the natural aspirations of talented ambition for new theatres multiplying the chances of elevation in the lottery of political life, may require the co-operation of whatever moral causes may aid in preserving the equilibrium contemplated by the Theory of our compound Government. Among these causes may justly be placed appeals to the love and pride of country; & few could be made in a form more touching, than a well-executed picture of the Magical effect of our National Emblem, in converting the furious passions of a tumultuous soldiery into an enthusiastic respect for the free & united people whom it represented.

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[\[Back to Table of Contents\]](#)

TO — — 1

[1833.]

Mad. Mss.

[*Majority Governments.*]

Dear Sir,—

You justly take alarm at the new doctrine that a majority Gov<sup>t</sup>. is of all other Gov<sup>ts</sup>. the most oppressive. The doctrine strikes at the root of Republicanism, and if pursued into its consequences, must terminate in absolute monarchy, with a standing military force; such alone being impartial between its subjects, and alone capable of overpowering majorities as well as minorities.

But it is said that a majority Gov<sup>t</sup>. is dangerous only where there is a difference in the interest of the classes or sections composing the community; that this difference will generally be greatest in communities of the greatest extent; and that such is the extent of the U. S. and the discordance of interests in them, that a majority cannot be trusted with power over a minority.

Formerly, the opinion prevailed that a Republican Gov<sup>t</sup> was in its nature limited to a small sphere; and was in its true character only when the sphere was so small that the people could, in a body, exercise the Gov<sup>t</sup> over themselves.

The history of the ancient Republics, and those of a more modern date, had demonstrated the evils incident to popular assemblages, so quickly formed, so susceptible of contagious passions, so exposed to the misguidance of eloquent & ambitious leaders; and so apt to be tempted by the facility of forming interested majorities, into measures unjust and oppressive to the minor parties.

The introduction of the representative principle into modern Gov<sup>ts</sup>. particularly of G. B. and her colonial offsprings, had shown the practicability of popular Gov<sup>ts</sup>. in a larger sphere, and that the enlargement of the sphere was a cure for many of the evils inseparable from the popular forms in small communities.

It remained for the people of the U. S., by combining a federal with a republican organization, to enlarge still more the sphere of representative Gov<sup>t</sup> and by convenient partitions & distributions of power, to provide the better for internal justice & order, whilst it afforded the best protection ag<sup>st</sup>. external dangers.

Experience & reflection may be said not only to have exploded the old error, that repub<sup>n</sup> Gov<sup>ts</sup>. could only exist within a small compas, but to have established the important truth, that as representative Gov<sup>ts</sup>. are necessary substitutes for popular assemblages; so an association of free communities, each possessing a responsible Gov<sup>t</sup> under a collective authority also responsible, by enlarging the practicable sphere



of popular governments, promises a consummation of all the reasonable hopes of the patrons of free Gov<sup>t</sup>

It was long since observed by Montesquieu, has been often repeated since, and, may it not be added, illustrated within the U. S. that in a confederal system, if one of its members happens to stray into pernicious measures, it will be reclaimed by the frowns & the good examples of the others, before the evil example will have infected the others.

But whatever opinions may be formed on the general subjects of confederal systems, or the interpretation of our own, every friend to Republican Gov<sup>t</sup>. ought to raise his voice ag<sup>st</sup> the sweeping denunciation of majority Gov<sup>ts</sup> as the most tyrannical and intolerable of all Gov<sup>ts</sup>

The Patrons of this new heresy will attempt in vain to mask its anti-republicanism under a contrast between the extent and the discordant interests of the Union, and the limited dimensions and sameness of interests within its members. Passing by the great extent of some of the States, and the fact that these cannot be charged with more unjust & oppressive majorities than the smaller States, it may be observed that the extent of the Union, divided as the powers of Gov<sup>t</sup>. are between it and its members, is found to be within the compass of a successful administration of all the departments of Gov<sup>t</sup>. notwithstanding the objections & anticipations founded on its extent when the Constitution was submitted to the people. It is true that the sphere of action has been and will be not a little enlarged by the territories embraced by the Union. But it will not be denied, that the improvements already made in internal navigation by canals & steamboats, and in turnpikes & railroads, have virtually brought the most distant parts of the Union, in its present extent, much closer together than they were at the date of the Federal Constitution. It is not too much to say, that the facility and quickness of intercommunication throughout the Union is greater now than it formerly was between the remote parts of the State of Virginia.

But if majority Gov<sup>ts</sup>. as such, are so formidable, look at the scope for abuses of their power within the individual States, in their division into creditors & debtors, in the distribution of taxes, in the conflicting interests, whether real or supposed, of different parts of the State, in the case of improving roads, cutting canals, &c., to say nothing of many other sources of discordant interests or of party contests, which exist or w<sup>d</sup> arise if the States were separated from each other. It seems to be forgotten, that the abuses committed within the individual States previous to the present Constitution, by interested or misguided majorities, were among the prominent causes of its adoption, and particularly led to the provision contained in it which prohibits paper emissions and the violations of contracts, and which gives an appellate supremacy to the judicial department of the U. S. Those who framed and ratified the Constitution believed that as power was less likely to be abused by majorities in representative Gov<sup>ts</sup> than in democracies, where the people assembled in mass, and less likely in the larger than in the smaller communities, under a representative Gov<sup>t</sup>. inferred also, that by dividing the powers of Gov<sup>t</sup>. and thereby enlarging the practicable sphere of government, unjust majorities would be formed with still more difficulty, and be therefore the less to be dreaded, and whatever may have been the just complaints of unequal laws and

sectional partialities under the majority Gov<sup>t</sup>. of the U. S. it may be confidently observed that the abuses have been less frequent and less palpable than those which disfigured the administrations of the State Gov<sup>ts</sup> while all the effective powers of sovereignty were separately exercised by them. If bargaining interests and views have created majorities under the federal system, what, it may be asked, was the case in this respect antecedent to this system, and what but for this would now be the case in the State Gov<sup>ts</sup>. It has been said that all Gov<sup>t</sup> is an evil. It w<sup>d</sup> be more proper to say that the necessity of any Gov<sup>t</sup> is a misfortune. This necessity however exists; and the problem to be solved is, not what form of Gov<sup>t</sup>. is perfect, but which of the forms is least imperfect; and here the general question must be between a republican Govern<sup>t</sup> in which the majority rule the minority, and a Gov<sup>t</sup> in which a lesser number or the least number rule the majority. If the republican form is, as all of us agree, to be preferred, the final question must be, what is the structure of it that will best guard against precipitate counsels and factious combinations for unjust purposes, without a sacrifice of the fundamental principle of Republicanism. Those who denounce majority Gov<sup>ts</sup>. altogether because they may have an interest in abusing their power, denounce at the same time all Republican Gov<sup>t</sup> and must maintain that minority governments would feel less of the bias of interest or the seductions of power.

As a source of discordant interests within particular States, reference may be made to the diversity in the applications of agricultural labour, more or less visible in all of them. Take for example Virginia herself. Her products for market are in one district Indian corn and cotton; in another, chiefly tobacco; in another, tob<sup>o</sup>. and wheat; in another, chiefly wheat, rye, and live stock. This diversity of agricultural interests, though greater in Virg<sup>a</sup> than elsewhere, prevails in different degrees within most of the States.

Virg<sup>a</sup>. is a striking example also of a diversity of interests, real or supposed, in the great and agitating subjects of roads and water communications, the improvements of which are little needed in some parts of the State, tho' of the greatest importance in others; and in the parts needing them much disagreement exists as to the times, modes, & the degrees of the public patronage; leaving room for an abuse of power by majorities, and for majorities made up by affinities of interests, losing sight of the just & general interest.

Even in the great distinctions of interest and of policy generated by the existence of slavery, is it much less between the Eastern & Western districts of Virginia than between the Southern & Northern sections of the Union? If proof were necessary, it would be found in the proceedings of the Virg<sup>a</sup> Convention of 1829-30, and in the Debates of her Legislature in 1830-31. Never were questions more uniformly or more tenaciously decided between the North & South in Cong<sup>s</sup>, than they were on those occasions between the West & the East of Virginia.

But let us bring this question to the test of the tariff itself [out of which it has grown,] and under the influences of which it has been inculcated, that a permanent incompatibility of interests exists in the regulations of foreign commerce between the agricultural and the manufacturing population, rendering it unsafe for the former to be under a majority power when patronizing the latter.

In all countries, the mass of people become, sooner or later, divided mainly into the class which raises food and raw materials, and the class which provides cloathing & the other necessaries and conveniences of life. As hands fail of profitable employment in the culture of the earth, they enter into the latter class. Hence, in the old world, we find the nations everywhere formed into these grand divisions, one or the other being a decided majority of the whole, and the regulations of their relative interests among the most arduous tasks of the Gov<sup>t</sup>. Although the mutuality of interest in the interchanges useful to both may, in one view, be a bond of amity & union, yet when the imposition of taxes whether internal or external takes place, as it must do, the difficulty of equalizing the burden and adjusting the interests between the two classes is always more or less felt. When imposts on foreign commerce have a protective as well as a revenue object, the task of adjustment assumes a peculiar arduousness.

This view of the subject is exemplified in all its features by the fiscal & protective legislation of G. B. and it is worthy of special remark that there the advocates of the protective policy belong to the landed interest; and not as in the U. S. to the manufacturing interest; though in some particulars both interests are suitors for protection ag<sup>st</sup> foreign competition.

But so far as abuses of power are engendered by a division of a community into the agricultural & manufacturing interests and by the necessary ascendancy of one or the other as it may comprize the majority, the question to be decided is whether the danger of oppression from this source must not soon arise within the several States themselves, and render a majority Gov<sup>t</sup> as unavoidable an evil in the States individually; as it is represented to be in the States collectively.

That Virginia must soon become manufacturing as well as agricultural, and be divided into these two great interests, is obvious & certain. Manufactures grow out of the labour not needed for agriculture, and labour will cease to be so needed or employed as its products satisfy & satiate the demands for domestic use & for foreign markets. Whatever be the abundance or fertility of the soil, it will not be cultivated when its fruits must perish on hand for want of a market. And is it not manifest that this must be henceforward more & more the case in this State particularly? The earth produces at this time as much as is called for by the home & the foreign markets; while the labouring population, notwithstanding the emigration to the West and the S. West, is fast increasing. Nor can we shut our eyes to the fact, that the rapid increase of the exports of flour & Tob<sup>o</sup> from a new & more fertile soil will be continually lessening the demand on Virginia for her two great staples, and be forcing her, by the inability to pay for imports by exports, to provide within herself substitutes for the former.

Under every aspect of the subject, it is clear that Virginia must be speedily a manufacturing as well as an agricultural State; that the people will be formed into the same great classes here as elsewhere; that the case of the tariff must of course among other conflicting cases real or supposed be decided by the republican rule of majorities; and, consequently, if majority gov<sup>ts</sup> as such, be the worst of Gov<sup>ts</sup> those who think & say so cannot be within the pale of the republican faith. They must either join the avowed disciples of aristocracy, oligarchy or monarchy, or look for a Utopia exhibiting a perfect homogeneousness of interests, opinions & feelings nowhere yet

found in civilized communities. Into how many parts must Virginia be split before the semblance of such a condition could be found in any of them. In the smallest of the fragments, there would soon be added to previous sources of discord a manufacturing and an agricultural class, with the difficulty experienced in adjusting their relative interests in the regulation of foreign commerce if any, or if none in equalising the burden of internal improvement and of taxation within them. On the supposition that these difficulties could be surmounted, how many other sources of discords to be decided by the majority would remain. Let those who doubt it consult the records of corporations of every size such even as have the greatest apparent simplicity & identity of pursuits and interests.<sup>1</sup>

In reference to the conflicts of interests between the agricultural and manufacturing States, it is a consoling anticipation that, as far as the legislative encouragements to one may not involve an actual or early compensation to the other, it will accelerate a state of things in which the conflict between them will cease and be succeeded by an interchange of the products profitable to both; converting a source of discord among the States into a new cement of the Union, and giving to the country a supply of its essential wants independent of contingencies and vicissitudes incident to foreign commerce.

It may be objected to majority governments, that the majority, as formed by the Constitution, may be a minority when compared with the popular majority. This is likely to be the case more or less in all elective governments. It is so in many of the States. It will always be so where property is combined with population in the election and apportionment of representation. It must be still more the case with confederacies, in which the members, however unequal in population, have equal votes in the administration of the government. In the compound system of the United States, though much less than in mere confederacies, it also necessarily exists to a certain extent. That this departure from the rule of equality, creating a political and constitutional majority in contradistinction to a numerical majority of the people, may be abused in various degrees oppressive to the majority of the people, is certain; and in modes and degrees so oppressive as to justify ultra or anti-constitutional resorts to adequate relief is equally certain. Still the constitutional majority must be acquiesced in by the constitutional minority, while the Constitution exists. The moment that arrangement is successfully frustrated, the Constitution is at an end. The only remedy, therefore, for the oppressed minority is in the amendment of the Constitution or a subversion of the Constitution. This inference is unavoidable. While the Constitution is in force, the power created by it, whether a popular minority or majority, must be the legitimate power, and obeyed as the only alternative to the dissolution of all government. It is a favourable consideration, in the impossibility of securing in all cases a coincidence of the constitutional and numerical majority, that when the former is the minority, the existence of a numerical majority with justice on its side, and its influence on public opinion, will be a salutary control on the abuse of power by a minority constitutionally possessing it: a control generally of adequate force, where a military force, the disturber of all the ordinary movements of free governments, is not on the side of the minority.

The result of the whole is, that we must refer to the monitory reflection that no government of human device and human administration can be perfect; that that which is the least imperfect is therefore the best government; that the abuses of all other governments have led to the preference of republican government as the best of all governments, because the least imperfect; that the vital principle of republican government is the *lex majoris partis*, the will of the majority; that if the will of a majority cannot be trusted where there are diversified and conflicting interests, it can be trusted nowhere, because such interests exist everywhere; that if the manufacturing and agricultural interests be of all interests the most conflicting in the most important operations of government, and a majority government over them be the most intolerable of all governments, it must be as intolerable within the States as it is represented to be in the United States; and, finally, that the advocates of the doctrine, to be consistent, must reject it in the former as well as in the latter, and seek a refuge under an authority master of both.

[\[Back to Table of Contents\]](#)

TO THOMAS S. GRIMKE.

Montp<sup>r</sup>, Jan<sup>y</sup>. 6, 1834.

Mad. Mss.

Dear Sir

Your letter of the 21<sup>st</sup> of Aug<sup>st</sup> last was duly rec<sup>d</sup>, and I must leave the delay of this acknowledgment of it to your indulgent explanation. I regret the delay itself less than the scanty supply of autographs requested from me. The truth is that my files have been so often resorted to on such occasions, within a few years past, that they have become quite barren, especially in the case of names most distinguished. There is a difficulty also, not readily suggesting itself, in the circumstance, that wherever letters do not end on the first or third page, the mere name cannot be cut off without the mutilation of a written page. Another circumstance is that I have found it convenient to spare my pigeon holes, by tearing off the superscribed parts where they could be separated; so that autographs have been deprived even of that resource.

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

The other error lies in the view which your note L for the 18<sup>th</sup> page, gives of Mr. Pinckney's draft of a Constitution for the U. S., and its conformity to that adopted by the Convention. It appears that the Draft laid by Mr. P. before the Convention, was like some other important Documents, not among its preserved proceedings. And you are not aware that *insuperable* evidence exists, that the Draft in the published Journal, could not, in a number of instances, material as well as minute, be the same with that laid before the Convention. Take for an example of the former, the Article relating to the House of Representatives more than any, the corner stone of the Fabric. That the election of it by the *people* as proposed by the printed Draft in the Journal, could not be the mode of Election proposed in the lost Draft, must be inferred from the face of the Journal itself; for on the 6<sup>th</sup> of June, but a few days after the lost Draft, was presented to the Convention, Mr. P. moved to strike the word "*people*" out of Mr. Randolph's proposition; and to "Resolve that the members of the *first branck* of the National Legislature ought to be *elected* by the *Legislatures* of the *several States*. But

there is other and most conclusive proof, that an election of the House of Representatives, by the *people*, could not have been the mode proposed by him. There are a number of other points in the published Draft, some conforming most *literally* to the adopted Constitution, which it is *ascertainable*, could not have been the same in the Draft laid before the Convention. The Conformity & even identity of the Draft in the Journal, with the adopted Constitution, on points & details the result of conflicts and compromises of opinion apparent in the Journal, have excited an embarrassing curiosity often expressed to myself or in my presence. The subject is in several respects a delicate one, and it is my wish that what is now said of it may be understood as yielded to your earnest request, and as entirely confined to yourself. I knew Mr. P. well, and was always on a footing of friendship with him. But this consideration ought not to weigh against justice to others, as well as against truth on a subject like that of the Constitution of the U. S.

The propositions of Mr. Randolph were the result of a Consultation among the seven Virginia Deputies, of which he, being at the time Governor of the State was the organ. The propositions were prepared on the supposition that, considering the prominent agency of Virg<sup>a</sup> in bringing about the Convention, some initiative step might be expected from that quarter. It was meant that they should sketch a real and adequate Gov<sup>t</sup>. for the Union, but without committing the parties ag<sup>st</sup>. a freedom in discussing & deciding on any of them. The Journal shews that they were in fact the basis of the deliberations & proceedings of the Convention. And I am persuaded that altho not in a developed & organized form, they sufficiently contemplated it; and moreover that they embraced a fuller outline of an adequate system, than the plan laid before the Convention, variant as that, ascertainably must have been, from the Draft now in print.

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

[\[Back to Table of Contents\]](#)

TO HENRY LEE.

Montp<sup>r</sup>, March 3, 1834.

Mad. Mss.

Your letter of Nov<sup>r</sup>. 14 came safely tho' tardily to hand.

I must confess that I perceive no ground on which a doubt could be applied to the statement of Mr. Jefferson which you cite. Nor can it I think be difficult to account for my declining an Executive appointment under Washington and accepting it under Jefferson, without making it a test of my comparative attachment to them, and without looking beyond the posture of things at the two epochs.

The part I had borne, in the origin and adoption of the Constitution, determined me at the outset of the Gov<sup>t</sup>. to prefer a seat in the House of Representatives; as least exposing me to the imputation of selfish views; and where, if anywhere I could be of service in sustaining the Constitution ag<sup>st</sup>. the party adverse to it. It was known to my friends when making me a candidate for the Senate, that my choice was the other branch of the Legislature. Having commenced my Legislative career as I did, I thought it most becoming to proceed under the original impulse to the end of it; and the rather as the Const<sup>n</sup>. in its progress, was encountering trials, of a new sort in the formation of new Parties attaching adverse constructions to it.

The Crisis at which I accepted the Executive appointment under Mr. Jefferson is well known. My connexion with it, and the part I had borne in promoting his election to the Chief Magistracy, will explain my yielding to his pressing desire that I should be a member of his Cabinet.

I hope you received the copies of your father's letters to me, which were duly forwarded; and I am not without a hope that you will have been enabled to comply with my request of Copies of mine to him.

With friendly salutations.



[\[Back to Table of Contents\]](#)

TO WILLIAM COGSWELL

Montpellier, March 10, 1834.

Mad. Mss.

Dear Sir,—

Your letter of the 18th Ult. was duly received. You give me a credit to which I have no claim, in calling me “*the* writer of the Constitution of the U. S.” This was not, like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads & many hands.

Your criticism on the Collocation of books in the Library of our University, may not be without foundation. But the doubtful boundary between some subjects, and the mixture of different subjects in the same works, necessarily embarrass the task of classification.

Being now within a few days of my 84th year, with a decaying health & faded vision, and in arrears also of the reading I have assigned to myself, I have not been able sooner to acknowledge your politeness in sending me the two pamphlets. The sermon combats very ably the veteran error of entwining with the Civil an Ecclesiastical polity. Whether it has not left unremoved a fragment of the argumentative root of the combination is a question which I leave others to decide.

With friendly respects & salutations

[\[Back to Table of Contents\]](#)

TO JOHN M. PATTON.

(Confidential)

Mad. Mss.

March 24, 1834.

Dear Sir,—

I have duly rec<sup>d</sup> the copy of your speech on the “Virginia Resolutions.” Tho’ not permitting myself to enter into a discussion of the several topics embraced by them, for which indeed my present condition would unfit me, I will not deny myself the pleasure, of saying that you have done great justice to your views of them. I must say at the same time that the warmth of your feelings has done infinitely more than justice to any merits that can be claimed for your friend.

Should the controversy on removals from office, end in the establishment of a share in the power, as claimed for the Senate, it would materially vary the relations among the component parts of the Gov<sup>t</sup> and disturb the operation of the checks & balances as now understood to exist. If the right of the Senate be, or be made a constitutional one, it will enable that branch of the Gov<sup>t</sup> to force on the Executive Department a continuance in office, even of the Cabinet officers, notwithstanding a change from a personal & political harmony with the President, to a state of open hostility towards him. If the right of the Senate be made to depend on the Legislature, it would still be *grantable* in that extent; and even with the exception of the Heads of Departments and a few other officers, the augmentation of the Senatorial patronage, and the new relation between the Senate directly, and the Legislature indirectly, with the Chief Magistrate, would be felt deeply in the general administration of the Government. The innovation, however modified would more than double the danger of throwing the Executive machinery out of gear, and thus arresting the march of the Gov<sup>t</sup>. altogether.

The Legislative power is of an elastic & Protean character, but too imperfectly susceptible of definitions & landmarks. In its application to tenures of office, a law passed a few years ago, declaring a large class of offices, vacant at the end of every four years and of course to be filled by new appointments. Was not this as much a removal as if made individually & in detail? The limitation might have been 3, 2, or 1 year; or even from session to session of Cong<sup>s</sup>. which would have been equivalent to a tenure at the pleasure of the Senate.

The light in which the large States would regard any innovation increasing the weight of the Senate, constructed and endowed as it is may be inferred from the difficulty of reconciling them to that part of the Constitution when it was adopted.

The Constitution of the U.S. may doubtless disclose from time to time faults which call for the pruning or the ingrafting hand. But remedies ought to be applied not in the paroxysms of party & popular excitements: but with the more leisure & reflection, as

the Great Departments of Power according to experience may be successively and alternately in, and out of public favour; and as changes hastily accommodated to these vicissitudes would destroy the symmetry & the stability aimed at in our political system. I am making observations however very superfluous when addressed to you, and I quit them with a tender of the cordial regards & salutations w<sup>ch</sup> I pray you to accept.

[\[Back to Table of Contents\]](#)

## TO EDWARD COLES.

Aug. 29, 1834.

Mad. Mss.

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You have certainly presented your views of the subject with great skill & great force. <sup>1</sup> But you have not sufficiently adverted to the position I have assumed, and which has been accorded, or rather assigned to me by others, of being withdrawn from *party* agitations, by the debilitating effects of age and disease.

And how could I say that the present exciting questions in which you expect me to engage, are not party questions? How could I say that the Senate was not a Party, because representing the States, and claiming the support of the people; or that the other House representing the people and confiding in their support, with the Executive at their head, was less than a Party? How could I say that the former is the Nation, and the latter but a faction.

What a difference again between my relation to the Resolutions of 98-99, charged on my individual responsibility, and my common relation only to the Constitutional questions now agitated, to which might be added the difference of my present condition, from what it was at the date of my published exposition of those Resolutions, and the habit now of invalidating opinions emanating from me by a reference to my age & infirmities?

Would not candour & consistency oblige me in denouncing the heresies of one side, not to pass in silence those of the other? For claims are made by the Senate in opposition to the principles & practice of every Administration, my own included, and varying materially, in some instances, the relations between the Great Departments of the Government. A want of impartiality in this respect, would enlist me into one of the parties, shut the ear of the other; and discredit me with those, if there be now such, who are wavering between them.

How, in justice or in truth, could I join in the charge ag<sup>st</sup> the P. of claiming a power over the public money, including a right to apply it to whatever purpose he pleased, even to his own? However unwarrantable the removal of the deposits, or culpable the mode of effectuating it, the act has been admitted by some of his leading opponents, to have been, not a usurpation as charged, but an abuse only of power. And however unconstitutional the denial of a Legislative power over the Custody of the Public money, as being an Executive Prerogative, there is no appearance of a denial to the Legislature of an absolute and exclusive right to appropriate the public money, or of a claim for the Executive of an appropriating power, the charge nevertheless, pressed with most effect against him. The distinction is so obvious, and so essential, between a Custody and an appropriation, that candor would not permit a condemnation of the wrongful claim of custody, without condemning at the same time, the wrongful charge of a claim of appropriation.

Candour would require from me also a notice of the disavowal by the President, doubtless real, tho' informal, of the obnoxious meaning put on some of his acts, particularly his Proclamation; a notice which would detract from my credit with those who carefully keep the disavowal out of view, in their strictures on the Proclamation. When I remarked to you my entire condemnation of the Proclamation, I added "in the sense w<sup>ch</sup>. it bore, but which it appeared, had been disclaimed." In fact I have in conversations, from w<sup>ch</sup> I apprehended *no publicity*, frankly pointed at what, I regarded as heretical doctrines on every side, my wish to avoid publicity being prescribed by my professed as well as proper abstraction from the polemic scene. I have accordingly, in my unavoidable answers to dinner invitations received from quarters adverse to each other, but equally expressing the kindest regard for me, endeavored to avoid involving myself in their party views, by confining myself to subjects in which all parties profess to concur, and to the proceedings of Virg<sup>a</sup>. generally referred to in the invitations, and with respect to which my adherence was well known.

You call my attention with much emphasis to "the principle openly avowed by the President & his friends, that offices & emoluments were the spoils of victory, the personal property of the successful candidate for the Presidency, to be given as rewards for electioneering services; and in general to be used as the means of rewarding those who support, and of Punishing those who do not support, the dispenser of the fund." I fully Agree in all the odium you attach to such a rule of action. But I have not seen any avowal of such a principle by the President, and suspect that few if any of his friends would openly avow it. The first, I believe who openly proclaimed the right & policy in a successful candidate for the Presidency to reward friends & punish enemies, by removals and appointments is now the most vehement, in branding the practice. Indeed, the principle if avowed without the practice, or practised without the avowal, could not fail to degrade any Administration; both together completely so. The odium itself would be an antidote to the poison of the example, and a security ag<sup>st</sup>. the permanent danger apprehended from it.

What you dwell on most is, that nullification is more on the decline, and less dangerous than the popularity of the President, with which his unconstitutional doctrines is armed. In this I cannot agree with you. His popularity is evidently and rapidly sinking under the unpopularity of his doctrines. Look at the entire States which have abandoned him. Look at the increasing minorities in States where they have not yet become majorities. Look at the leading partizans who have abandoned and turned against him; and at the reluctant and qualified support given by many who still profess to adhere to him. It cannot be doubted that the danger and even existence of the parties which have grown up under the auspices of his name, will expire with his natural or his official life, if not previously to either.

On the other hand what more dangerous than Nullification, or more evident than the progress it continues to make, either in its original shape or in the disguises it assumes. Nullification has the effect of putting powder under the Constitution & Union, and a match in the hand of every party, to blow them up at pleasure. And for its progress, hearken to the tone in which it is now preached; cast your eye on its

increasing minorities in most of the S. States without a decrease in any one of them. Look at Virginia herself and read in the Gazettes, and in the proceedings of popular meetings, the figure which the anarchical principle now makes, in contrast with the scouting reception given to it but a short time ago.

It is not probable that this offspring of the discontents of S. Carolina, will ever approach success, in a majority of the States. But a susceptibility of the contagion in the Southern States is visible; and the danger is not to be concealed that the sympathies arising from known causes, and the inculcated impression of a permanent incompatibility of interests between the South & the North, may put it in the power of popular leaders aspiring to the highest stations, and despairing of success on the Federal theatre, to unite the South, on some critical occasion, in a course that will end in creating a new theatre of great tho' inferior extent. In pursuing this course, the first and most obvious step is nullification; the next secession; & the last, a farewell separation. How near was this course being lately exemplified? and the danger of its recurrence in the same, or some other quarter, may be increased by an increase of restless aspirants, and by the increasing impracticability of retaining in the Union a large & cemented section against its will. It may indeed happen that a return of danger from abroad, or a revived apprehension of danger at home, may aid in binding the States in one political system, or that the geographical and commercial ligatures, may have that effect; or that the present discord of interests between the North & the South, may give way to a less diversity in the applications of labour, or to the mutual advantage of a safe & constant interchange of the different products of labour in different sections. All this may happen, and with the exception of foreign hostilities, hoped for. But in the mean time local prejudices and ambitious leaders may be but too successful, in finding or creating occasions, for the nullifying experiment of breaking a more beautiful China vase 1 than the British Empire ever was, into parts which a miracle only could reunite.

I have thought it due to the affectionate interest you take in what concerns me to submit the observations here sketched, crude as they are. The field they open for reflection I leave to yours, and to your opportunity which I hope will be a long one, of witnessing the developments & vicissitudes of the future.

[\[Back to Table of Contents\]](#)

## TO WILLIAM H. WINDER.1

Montpr., Sepr. 15, 1834.

Mad. Mss.

Dear Sir

I am sensible of the delay in acknowledging your letter of NA and regret it. But apart from the crippled condition of my health, which almost forbids the use of the pen, I could not forget that I was to speak of occurrences after a lapse of 20 years, and at an age in its 84th year; circumstances so readily and for the most part justly referred to, as impairing the confidence due to recollections & opinions.

You wish me to express personally “my approval of your father’s character & conduct at the battle of Bladensburg,” on the ground “of my being fully acquainted with everything connected with them and of an ability to judge of which no man can doubt.”

You appear not to have sufficiently reflected, that having never been engaged in military service, my judg<sup>t</sup>. in the case could not have the weight with others, which your partiality assumes for it, but might rather expose me to a charge of presumption in deciding on points purely of a professional description. Nor was I on the field as a spectator, till the order of the battle had been formed & had approached the moment of its commencement.

With respect to the order of the battle, that being known, will speak for itself; and the gallantry, activity & zeal of your father during the action had a witness in every observer. If his efforts were not rewarded with success, candour will find an explanation in the peculiarities he had to encounter; especially in the advantage possessed by the veteran troops of the Enemy over a militia, which however brave & patriotic, could not be a match for them in the open field.

I cannot but persuade myself that the evidence on record, and the verdict on the Court of enquiry, will outweigh & outlive censorious comments doing injustice to the character & memory of your father. For myself, I have always had a high respect for his many excellent qualities, and am gratified by the assurance you give me, of the place I held in his esteem & regard.

[\[Back to Table of Contents\]](#)

TO MANN BUTLER.

Oct. 11, 1834.

Mad. Mss.

D<sup>R</sup> Sir

I have rec<sup>d</sup> your letter of the 21 ult. in which you wish to obtain my recollection of what passed between M<sup>r</sup>. John Brown and me on the overtures of Gardoqui “that if the people of Kentucky would erect themselves into an independent State, and appoint a proper person to negotiate with him, he had authority for that purpose and would enter into an arrangement with them for the exportation of their produce to New Orleans.”

My recollection, with which, references in my manuscript papers accord, leaves no doubt that the overture was communicated to me by Mr. Brown. Nor can I doubt, that, as stated by him, I expressed the opinion and apprehension, that a knowledge of it in Kentucky might in the excitements there, be mischievously employed. This view of the subject evidently resulted from the natural and known impatience of the W people on the waters of the Mississippi for a market for the products of their exuberant soil; from the distrust of the Federal policy produced by the project of surrendering the use of that river for a term of many years; and from a coincidence of the overture, in point of time, with the plan on foot, for consolidating the Union by arming it with new powers, an object, to embarrass & defeat which the dismembering aims of Spain would not fail to make the most tempting sacrifices, and to spare no intrigues. 1

I owe it to Mr. Brown, with whom I was in intimate friendship, when we were associates in public life, to observe that I always regarded him whilst steadily attentive to the interests of his constituents, as duly impressed with the importance of the Union and anxious for its prosperity.

Of the other particular enquiries in your letter my great age now in its 84th year, and with more than the usual infirmities, will I hope absolve me from undertaking to speak, without more authoritative aids to my memory than I can avail myself of. In what relates to Gen<sup>l</sup>. Wilkinson, official investigations in the archives of the War Department, and the files of M<sup>r</sup> Jefferson, must of course be among the important sources of light you wish for.

It would afford me pleasure to aid the interesting work which occupies your pen by materials worthy of it. But I know not that I could point to any which are not in print or in public offices, and which if not already known to you are accessible to your researches. I can only therefore wish for your historical task all the success which the subject merits, and which is promised by the qualifications ascribed to the author.



I regret the tardiness of this acknowledgment of your letter. My feeble condition and frequent interruptions are the apology, which I pray you to accept with my respects & my cordial salutation.

[\[Back to Table of Contents\]](#)

## TO DANIEL DRAKE.

Montp<sup>r</sup>, Jan<sup>y</sup> 12, 1835.

Mad. Mss.

Dear Sir

The copy of your “Discourse on the History character, and prospects of the West,” was duly received,<sup>1</sup> and I have read with pleasure, the instructive views taken of its interesting and comprehensive theme. Should the youth addressed and their successors, follow your advice, and their example be elsewhere imitated in noting from period to period the progress and changes of our country under the aspects adverted to, the materials, added to the supplies of the decennial Census, improved as that may be, will form a treasure of incalculable value to the Philosopher, the Lawgiver and the Political Economist. Our history, short as it is, has already disclosed great errors sanctioned by great names, in political science, and it may be expected to throw new lights on problems still to be decided.

The “Note” at the end of the discourse, in which the geographical relations of the States are delineated, merits particular attention. Hitherto hasty observers, and unfriendly prophets, have regarded the Union as too frail to last, and to be split at no distant day, into the two great divisions of East and West. It is gratifying to find that the ties of interest are now felt by the latter not less than the former: ties that are daily strengthened by the improvements made by art in the facilities of beneficial intercourse. The positive advantages of the Union would alone endear it to those embraced by it; but it ought to be still more endeared by the consequences of disunion, in the jealousies & collisions of Commerce, in the border wars, pregnant with others, and soon to be engendered by animosities between the slaveholding, and other States, in the higher toned Gov<sup>ts</sup>. especially in the Executive branch, in the military establishments provided ag<sup>st</sup> external danger, but convertible also into instruments of domestic usurpation, in the augmentations of expence, and the abridgment, almost to the exclusion of taxes on consumption (the least unacceptable to the people) by the facility of smuggling among communities locally related as would be the case. Add to all these the prospect of entangling alliances with foreign powers multiplying the evils of internal origin. But I am rambling into observations, with proof in the “Discourse” before me that however just they cannot be needed.

With the thanks Sir which I owe to your politeness in favoring me with it I tender my respectful & cordial salutations.

[\[Back to Table of Contents\]](#)

## MADISON'S WILL. 1

April 19, 1835.

I, James Madison, of Orange County, do make this my last will and testament, hereby revoking all wills by me heretofore made.

I devise to my dear wife during her life the tract of land whereon I live, as now held by me, except as herein otherwise devised, and if she shall pay the sum of nine thousand dollars . . . . . within three years . . . . . after my death, to be distributed as herein after directed, then I devise the same land to her in fee simple. If my wife shall not pay the said sum of money within the period before mentioned, then and in that case it is my will and I hereby direct that at her death the said land shall be sold for cash or on a credit, as may be deemed most for the interest of those entitled to the proceeds thereof. If my wife shall pay the said sum of money within the time before specified as aforesaid, so as to become entitled to the fee simple in the said land, then I bequeath the said sum of money to be equally divided among all my nephews and nieces, which shall at that time be living, and in case of any of them being dead, leaving issue at that time living, then such issue shall take the place of it's or their deceased parent. It is my further will that in case my wife shall not pay the said sum of money within the time before named and it shall therefore be necessary to sell the said land at her death as before directed, then after deducting the twentieth part of the purchase money of the said land, which deducted part I hereby empower my wife to dispose of by her Will, I bequeath the residue of the purchase money and in case of her dying without having disposed of such deducted part by her Will, I bequeath the whole of the purchase money of the said land to my nephews and nieces or the issues of such of them as may be dead in the manner before directed in regard to the money to be paid by her in case she shall pay the same. I devise my grist mill, with the land attached thereto, to my wife during her life, and I hereby direct the same to be sold at her death and the purchase money to be divided as before directed in regard to the proceeds of the tract whereon I live. I devise to my niece, Nelly C. Willis and her heirs the lot of land lying in Orange County purchased of Boswell Thornton on which is a limestone quarry and also my interest in a tract of land lying in Louisa County, reputed to contain two hundred acres and not far from the said Limestone quarry. I devise my house and lot or lots in the city of Washington to my beloved wife and her heirs.

I give and bequeath my ownership in the negroes and people of colour held by me to my dear wife, but it is my desire that none of them should be sold without his or her consent or in case of their misbehaviour; except that infant children may be sold with their parent who consents for them to be sold with him or her, and who consents to be sold.

I give all my personal estate of every description, ornamental as well as useful, except as herein after otherwise given, to my dear wife; and I also give to her all my

manuscript papers, having entire confidence in her discreet and proper use of them, but subject to the qualification in the succeeding clause.

Considering the peculiarity and magnitude of the occasion which produced the convention at Philadelphia in 1787, the Characters who composed it, the Constitution which resulted from their deliberation, it's effects during a trial of so many years on the prosperity of the people living under it, and the interest it has inspired among the friends of free Government, it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States, and to all who take an interest in the progress of political science and the cause of true liberty. It is my desire that the report as made by me should be published under her authority and direction, as the publication may yield a considerable amount beyond the necessary expenses thereof; I give the net proceeds thereof to my wife charged with the following legacies to be paid out of that fund only—first I give to Ralph Randolph Gurley, Secretary of the American Colonization society and to his executors and administrators, the sum of two thousand dollars, in trust nevertheless, that he shall appropriate the same to the use and purposes of the said society, whether the same be incorporated by law or not. I give fifteen hundred dollars to the University of Virginia, one thousand dollars to the College at Nassau Hall at Princeton, New Jersey, and one thousand dollars to the College at Uniontown, Pennsylvania and it is my will that if the said fund should not be sufficient to pay the whole of the three last legacies, that they abate in proportion.

I further direct that there be paid out of the same fund to the guardian of the three sons of my deceased nephew, Robert L. Madison, the sum of three thousand dollars, to be applied to their education in such proportions as their guardian may think right—I also give, out of the same fund to my nephew Ambrose Madison two thousand dollars to be applied by him to the education of his sons in such proportions as he may think right, and I also give out of the same fund the sum of five hundred dollars to each of the daughters of my deceased niece, Nelly Baldwin and if the said fund shall not be sufficient to pay the whole of the legacies for the education of my great nephews as aforesaid and the said legacies to my great nieces, then they are to abate in proportion.

I give to the University of Virginia all that portion of my Library of which it has not copies of the same editions, and which may be thought by the Board of Visitors not unworthy of a place in it's Library, reserving to my wife the right first to select such particular books & pamphlets as she shall choose, not exceeding three hundred volumes.

In consideration of the particular and valuable aids received from my brother in law, John C. Payne and the affection which I bear him, I devise to him and his heirs two hundred and forty acres of land on which he lives, including the improvements, on some of which he has bestowed considerable expense to be laid off adjoining the lands of Reuben and James Newman in a convenient form for a farm so as to include woodland and by the said Mr Newmans. I bequeath to my step son, John Payne Todd the case of Medals presented me by my friend George W. Erving and the walking

staff made from a timber of the frigate Constitution and presented me by Commodore Elliot, her present Commander.

I desire the gold mounted walking staff bequeathed to me by my late friend Thomas Jefferson be delivered to Thomas J. Randolph as well in testimony of the esteem I have for him as of the knowledge I have of the place he held in the affection of his grand-father. To remove every doubt of what is meant by the terms tract of land whereon I live, I here declare it to comprehend all land owned by me and not herein otherwise devised away. I hereby appoint my dear wife to be sole executrix of this my Will and desire that she may not be required to give security for the execution thereof and that my estate be not appraised. IN testimony hereof—I have this fifteenth day of April, one thousand eight hundred and thirty five—signed, sealed, published and declared this to be my last Will & Testament.

We have signed in presence of the testator and of each other,

James Madison. (Seal)

Robert Taylor.

Reuben Newman Sr.

Reuben Newman Jr.

Sims Brockman.

I, James Madison do annex this Codicil to my last will—as above & to be taken as part thereof. It is my will that the nine thousand dollars to be paid by my wife and distributed among my nephews & Nieces, may be paid into the Bank of Virginia, or into the Circuit Superior Court of Chancery for Orange, within three years after my death.

I direct that the proceeds from the sale of my Grist Mill & the land annexed sold at the death of my wife shall be paid to Ralph Randolph Gurly, secretary of the American *Colonization* society and to his executors & administrators, in trust and for the purposes of the said society, whether the same be incorporated by law or not.

This Codicil is written wholly by and signed by my own hand this nineteenth day of April 1835. James Madison.

At a monthly Court held for the county of Orange at the Courthouse on Monday the 25th of July, 1836, This last Will and testament of James Madison deceased, with the codicil thereto being offered for probate by Dolly P. Madison, the will was duly proved by the oaths of Robert Taylor, Reuben Newman Sr., and Sims Brockman, attesting witnesses thereto and there being no subscribing witnesses to the codicil, Robert Taylor William Madison and Reynolds Chapman were sworn severally and deposed that they were well acquainted with the hand writing of the said James Madison, deceased, and verily believed that the said codicil and the name of the said James Madison thereto affixed were wholly written by the testator, whereupon the

said Will with the Codicil thereto was established as the last Will and Testament of the said James Madison, deceased, and ordered to be recorded. And on the motion of Dolly P. Madison the executrix named in the will, who made oath according to law and entered into bond without security, (the will directing that none should be required) in the penalty of one hundred thousand dollars conditioned as the law directs—Certificate was granted her for obtaining a probate thereof in due form.

Teste.

A Copy—Teste:

C. W. Woolfolk, Clerk

Orange Circuit Court, V<sup>a</sup>.

[\[Back to Table of Contents\]](#)

TO W. A. DUER.1

Montpellier, June 5th, 1835.

Dear Sir—

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

On the subject of Mr. Pinckney's proposed plan of a Constitution, it is to be observed that the plan printed in the Journal was not the document actually presented by him to the Convention. That document was no otherwise noticed in the proceedings of the Convention than by a reference of it, with Mr. Randolph's plan, to a committee of the whole, and afterwards to a committee of detail, with others; and not being found among the papers left with President Washington, and finally deposited in the Department of State, Mr. Adams, charged with the publication of them, obtained from Mr. Pinckney the document in the printed Journals as a copy supplying the place of the missing one. In this there must be error, there being sufficient evidence, even on the face of the Journals, that the copy sent to Mr. Adams could not be the same with the document laid before the Convention. Take, for example, the article constituting the House of Representatives the corner-stone of the fabric, the identity, even verbal, of which, with the adopted Constitution, has attracted so much notice. In the first place, the details and phraseology of the Constitution appear to have been anticipated. In the next place, it appears that within a few days after Mr. Pinckney presented his plan to the Convention, he moved to strike out from the resolution of Mr. Randolph the provision for the election of the House of Representatives by the people, and to refer the choice of that House to the Legislatures of the States, and to this preference it appears he adhered in the subsequent proceedings of the Convention. Other discrepancies will be found in a source also within your reach, in a pamphlet published by Mr. Pinckney soon after the close of the Convention, in which he refers to parts of his plan which are at variance with the document in the printed Journal. A friend who had examined and compared the two documents has pointed out the discrepancies noted below.1 Further evidence1 on this subject, not within your own reach, must await a future, perhaps a posthumous disclosure.

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

The resolutions of Mr. Randolph, the basis on which the deliberations of the Convention proceeded, were the result of a consultation among the Virginia Deputies, who thought it possible that, as Virginia had taken so leading a part1 in reference to the Federal Convention, some initiative propositions might be expected from them. They were understood not to commit any of the members absolutely or definitively on

the tenor of them. The resolutions will be seen to present the characteristic provisions and features of a Government as complete (in some respects, perhaps, more so) as the plan of Mr. Pinckney, though without being thrown into a formal shape. The moment, indeed, a real Constitution was looked for as a substitute for the Confederacy, the distribution of the Government into the usual departments became a matter of course with all who speculated on the prospective change, and the form of general resolutions was adopted as the most convenient for discussion. It may be observed, that in reference to the powers to be given to the General Government the resolutions comprehended as well the powers contained in the articles of Confederation, without enumerating them, as others not overlooked in the resolutions, but left to be developed and defined by the Convention.

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

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

I can add little to what I have already said in relation to the agency of your father in the adoption of the Federal Constitution. My only correspondence with him was a short one, introduced by a letter from him written during the Convention of New York, at the request of Mr. Hamilton, who was too busy to write himself, giving and requesting information as to the progress of the Constitution in New York and Virginia. Of my letter or letters to him I retain no copy. The two letters from him being short, copies of them will be sent if not on his files, and if desired. They furnish an additional proof that he was an ardent friend of the depending Constitution.

I have marked this letter "confidential," and wish it to be considered for yourself only. In my present condition, enfeebled by age and crippled by disease, I may well be excused for wishing not to be in any way brought to public view on subjects involving considerations of a delicate nature. I thank you, sir, for your kind sentiments and good wishes, and pray you to accept a sincere return of them.<sup>1</sup>



[\[Back to Table of Contents\]](#)

## TO CHARLES FRANCIS ADAMS.1

Montpellier, Oct. 12, 1835.

*(Private)*

Dear Sir:

I have received your letter of Sept. 30th, with a copy of “An Appeal from the New to the Old Whigs.” The pamphlet contains very able and interesting “views” of its subject.

The claims for the Senate of a share in the removal from office, and for the legislature an authority to regulate its tenure, have had powerful advocates. I must still think, however, that the text of the Constitution is best interpreted by reference to the tripartite theory of Government; to which practice has conformed, and which so long and uniform a practice would seem to have established.

The face of the Constitution and the journalized proceedings of the Convention strongly indicate a partiality to that theory, then at its zenith of favor among the most distinguished commentators on the organizations of political power.

The right of suffrage, the rule of apportioning representation, and the mode of appointing to, and removing from office, are fundamentals in a free Government; and ought to be fixed by the Constitution; if alterable by the Legislature, the Government might become the creator of the Constitution, of which it is itself but the creature: and if the large states could be reconciled to an augmentation of power in the Senate, constructed and endowed as that branch of the Government is, a veto on removals from office would at all times be worse than inconvenient in its operation, and in party times might, by throwing the Executive machinery out of gear, produce a calamitous interregnum.

In making these remarks I am not unaware that in a country wide and expanding as ours is, and in the anxiety to convey information to the door of every citizen, an unforeseen multiplication of offices may add a weight to the executive scale disturbing the equilibrium of the Government. I should therefore see with pleasure a guard against the evil by whatever regulations having that effect, may be within the scope of legislative power; or if necessary even by an amendment to the Constitution when a lucid interval of party excitement shall invite the experiment.

With thanks for your friendly communication and for the interest which you express in my health which is much broken by chronic complaints, added to my great age, I pray you to accept the assurance of my respect and good wishes.

[\[Back to Table of Contents\]](#)

TO CHARLES J. INGERSOLL.

Montp<sup>r</sup>., Dec<sup>r</sup> 30th, 35.

Mad. Mss.

Dear Sir

I thank you, tho' at a late day, for the pamphlet comprizing your address at New York.

The address is distinguished by some very important views of an important subject.

The absolutists on the "Let alone theory" overlook the two essential pre-requisites to a perfect freedom of external commerce. 1. That it be universal among nations. 2. That peace be perpetual among them.

A perfect freedom of international commerce, manifestly requires that it be *universal*. If not so, a Nation departing from the theory, might regulate the commerce of a Nation adhering to it, in subserviency to its own interest, and disadvantageously to the latter. In the case of navigation, so necessary under different aspects nothing is more clear than that a discrimination by one Nation in favor of its own vessels, without an equivalent discrimination on the side of another, must at once banish from the intercourse, the navigation of the latter. This was verified by our own ante-Constitution experience; as the remedy for it has been by the post-constitution experience.

But to a perfect freedom of commerce, universality is not the only condition; perpetual peace is another. War, so often occurring & so liable to occur, is a disturbing incident entering into the calculations by which a Nation ought to regulate its foreign commerce. It may well happen to a nation adhering strictly to the rule of buying cheap, that the rise of prices in Nations at war, may exceed the cost of a protective policy in time of peace; so that taking the two periods together, protection would be cheapness. On this point also an appeal may be made to our own experience. The Champions for the "Let alone policy" forget that theories are the offspring of the closet; exceptions & qualifications the lessons of experience.

[\[Back to Table of Contents\]](#)

## SOVEREIGNTY.

[1835]

Mad. Mss.

It has hitherto been understood, that the supreme power, that is, the sovereignty of the people of the States, was in its nature divisible, and was in fact divided, according to the Constitution of the U. States, between the States in their united and the States in their individual capacities that as the States, in their highest sov. char., were competent to surrender the whole sovereignty and form themselves into a consolidated State, so they might surrender a part & retain, as they have done, the other part, forming a mixed Gov<sup>t</sup> with a division of its attributes as marked out in the Constitution.

Of late, another doctrine has occurred, which supposes that sovereignty is in its nature indivisible; that the societies denominated States, in forming the constitutional compact of the U. States, acted as indivisible sovereignties, and consequently, that the sovereignty of each remains as absolute and entire as it was then, or could be at any time.

This discord of opinions arises from a propensity in many to prefer the use of theoretical guides and technical language to the division and depositories of pol. power, as laid down in the const<sup>l</sup> charter, which expressly assigns certain powers of Gov<sup>t</sup> which are the attributes of sovereig<sup>ty</sup>. of the U. S., and even declares a practical supremacy of them over the powers reserved to the States; a supremacy essentially involving that of exposition as well as of execution; for a law could not be supreme in one depository of power if the final exposition of it belonged to another.

In settling the question between these rival claims of power, it is proper to keep in mind that all power in just & free Gov<sup>ts</sup> is derived from compact, that when the parties to the compact are competent to make it, and when the compact creates a Gov<sup>t</sup>, and arms it not only with a moral power, but the physical means of executing it, it is immaterial by what name it is called. Its real character is to be decided by the compact itself; by the nature and extent of the powers it specifies, and the obligations imposed on the parties to it.

As a ground of compromise let then, the advocates of State rights acknowledge this rule of measuring the Federal share of sovereign power under the const. compact; and let it be conceded, on the other hand, that the States are not deprived by it of that corporate existence and political unity which w<sup>d</sup>. in the event of a dissolution, voluntary or violent, of the Const<sup>n</sup>. replace them in the condition of separate communities, that being the condition in which they entered into the compact.

At the period of our Revol<sup>n</sup> it was supposed by some that it dissolved the social compact within the Colonies, and produced a state of nature which required a naturalization of those who had not participated in the revol<sup>n</sup>. The question was brought before Cong. at its first session by D<sup>r</sup> Ramsay, who contested the election of

W<sup>m</sup> Smith; who, though born in S. C., had been absent at the date of Independence. The decision was, that his birth in the Colony made him a member of the society in its new as well as its original state.

To go to the bottom of the subject, let us consult the Theory which contemplates a certain number of individuals as meeting and agreeing to form one political society, in order that the rights the safety & the interest of each may be under the safeguard of the whole.

The first supposition is, that each individual being previously independent of the others, the compact which is to make them one society must result from the free consent of *every* individual.

But as the objects in view could not be attained, if every measure conducive to them required the consent of every member of the society, the theory further supposes, either that it was a part of the original compact, that the will of the majority was to be deemed the will of the whole, or that this was a law of nature, resulting from the nature of political society itself, the offspring of the natural wants of man.

Whatever be the hypothesis of the origin of the *lex majoris partis*, it is evident that it operates as a plenary substitute of the will of the majority of the society for the will of the whole society; and that the sovereignty of the society as vested in & exercisable by the majority, may do anything that could be *rightfully* done by the unanimous concurrence of the members; the reserved rights of individuals (of conscience for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed.

The question then presents itself, how far the will of a majority of the society, by virtue of its identity with the will of the society, can divide, modify, or dispose of the sovereignty of the society; and quitting the theoretic guide, a more satisfactory one will perhaps be found—1, In what a majority of a society has done, and been universally regarded as having had a right to do; 2, What it is universally admitted that a majority by virtue of its sovereignty might do, if it chose to do.

1. The majority has not only naturalized, admitted into social compact again, but has divided the sovereignty of the society by actually dividing the society itself into distinct societies equally sovereign. Of this operation we have before us examples in the separation of Kentucky from Virginia and of Maine from Massachusetts; events w<sup>ch</sup>. were never supposed to require a unanimous consent of the individuals concerned.

In the case of naturalization a new member is added to the social compact, not only without a unanimous consent of the members, but by a majority of the governing body, deriving its powers from a majority of the individual parties to the social compact.

2. As, in those cases just mentioned, one sovereignty was divided into two by dividing one State into two States; so it will not be denied that two States equally sovereign

might be incorporated into one by the voluntary & joint act of majorities only in each. The Constitution of the U. S. has itself provided for such a contingency. And if two States, could thus incorporate themselves into one by a mutual surrender of the entire sovereignty of each; why might not a partial incorporation, by a partial surrender of sovereignty, be equally practicable if equally eligible. And if this could be done by two States, why not by twenty or more.

A division of sovereignty is in fact illustrated by the exchange of sovereign rights often involved in Treaties between Independent Nations, and still more in the several confederacies which have existed, and particularly in that which preceded the present Constitution of the United States.

Certain it is that the constitutional compact of the U. S. has allotted the supreme power of Gov<sup>t</sup> partly to the United States by special grants, partly to the individual States by general reservations; and if sovereignty be in its nature divisible, the true question to be decided is, whether the allotment has been made by the competent authority, and this question is answered by the fact that it was an act of the *majority* of the people in each State in their highest sovereign capacity, equipollent to a *unanimous* act of the people composing the State in that capacity.

It is so difficult to argue intelligibly concerning the compound system of Gov<sup>t</sup> in the U. S. without admitting the divisibility of sovereignty, that the idea of sovereignty, as divided between the Union and the members composing the Union, forces itself into the view, and even into the language of those most strenuously contending for the unity & indivisibility of the *moral being* created by the social compact. "For security ag<sup>st</sup> oppression from abroad we look to the *sovereign power* of the U. S. to be exerted according to the compact of union; for security ag<sup>st</sup> oppression from within, or domestic oppression, we look to the sovereign power of the State. Now all sovereigns are equal; the sovereignty of the State is equal to that of the Union, for the sovereignty of each is but a *moral person*. That of the State and that of the Union are each a moral person, and in that respect precisely equal." These are the words in a speech which, more than any other, has analyzed & elaborated this particular subject, and they express the view of it finally taken by the speaker, notwithstanding the previous one in which he says, "the States, whilst the Constitution of the U. S. was forming, were not even shorn of *any* of their sovereign power by that process."

That a sovereignty would be lost & converted into a vassalage, if subjected to a foreign sovereignty over which it had no controul, and in which it had no participation, is clear & certain, but far otherwise is a surrender of portions of sovereignty by compacts among sovereign communities making the surrenders equal & reciprocal & of course giving to each as much as is taken from it.

Of all free Gov<sup>ts</sup> compact is the basis & the essence, and it is fortunate that the powers of Gov<sup>t</sup> supreme as well as subordinate can be so moulded & distributed, so compounded and divided by those on whom they are to operate as will be most suitable to their conditions, will best guard their freedom, and best provide for their safety.

[\[Back to Table of Contents\]](#)

## NOTES ON NULLIFICATION. 1

Mad. Mss.

1835. 6.

Altho' the Legislature of Virginia declared at a late session almost unanimously, that S. Carolina was not supported in her doctrine of nullification by the Resolutions of 1798, it appears that those resolutions are still appealed to as expressly or constructively favoring the doctrine.

That the doctrine of nullification may be clearly understood it must be taken as laid down in the Report of a special committee of the House of Representatives of S. C. in 1828. In that document it is asserted, that a single State has a constitutional right to arrest the execution of a law of the U. S. within its limits; that the arrest is to be presumed right and valid, and is to remain in force unless  $\frac{3}{4}$  of the States, in a Convention, shall otherwise decide.

The forbidding aspect of a naked creed, according to which a process instituted by a single State is to terminate in the ascendancy of a minority of 7, over a majority of 17, has led its partizans to disguise its deformity under the position that a single State may rightfully resist an unconstitutional and tyrannical law of the U. S., keeping out of view the essential distinction between a constitutional right and the natural and universal right of resisting intolerable oppression. But the true question is whether a single state has a constitutional right to annul or suspend the operation of a law of the U. S. within its limits, the State remaining a member of the Union, and admitting the Constitution to be in force.

With a like policy, the nullifiers pass over the state of things at the date of the proceedings of Vir<sup>a</sup> and the particular doctrines and arguments to which they were opposed; without an attention to which the proceedings in this as in other cases may be insecure ag<sup>st</sup> a perverted construction.

It must be remarked also that the champions of nullification, attach themselves exclusively to the 3. Resolution, averting their attention from the 7. Resolution which ought to be coupled with it, and from the Report also, which comments on both, & gives a full view of the object of the Legislature on the occasion.

Recurring to the epoch of the proceedings, the facts of the case are that Cong<sup>s</sup> had passed certain acts, bearing the name of the alien and sedition laws, which Virg. & some of the other States, regarded as not only dangerous in their tendency, but unconstitutional in their text; and as calling for a remedial interposition of the States. It was found also that not only was the constitutionality of the acts vindicated by a predominant party, but that the principle was asserted at the same time, that a sanction to the acts given by the supreme Judicial authority of the U. S. was a bar to any interposition whatever on the part of the States, even in the form of a legislative declaration that the acts in question were unconstitutional.

Under these circumstances, the subject was taken up by Virg<sup>a</sup>. in her resolutions, and pursued at the ensuing session of the Legislature in a comment explaining and justifying them; her main and immediate object, evidently being, to produce a conviction everywhere, that the Constitution had been violated by the obnoxious acts and to procure a concurrence and co-operation of the other States in effectuating a repeal of the acts. She accordingly asserted and offered her proofs at great length, that the acts were unconstitutional. She asserted moreover & offered her proofs that the States had a right in such cases, to interpose, first in their constituent character to which the gov<sup>t</sup> of the U. S. was responsible, and otherwise as specially provided by the Constitution; and further, that the States, in their capacity of parties to and creators of the Constitution, had an ulterior right to interpose, notwithstanding any decision of a constituted authority; which, however it might be the *last resort* under the forms of the Constitution in cases falling within the scope of its functions, could not preclude an interposition of the States as the parties which made the Constitution and, as such, possessed an authority paramount to it.

In this view of the subject there is nothing which excludes a natural right in the States individually, more than in any portion of an individual State, suffering under palpable and insupportable wrongs, from seeking relief by resistance and revolution.

But it follows, from no view of the subject, that a nullification of a law of the U. S. can as is now contended, belong rightfully to a single State, as one of the parties to the Constitution; the State not ceasing to avow its adherence to the Constitution. A plainer contradiction in terms, or a more fatal inlet to anarchy, cannot be imagined.

And what is the text in the proceedings of Virginia which this spurious doctrine of nullification claims for its parentage? It is found in the 3<sup>d</sup> of the Resolutions of -98, which is in the following words.

“That in case of a deliberate, a palpable & dangerous exercise of powers not granted by the [constitutional] compact, the *States* who are parties thereto have a right and are in duty bound to interpose for arresting the progress of the evil, & for maintaining within their respective limits, the authorities rights & liberties appertaining to them.”

Now is there anything here from which a *single* State can infer a right to arrest or annul an act of the General Gov<sup>t</sup> which it may deem unconstitutional? So far from it, that the obvious & proper inference precludes such a right on the part of a single State; *plural* number being used in every application of the term.

In the next place, the course & scope of the reasoning requires that by the rightful authority to interpose in the cases & for the purposes referred to, was meant, not the authority of the States *singly & separately*, but their authority as the *parties* to the Const<sup>n</sup>, the authority which, in fact, made the Constitution; the authority which being paramount to the Constitution was paramount to the authorities constituted by it, to the Judiciary as well as the other authorities. The resolution derives the asserted right of interposition for arresting the progress of usurpations by the Federal Gov<sup>t</sup> from the fact, that its powers were limited to the grant made by the States; a grant certainly not made by a *single* party to the grant, but by the *parties* to the compact containing the

grant. The mode of their interposition, in extraordinary cases, is left by the Resolution to the parties themselves; as the mode of interposition lies with the parties to other Constitutions, in the event of usurpations of power not remediable, under the forms and by the means provided by the Constitution. If it be asked why a claim by a single party to the constitutional compact, to arrest a law, deemed by it a breach of the compact, was not expressly guarded ag<sup>st</sup> the simple answer is sufficient that a pretension so novel, so anomalous & so anarchical, was not & could not be anticipated.

In the third place, the nullifying claim for a single State is probably irreconcilable with *the effect* contemplated by the interposition claimed by the Resolution for the parties to the Constitution namely that of “maintaining within the respective limits of the States the authorities rights & liberties appertaining to them.” Nothing can be more clear than that these auth<sup>s</sup> &c., &c., of the States, in other words, the authority & laws of the U. S. must be the same in all; or that this cannot continue to be the case, if there be a right in each to annual or suspend within itself the operation of the laws & authority of the whole. There cannot be different laws in different states on subjects within the compact without subverting its fundamental principles, and rendering it as abortive in practice as it would be incongruous in theory. A concurrence & co-operation of the States in favor of each, would have the effect of preserving the necessary uniformity in all, which the Constitution so carefully & so specifically provided for in cases where the rule might be in most danger of being violated. Thus the citizens of every State are to enjoy reciprocally the privileges of citizens in every other State. Direct taxes are to be apportioned on all, according to a fixed rule. Indirect taxes are to be the same in all the States. The duties on imports are to be uniform: No preference is to be given to the ports of one State over those of another. Can it be believed, that with these provisions of the Const<sup>n</sup> illustrating its vital principles fully in view of the Legislature of Virginia, that its members could in the Resolution quoted, intend to countenance a right in a single State to distinguish itself from its co-States, by avoiding the burdens, or restrictions borne by them; or indirectly giving the law to them.

These startling consequences from the nullifying doctrine have driven its partizans to the extravagant presumption that no State would ever be so unreasonable, unjust & impolitic as to avail itself of its right in any case not so palpably just and fair as to ensure a concurrence of the others, or at least the requisite proportion of them.

Omitting the obvious remark that in such a case the law would never have been passed or immediately repealed; and the surprize that such a defence of the nullifying right should come from S. C. in the teeth & at the time of her own example, the presumption of such a forbearance in each of the States, or such a pliability in all, among 20 or 30 independent sovereignties, must be regarded as a mockery by those who reflect for a moment on the human character, or consult the lessons of experience, not the experience of other countries & times, but that among ourselves; and not only under the former defective Confederation, but since the improved system took place of it. Examples of differences, persevering differences among the States on the constitutionality of Federal acts, will readily occur to every one; and which would, e'er this, have defaced and demolished the Union, had the nullifying claim of S.



Carolina been indiscriminately exercisable. In some of the States, the carriage-tax would have been collected, in others unpaid. In some, the tariff on imports would be collected; in others, openly resisted. In some, lighthouses w<sup>d</sup> be established; in others denounced. In some States there might be war with a foreign power; in others, peace and commerce. Finally, the appellate authority of the Supreme Court of the U. S. would give effect to the Federal laws in some States, whilst in others they would be rendered nullities by the State Judiciaries. In a word, the nullifying claims if reduced to practice, instead of being the conservative principle of the Constitution, would necessarily, and it may be said obviously, be a deadly poison.

Thus, from the 3<sup>d</sup>. resol<sup>n</sup> itself, whether regard be had to the employment of the term *States* in the plural number, the argumentative use of it, or to the object namely the “maintaining the authority & rights of each, which must be the same in all as in each, it is manifest that the adequate interposition to which it relates, must be not a single, but a concurrent interposition.

If we pass from the 3<sup>d</sup> to the 7<sup>th</sup> Resolution, which, tho’ it repeats and re-enforces the 3<sup>d</sup> and which is always skipped over by the nullifying commentators, the fallacy of their claim will at once be seen. The resolution is in the following words. [“That the good people of the commonwealth having ever felt and continuing to feel the most sincere affection to their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining unimpaired the authorities, rights, and liberties reserved in the states respectively or to the people.”1] Here it distinctly appears, as in the 3<sup>d</sup> resol<sup>n</sup> that the course contemplated by the Legislature, “for maintaining the authorities, rights, & liberties reserved to the States respectively,” was not a *solitary* or *separate* interposition, but a *co-operation* in the means necessary & proper for the purpose.

If a further elucidation of the view of the Legislature could be needed, it happens to be found in its recorded proceedings. In the 7<sup>th</sup> Resolution as originally proposed, the term “*unconstitutional*,” was followed by null void, &c. These added words being considered by some as giving pretext for some disorganizing misconstruction, were unanimously stricken out, or rather withdrawn by the mover of the Resolutions.

An attempt has been made, by ascribing to the words stricken out, a nullifying signification, to fix on the reputed draftsman of the Resolution the character of a nullifier. Could this have been effected, it would only have vindicated the Legislature the more effectually from the imputation of favoring the doctrine of S. Carolina. The unanimous erasure of nullifying expressions was a protest by the H. of Delegates, in the most emphatic form against it.

But let us turn to the “Report,” which explained and vindicated the Resolutions; and observe the light in which it placed first the third and then the 7<sup>th</sup>1

It must be recollected that this Document proceeded from Representatives chosen by the people some months after the Resolutions had been before them, with a longer period for manifesting their sentiments before the Report was adopted; and without any evidence of disapprobation in the Constituent Body. On the contrary, it is known to have been rec<sup>d</sup> by the Republican party, a decided majority of the people, with the most entire approbation. The Report therefore must be regarded as the most authoritative evidence of the meaning attached by the State to the Resolutions. This consideration makes it the more extraordinary, and let it be added the more inexcusable, in those, who in their zeal to extract a particular meaning from a particular resolution, not only shut their eyes to another Resolution, but to an authentic exposition of both.

And what is the comment of the Report on that particular resolution?, namely, the 3<sup>d</sup>

In the first place, it conforms to the resolution in using the term which expresses the interposing auth<sup>y</sup> of the States, in the *plural* number *States*, not in the singular number *State*. It is indeed impossible not to perceive that the entire current & complexion of the observations explaining & vindicating the resol<sup>ns</sup>. imply necessarily, that by the interposition of the States for arresting the evil of usurpation, was meant a concurring auth<sup>y</sup>. not that of a *single* state; whilst the collective meaning of the term, gives consistency & effect to the reasoning & the object.

But besides this general evidence that the Report in the invariable use of the plural term *States*, withheld from a single State the right expressed in the Resol<sup>n</sup>. a still more precise and decisive inference, to the same effect, is afforded by several passages in the document.

Thus the report observes “The States then being the parties to the const<sup>l</sup> compact, and in their highest sovereign capacity, it follows of necessity, that there can be no tribunal above *their* auth<sup>y</sup> to decide in the *last* resort, whether the compact made by them be violated; and, consequently that as the parties to it, they must *themselves* decide in the last resort such questions as may be of sufficient magnitude to require their interposition.”

Now apart from the palpable insufficiency of an interposition by a single State to effect the declared object of the interposition namely, to maintain authorities & rights which must be the same in all the States, it is not true that there would be no tribunal above the authority of a state as a single party; the aggregate authority of the parties being a tribunal above it to decide in the *last* resort.

Again the language of the Report is, “If the deliberate exercise of dangerous powers palpably withheld by the Constitution could not justify the parties to it in interposing even so far as to arrest the progress of the evil, & thereby preserve the Constitu<sup>n</sup>. itself, as well as to provide for the safety of the parties to it, there w<sup>d</sup> be an end to all relief from usurped power”—Apply here the interposing power of a single State, and it would not be true that there w<sup>d</sup> be no relief from usurped power. A sure & adequate relief would exist in the interposition of the *States*, as the *co-parties* to the Constitution, with a power paramount to the Const<sup>n</sup> itself.

It has been said that the right of interposition asserted for the states by the proceedings of Virginia could not be meant a right for them in their collective character of parties to and creators of the Constitution, because that was a right by none denied. But as a simple truth or truism, its assertion might not be out of place when applied as in the resolution, especially in an avowed recurrence to fundamental principles, as in duty called for by the occasion. What is a portion of the Declaration of Independence but a series of simple and undeniable truths or truisms? what but the same composed a great part of the Declarations of Rights prefixed to the state constitutions? It appears, however, from the report itself, which explains the resolutions, that the last *resort* claimed for the Supreme Court of the United States, in the case of the alien and sedition laws, was understood to require a recurrence to the ulterior resort in the authority from which that of the court was derived. “But, (continues the Report) it is objected<sup>1</sup> that the judicial authority is to be regarded as the sole expositor of the Const<sup>n</sup> in the last resort.”

In answering this objection the Report observes, “that however true it may be that the judicial Dep<sup>t</sup>, in all questions submitted to it by the forms of the Constn. to decide in the last resort, this resort must necessarily *not* be the last—in relation to the rights of the parties to the const<sup>l</sup> compact from which the Judicial as well as the other Departments hold their *delegated trusts*. On any other hypothesis, the Delegation of judicial power w<sup>d</sup> annul the auth<sup>y</sup> delegating it, and the concurrence of this Dep<sup>t</sup> with the others in usurped power, might subvert for ever, and beyond the possible reach of any rightful remedy, the very Constit<sup>l</sup> which all were instituted to preserve.” Again observes the report, “The truth declared in the resolution being established, the expediency of making the declaration at the present day may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered that a frequent recurrence to fundamental principles is solemnly enjoined by most of the State constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy, to which republics are liable as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines, not unfrequent at the present day, with those which characterized the epoch of our revolution, and which form the basis of our republican constitutions, will best determine whether the declaratory recurrence here made to those principles ought to be viewed as unreasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind; and at no time, perhaps, more necessary than at present.”

Who can avoid seeing the necessity of understanding by the “*parties*” to the const<sup>l</sup> compact, the authority, which made the compact and from which all the Dep<sup>ts</sup> held their delegated trusts. These trusts were certainly not delegated by a *single* party. By regarding the term *parties* in its plural, not individual meaning, the answer to the objection is clear and satisfactory. Take the term as meaning *a party*, and not *the parties*, and there is neither truth nor argument in the answer. But further, on the hypothesis, that the rights of the *parties* meant the rights of *a party*, it w<sup>d</sup> not be true as affirmed by the Report, that “the Delegation of Jud<sup>l</sup> power w<sup>d</sup> annul the auth<sup>y</sup> delegating it, and that the concurrence of this Dep<sup>t</sup> with others in usurped power

might subvert for ever, & beyond the reach of any rightful remedy, the very Constitution w<sup>ch</sup> all were instituted to preserve.” However deficient a remedial right in a *single State* might be to preserve the Const<sup>n</sup> against usurped power an ultimate and adequate remedy w<sup>d</sup> always exist in the rights of the *parties* to the Const<sup>n</sup> in whose hands the Const<sup>n</sup> is at all times but clay in the hands of the potter, and who could apply a remedy by explain<sup>g</sup> amend<sup>g</sup>, or remak<sup>g</sup> it, as the one or the other mode might be the most proper remedy.

Such being the comment of the Report on the 3<sup>d</sup> Resolution, it fully demonstrates the meaning attached to it by Virginia when passing it, and rescues it from the nullifying misconstruction into which the Resolution has been distorted.

Let it next be seen, how far the comment of the Rep<sup>t</sup>. on the 7<sup>th</sup> Resol<sup>n</sup>. above inserted accords with that on the 3<sup>d</sup>.; and that this may the more conveniently be scanned by every eye, the comment is subjoined at full length.

[“The fairness and regularity of the course of proceedings here pursued have not protected it against objections even from sources too respectable to be disregarded.

“It has been said that it belongs to the judiciary of the United States, and not to the state legislatures, to declare the meaning of the federal Constitution.

“But a declaration that proceedings of the federal government are not warranted by the Constitution, is a novelty neither among the citizens nor among the legislatures of the states; are not the citizens or the Legislature of Virginia singular in the example of it.

“Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the federal government, or whether made before or after judicial decisions thereon, be deemed, in any point of view, an assumption of the office of the judge. The declarations in such cases are expressions of opinions, unaccompanied with any other effect than what they may produce on opinion by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expressions of the general will; possibly to a change in the opinion of the judiciary; the latter enforces the general will, while that will and that opinion continue unchanged.

“And if there be no impropriety in declaring the unconstitutionality of proceedings in the federal government, where can be the impropriety of communicating the declaration to other states, and inviting their concurrence in a like declaration? What is allowable for one must be allowable for all; and a free communication among the states, where the Constitution imposes no restraint, is as allowable among the state governments as among other public bodies or private citizens. This consideration derives a weight that cannot be denied to it, from the relation of the state legislatures to the federal Legislature, as the immediate constituents of one of its branches.

“The legislatures of the states have a right also to originate amendments to the Constitution, by a concurrence of two thirds of the whole number, in applications to

Congress for the purpose. When new states are to be formed by a junction of two or more states or parts of states, the legislatures of the states concerned are, as well as Congress, to concur in the measure. The states have a right also to enter into agreements or compacts, with the consent of Congress. In all such cases, a communication among them results from the object which is common to them.

“It is lastly to be seen whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other states for co-operating with Virginia in maintaining the rights reserved to the states or to the people, be in any degree liable to the objections which have been raised against it.

“If it be liable to objection, it must be because either the object or the means are objectionable.

“The object being to maintain what the Constitution has ordered, is in itself a laudable object.

“The means are expressed in the terms ‘the necessary and proper measures.’ A proper object was to be pursued by means both necessary and proper.

“To find an objection, then, it must be shown that some meaning was annexed to these general terms which was not proper; and, for this purpose, either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the term could refer.

“In the example given by the state, of declaring the alien and sedition acts to be unconstitutional, and of communicating the declaration to the other states, no trace of improper means has appeared. And if the other states had concurred in making a like declaration, supported, too, by the numerous applications flowing immediately from the people, it can scarcely be doubted that these simple means would have been as sufficient as they are unexceptionable.

“It is no less certain that other means might have been employed which are strictly within the limits of the Constitution. The legislatures of the states might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or they might have represented to their respective senators in Congress their wish that two thirds thereof would propose an explanatory amendment to the Constitution; or two thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a convention for the same object.

“These several means, though not equally eligible in themselves, nor probably to the states, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other states a choice among the farther means that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

“These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is

one other, however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehended danger to liberty from the establishment of the general government over so great a country, the appeal was emphatically made to the intermediate existence of the state governments between the people and that government, to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound the alarm to the public. This argument was probably not without its effect; and if it was a proper one then to recommend the establishment of the Constitution, it must be a proper one now to assist in its interpretation.

“The only part of the two concluding resolutions that remains to be noticed, is the repetition in the first of that warm affection to the Union and its members, and of that scrupulous fidelity to the Constitution, which have been invariably felt by the people of this state. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the General Assembly cannot descend into a discussion of it. Those who have listened to the suggestion can only be left to their own recollection of the part which this state has borne in the establishment of our national independence, in the establishment of our national Constitution, and in maintaining under it the authority and laws of the Union, without a single exception of internal resistance or commotion. By recurring to these facts, they will be able to convince themselves that the representations of the people of Virginia must be above the necessity of opposing any other shield to attacks on their national patriotism than their own consciousness and the justice of an enlightened public, who will perceive, in the resolutions themselves, the strongest evidence of attachment both to the Constitution and to the Union, since it is only by maintaining the different governments and departments within their respective limits that the blessings of either can be perpetuated.”]

Here is certainly not a shadow of countenance to the doctrine of nullification. Under every aspect, it enforces the arguments and authority ag<sup>st</sup> such an apocryphal version of the text.

From this view of the subject, those who will duly attend to the tenour of the proceedings of Virg<sup>a</sup> and to the circumstances of the period when they took place will concur in the fairness of disclaiming the inference from the undeniableness of a truth, that it could not be the truth meant to be asserted in the Resol<sup>n</sup>. The employment of the truth asserted, and the reasons for it, are too striking to be denied or misunderstood.

More than this, the remark is obvious, that those who resolve the nullifying claim into the *natural* right to resist intolerable oppression, are precluded from inferring that to be the right meant by the Resol<sup>n</sup>, since that is as little denied, as the paramountship of the auth<sup>y</sup>, creating a Const<sup>n</sup> over an auth<sup>y</sup> derived from it.

The true question therefore is whether there be a *constitutional* right in a single state to nullify a law of the U. S. We have seen the absurdity of such a claim in its naked and suicidal form. Let us turn to it as modified by S. C., into a right in every State to

resist within itself, the execution of a Federal law deemed by it to be unconstitutional; and to demand a Convention of the States to decide the question of constitutionality, the annulment of the law to continue in the mean time, and to be permanent, unless  $\frac{3}{4}$  of the states concur in over-ruling the annulment.

Thus, during the temporary nullification of the law, the results would be the same from those proceeding from an unqualified nullification, and the result of a convention might be, that 7 out of the 24 states, might make the temporary results permanent. It follows, that any State which could obtain the concurrence of six others, might abrogate any law of the U. S. constructively whatever, and give to the Constitution any shape they please, in opposition to the construction and will of the other seventeen, each of the 17 having an equal right & authority with each of the 7. Every feature in the Constitution, might thus be successively changed; and after a scene of unexampled confusion & distraction, what had been unanimously agreed to as a whole, would not as a whole be agreed to by a single party. The amount of this modified right of nullification is, that a single State may arrest the operation of a law of the United States, and institute a process which is to terminate in the ascendancy of a minority over a large majority, in a Republican System, the characteristic rule of which is that the major will is the ruling will. And this newfangled theory is attempted to be fathered on Mr. Jefferson the apostle of republicanism, and whose own words declare that “acquiescence in the decision of the majority is the vital principle of it.” [See his Inaugural Address.]

Well might Virginia declare, as her Legislature did by a resolution of 1833 “that the resolutions of 98-99, gave no support to the nullifying doctrine of South Carolina. And well may the friends of Mr. J. disclaim any sanction to it or to any *constitutional* right of nullification from his opinions. His memory is fortunately rescued from such imputations, by the very Document procured from his files and so triumphantly appealed to by the nullifying partisans of every description. In this Document, the remedial right of nullification is expressly called a *natural* right, and, consequently, not a right derived from the Constitution, but from abuses or usurpations, releasing the parties to it from their obligation.<sup>1</sup>

It is said that in several instances the authority & laws of the U. S. have been successfully nullified by the particular States. This may have occurred possibly in urgent cases, and in confidence that it would not be at variance with the construction of the Fed<sup>l</sup> Gov<sup>t</sup> or in cases where, operating within the Nullifying State alone it might be connived at as a lesser evil than a resort to force; or in cases not falling within the Fed<sup>l</sup> jurisdiction; or finally in cases, deemed by the States, subversive of their *essential rights*, and justified therefore, by the *natural* right of self-preservation. Be all this as it may, examples of nullification, tho’ passing off with<sup>t</sup> any immediate disturbance of the public order, are to be deplored, as weaken<sup>g</sup> the com<sup>on</sup> Gov<sup>t</sup>. and as undermining the Union. One thing seems to be certain, that the States which have exposed themselves to the charge of nullification, have, with the exception of S. C., disclaimed it as a *constitutional* right, and have moreover protested ag<sup>st</sup>. it as *modified* by the process of South Carolina.

The conduct of Pen<sup>a</sup>. and the opinions of Judge M<sup>c</sup>Kean & Tilgman have been particularly dwelt on by the nullifiers. But the final acquiescence of the state in the auth<sup>y</sup> of the Fed<sup>l</sup> Judiciary transfers their auth<sup>y</sup> to the other scale, and it is believed that the opinions of the two judges, have been superseded by those of their brethren, which have been since & at the present time are, opposed to them.1

Attempts have been made to shew that the resolutions of Virginia contemplated a forcible resistance to the alien & sed<sup>t</sup> laws and as evidence of it, the laws relating to the armory, and a Hab<sup>s</sup> corpus for the protection of members of her Legislature, have been brought into view. It happens however, as has been ascertained by the recorded dates that the first of these laws was enacted prior to the al. & sed. laws. As to the last, it appears that it was a general law, providing for other emergencies as well as federal arrests and its applicability never tested by any occurrence under the al. & sed<sup>n</sup>. laws. The law did not necessarily preclude an acquiescence in the supervising decision of the Fed<sup>l</sup> Jud<sup>y</sup> sh<sup>d</sup> that not sustain the Hab<sup>s</sup>. corp<sup>s</sup> which it might be calculated would be sustained. And all must agree, that cases might arise, of such violations of the security & privileges of representatives of the people, as would justify the states in a resort to the *natural* law of self-preservation. The extent of the privileges of the fed<sup>l</sup> & State representatives of the people, ag<sup>st</sup> criminal charges by the 2 authorities reciprocally, involves delicate questions which it may be better to leave for those who are to decide on them, than unnecessarily to discuss them in advance. The moderate views of V<sup>a</sup>. on the critical occasion of the al. & sed. laws, are illustrated by the terms of the 7<sup>th</sup> Resol. with an eye to which the 3<sup>d</sup> Resol. ought always to be expounded, by the unanimous erasure of the terms "null void" &c., from the 7<sup>th</sup> art. as it stood; and by the condemnation & imprisonment of Callender under the law, without the slightest opposition on the part of the state. So far was the State from countenancing the nullifying doctrine, that the occasion was viewed as a proper one for exemplifying its devotion to public order, and acquiescence in laws which it deemed unconstitutional, whilst those laws were not constitutionally repealed. The language of the Gov<sup>r</sup> in a letter to a friend, will best attest the principles & feelings which dictated the course pursued on the occasion.1

It is sometimes asked in what mode the States could interpose in their collective character as parties to the Constitution ag<sup>st</sup> usurped power. It was not necessary for the object & reasoning of the resol<sup>ns</sup> & report, that the mode should be pointed out. It was sufficient to shew that the auth<sup>y</sup> to interpose existed, and was a resort beyond that of the Supreme Court of the U. S. or any auth<sup>y</sup> derived from the Const<sup>n</sup>. The auth<sup>y</sup>. being plenary, the mode was of its own choice, and it is obvious, that, if employed by the States as coparties to and creators of the Const<sup>n</sup> it might either so explain the Const<sup>n</sup> or so amend it as to provide a more satisfactory mode within the Const<sup>n</sup> itself for guarding it ag<sup>st</sup> constructive or other violations.

It remains however for the nullifying expositors to specify the right & mode of interposition which the resolution meant to assign to the States *individually*. They cannot say it was a natural right to resist intolerable oppression; for that was a right not less admitted by all than the collective right of the States as parties to the Const. the nondenial of which was urged as a proof that it could not be meant by the Resol<sup>n</sup>.



They cannot say that the right meant was a Constit<sup>l</sup> right to resist the constitutional auth<sup>y</sup> for that is a construction in terms, as much as a legal right to resist a law.

They can find no middle ground, between a natural and a constitutional right, on which a right of nullifying interposition can be placed; and it is curious to observe the awkwardness of the attempt, by the most ingenious advocates [Upshur and Berrian].

They will not rest the claim as modified by S. C. for that has scarce an advocate out of the State, and owes the remnant of its popularity there to the disguise under which it is now kept alive; some of the leaders of the party admitting its indefensibility, in its naked shape.

The result is, that the nullifiers, instead of proving that the Resol<sup>n</sup> meant nullification, would prove that it was altogether without meaning.

It appears from this Comment, that the right asserted and exercised by the Legislature, to *declare* an act of Cong<sup>s</sup>. unconstitutional had been denied by the Defenders of the alien & sedition acts as an interference with the Judicial authority; and, consequently, that the reasonings employed by the Legislature, were called for by the doctrines and inferences drawn from that authority, and were not an idle display of what no one denied.

It appears still farther, that the efficacious interposition contemplated by the Legislature; was a concurring and co-operating interposition of the States, not that of a single State.

It appears that the Legislature expressly disclaimed the idea that a declaration of a State, that a law of the U. S. was unconstitutional, had the effect of *annulling* the law.

It appears that the object to be attained by the invited cooperation with Virginia was, as expressed in the 3<sup>d</sup>. & 7<sup>th</sup>. Resol. to maintain within the several States their respective auth<sup>s</sup>. rights, & liberties, which could not be constitutionally different in different States, nor inconsistent with a sameness in the authy. & laws of the U. S. in all & in each.

It appears that the means contemplated by the Legislature for attaining the object, were measures recognised & designated by the Constitution itself. [1](#)

Lastly, it may be remarked that the concurring measures of the states, without any nullifying interposition whatever did attain the contemplated object; a triumph over the obnoxious acts, and an apparent abandonment of them for ever.

It has been said or insinuated that the proceedings of Virg<sup>s</sup>. in 98-99, had not the influence ascribed to them in bringing about that result. Whether the influence was or was not such as has been claimed for them, is a question that does not affect the meaning & intention of the proceedings. But as a question of fact, the decision may be safely left to the recollection of those who were co-temporary with the crisis, and to the researches of those who were not, taking for their guides the reception given to the

proceedings by the Repubn. party every where, and the pains taken by it, in multiplying republications of them in newspapers and in other forms.

What the effect might have been if Virga. had remained patient & silent, and still more if she had sided with S. Carolina, in favoring the alien & sedition acts. can be but a matter of conjecture.

What would have been thought of her if she had recommended the nullifying project of S. C. may be estimated by the reception given to it under all the factitious gloss, and in the midst of the peculiar excitement of which advantage has been taken by the partizans of that anomalous conceit.

It has been sufficiently shown, from the language of the Report, as has been seen, that the right in the States to interpose declarations & protests, ag<sup>st</sup> unconstitutional acts of Congress, had been denied; and that the reasoning in the Resolutions was called for by that denial. But the triumphant tone, with which it is affirmed & reiterated that the resolutions, must have been directed ag<sup>st</sup> what no one denied, unless they were meant to assert the right of a single State to arrest and annul acts of the federal Legislature, makes it proper to adduce a proof of the fact that the declaratory right was denied, which, if it does not silence the advocate of nullification, must render every candid ear indignant at the repetition of the untruth.

The proof is found in the recorded votes of a large and respectable portion of the House of Delegates, at the time of passing the report.

A motion [see the Journal] offered at the closing scene affirms “that protests made by the Legislature of this or any other State ag<sup>st</sup>. particular acts of Cong<sup>s</sup>. as unconstitutional accompanied with invitations to other States, to join in such protests, are improper & unauthorized assumptions of power not permitted, nor intended to be permitted to the State Legislatures. And inasmuch as *correspondent sentiments with the present*, have been expressed by those of our sister States who have acted on the Resolutions [of 1798], Resolved therefore that the present General Assembly convinced of the impropriety of the Resolutions of the last Assembly, deem it inexpedient farther to act on the said Resolutions.”

On this Resolution, the votes, according to the yeas & nays were 57, of the former, 98 of the latter.

Here then within the H. of Delegates itself more than ? of the whole number *denied* the right of the State Legislature to proceed by acts merely declaratory ag<sup>st</sup>. the constitutionality of acts of Cong<sup>s</sup> and affirmed moreover that the states who had acted on the Resol<sup>s</sup> of Va. entertained the same sentiments. It is remarkable that the minority, who denied the right of the legislatures even to protest, admitted the right of the *states* in the capacity of *parties*, without claiming it for a single state.

With this testimony under the eye it may surely be expected that it will never again be said that such a right had never been denied, nor the pretext again resorted to that without such a denial, the nullifying doctrine alone could satisfy the true meaning of

the Legislature. [See the instructions to the members of Congress passed at the same session, which do not squint at the nullifying idea; see also the protest of the minority in the Virga. Legisla<sup>te</sup>. and the Report of the Com<sup>ee</sup> of Cong<sup>s</sup>. on the proceedings of Virginia.]

It has been asked whether every right has not its remedy, and what other remedy exists under the Gov<sup>t</sup>. of the U. S. ag<sup>st</sup>. usurpations of power, but a right in the States individually to annul and resist them.

The plain answer is, that the remedy is the same under the government of the United States as under all other Gov<sup>ts</sup>. established & organized on free principles. The first remedy is in the checks provided among the constituted authorities; that failing the next is in the influence of the Ballot-boxes & Hustings; that again failing, the appeal lies to the power that made the Constitution, and can explain, amend, or remake it. Should this resort also fail, and the power usurped be sustained in its oppressive exercise on a minority by a majority, the final course to be pursued by the minority, must be a subject of calculation, in which the degree of oppression, the means of resistance, the consequences of its failure, and consequences of its success must be the elements.

Does not this view of the case, equally belong to every one of the States, Virginia for example.

Should the constituted authorities of the State unite in usurping oppressive powers; should the constituent Body fail to arrest the progress of the evil thro' the elective process according to the forms of the Constitution; and should the authority which is above that of the Constitution, the majority of the people, inflexibly support the oppression inflicted on the minority, nothing would remain for the minority, but to rally to its reserved rights (for every citizen has his reserved rights, as exemplified in Declarations prefixed to most of the State constitutions), and to decide between acquiescence & resistance, according to the calculation above stated.

Those who question the analogy in this respect between the two cases, however different they may be in some other respects, must say, as some of them, with a boldness truly astonishing do say, that the Constitution of the U. S. which as such, and under that name, was presented to & accepted by those who ratified it; which has been so deemed & so called by those living under it for nearly half a century; and, as such sworn to by every officer, state as well as federal, is yet no Constitution, but a treaty, a league, or at most a confederacy among nations, as independent and sovereign, in relation to each other, as before the charter which calls itself a Constitution was formed.

The same zealots must again say, as they do, with a like boldness & incongruity that the Gov<sup>t</sup> of the U. S. w<sup>ch</sup> has been so deemed & so called from its birth to the present time; which is organized in the regular forms of Representative Govt<sup>s</sup>. and like them operates directly on the individuals represented; and whose laws are declared to be the supreme law of the land, with a physical force in the gov<sup>t</sup> for executing them, is yet

no gov<sup>t</sup>. but a mere agency, a power of attorney, revocable at the will of any of the parties granting it.

Strange as it must appear, there are some who maintain these doctrines, and hold this language: and what is stranger still, denounce those as heretics and apostates who adhere to the language & tenets of their fathers, and this is done with an exulting question whether every right has not its remedy; and what remedy can be found against federal usurpations, other than that of a right in every State to nullify & resist the federal acts at its pleasure?

Yes, it may be safely admitted that every right has its remedy; as it must be admitted that the remedy under the Constitution lies where it has been marked out by the Constitution; and that no appeal can be consistently made from that remedy by those who were and still profess to be parties to it, but the appeal to the parties themselves having an authority above the Constitution or to the law of nature & of nature's God.

It is painful to be obliged to notice such a sophism as that by which this inference is assailed. Because an unconstitutional law is no law, it is alledged that it may be constitutionally disobeyed by all who think it unconstitutional. The fallacy is so obvious, that it can impose on none but the most biassed or heedless observers. It makes no distinction where the distinction is obvious, and *essential*, between the case of a law *confessedly* unconstitutional, and a case turning on a *doubt & a divided opinion* as to the meaning of the Constitution; on a question, not whether the Constitution ought or ought not to be obeyed; but on the question, what is the Constitution. And can it be seriously & deliberately maintained, that every individual or every subordinate auth<sup>y</sup> or every party to a compact, has a right to take for granted, that its construction is the infallible one, and to act upon it ag<sup>st</sup>. the construction of all others, having an equal right to expound the instrument, nay against the regular exposition of the constituted authorities, with the tacit sanction of the community. Such a doctrine must be seen at once to be subversive of all constitutions, all laws, and all compacts. The provision made by a Const<sup>n</sup>. for its own exposition, thro' its own authorities & forms, must prevail whilst the Constitution is left to itself by those who made it; or until cases arise which justify a resort to ultra-constitutional interpositions.

The main pillar of nullification is the assumption that sovereignty is a unit, at once indivisible and unalienable; that the states therefore individually retain it entire as they originally held it, and, consequently that no portion of it can belong to the U. S.

But is not the Const<sup>n</sup>. itself necessarily the offspring of a sov<sup>n</sup> auth<sup>y</sup>? What but the highest pol: auth<sup>y</sup>. a sovereign auth<sup>y</sup>, could make such a Const<sup>n</sup>? a const<sup>n</sup>. w<sup>ch</sup>. makes a Gov<sup>t</sup>.; a Gov<sup>t</sup>. which makes laws; laws which operate like the laws of all other gov<sup>ts</sup>. by a penal & physical force, on the individuals subject to the laws; and finally laws declared to be the Supreme law of the land; anything in the Const<sup>n</sup> or laws of the individual State notwithstanding.

And where does the sov<sup>y</sup>. which makes such a Const<sup>n</sup> reside. It resides not in a single state but in the people of each of the several states, uniting with those of the others in

the express & solemn compact which forms the Const<sup>n</sup> To the *extent* of that compact or Constitution therefore, the people of the several States must be a sovereign as they are a united people.

In like manner, the const<sup>ns</sup>. of the States, made by the people as separated into States, were made by a sovereign auth<sup>y</sup> by a sovereignty residing in each of the States, to the extent of the objects embraced by their respective constitutions. And if the states be thus sovereign, though shorn of so many of the essential attributes of sovereignty, the U. States by virtue of the sovereign attributes with w<sup>ch</sup> they are endowed, may, to that extent, be sovereign, tho' destitute of the attributes of which the States are not shorn.

Such is the political system of the U. S. de jure & de facto; and however it may be obscured by the ingenuity and technicalities of controversial commentators, its true character will be sustained by an appeal to the law and the testimony of the fundamental charter.

The more the pol: system of the U. S. is fairly examined, the more necessary it will be found, to abandon the abstract and technical modes of expounding & designating its character; and to view it as laid down in the charter which constitutes it, as a system, hitherto without a model; as neither a simple or a consolidated Gov<sup>t</sup>. nor a Gov<sup>t</sup> altogether confederate; and therefore not to be explained so as to make it either, but to be explained and designated, according to the actual division and distribution of political power on the face of the instrument.

A just inference from a survey of this polit: system is that it is a division and distribution of pol: power, nowhere else to be found; a nondescript, to be tested and explained by itself alone; and that it happily illustrates the diversified modifications of which the representative principle of republicanism is susceptible with a view to the conditions, opinions, and habits of particular communities.

That a sovereignty should have even been denied to the States in their united character, may well excite wonder, when it is recollected that the Const<sup>n</sup> which now unites them, was announced by the conv<sup>n</sup> which formed it, as dividing sovereignty between the Union & the States; [see letter of the Presd<sup>t</sup> of the Convention (W.) to the old Cong<sup>s</sup> 1 ] that it was presented under that view, by contemporary expositions recommend<sup>g</sup> it to the ratifying authorities [see Feder<sup>t</sup> and other proofs]; that it is proved to have been so understood by the language which has been applied to it constantly & notoriously; that this has been the doctrine & language, until a very late date, even by those who now take the lead in making a denial of it the basis of the novel notion of nullification. [See the Report to the Legisl. of S. Carol<sup>a</sup>. in 1828.] So familiar is sovereignty in the U. S. to the thoughts, views & opinions even of its polemic adversaries, that Mr. Rowan, in his elaborate speech in support of the indivisibility of sovereignty, relapsed before the conclusion of his argument into the idea that sovereignty was partly in the Union, partly in the States. [See his speech in the Richmond Enquirer of the —.] Other champions of the Rights of the States among them Mr. J-n might be appealed to, as bearing testimony to the sovereignty of the U. S. If Burr had been convicted of acts defined to be treason, w<sup>ch</sup> it is allowed can be committed only ag<sup>st</sup> a sover<sup>n</sup>. auth<sup>y</sup> who w<sup>d</sup>. then have pleaded the want of sov<sup>y</sup> in the

U. S. Quere. if there be no sov<sup>y</sup>. in the U. S. whether the crime denominated treason might not be committed, without falling within the jurisdiction of the States, and consequently, with impunity?

What seems to be an obvious & indefeasible proof that the people of the individual States, as composing the U. States must possess a sovereignty, at least in relation to foreign sovereigns is that in that supposition only, foreign Gov<sup>ts</sup>. would be willing or expected to maintain international relations with the U. S. Let it be understood that the Gov<sup>t</sup> at Washington was not a national Gov<sup>t</sup> representing a sovereign auth<sup>y</sup>; and that the sovereignty resided absolutely & exclusively in the several States, as the only sovereigns & nations in our political system, and the diplomatic functionaries at the seat of the Fed<sup>l</sup> Gov<sup>t</sup> would be obliged to close their communications with the Sec<sup>y</sup> of State, and with new commissions repair to Columbia, in S. C. and other seats of the State Gov<sup>ts</sup>. They could no longer, as the Rep<sup>ts</sup> of a sovereign auth<sup>y</sup> hold intercourse with a functionary who was but an agent of a self-called Gov<sup>t</sup> which was itself but an agent, representing no sovereign authority; not of the States as separate sovereignties, nor a sovereignty in the U. S. which had no existence. For a like reason, the Plenipotentiaries of the U. S. at foreign courts, would be obliged to return home unless commissioned by the individual States. With respect to foreign nations, the confederacy of the States was held de facto to be a nation, or other nations would not have held national relations with it.

There is one view of the subject which ought to have its influence on those who espouse doctrines which strike at the authoritative origin and efficacious operation of the Gov<sup>t</sup> of the U. States. The Gov<sup>t</sup> of the U. S. like all Gov<sup>ts</sup> free in their principles, rests on compact; a compact, not between the Gov<sup>t</sup> & the parties who formed & live under it; but among the parties themselves, and the strongest of Gov<sup>ts</sup>. are those in which the compacts were most fairly formed and most faithfully executed.

Now all must agree that the compact in the case of the U. S. was duly formed, and by a competent authority. It was formed, in fact by the people of the several States in their highest sovereign authority; an authority which c<sup>d</sup> have made the compact a mere league, or a consolidation of all entirely into one community. Such was their auth<sup>y</sup> if such had been their will. It was their will to prefer to either the constitutional Gov<sup>t</sup> now existing; and this being undeniably establ<sup>d</sup> by a competent and even the highest human auth<sup>y</sup>, it follows that the obligation to give it all the effect to which any Gov<sup>t</sup> could be entitled; whatever the mode of its formation, is equally undeniable. Had it been formed by the people of the U. S. as one society, the authority could not have been more competent, than that which did form it; nor w<sup>d</sup> a consolidation of the people of the States into one people, be different in validity or operation, if made by the aggregate auth<sup>y</sup> of the people of the States, than if made by the plenary sanction given concurrently as it was in their highest sovereign capacity. The Gov<sup>t</sup> whatever it be resulting from either of these processes would rest on an auth<sup>y</sup>. equally competent; and be equally obligatory & operative on those over whom it was established. Nor would it be in any respect less responsible, theoretically and practically, to the constituent body, in the one hypothesis than in the other; or less subject in extreme cases to be resisted and overthrown. The faith pledged in the compact, being the vital principle of all free Gov<sup>t</sup> that is the true test by which pol: right & wrong are to be

decided, and the resort to physical force justified, whether applied to the enforcement or the subversion of political power.

Whatever be the *mode* in which the *essential* aut<sup>y</sup> estab<sup>d</sup>. the Const<sup>n</sup>, the structure of this, the power of this, the rules of exposition, the means of execution, must be the same; the tendency to consol. or dissolution the same. The question, whether we the people means the people in their aggregate capacity, acting by a numerical maj<sup>y</sup> of the whole, or by a maj<sup>y</sup> in each of all the States, the auth<sup>y</sup> being equally valid and binding, the question is interesting, but as an historical fact of merely speculative curiosity.

Whether the centripetal or centrifugal tendency be greatest, is a problem which experience is to decide; but it depends not on the mode of the grant, but the extent and effect of the powers granted. The only distinctive circumstance is in the effect of a dissolution of the system on the resultum of the parties, which, in the case of a system formed by the people, as that of the United States was, would replace the states in the character of separate communities, whereas a system founded by the people, as one community, would, on its dissolution, throw the people into a state of nature. [1](#)

In conclusion, those who deny the possibility of a political system, with a divided sovereignty like that of the U. S., must chuse between a government purely consolidated, & an association of Gov<sup>ts</sup>. purely federal. All republics of the former character, ancient or modern, have been found ineffectual for order and justice within, and for security without. They have been either a prey to internal convulsions or to foreign invasions. In like manner, all confederacies, ancient or modern, have been either dissolved by the inadequacy of their cohesion, or, as in the modern examples, continue to be monuments of the frailties of such forms. Instructed by these monitory lessons, and by the failure of an experiment of their own (an experiment w<sup>ch</sup>, while it proved the frailty of mere federalism, proved also the frailties of republicanism without the control of a Federal organization), [1](#) the U. S. have adopted a modification of political power, which aims at such a distribution of it as might avoid as well the evils of consolidation as the defects of federation, and obtain the advantages of both. Thus far, throughout a period of nearly half a century, the new and compound system has been successful beyond any of the forms of Gov<sup>t</sup>, ancient or modern, with which it may be compared; having as yet discovered no defects which do not admit remedies compatible with its vital principles and characteristic features. It becomes all therefore who are friends of a Gov<sup>t</sup> based on free principles to reflect, that by denying the possibility of a system partly federal and partly consolidated, and who would convert ours into one either wholly federal or wholly consolidated, in neither of which forms have individual rights, public order, and external safety, been all duly maintained, they aim a deadly blow at the last hope of true liberty on the face of the Earth Its enlightened votaries must perceive the necessity of such a modification of power as will not only divide it between the whole & the parts, but provide for occurring questions as well between the whole & the parts as between the parts themselves. A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a Gov<sup>t</sup> in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative umpire. The final appeal

in such cases must be to the authority of the whole, not to that of the parts separately and independently. This was the view taken of the subject, whilst the Constitution was under the consideration of the people. [See Federalist No. 39.] It was this view of it which dictated the clause declaring that the Constitution & laws of the U. S. should be the supreme law of the Land, anything in the const<sup>n</sup> or laws of any of the States to the contrary notwithstanding. [See Art. VI.] It was the same view which specially prohibited certain powers and acts to the States, among them any laws violating the obligation of contracts, and which dictated the appellate provision in the Judicial act passed by the first Congress under the Constitution. [See Art. I.] And it may be confidently foretold, that notwithstanding the clouds which a patriotic jealousy or other causes have at times thrown over the subject, it is the view which will be permanently taken of it, with a surprise hereafter, that any other should ever have been contended for.

TO — —.

March, 1836.

Mad. Mss.

D<sup>R</sup> Sir,—

The letter of Mr. Leigh to the Gen<sup>l</sup>. Assembly presents some interesting views of its important subject & furnishes an excuse for reflections not inapposite to the present juncture.

The precise obligation imposed on a representative, by the instructions of his constituents, still divides the opinions, of distinguished statesmen. This is the case in Great Britain, where such topics have been most discussed. It is also now the case, more or less, and was so, at the first Congress under the present Constitution, as appears from the Register of Debates, imperfectly as they were reported.

It being agreed by all, that whether an instruction be obeyed or disobeyed, the act of the Representative is equally valid & operative, the question is a moral one, between the Representative, and his Constituents. With him, if satisfied, that the instruction expresses the will of his constituents, it must be to decide whether he will conform to an instruction opposed to his judgment or will incur their displeasure by disobeying it and with them to decide in what mode they will manifest their displeasure. In a case necessarily appealing to the conscience of the Representative its paramount dictates must of course be his guide.

It is well known that the equality of the States in the Federal Senate was a compromise between the larger, & the smaller states, the former claiming a proportional representation in both branches of the Legislature, as due to their superior population; the latter, an equality in both, as a safeguard to the reserved sovereignty of the States, an object which obtained the concurrence of members from the larger States. But it is equally true tho' but little adverted to as an instance of miscalculating speculation that, as soon as the smaller States, had secured more than a proportional share in the proposed Government, they became favorable to



augmentations of its powers; & that under the administration of the Gov<sup>t</sup>., they have generally, in contests between it, & the State governments, leaned to the former. Whether the direct effect of instructions which could make the senators dependent on the pleasure of their Constituents, or the indirect effect inferred from such a tenure by Mr. Leigh, would be most favourable, to the General Government, or the state Governments, is a question which not being tested by practice, is left to individual opinions. My anticipations I confess do not accord with that in the letter.

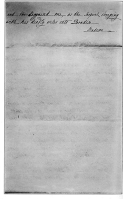
Nothing is more certain than that the tenure of the Senate, was meant as an obstacle to the instability, which not only history, but the experience of our Country, had shewn to be the besetting infirmity of popular Gov<sup>ts</sup>. Innovations therefore impairing the stability afforded by that tenure, without some compensating remodification of the powers of the Government, must affect the balance, contemplated by the Constitution.

My prolonged life has made me a witness of the alternate popularity, & unpopularity of each of the great branches of the Federal Government. I have witnessed, also, the vicissitudes, in the apparent tendencies in the Federal & State Governments to encroach each on the authorities of the other, without being able to infer with certainty, what would be the final operation of the causes as heretofore existing; whilst it is far more difficult, to calculate, the mingled & checkered influences, on the future from an expanding territorial Domain; from the multiplication of the parties to the Union, from the great & growing power of not a few of them, from the absence of external danger; from combinations of States in some quarters, and collisions in others, and from questions, incident to a refusal of unsuccessful parties to abide by the issue of controversies judicially decided. To these uncertainties, may be added, the effects of a dense population, & the multiplication, and the varying relations of the classes composing it. I am far however from desponding of the great political experiment in the hands of the American people. Much has already been gained in its favour, by the continued prosperity accompanying it through a period of so many years. Much may be expected from the progress and diffusion of political science in dissipating errors, opposed to the sound principles which harmonize different interests; from the Geographical, commercial, & social ligaments, strengthened as they are by mechanical improvements, giving so much advantage to time over space; & above all, by the obvious & inevitable consequences of the wreck of an ark, bearing as we have flattered ourselves the happiness of our country & the hope of the world. Nor is it unworthy of consideration, that the 4 great religious Sects, running through all the States, will oppose an event placing parts of each under separate Governments.

It cannot be denied that there are in the aspect our country presents, Phenomena of an ill omen, but it w<sup>d</sup>. seem that they proceed from a coincidence of causes, some transitory, others fortuitous, rarely if ever likely to recur, that of the causes more durable some can be greatly mitigated if not removed by the Legislative authority, and such as may require and be worthy the “intersit” of a higher power, can be provided for whenever, if ever, the public mind may be calm and cool enough for that resort.



FACSIMILE OF JAMES MADISON'S LAST MESSAGE TO HIS COUNTRYMEN  
IN MRS. MADISON'S WRITING



[1] See *ante*, Vol. IV., pp. 264, 327, 414.

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

In the letter Madison said.

“It is far from my purpose to resume a subject on which I have perhaps already exceeded the proper limits. But, having spoken with so confident a recollection of the meaning attached by the Convention to the term “migration” which seems to be an important hinge to the Argument, I may be permitted merely to remark that Mr. Wilson, with the proceedings of that assembly fresh on his mind, distinctly applies the term to persons coming to the U. S. *from abroad*, (see his printed speech, p. 59) and

that a consistency of the passage cited from the Federalist with my recollections, is preserved by the discriminating term “*beneficial*” added to voluntary emigrations from Europe to America.”—*Mad. MSS.* Wilson’s speech may be found in *Elliott’s Debates*, ii., 451.

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

[1] Article VII of the treaty of cession (1803) provided that “French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies, and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States.”—*Treaties and Conventions*, 333.

[1] *Appeal from the Judgment of Great Britain respecting the United States.* (1819.)

[2] Hertell sent Madison his pamphlet entitled “An Exposé of the causes of intemperate drinking and the means by which it may be obviated.”—*Mad. MSS.*

[1] November 29 Crolius transmitted an address of the Tammany Society on the subject of national economy and domestic manufactures.—*Mad. MSS.*

[1] See *ante*, Vol. VII., p. 162. Peletiah Webster’s pamphlet was: *A Dissertation on the Political Union and Constitution of the Thirteen United States of North America: which is necessary to their Preservation and Happiness, humbly offered to the Public, by a Citizen of Philadelphia.* Philadelphia: 1783. It was reprinted in 1908, as Pub. Doc. 461, 60th Cong., 1st Sess. (Senate.)

Apparently, Madison was unsuccessful in obtaining the pamphlet from Noah Webster for he wrote to Tench Coxe November 10, 1820:

In looking over my pamphlets & other printed papers, I perceive a chasm in the Debates of Congress between March 4, 1790 (being the close of No III of Vol IV, by T. Lloyd) & the removal of Congress from Philadelphia to Washington. May I ask the favor of you, if it can be done without difficulty, to procure for me the means of filling the chasm. I should be glad also to procure a pamphlet, “Sketches of American

policy by Noah Webster,” published in Philadelphia in 1784 or ’5; and another, “Pelitiah Webster’s dissertation on the political Union & Constitution of the thirteen U. States,” published in 1783 or ’4. Both of them have disappeared from my collection of such things.—*Mad. MSS.*

[1] The *Journal, Acts and Proceedings of the Convention*, etc., Boston, 1819, published by authority of joint resolution of Congress of March 27, 1818. *Ante*, III., p. xiv.

[1] The Missouri Act was approved March 6, 1820. Section 8 read: “That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in punishment of crimes . . . shall be and is hereby forever prohibited.”—*3 Stat.*, 548.

[1] Williams submitted a pamphlet on the causes of the commercial depression and a plan for reforming the currency.—*Mad. MSS.*

[1] From the original kindly loaned by Fredk. D. McGuire, Esq., of Washington.

[1] See *ante*, Vol. IV., p. 396.

[1] John W. Taylor, of New York, was elected speaker. The debate on the question of the admission of Missouri began November 23d.—*Annals of Congress*, 16th Cong., 2d Sess., p. 453.

[1] Coxe was not appointed. He died in 1824 aged seventy years.

[1] The letter is dated November 25, 1780.—*Ante*, Vol. I., p. 101.

[1] From Madison’s *Works* (Cong. Ed.). Corbin’s letter said that slavery and farming were incompatible and that he was thinking of emigrating to the North.—*Mad. MSS.*

[1] William Eustis was elected to Congress from Massachusetts in 1820 and served till 1823, when he was elected Governor of Massachusetts, holding the office until his death in 1825.

[1] The act of May 15, 1820, “to limit the term of office of certain officers,” provided that district attorneys, collectors of customs, naval officers, surveyors of customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary general, the assistant apothecaries general and the commissary general of purchases should be appointed for a term of four years, but should be removable at pleasure.

On this subject Madison wrote to Jefferson, January 7, 1821:

In the late views taken by us, of the Act of Congress, vacating periodically the Executive offices, it was not recollected, in justice to the President, that the measure

was not without precedents. I suspect however that these are confined to the Territorial establishments, where they were introduced by the Old Congs. in whom all powers of Govt. were confounded; and continued by the new Congress, who have exercised a like confusion of powers within the same limits. Whether the Congressional code contains any precedent of a like sort more particularly misleading the President I have not fully examined. If it does, it must have blindly followed the territorial examples.—*Mad. MSS.*

[1] See letter to Jefferson June 19, 1786, *ante*, Vol. II., p. 246. The work under discussion was William Godwin's *Of Population; an Enquiry Concerning the Power of Increase in the Numbers of Mankind, being an Answer to Mr. Malthus's Essay on the Subject*. London, 1820.

[1] See for exact no. Senator Smith's speech of last session.—*Madison's Note*.

[1] The case referred to is *Cohens v. Virginia*. Chief Justice Marshall handed down the decision, which is highly federal in tone.—6 *Wheaton*, 257.

Roane wrote five articles under the *nom de plume* Algernon Sydney, against the position of the Supreme Court. They were published in the *Richmond Enquirer* beginning May 25, 1821.

[1] "The opinion of the *Federalist* has always been considered as of great authority. It is a complete commentary on our constitution, and is appealed to by all parties in the questions to which that instrument has given birth. Its intrinsic merit entitles it to this high rank; and the part two of its authors performed in framing the constitution, put it very much in their power to explain the views with which it was framed."—6 *Wheaton*, 294.

[1] Commercial Advertiser, Aug. 18, 1821.—*Madison's note*.

[2] Gales sent the clipping with the remark: "If the whole work be of the same texture, it must be of little value, less authority."—*Mad. MSS.*

[1] Madison's note says: "See letter of 15th September, 1821, to Thomas Ritchie." It is as follows:

(*Confidential*)

Dear Sir,—

I have recd. yours of the 8th instant on the subject of the proceedings of the Convention of 1787.

It is true as the Public has been led to understand, that I possess materials for a pretty ample view of what passed in that Assembly. It is true also that it has not been my intention that they should forever remain under the veil of secrecy. Of the time when

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

Such being the course of my reflections I have suffered a concurrence & continuance of particular inconveniences for the time past, to prevent me from giving to my notes the fair & full preparation due to the subject of them. Of late, being aware of the growing hazards of postponement, I have taken the incipient steps for executing the task; and the expediency of not risking an ultimate failure is suggested by the Albany Publication, from the notes of a N York member of the Convention. I have not seen more of the volume than has been extracted into the Newspapers. But it may be inferred from these samples, that it is not only a very mutilated but a very erroneous edition of the matter to which it relates. There must be an entire omission also of the proceedings of the latter period of the session from which Mr. Yates & Mr. Lansing withdrew in the temper manifested by their report to their constituents; the period during which the variant & variable opinions, converged & centered in the modifications seen in the final act of the Body.

It is my purpose now to devote a portion of my time to an exact digest of the voluminous materials in my hands. How long a time it will require, under the interruptions & avocations which are probable, I cannot easily conjecture; not a little will be necessary for the mere labour of making fair transcripts. By the time I get the whole into a due form for preservation, I shall be better able to decide on the question of publication. As to the particular place or Press, shd this be the result, I have not as must be presumed, turned a thought to either. Nor can I say more now than that your letter will be kept in recollection, & that should any other arrangement prevail over its object, it will not proceed from any want of confidence esteem or friendly dispositions; of all which I tender you sincere assurances.—*Mad. MSS.*

[1] To Lafayette Madison wrote the same year (date not given).

“The Negro slavery is as you justly complain a sad blot on our free Country tho. a very ungracious subject of reproaches from the quarter wch. has been most lavish of them. No satisfactory plan has yet been devised for taking out the stain. If an adequate

asylum could be found in Africa that would be the appropriate destination for the unhappy race among us. Some are sanguine that the efforts of an existing Colonization Society will accomplish such a provision, but a very partial success seems the most that can be expected. Some other region must therefore be found for them as they become free and willing to emigrate. The repugnance of the Whites to their continuance among them is founded on prejudices themselves founded on physical distinctions, which are not likely soon if ever to be eradicated. Even in States, Massachusetts for example, which displayed most sympathy with the people of colour on the Missouri question, prohibitions are taking place against their becoming residents. They are every where regarded as a nuisance, and must really be such as long as they are under the degradation which the public sentiment inflicts on them. They are at the same time rapidly increasing from manumissions and from offsprings, and of course lessening the general disproportion between the slaves & the Whites. This tendency is favorable to the cause of a universal emancipation.”—*Mad. MSS.*

[1] The letter with the annexed copies of supporting letters was printed in Niles’ *Weekly Register*, January 26, 1822, Vol. xxi., p. 347. For the letter of November 25, 1780, to Joseph Jones, see *ante* I., 101; for that of December 5, 1780, to Jones, *Id.*, 110; for the joint letter of Theodorick Bland and Madison to Jefferson, December 13, 1780, *Id.*, 102, n.

[1] Drawn by J. M.—Madison’s note.

[1] The Florida treaty was proclaimed February 22, 1821; Monroe’s message recommending recognition of South American independence was dated March 8, 1822.

[1] Madison made the following memorandum on the subject (undated):

### ***Power Of The President To Appoint Public Ministers & Consuls In The Recess Of The Senate.***

The place of a foreign Minister or Consul is not an *office* in the constitutional sense of the term.

1. It is not created by the Constitution.
2. It is not created by a law authorized by the Constitution.
3. It cannot, as an office, be created by the mere appointment for it, made by the President & Senate, who are to fill, not create offices. These must be “established by law,” & therefore by Congress only.
4. On the supposition even that the appointment could create an office, the office would expire with the expiration of the appointment, and every new appointment



would create a new office, not fill an old one. A law reviving an expired law is a new law.

The place of a foreign Minister or Consul is to be viewed, as created by the Law of Nations to which the U. S. as an Independent nation, is a party; and as always open for the proper functionaries, when sent by the constituted authority of one nation, and received by that of another. The Constitution in providing for the appointment of such functionaries, presupposes this mode of intercourse as a branch of the Law of Nations.

The question to be decided is, What are the cases in which the President can make appointments without the concurrence of the Senate; and it turns on the construction of the power “to fill up all vacancies which may happen during the recess of the Senate.”

The term all embraces both foreign and municipal cases; and in examining the power in the foreign, however failing in exact analogy to the municipal, it is not improper to notice the extent of the power in the municipal.

If the text of the Constitution be taken literally no municipal officer could be appointed by the President alone, to a vacancy not *originating* in the recess of the Senate. It appears however, that under the sanction of the maxim, *qui hæret in litera hæret in cortice*, and of the argumentum *ab inconvenienti*, the power has been understood to extend, in cases of necessity or urgency, to vacancies happening to exist, in the recess of the Senate, though not coming into existence in the recess. In the case, for example, of an appointment to a vacancy by the President & Senate, of a person dead at the time, but not known to be so, till after the adjournment and dispersion of the Senate, it has been deemed within the reason of the constitutional provision, that the vacancy should be filled by the President alone; the object of the provision being to prevent a failure in the execution of the laws, which without such a scope to the power, must very inconveniently happen, more especially in so extensive a country. Other cases of like urgency may occur; such as an appointment by the President & Senate rendered abortive by a refusal to accept it.

If it be admissible at all to make the power of the President without the Senate, applicable to vacancies happening unavoidably to exist, tho’ not to originate, in the recess of the Senate, and which the public good requires to be filled in the recess, the reasons are far more cogent for considering the sole power of the President as applicable to the appointment of foreign functionaries; inasmuch as the occasions demanding such appointments may not only be far more important, but on the further consideration, that unlike appointments under the municipal law, the calls for them may depend on circumstances altogether under foreign controul, and sometimes on the most improbable & sudden emergencies, and requiring therefore that a competent authority to meet them should be always in existence. It would be a hard imputation on the Framers and Ratifiers of the Constitution, that while providing for casualties of inferior magnitude, they should have intended to exclude from the provision, the means usually employed in obviating a threatened war; in putting an end to its calamities; in conciliating the friendship or neutrality of powerful nations, or even in seizing a favourable moment for commercial or other arrangements material to the



public interest. And it would surely be a hard rule of construction, that would give to the text of the Constitution an operation so injurious, in preference to a construction that would avoid it, and not be more liberal than would be applied to a remedial statute. Nor ought the remark to be omitted that by rejecting such a construction this important function unlike some others, would be excluded altogether from our political system, there being no pretension to it in any other department of the General Government, or in any department of the State Govts. To regard the power of appointing the highest Functionaries employed in foreign missions, tho' a specific & substantive provision in the Constitution, as incidental merely, in any case, to a subordinate power, that of a provisional negotiation by the President alone, would be a more strained construction of the text than that here given to it.

The view which has been taken of the subject overrules the distinction between missions to foreign Courts, to which there had before been appointments, and to which there had not been. Not to speak of diplomatic appointments destined not for stations at foreign courts, but for special negotiations, no matter where, and to which the distinction would be inapplicable, it cannot bear a rational or practical test in the cases to which it has been applied. An appointment to a foreign court, at one time, unlike an appointment to a municipal office always requiring it, is no evidence of a need for the appointment at another time; whilst an appointment where there had been none before, may, in the recess of the Senate, be of the greatest urgency. The distinction becomes almost ludicrous when it is asked for what length of time the circumstance of a former appointment is to have the effect assigned to it on the power of the President. Can it be seriously alleged, that after the interval of a century, & the political changes incident to such a lapse of time, the original appointment is to authorize a new one, without the concurrence of the Senate; whilst a like appointment to a new court, or even a new nation however immediately called for, is barred by the circumstance that no previous appointment to it had taken place. The case of diplomatic missions belongs to the Law of Nations, and the principles & usages on which that is founded are entitled to a certain influence in expounding the provisions of the Constitution which have relation to such missions. The distinction between courts to which there had, and to which there had not been previous missions, is believed to be recorded in none of the oracular works on international law, and to be unknown to the practice of Governments, where no question was involved as to the *de facto* establishment of a Government.

With this exposition, the practice of the Government of the U. States has corresponded, and with every sanction of reason & public expediency. If in any particular instance the power has been misused, which it is not meant to suggest, that could not invalidate either its legitimacy or its general utility, any more than any other power would be invalidated by a like fault in the use of it.—*Mad. MSS.*

[1] This letter was shown to John Quincy Adams by Monroe and the part relating to appointments was read to the Cabinet.—*Adams's Diary*, v., 539; vi., 25.

[1] Adams, Secretary of State, Crawford, Secretary of the Treasury, and Calhoun, Secretary of War, were candidates for the nomination to succeed Monroe and at enmity with each other.

[1] Livingston's famous Report of the Plan of the Penal Code had just been published in New Orleans.

[1] The report was made by Mr. Jefferson, Mr. Pendleton, and Mr. Wythe.—*Madison's Note*.

[1] The attempt to give credit to Richard Henry Lee for part authorship of the Declaration of Independence appeared in the *Philadelphia Union and Federal Republican*, reprinted in the *Charleston Patriot*, and all copied in the *Richmond Enquirer*, August 6, 1822.

[2] See the Journal of that date (*Madison's Note*).

[1] On February 14, 1815, James T. Austin applied to Madison for the appointment of Comptroller of the Treasury.—*Mad. MSS.* Austin's *Life of Elbridge Gerry* appeared in 1828-'29. January 22, 1832, he wrote to Madison for information concerning Gerry's services in the Constitutional Convention for use in a revised edition of his book, which, however, never was published. Elbridge Gerry, Jr., wrote to Madison December 4, 1814, saying his father had impoverished himself and his family by his public services, and asked for an office.—*Mad. MSS.*

[1] See Jefferson's letter in *Writings* (P. L. Ford), xii., p. 274. Judge William Johnson wrote to Jefferson Dec. 10, 1822, from Charleston. "When I was on our State bench I was accustomed to delivering seriatim opinions in our appellate Court, and was not a little surprised to find our Chief-Justice in the Supreme Court delivering all the opinions in cases in which he sat, even in some Instances when contrary to his own Judgment & vote. But I remonstrated in vain; the answer was, he is willing to take the Trouble, & it is a Mark of Respect to him. I soon, however, found out the real cause. Cushing was incompetent, Chase could not be got to think or write, Patterson was a slow man & willingly declined the Trouble, & the other two Judges [Marshall and Bushrod Washington] you know are commonly estimated as one Judge." He had succeeded in getting the court to appoint some one to deliver the opinion of the majority and leave it to the minority's discretion to record its opinion or not. The real trouble was that the court was too numerous. "Among seven men," he said, "you will always find at least one intriguer, and probably more than one who may be acted upon only by intrigue." Four judges were enough. He would have the country divided into a Southern, a Western, a Middle, and an Eastern division and a judge appointed from each.—*Jefferson MSS.*

[1] *The Life and Correspondence of Nathaniel Greene*, Charleston, 1822.

[2] Alexander Hill Everett's *Europe: or a General Survey of the Present Situation of the Principal Powers; with Conjectures on their future Prospects. By a Citizen of the United States.* Boston, 1822.

[1] *Ante*, Vol. VII., p. 204.

[1] Christopher Gore printed a reply to Everett's *Europe in Remarks on the Censures of the Government of the United States contained in the Ninth Chapter of "Europe,"* etc. Boston, 1822.

[1] Jedediah Morse wrote to Madison from New Haven March 14, 1823, sending a printed list of questions "from a respectable Correspondent in Liverpool, deeply engaged in the Abolition of the Slave Trade, and the Amelioration of the condition of Slaves," and asking Madison to furnish brief answers. The questions follow:

1. Do the planters generally live on their own estates?
2. Does a planter with ten or fifteen slaves employ an overseer, or does he overlook his slaves himself?
3. Obtain estimates of the culture of Sugar and Cotton, to show what difference it makes where the planter resides on his estate, or where he employs attorneys, overseers, &c.
4. Is it a common or general practice to mortgage slave estates?
5. Are sales of slave estates very frequent under execution for debt, and what proportion of the whole may be thus sold annually?
6. Does the Planter possess the power of selling the different branches of a family separate?
7. When the prices of produce, Cotton, Sugar, &c., are high, do the Planters purchase, instead of raising, their corn and other provisions?
8. When the prices of produce are low, do they then raise their own corn and other provisions?
9. Do the negroes fare better when the Corn, &c., is raised upon their master's estate, or when he buys it?
10. Do the tobacco planters in America ever buy their own Corn or other food, or do they always raise it?
11. If they always, or mostly, raise it, can any other reason be given for the difference of the system pursued by them and that pursued by the Sugar and Cotton planters than that the cultivation of tobacco is less profitable than that of Cotton or Sugar?
12. Do any of the Planters manufacture the packages for their produce, or the clothing for their negroes? and if they do, are their negroes better clothed than when clothing is purchased?
13. Where, and by whom, is the Cotton bagging of the Brazils made? is it principally made by free men or slaves?

14. Is it the general system to employ the negroes in task work, or by the day?
15. How many hours are they generally at work in the former case? how many in the latter? Which system is generally preferred by the master? which by the slaves?
16. Is it common to allow them a certain portion of time instead of their allowance of provisions? In this case, how much is allowed? Where the slaves have the option, which do they generally choose? On which system do the slaves look the best, and acquire the most comforts?
17. Are there many small plantations where the owners possess only a few slaves? What proportion of the whole may be supposed to be held in this way?
18. In such cases, are the slaves treated or almost considered a part of the family?
19. Do the slaves fare the best when their situations and that of the master are brought nearest together?
20. In what state are the slaves as to religion or religious instruction?
21. Is it common for the slaves to be regularly married?
22. If a man forms an attachment to a woman on a different or distant plantation, is it the general practice for some accommodation to take place between the owners of the man and woman, so that they may live together?
23. In the United States of America, the slaves are found to increase at about the rate of 3 [Editor: illegible symbol] cent. [Editor: illegible symbol] annum. Does the same take place in other places? Give a census, if such is taken. Show what cause contributes to this increase or what prevents it where it does not take place.
24. Obtain a variety of estimates from the Planters of the cost of bringing up a child, and at what age it becomes a clear gain to its owner.
25. Obtain information respecting the comparative cheapness of cultivation by slaves or by free men.
26. Is it common for the free blacks to labour in the field?
27. Where the labourers consist of free blacks and of white men, what are the relative prices of their labour when employed about the same work?
28. What is the proportion of free blacks and slaves?
29. Is it considered that the increase in the proportion of free blacks to slaves increases or diminishes the danger of insurrection?

30. Are the free blacks employed in the defence of the Country, and do they and the Creoles preclude the necessity of European troops?
31. Do the free blacks appear to consider themselves as more closely connected with the slaves or with the white population? and in cases of insurrection, with which have they generally taken part?
32. What is their general character with respect to industry and order, as compared with that of the slaves?
33. Are there any instances of emancipation in particular estates, and what is the result?
34. Is there any general plan of emancipation in progress, and what?
35. What was the mode and progress of emancipation in those States in America where slavery has ceased to exist?—*Mad. MSS.*

[1] Eustis had just been elected governor of Massachusetts.

[1] See Jefferson to William Johnson, Oct. 27, 1822, and June 12, 1823.—*Jefferson's Writings* (P. L. Ford), xii., 246, 252, n.

[2] See *ante*, VI., No. 106, n.; also *Writings of Washington* (W. C. Ford), xii., 123; xiii., 194, 277.

[1] *Construction Construed*, by John Taylor, of Caroline. Richmond 1820.

[1] *Ante*, pp. 25, 65.

[1] On February 5, 1824, Madison wrote to Monroe again saying he wished information obtained from Jackson to show what was the form and date of the appointment of Major General accepted by him in his letter of June 20, 1814, to the Secretary of War, and when the appointment was to take effect. The reason for his questions is explained in his statement prepared in 1824 (but never printed) entitled: "Review of a statement attributed to Genl. John Armstrong, with an appendix of illustrative documents." The review said that in the *Literary and Scientific Repository*, October, 1821, a statement appeared stating that early in May, 1814, Armstrong had proposed that Jackson be appointed a Brigadier with the brevet rank of Major General, until a vacancy should permit his appointment as Major General, and that Madison had approved the arrangement. A communication was, accordingly, made to Jackson, but when Harrison's resignation was received and reported to Madison he was undecided. Armstrong, however, acted on the President's first approval and sent a commission to Jackson. The letters gathered by Madison showed that on May 14, 1814, Armstrong had proposed that Jackson be made a Brigadier with the brevet of Major General; that the President ordered Armstrong on May 17 to send a commission for that rank; that on May 20 Armstrong reported Harrison's resignation without any suggestion concerning Jackson; that on May 24 the President wrote

Armstrong that Harrison's resignation opened the way for a Major General's commission for Jackson, but he would suspend a final decision. In the meantime he returned the commission of Brevet Major General because he had not received the preliminary one of Brigadier. On May 22 Armstrong wrote to Jackson that commissions would be prepared appointing him Brigadier and Brevet Major General. On June 8 Jackson replied accepting this appointment. On May 28 Armstrong informed Jackson of his appointment as Major General to succeed Harrison. It was evident, according to Madison, that Armstrong was endeavoring to convey the false impression that he, and not Madison, really made the appointment. Madison's statement proceeds.

“Should it be asked why the individual in question [Armstrong] was placed, and, after such developments in his career, continued, at the head of the War Department, the answer will readily occur to those best acquainted with the circumstances of the period. Others may be referred for an explanation to the difficulty which had been felt in its fullest pressure, of obtaining services which would have been preferred, several eminent citizens to whom the station had been offered having successively declined it. It was not unknown at the time that objections existed to the person finally appointed, as appeared when his nomination went to the Senate, where it received the reluctant sanction of a scanty majority. Nor was the President unaware or unwarned of the temper and turn of mind ascribed to him, which might be uncongenial with the official relations in which he was to stand. But these considerations were sacrificed to recommendations from esteemed friends, a belief that he possessed, with known talents, a degree of military information which might be useful, and a hope that a proper mixture of conciliating confidence and interposing controul, would render objectionable peculiarities less in practice than in prospect. And as far as disappointments were experienced, it was thought better, to bear with them, than to incur, anew, the difficulty of finding a successor, with the inconveniences of an interval and a forced change in the head of the department of War, in the midst of war. This view of the subject continued to prevail, till the departure of the Secretary took place.”—*Mad. MSS.*

[1] On January 3, 1824, Madison wrote to George McDuffie who had introduced a joint resolution in Congress December 22 (*Annals of Cong., 18 Cong., 1st Sess., Vol. I, p. 851*) for amending the provision of the Constitution relative to the election of President and Vice-President:

“I agree equally with them in preferring an eventual choice of Presidt. & V. Presidt. by a joint ballot of the two Houses of Congress, to the existing provision for such a choice by the H. of Reps. voting by States. The Committee appear to me to be very right also in linking the amendments together, as a compromise between States who may mutually regard them as concessions.

“In the amendment relating to District elections of representatives it is provided that the Districts shall not be alterable previous to another Census, and the ‘Joint Resolution’ extends the prohibition to the Electoral Districts. As the return of a Census may not be within less than ten years, the regulation may become very inconvenient & dissatisfactory especially in new States, within different parts of

which the population will increase at such unequal rates. It would be a better provision that no change of Districts should take place within a period of preceding elections next in view, and to apply the rule to cases where Congress may have a right to interfere, as well as to the ordinary exercise of the power by the States.

“The power given by the ‘Joint Resolution’ to the Electors of P. & V. P. to fill up their own vacancies, & to appoint the two additional Electors, is liable to the Remark, that where there may be but a single Elector, casualties to him might deprive his State of its two additional Electors; and that a single Elector with a right to appoint two others, would have in effect three votes; a situation exposing him in a particular manner, to temptations of which the Constitution is jealous. The objection to such an augmented power applies, generally, with a force proportioned to the powers of Electors allotted to a State. There may be some difficulty in finding a satisfactory remedy for the case. In States entitled to but one Representative, the single district might choose the three Electors. In States having two Reps., each of its two Districts, by choosing two Electors, would furnish the quota of four. In all other States the difficulty would occur. And as uniformity is so justly an object, it would seem best to let the State Legislatures appoint or provide for the appointment of the two additional Electors, and for filling the Electoral vacancies, limiting the time within which the appointment must be made.

“Would it not be better to retain the word ‘immediately’ in requiring the two Houses to proceed to the choice of P. & V. P., than to change it into ‘without separating.’ If the change could quicken and ensure a final ballot, it would certainly be a good one. But as it might give rise to disputes as to the validity of an Election, after an adjournment and separation forced by a repetition of abortive ballotings, the existing term might perhaps as well remain & take its chance of answering its purpose. The distinction between a regulation which is directory only, and one a departure from which would have a viciating effect, is not always obvious; and in the delicate affair of electing a Chief Magistrate it will be best to hazard as little as possible a discussion of it.

“In the appeal to the second meeting of Electors, their choice is limited to the *two* names having the highest number of votes given at the first meeting. As there may be an equality of votes among several highest on the list, the option ought to be enlarged accordingly, as well with a view to obviate uncertainty, as to deal equally with equal pretensions.

“The expedient of resorting to a second meeting of the Presidential Electors, in order to diminish the risk of a final resort to Congress, has certainly much to recommend it. But the evil to be guarded as it would lose not a little of its formidable aspect, by the substitution of a joint ballot of the members of Congress, for a vote by States in the Representative branch: which the prolonged period during which the Electors must be in appointment before their final votes would be given, relinquishes the contemplated advantage of functions to be so quickly commenced and closed as to preclude extraneous management & intrigue. The increased trouble and expence are of minor consideration, tho’ not to be entirely disregarded. It may be more important to remark, that in cases where from an equality of votes in the Electoral List, more than two

names might be sent back to the Electors, very serious embarrassments & delays might happen from miscalculations or perverse dispositions in some of so many distinct meetings, and that after all, no perfect security would exist agst. an ultimate devolution of the choice on Congress. Still it may be a fair question whether a second meeting of Electors, with its prospect of preventing an election by the members of the Legislature, would not be preferable to a single meeting with the greater probability of a resort to them.”—Copy kindly loaned by W. H. Gibbes, Esq. of Columbia, S. C.

On January 30, 1826, he wrote to Robert Taylor, concerning the proposed amendment to the Constitution introduced in the Senate Dec. 15, 1825.

“It seems to be generally agreed that some change in the mode of electing the Executive Magistrate is desirable, that would produce more uniformity & equality, with a better security for concentrating the major will of the nation, and less risk of an eventual decision in the national Legislature.

“The amendment reported by the Committee of the Senate is very ably prepared & recommended. But I think there are advantages in the intervention of Electors, and inconveniences in a direct vote by the people, which are not sufficiently adverted to in the Report.

“One advantage of Electors is, that as Candidates, & still more as competitors personally known in the Districts, they will call forth the greater attention of the people: another advantage is, that altho’ generally the mere mouths of their Constituents, they may be intentionally left sometimes to their own judgment, guided by further information that may be acquired by them: and finally, what is of material importance, they will be able, when ascertaining, which may not be till a late hour, that the first choice of their constituents is utterly hopeless, to substitute in the electoral vote the name known to be their second choice.

“If the election be referred immediately to the people, however they may be liable to an excess of excitement on particular occasions, they will on ordinary occasions and where the candidates are least known feel too little; yielding too much to the consideration that in a question depending on millions of votes individual ones are not worth the trouble of giving them. There would be great encouragement therefore for active partizans to push up their favorites to the upper places on the list and by that means force a choice between candidates, to either of whom others lower on the list would be preferred. Experience gives sufficient warning of such results.

“An election by Districts, instead of general tickets, & State Legislatures, and an avoidance of a decision by the House of Representatives voting by States, would certainly be changes much for the better: and a combination of them may be made perhaps acceptable both to the large and to the small States. I subjoin the sketch of an elective process which occurred to me some years ago, but which has never been so thoroughly scrutinized as to detect all the flaws that may lurk in it.”—*Chic. Hist. Soc. MSS.*



[1] See Monroe's *Writings* (Hamilton), VI., 323, *et seq.* On Nov. 1, Madison wrote to Jefferson:

“With the British power & navy combined with our own we have nothing to fear from the rest of the World; and in the great struggle of the Epoch between liberty and despotism, we owe it to ourselves to sustain the former in this hemisphere at least. I have even suggested an invitation to the B. Govt to join in applying the ‘small effort for so much good’ to the French invasion of Spain, & to make Greece an object of some such favorable attention. Why Mr. Canning & his colleagues did not sooner interpose against the calamity wch. could not have escaped foresight cannot be otherwise explained but by the different aspect of the question when it related to liberty in Spain, and to the extension of British Commerce to her former Colonies.”—*Mad. MSS.*

[1] April 13, 1824, Madison wrote to Monroe.

“I never had a doubt that your Message proclaiming the just & lofty sentiments of ten millions, soon to become twenty, enjoying in tranquil freedom the rich fruits of successful revolution, would be recd in the present crisis of Europe with exulting sympathies by all such men as Fayette, and with envenomed alarm by the partisans of despotism. The example of the U. S. is the true antidote to the doctrines & devices of the Holy Allies, and if continued as we trust it will be, must regenerate the old world, if its regeneration be possible.”—*Mad. MSS.*

[1] (See Vol. II., p. 326 of the Secret Journals now in print which I presume you have)—*Madison's note.* See for the report *ante* Vol. I., p. 82; for the letter, Vol. II., p. 64. On Feb. 27, 1824, Madison wrote Rush:

“Almost at the moment of receiving yours of Decr. 28, my hand casually fell on the inclosed scrap, which I must have extracted from the Author,<sup>2</sup> [borrowed for the purpose] on some occasion when the right of navigating the Mississippi engaged my attention. I add it to my former inclosures on that subject, merely as pointing to one source of information which may lead to others fuller & better.”—*Mad. MSS.*

[1] Alexander Hill Everett's *New Ideas on Population, with Remarks on the Theories and Godwin of Malthus*. London and Boston, 1822. See Madison to Jefferson, *ante*, Vol. II., p. 246.

[1] Barbour was then a Senator from Virginia. He said in his letter: “The most important part [of the President's message] will refer, but remotely however, to the probable interference of the Allied Powers in the internal concerns of the Spanish provinces. The information received furnishes too much ground to believe that a design of that sort is seriously meditated. I have a serious thought of proposing a resolution advising the President to co-operate by treaty with Great Britain to prevent it. If it be not asking too much of you I should be very much gratified with your views on this interesting subject.”—*Mad. MSS.*

[2] Madison wrote to Monroe, December 6:

“I rec., by yesterday’s mail your favor of the 4th, covering a copy of the Message & another copy under a blank cover. It presents a most interesting view of the topics selected for it. The observations on the foreign ones are well moulded for the occasion, which is rendered the more delicate & serious by the equivocal indications from the Brit. Cabinet. The reserve of Canning after his frank & earnest conversations with Mr. Rush is mysterious & ominous. Could he have stepped in advance of his Superiors? or have they deserted their first objects? or have the allies shrunk from theirs? or is any thing taking place in Spain which the adroitness of the Brit Govt. can turn agst. the allies, and in favor of S. America? Whatever may be the explanation, Canning ought in Candour, after what had passed with Mr. Rush, not to have withheld it; and his doing so enjoins a circumspect reliance on our own Councils & energies. One thing is certain that the contents of the Message will receive a very close attention every where, and that it can do nothing but good anywhere.”—*Mad. MSS.*

[1] *New Views of the Constitution of the United States*. By John Taylor of Caroline, Washington, 1823. Taylor was at this time a Senator from Virginia.

[1] From the original kindly contributed by Miss Sally J. Newman, “Hilton,” Va.

[1] *On the proposed alteration of the tariff submitted to the consideration of the members of South Carolina in the ensuing Congress*. Columbia, 1824.

[1] Notice of his death arrived before this was sent.—*Madison’s Note*. Under date February 29, 1824, Cartwright sent Madison his book, *England’s Constitution, produced and illustrated*.—*Mad. MSS.*

[1] The relations between Madison and Livingston which had not been cordial for some years were now amicable. Madison wrote Monroe April 13, 1824: “Mr. Livingston may be assured that I never considered our personal relations to be other than friendly and that I am more disposed to cherish them by future manifestations than to impair them by recollections of any sort.”—*Mad. MSS.*

[1] The convention relative to navigation, fishing, and trading in the Pacific and to establishments on the northwest coast between the United States and Russia was concluded April 17, 1824, at St. Petersburg.—*Treaties and Conventions*, (Ed. 1889), p. 931.

[1] *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States*. Philadelphia, 1824.

[1] By these the common Law or any other laws may be sanctioned or introduced within the territories or other places subject to the conclusive power of Legislation vested in Congress.—*Madison’s Note*.

[1] The list enclosed was as follows:

- Cent<sup>y</sup>. I. --- Clemens Epist<sup>e</sup>. to the Corinthians - published at Cambridge 1788.  
 Ignatius Epist<sup>s</sup> - - - - - Amsterdam 1607.  
 Cotelier - Recueil de Monumens des pères dans les tems apostoliques edit par le Cleve Amsterdam 1774, 2 v. fol.  
 Flavius Josephus [in English by Whiston] Amsterdam 1726, 2v. fol.  
 Philo Judaeus [Greek & Latin] English Ed<sup>n</sup>. 1742, 2 v. fol, Lucian's Works - - - Amsterdam 1743, 3 v. 4°.  
 Fabricius Biblio Græc:  
 - - - - Delectus &c. See Mosh<sup>m</sup>. v. 1, p. 106.
- Cent: II. Justin Martyrs apolos, &c. [Edited by Prudent Maraud Benedictine] 1742, 1 v. fol.  
 Hermias - - Oxford 1700 - 8°.  
 Athenagoras - - Oxford 1706 - 8°.  
 Clemens Alexandrinus [Ed. by Potter] Oxford 1715 2 vol. fol.  
 Tertullian - - - - - Venice 1746, 1 v. fol., Theophilus of Antioch [first adopted the term Trinity] - 1742 1 v. fol.  
 Irenaeus [Ed. by Grabe] 1702, 1 v. fol.  
 Tatian - agst the Gentiles - Oxford, 1700, 8°.  
 Ammonius Saccas's Harmony of the Evangelists-  
 Celsus [translated par Bouhereau] Amsterdam 1700 4°.
- Cent. III. Minutius Felix [translated by Reeves] Leiden 1672, 8°.  
 Origen - - - 4 vol. fol. Greek & Latin.  
 Cyprian - - [translated into French by Lombert] 1 v. fol.  
 Gregory Thaumaturgus-Grec. & Lat. 1626, 1 v. fol.  
 Arnobius Africanus. Amsterdam 1651, 1 v. 4°.  
 Anatolius - - - - - Antwerp, 1634, 1 v. fol.  
 Methodius Eubulius - Rome 1656, 8°.  
 Philostratus life of Apollonius Tyanaeus [Grec. & Lat. with notes by Godefroy Olearius, Leipsic, 1709, 1 v. fol: Frenched by De Vigenere, Englished in part by Chs. Blount]
- Cent: IV. Lactantius.—Edit by Lenglet Paris 1748, 2 v. 4°.  
 Eusebius of Cæsarea - -  
 Athanasius, par Montfauçon 1698, 3 v. fol.  
 Antonius' [founder of the Monastic order] seven letters &c. Latin.  
 S<sup>t</sup>. Cyril (of Jerusalem) Gr. & Lat. Paris 1720, 1 v. fol.  
 S<sup>t</sup>. Hilary. Ed. by Massci Verona 1730.  
 Lucifer, Bishop of Cagliari. Paris 1586 1 v. 8°.  
 Epiphanius. Gr. & Lat. Edit Pere Petau, 1622, 2 v. fol.  
 Optatus. Ed. by Dupin, 1700. fol.  
 Pacianus. Paris, 1538. 4°.  
 Basil (B. of Cæsarea) Gr. & Lat. 1721, 3 v. fol.  
 Gregory (of Nazianzi) G. & L. Paris 1609-11 2 v. fol.

1 With life by Kippis 1788.—*Madison's Note*.

- - - - (of Nyssa) 1615 2 v. fol.  
Ambrosius—Paris 1690 2 v. fol.  
Jerome. - - - Paris 1693-1706, 5 v. fol.  
Ruffinus - - Paris 1580 - - - 1 v. fol.  
Augustin - - - - 1679-1700 8 v. fol.  
Chrysostom John Gr. & L.— 10 v. fol.  
Ammianus Marcellinus  
Julian's works  
Cent: V. Sulpicius Severus. Verona 1754, 2 v. 4°.  
Isidorus (of Pelusium) Paris 1638. Gr. & L. 1 v. fol.  
Cyril (of Alex<sup>a</sup>) Gr. & L. 6 v. fol.  
Orosius - - Leyden. 1738, 4°.  
Theodoret. Edit by Pere Simond. G. & L. 1642. 4 v. fol. in 1684, vol. V. by Garnier.  
Philostorgius, by Godefroi. G. & L. 1642, 1 v. 4°.  
Vincentius Lyrinensis. Rome. 4°.  
Socrates' Eccles. History.  
Sozomen. d<sup>o</sup>. d<sup>o</sup>.  
Leo (the great) by Quesnel Lyons. 1700, fol.  
Æneas (of Gaza) Gr. with Latin version, by Barthius &c. 1655, 4°.  
Miscellaneous Thomas Aquinas [Do<sup>r</sup>. Angelicus] Head of the Thomists, 12 v. fol.  
The Koran, Duns Scotus [Doctor Subtilis] Head of the Scotists, 12 v. fol.  
Caves Lives of the Fathers. Dailles Use & abuse of them.  
Erasmus, Luther, Calvin, Socinus, Bellarmin, Chilling-worth.  
Council of Trent by F. Paul; by Palavicini; by Basnaze.  
Grotius on the truth of Xn Religion. Sherlock's [Bishop] Sermons.  
Tillotsons &c. Tillemont, Baronius, Lardner, [1](#) Hookers Ecclesiastical Polity. Pierson on the Creed. Bossuet on 39 Articles Pascal's lettres Provinciales. do Pensées. Fenelon Bossuet.  
Bourdelon Sauvin Fletcher Manillon. Warburton's Divine Legation.  
Hannah Adams—View of all Religions.  
Stackhouses - - Hist. of the Bible.  
S<sup>r</sup>. Isaac Newtons works on Religious subjects.  
Locke's do. Stillingfleets controversy with him on the possibility of endowing matter with thought.  
Clarke on the Being & Attributes of God.  
- - - Sermons.  
Butler's Analogy. Eight Sermons at Boyles. Lectures by Bentley.  
Whitby on the 5 points.  
Whiston's Theological Works.  
Taylor (Jeremiah) Sermons.  
[1](#) With life by Kippis 1788.—*Madison's Note*.

John Taylor [of Norwich] ag<sup>st</sup> original Sin Edward's in answer.  
Edward's on free will - - - on virtue.  
Soame Jenyn's Enquiry into the nature & origin of evil Liturgy for  
King's Chapel Boston.  
Matheis Essays to do good. Price on Morals.  
Wallaston's Religion of Nature delineated.  
Barclay's apology for Quakers. W<sup>m</sup>. Penn's works.  
King's Enquiry into the Constitution discipline & worship of the  
Church, within 3 first cent.  
King [W<sup>m</sup>.] Essay on Origin of Evil; notes by Law. Wesley on  
Original Sin.  
Priestley's & Horesley's controversies.  
Historical view of the Controversy on the intermediate state of the  
Soul by Dean Blackburne.  
The Confessional by same.  
Jone's method of settling the canonical Scripture of N. Test<sup>t</sup>.  
Leibnitz on Goodness of God, liberty of man & origin of evil.  
Paley's Works. Warburton's principles of Nat. & Rev<sup>d</sup>. Religion.  
Blairs Sermons. Buckmeisters (of Boston) do.  
Necker's importance of Religion.  
Latrobe's (Benjamin) Doctrine of the Moravians.  
Ray's wisdom of God in the Creation.  
Durham's Astrotheology.  
Bibliotheca fratrum Polonorum 9 vol. fol.

[1](#) With life by Kippis 1788.—*Madison's Note*.

The Catalogue of Eastburn & Co. New York, particularly the Theological part at the end, deserves attention. Some rare books are found in it, and might probably be bought at cheap prices.—*Mad. MSS.*

[\[1\]](#) July, 1826. For a more recollected view of this matter, see an account of the origin & progress of the "Constitution of Virginia," by J. M. & among his papers.—*Madison's Note*. See *ante*, Vol. I., p. 32.

[\[2\]](#) From the family papers of the late J. Henley Smith, Esq., of Washington, D. C. When Lafayette arrived Madison wrote to him, August 21, 1824:

"I this instant learn, my dear friend, that you have safely reached the shores, where you will be hailed by every voice of a free people. That of no one, as you will believe, springs more from the heart than mine. May I not hope that the course of your movements will give me an opportunity of proving it, by the warmth of my embrace on my own threshold. Make me happy by a line to that effect when you can snatch a moment for a single one from the eager gratulations pouring in upon you."—*Mad. MSS.*

[1] The House of Representatives was about to vote for the candidates for the Presidency and elected John Quincy Adams over Crawford and Jackson, on February 9th.

[1] Biddle was then President of the United States Bank. He replied April 26th that the bank had adopted a rule forbidding the advance of money on real estate for indeterminate periods.

[1] The apoplectic attack & its effect as related by Dr Waterhouse should be extracted from his letter and accompany this—*Madison's Note*. Waterhouse wrote June 30th from Cambridge:

“You may have seen in the papers that the miserable General H[ull] has been treated with a public dinner; at which presided a son of the late worthy Govr. Sullivan, and nephew to the General—a degenerate plant of a strange (foreign) vine—the bitterest, & most inveterate of the whole high-federal gang—a man notorious for having dishonored his Father and his Mother, and who had doubtless congenial feelings with the military convict.

“I mentioned that Hull had a stroke of apoplexy, a year, perhaps, before his appointment of General on the Canada expedition. I have refreshed my memory since I came home, and therefore repeat, that a few miles from my house, at a review of the Middlesex militia, whereof the late Speaker General Varnum was commanding officer, General Hull fell senseless, and, if I recollect rightly, was carried home in that condition; from which time, he never appeared to be the man he was before, insomuch that I remember people spoke of it, when his appointment was announced.—The gallant General Miller called on me yesterday when we refreshed each other's memories on the events of Hull.”—*Mad. MSS.*

[1] These peculiarities, it wd. seem are not of equal force in the South American States, owing in part perhaps to a former degradation produced by colonial vassalage, but principally to the lesser contrast of colours. The difference is not striking between that of many of the Spanish & Portuguese Creoles & that of many of the mixed breed.—*Madison's Note*. Miss Wright's pamphlet was *A Plan for the gradual abolition of Slavery in the United States without danger or loss to the Citizens of the South*, Baltimore, 1825.

[1] George Rapp, founder of the sect of Harmonists or Harmonites.

[1] *Vindication of the Argument a priori in Proof of the Being and Attributes of God, from the Objection of Dr. Waterland.*

[1] The paper was the draft of a protest drawn up by Jefferson with a view to its adoption by the Virginia assembly. *Jefferson's Writings* (P. L. Ford), xii., 418 n.

[1] The extract was as follows:

“The Secretary of State will not deny that, whatever may have been the intentions of

the framers of a constitution or of a law; that intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Nothing is more common than for laws to express and effect more or less than was intended. If, then, a power to erect a corporation in any case, be deducible by fair inference from the whole, or any part, of the numerous provisions of the constitution of the U. States, arguments drawn from extrinsic circumstances regarding the intention of the convention, must be rejected.”

Washington’s message of March 24, 1796, said:

“Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject. . . .

“There is also reason to believe that this construction agrees with the opinions entertained by the State Conventions, when they were deliberating on the Constitution. . . .

“If other proofs than these, and the plain letter of the Constitution itself, be necessary to ascertain the point under consideration, they may be found in the Journals of the General Convention, which I have deposited in the office of the Department of State. In those Journals it will appear, that a proposition was made ‘that no treaty should be binding on the United States which was not ratified by a law,’ and that the proposition was explicitly rejected.”—*Annals of Cong.*, 4th Cong., 1st Sess., p. 761.

[1] From the original kindly loaned by Frederick D. McGuire, Esq., of Washington, D. C.

[1] See Jefferson’s recital of his financial reverses in his letter.—*Jefferson’s Writings* (P. L. Ford), xii., 457.

[1] From “A Collection of Papers on Political, Literary and Moral Subjects.” By Noah Webster, LL.D. New York, 1843, p. 172.

See the letter of Oct. 12, 1804, to Webster, *ante*, Vol. VII., p. 164, which this letter amends. The member who introduced Madison’s motion in the Virginia legislature was John Tyler.

[1] Jefferson died July 4th.

[1] Copy of the original in the Virginia Historical Society. The enclosure was a copy of the Memorial and Remonstrance against religious assessments. See *ante*, Vol. II., p. 183.

[1] Van Buren wrote from Albany that he intended to propose an amendment to the constitution on the subject of internal improvements in the next Congress, having already done so in the last two sessions. He would be pleased if Madison would draft the amendment.—*Mad. MSS.*



[1] On October 15 Madison wrote to Van Buren acknowledging the receipt of the report of the committee on roads and canals: “The committee have transcended all preceding advocates of the doctrine they espouse, in appealing to the old articles of Confederation for its support. Whatever might have been the practice under those articles it would be difficult to shew that it was always kept within the prescribed limits. The Revolutionary Congress was the Offspring of the great crisis, and the exercise of its powers prior to the final ratification of the articles, governed by the law of necessity, or palpable expediency. And after that event there seems to have been often more regard to the former latitude of proceeding than to the text of the Instrument; assumptions of power apparently useful, being considered little dangerous in a Body so feeble, and so completely dependent on the authority of the States. There is no evidence however that the old Congress ever assumed such a construction of the terms ‘Com<sup>o</sup>n defence & general welfare’ as is claimed for the new. Nor is it probable that Gen: Washington in the sentiments quoted from or for him, had more in view than the great importance of measures beyond the reach of individual States, and, if to be executed at all, calling for the general authority of the Union. Such modes of deducing power, may be fairly answered by the question, what is the power that may not be grasped with the aid of them?”—*Mad. MSS.*

[1] From the original owned by the late J. Henley Smith of Washington. Smith’s address was printed in 1827 (Washington): “Memoir of the life, character and writings of Thomas Jefferson; delivered in the Capitol, before the Columbian institute on the sixth of January, 1827, and published at their request.”

[1] The work was printed by Thomas Jefferson Randolph. It may be seen in the *Works of Jefferson* (P. L. Ford), Federal Edition, i., 3.

[1] She came to the United States in 1825 at Lafayette’s suggestion.

[1] From the original kindly loaned by Mrs. Sally Newman, “Hillton,” Va.

[1] From the original owned by the late J. Henley Smith, of Washington, D. C.

[1] To Henry Lee, February, 1827, Madison wrote:

“The plan in question embraced—1. An expedition into Lake Huron with 4 or 5 vessels, & 800 or 1,000 men, to obtain possession of Mackinaw & St. Josephs. 2. An expedition with the forces under General Brown, to Burlington Heights preparatory to further operations for reducing the Peninsula; the expedition to depend on Chauncey’s getting the command of Lake Ontario without which supplies could not be secured. 3. the building of 14 or 15 armed boats at Sacket’s Harbour, so to command the St Lawrence under the protection of posts to be supplied from Izard’s command, as to intercept the communication between Montreal & Kingston. 4. The main force under Izard to make demonstrations towards Montreal, in order to divert the Enemy from operations westward, and afford the chance of compelling Prevost to fight disadvantageously, or break up his connection with Lake Champlaine.



“I pass to the reference you make to certain appointments both for the army and for the Cabinet. Selections for office, always liable to error was particularly so for military command at the commencement of the late war. The survivors of the Revolutionary band who alone had been instructed by experience in the field were but few; and of those several of the most distinguished, were disqualified by age or infirmities, or precluded by foreknown objections in the advisory Branch of the appointing Department. This last cause deprived the army of services which would have been very acceptable to the nominating Branch. Among those who had acquired a mere disciplinary experience, no sufficient criterion of military capacity existed; and of course they had to undergo tests of another sort, before they were marked out for high military trusts.

“That the appointment of Hull was unfortunate, was but too soon made certain. Yet he was not only recommended from respectable quarters, but by his ostensible fitness also. He was a man of good understanding. He had served with reputation, and even some *eclât* in the Revolutionary Army; He had been the Govr. at Detroit, and could not but be acquainted with the population & localities on the hostile as well as on his own side of the boundary; And he had been the superintendant of our Affairs with the Indians, a knowledge of which was of much importance. These advantages seemed to give him not only a preference, but an appropriateness for his trust. They were nevertheless fallacious; and it is not unworthy of recollection, that after the disaster which proved it, some who had been most warm in his recommendation, were most ready to condemn the confidence put in him.

“The appointment of Genl. Dearborn is also very unfavorably noticed. To say nothing of his acknowledged bravery & firmness, his military experience & local knowledge acquired during the Revolutionary war, had their value. And he had administered the Department of War for 8 years, to the satisfaction of the then President who thought well not only of his specific qualifications; but generally of his sound and practical judgment. To these considerations were added a public standing calculated to repress jealousies in others, not easy to be guarded agst. in such cases, and always of the worst tendency; It may well be questioned, whether any substituted appointment would at the time have been more satisfactory.

“The advanced position in the service, given to General Smyth was much to be regretted. Some of the circumstances which led to it were specious, and the scale & cultivation of his understanding very respectable, but his talent for military command was equally mistaken by himself, and by his friends.

“Before I advert to your review of Cabinet appointments, I must allude to the field of choice *as narrowed* by considerations never to be wholly disregarded. Besides the more essential requisites in the candidate, an eye must be had to his political principles and connexions, his personal temper and habits, his relations of feelings towards those with whom he is to be associated; and the quarter of the Union to which he belongs. These considerations, the last as little as any are not to be disregarded, but in cases where qualifications of a transcendant order, designate individuals, and silence the patrons of competitors whilst they satisfy the public opinion. Add to the whole, the necessary sanction of the Senate; and what may also be refused, the

necessary consent of the most eligible individual: You are probably very little aware of the *number of refusals* experienced during the period to which your observations apply.

“I must be allowed to express my surprize at the unfavorable view taken of the appointment of Mr. Jones. I do not hesitate to pronounce him the fittest minister who had ever been charged with the Navy Department. With a strong mind well stored with the requisite knowledge, he possessed great energy of character and indefatigable application to business. I cannot doubt that the evidence of his real capacity, his appropriate acquirements, and his effective exertions, in a most arduous service, & the most trying scenes, now to be found on the files of the Department, as well as my own, would reverse the opinion which seems to have been formed of him. Nor in doing him justice ought it to be omitted that he had on his hands, the Treasury as well as Navy Department, at a time when both called for unusual attention, and that he did not shrink from the former, for which he proved himself qualified, till the double burden became evidently insupportable.

“Mr. Campbell was the only member of the Cabinet from the West whose claims to a representation in it, were not unworthy of attention under existing circumstances. It was not indeed the quarter most likely to furnish fiscal qualifications; but it is certain that he had turned his thoughts that way, whilst in public life more than appears to have been generally known. He was, moreover, a man of sound sense, of pure integrity, and of great application. He held the office at a period when the difficulties were of a sort scarcely manageable by the ablest hands, and *when the ablest hands were least willing to encounter them*. It happened also that soon after he entered on his task, his ill health commenced, & continued to increase till it compelled him to leave the department.

“Of Mr. Crowninshield it may be said without claiming too much for him, that he had not only recd. public testimonies of respectability in a quarter of the Union feeling a deep interest in the Department to which he was called, but added to a stock of practical good sense, a useful stock of nautical experience and information; and an accommodating disposition particularly valuable in the head of that Department, since the auxiliary establishment of the Navy Board, on which the labouring oar now devolves. Superior talents without such a disposition, would not suit the delicacy of the legal relations between the Secretary & the Board, and the danger of collisions of very embarrassing tendency.

“As you have made no reference to Doctr. Eustis, I ought perhaps to observe a like silence. But having gone so far on the occasion, I am tempted to do him the justice of saying that he was an acceptable member of the Cabinet, that he possessed an accomplished mind, a useful knowledge on military subjects derived from his connexion with the Revolutionary army, and a vigilant superintendance of subordinate agents; and that his retreat from his station, proceeded from causes not inconsistent with these endowments. With the overload of duties required by military preparations on the great scale enjoined by law, and the refusal to him of assistants asked for who were ridiculed as crutches for official infirmity, no minister could have sustained himself; unless in the enjoyment of an implicit confidence on the part of the

public, ready to account for every failure, without an impeachment of his official competency. In ordinary times Eustis wd. have satisfied public expectation, & even in those he had to struggle with, the result wd. have been very different with organizations for the War Dept. equivalent to what has been found so useful in a time of peace for an army reduced to so small an establishment.—*Mad. MSS.*

[1] The report was submitted by Thomas H. Benton, March 1.

[1] “You will perceive that the Genl. Assembly has again pronounced the opinion that Duties for the protection of domestic manufactures are unconstitutional. I made an effort to amend the resolution in the Senate so as to declare the increased duties of 1824 impolitic and unwise, but lost the motion by a vote of 14 to 8. . . . In the debate in the House of Delegates, Genl. Taylor quoted the opinion of Mr. Jefferson as expressed in his messages to Congress. Mr Giles declared in reply that he knew that Mr. Jefferson had changed his opinion as to the Constitutionality of protecting Duties, & referred to a private letter which he had received from him. I have not seen the letter myself: but I believe a letter has been shewn to some of the members.” Cabell to Madison, Richmond, March 12, 1827.—*Mad. MSS.* See Jefferson to Giles, December 25, 1825. (*Writings*, Ford, xii., 424, Federal Edition.)

[1] Wanderings in Washington.—*Madison’s Note.*

[1] *Ante*, Vol. I., p. 32.

[1] Richard Rush, as Secretary of the Treasury, in his report for 1827 advanced the usual protectionist argument in favor of the benefit to agriculturalists of a better market from the increased number of artisans. *Cong. Debates*, 20th. Cong., 1st Sess., p. 2824.

[1] The MS. draft has the word “erased” here followed by “Hamilton,” which is struck out.

[1] Madison’s declination was addressed to Francis Brooke and printed in the *Richmond Enquirer* March 4:

Montpellier, Feby 22, 1828.

Dear Sir,

The mail of last evening brought me your circular communication, by which I am informed of my being nominated by the Convention at Richmond on the 8th of Jany one of the Electors recommended for the next appointment of Chief Magistrate of the U. States.

Whilst I express the great respect I feel to be due to my fellow Citizens composing that assembly, I must request that another name be substituted for mine on their Electoral ticket.

After a continuance in Public Life, with a very brief interval, through a period of more than forty years, and at the age then attained, I considered myself as violating no duty, in allotting for what of life might remain, a retirement from scenes of political agitation & excitement. Adhering to this view of my situation, I have forborne during the existing contest, as I had done during the preceding, to participate in any measures of a party character; and the restraint imposed on myself, is necessarily strengthened by an admonishing sense of increasing years. Nor, with these considerations could I fail to combine, a recollection of the Public relations in which I had stood to the distinguished Individuals now dividing the favour of their country, and the proofs given to both, of the high estimation in which they were held by me.

In offering this explanation, I hope I may be pardoned for not suppressing a wish, which must be deeply & extensively felt, that the discussions incident to the depending contest, may be conducted in a spirit and manner, neither unfavorable to a dispassionate result, nor unworthy of the great & advancing cause of Representative Government.—*Mad. MSS.*

[1] The speech was on the right of the Vice-President to call a senator to order for words spoken in debate. He said: “. . . But the leading division in the Convention was between those who, distrustful of the States, sought to abridge their powers, that those of the new government might be enlarged; and those who, on their part, distrustful, perhaps jealous of the government about to be created, were as strenuous to retain all powers not indispensably necessary to enable the federal government to discharge the specified and limited duties to be imposed upon it.”—*Substance of Mr. Van Buren’s observations on Mr. Foot’s amendment to the Rules of the Senate.* Washington, 1828.

[1] The draft of this letter is marked “not sent.” Lehre wrote from Charleston: “Disunion is now publicly spoken of & advocated by men, who heretofore always reprobated such an Idea. What would Mr. Jefferson say if he was now alive, to see the great strides that are now making to destroy the beautiful Republican System of Government, the best the world ever saw, which he & yourself laboured so long to establish for the welfare and happiness of your Country.”—*Mad. MSS.*

[1] On Sept. 27 Cabell wrote Madison asking permission to print this letter and on October 15 Madison replied that because of the all-absorbing interest in the impending presidential election it must not be printed until the election was over and the public mind should be in a tranquil state—*Mad. MSS.*

Madison wrote to Cabell again October 30:

“In my letter of September 18th, I stated briefly the grounds on which I rested my opinion that a power to impose duties & restrictions on imports with a view to encourage domestic productions, was constitutionally lodged in Congress. In the observations then made was involved the opinion also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by Congress, the only Body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

“I will premise that I concur in the opinion that, as a *general* rule, individuals ought to be deemed the best judges, of the best application of their industry and resources.

“I am ready to admit also that there is no Country in which the application may, with more safety, be left to the intelligence and enterprize of individuals, than the U. States.

“Finally, I shall not deny that, in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controuling the free exercise of it.

“With all these concessions, I think it can be satisfactorily shewn, that there are exceptions to the general rule, now expressed by the phrase ‘Let us alone,’ forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

“1. The Theory of ‘Let us alone,’ supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view, be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former, as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No Nation can, indeed, safely do so, until a reciprocity at least be ensured to it. Take for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in question, must shrink from a *universal* application of it.

“A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783, and the establishment of the present Constitution of the U. States, the want of a General Authority to regulate trade, is known to have had this consequence. And have not the pretensions & policy latterly exhibited by G. Britain, given warning of a like result from a renunciation of all countervailing regulations, on the part of the U. States. Were she permitted, by conferring on certain portions of her Domain the name of Colonies, to open from these a trade for herself, to foreign Countries, and to exclude, at the same time, a reciprocal trade to such colonies by foreign Countries, the use to be made of the monopoly needs not be traced. Its character will be placed in a just relief, by supposing that one of the Colonial Islands, instead of its present distance, happened to be in the vicinity of G. Britain, or that one of the Islands in that vicinity, should receive the name & be regarded in the light of a Colony, with the peculiar privileges claimed for colonies. Is it not manifest, that in this case, the favored Island might be made the sole medium of the commercial intercourse with foreign nations, and the parent Country thence enjoy every essential advantage, as to the terms of it, which would flow from an *unreciprocal* trade from her other ports with other nations.

“Fortunately the British claims, however speciously coloured or adroitly managed were repelled at the commencement of our commercial career as an Independent people; and at successive epochs under the existing Constitution, both in legislative discussions and in diplomatic negotiations. The claims were repelled on the solid ground, that the Colonial trade as a *rightful monopoly*, was limited to the intercourse between the parent Country & its Colonies, and between one Colony and another; the whole being, strictly in the nature of a coasting trade from one to another port of the same nation; a trade with which no other nation has a right to interfere. It follows of necessity, that the Parent Country, whenever it opens a Colonial port for a direct trade to a foreign Country, departs itself from the principle of Colonial Monopoly, and entitles the foreign Country to the same reciprocity in every respect, as in its intercourse with any other ports of the nation.

“This is common sense, and common right. It is still more, if more could be required; it is in conformity with the established usage of all nations, other than Great Britain, which have Colonies; notwithstanding British representations to the contrary. Some of those Nations are known to adhere to the monopoly of their Colonial trade, with all the rigor & constancy which circumstances permit. But it is also known, that whenever, and from whatever cause, it has been found necessary or expedient, to open their Colonial ports to a foreign trade, the rule of reciprocity in favour of the foreign party was not refused, nor, as is believed, a right to refuse it ever pretended.

“It cannot be said that the reciprocity was dictated by a deficiency of the commercial marine. France, at least could not be, in every instance, governed by that consideration; and Holland still less, to say nothing of the navigating States of Sweden and Denmark, which have rarely if ever, enforced a colonial monopoly. The remark is indeed obvious, that the shipping liberated from the usual conveyance of supplies from the parent Country to the Colonies, might be employed in the new channels opened for them in supplies from abroad.

“Reciprocity, or an equivalent for it, is the only rule of intercourse among Independent communities; and no nation ought to admit a doctrine, or adopt an invariable policy, which would preclude the counteracting measures necessary to enforce the rule.

“2. The Theory supposes moreover a perpetual peace, not less chimerical, it is to be feared, than a universal freedom of commerce.

“The effect of war among the commercial and manufacturing nations of the World, in raising the wages of labour and the cost of its products, with a like effect on the charges of freight and insurance, needs neither proof nor explanation. In order to determine, therefore, a question of economy between depending on foreign supplies, and encouraging domestic substitutes, it is necessary to compare the probable periods of war, with the probable periods of peace; and the cost of the domestic encouragement in times of peace, with the cost added to foreign articles in times of War.

“During the last century the periods of war and peace have been nearly equal. The

effect of a state of war in raising the price of imported articles, cannot be estimated with exactness. It is certain, however, that the increased price of particular articles, may make it cheaper to manufacture them at home.

“Taking, for the sake of illustration, an equality in the two periods, and the cost of an imported yard of cloth in time of war to be 9½ dollars, and in time of peace to be 7 dollars, whilst the same could, at all times, be manufactured at home, for 8 dollars, it is evident that a tariff of 1¼ dollar on the imported yard, would protect the home manufacture in time of peace, and avoid a tax of 1½ dollars imposed by a state of war.

“It cannot be said that the manufactories, which could not support themselves in periods of peace, would spring up of themselves at the recurrence of war prices. It must be obvious to every one, that, apart from the difficulty of great & sudden changes of employment, no prudent capitalists would engage in expensive establishments of any sort, at the commencement of a war of uncertain duration, with a certainty of having them crushed by the return of peace.

“The strictest economy, therefore, suggests, as exceptions to the general rule, an estimate, in every given case, of war & peace periods and prices, with inferences therefrom, of the amount of a tariff which might be afforded during peace, in order to avoid the tax resulting from war. And it will occur at once, that the inferences will be strengthened, by adding to the supposition of wars wholly foreign, that of wars in which our own country might be a party.<sup>1</sup>

“3. It is an opinion in which all must agree, that no nation ought to be unnecessarily dependent on others for the munitions of public defence, or for the materials essential to a naval force, where the nation has a maritime frontier or a foreign commerce to protect. To this class of exceptions to the theory may be added the instruments of agriculture and of mechanic arts, which supply the other primary wants of the community. The time has been when many of these were derived from a foreign source, and some of them might relapse into that dependence were the encouragement to the fabrication of them at home withdrawn. But, as all foreign sources must be liable to interruptions too inconvenient to be hazarded, a provident policy would favour an internal and independent source as a reasonable exception to the general rule of consulting cheapness alone.

“4. There are cases where a nation may be so far advanced in the pre-requisites for a particular branch of manufactures, that this, if once brought into existence, would support itself; and yet, unless aided in its nascent and infant state by public encouragement and a confidence in public protection, might remain, if not altogether, for a long time unattempted, or attempted without success. Is not our cotton manufacture a fair example? However favoured by an advantageous command of the raw material, and a machinery which dispenses in so extraordinary a proportion with manual labour, it is quite probable that, without the impulse given by a war cutting off foreign supplies and the patronage of an early tariff, it might not even yet have established itself; and pretty certain that it would be far short of the prosperous condition which enables it to face, in foreign markets, the fabrics of a nation that defies all other competitors. The number must be small that would now pronounce

this manufacturing boon not to have been cheaply purchased by the tariff which nursed it into its present maturity.

“5. Should it happen, as has been suspected, to be an object, though not of a foreign Government itself, of its great manufacturing capitalists, to strangle in the cradle the infant manufactures of an extensive customer or an anticipated rival, it would surely, in such a case, be incumbent on the suffering party so far to make an exception to the ‘let alone’ policy as to parry the evil by opposite regulations of its foreign commerce.

“6. It is a common objection to the public encouragement of particular branches of industry, that it calls off labourers from other branches found to be more profitable; and the objection is, in general, a weighty one. But it loses that character in proportion to the effect of the encouragement in attracting skilful labourers from abroad. Something of this sort has already taken place among ourselves, and much more of it is in prospect; and as far as it has taken or may take place, it forms an exception to the general policy in question.

“The history of manufactures in Great Britain, the greatest manufacturing nation in the world, informs us, that the woollen branch, till of late her greatest branch, owed both its original and subsequent growths to persecuted exiles from the Netherlands; and that her silk manufactures, now a flourishing and favourite branch, were not less indebted to emigrants flying from the persecuting edicts of France. [*Anderson’s History of Commerce.*]

“It appears, indeed, from the general history of manufacturing industry, that the prompt and successful introduction of it into new situations has been the result of emigrations from countries in which manufactures had gradually grown up to a prosperous state; as into Italy, on the fall of the Greek Empire; from Italy into Spain and Flanders, on the loss of liberty in Florence and other cities; and from Flanders and France into England, as above noticed. [*Franklin’s Canadian Pamphlet.*]

“In the selection of cases here made, as exceptions to the ‘let alone’ theory, none have been included which were deemed controvertible; and if I have viewed them, or a part of them only, in their true light, they show what was to be shown, that the power granted to Congress to encourage domestic products by regulations of foreign trade was properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation.”

### *Notes.*

“It does not appear that any of the strictures on the letters from J. Madison to J. C. Cabell have in the least invalidated the constitutionality of the power in Congress to favour domestic manufactures by regulating the commerce with foreign nations.



“1. That this regulating power embraces the object remains fully sustained by the uncontested fact that it has been so understood and exercised by all commercial and manufacturing nations, particularly by Great Britain; nor is it any objection to the inference from it, that those nations, unlike the Congress of the United States, had all other powers of legislation as well as the power of regulating foreign commerce, since this was the particular and appropriate power by which the encouragement of manufactures was effected.

“2. It is equally a fact that it was generally understood among the States previous to the establishment of the present Constitution of the United States, that the encouragement of domestic manufactures by regulations of foreign commerce, particularly by duties and restrictions on foreign manufactures, was a legitimate and ordinary exercise of the power over foreign commerce; and that, in transferring this power to the Legislature of the United States, it was anticipated that it would be exercised more effectually than it could be by the States individually. [See Lloyd’s Debates and other publications of the period.]

“It cannot be denied that a right to vindicate its commercial, manufacturing, and agricultural interests against unfriendly and unreciprocal policy of other nations, belongs to every nation, that it has belonged at all times to the United States as a nation; that, previous to the present Federal Constitution, the right existed in the governments of the individual States, not in the Federal Government; that the want of such an authority in the Federal Government was deeply felt and deplored; that a supply of this want was generally and anxiously desired; and that the authority has, by the substituted Constitution of the Federal Government, been expressly or virtually taken from the individual States; so that, if not transferred to the existing Federal Government it is lost and annihilated for the United States as a nation. Is not the presumption irresistible, that it must have been the intention of those who framed and ratified the Constitution, to vest the authority in question in the substituted Government? and does not every just rule of reasoning allow to a presumption so violent a proportional weight in deciding on a question of such a power in Congress, not as a source of power distinct from and additional to the constitutional source, but as a source of light and evidence as to the true meaning of the Constitution?

“3. It is again a fact, that the power was so exercised by the first session of the first Congress, and by every succeeding Congress, with the sanction of every other branch of the Federal Government, and with universal acquiescence, till a very late date. [See the Messages of the Presidents and the Reports and Letters of Mr. Jefferson.]

“4. That the surest and most recognized evidence of the meaning of the Constitution, as of a law, is furnished by the evils which were to be cured or the benefits to be obtained; and by the immediate and long-continued application of the meaning to these ends. This species of evidence supports the power in question in a degree which cannot be resisted without destroying all stability in social institutions, and all the advantages of known and certain rules of conduct in the intercourse of life.

“5. Although it might be too much to say that no case could arise of a character overruling the highest evidence of precedents and practice in expounding a

constitution, it may be safely affirmed that no case which is not of a character far more exorbitant and ruinous than any now existing or that has occurred, can authorize a disregard of the precedents and practice which sanction the constitutional power of Congress to encourage domestic manufactures by regulations of foreign commerce.

“The importance of the question concerning the authority of precedents, in expounding a constitution as well as a law, will justify a more full and exact view of it.

“It has been objected to the encouragement of domestic manufactures by a tariff on imported ones, that duties and imposts are in the clause specifying the sources of revenue, and therefore cannot be applied to the encouragement of manufactures when not a source of revenue.

“But, 1. It does not follow from the applicability of duties and imposts under one clause for one usual purpose, that they are excluded from an applicability under another clause to another purpose, also requiring them, and to which they have also been usually applied. “2. A history of that clause, as traced in the printed journal of the Federal Convention, will throw light on the subject.

“It appears that the clause, as it originally stood, simply expressed ‘a power to lay taxes, duties, imposts, and excises,’ without pointing out the objects; and, of course, leaving them applicable in carrying into effect the other specified powers. It appears, farther, that a solicitude to prevent any constructive danger to the validity of public debts contracted under the superseded form of government, led to the addition of the words ‘to pay the debts.’

“This phraseology having the appearance of an appropriation limited to the payment of debts, an express appropriation was added ‘for the expenses of the Government,’ &c.

“But even this was considered as short of the objects for which taxes, duties, imposts, and excises might be required; and the more comprehensive provision was made by substituting ‘for expenses of Government’ the terms of the old Confederation, viz.: and provide for the common defence and general welfare, making duties and imposts, as well as taxes and excises, applicable not only to payment of debts, but to the common defence and general welfare.

“The question then is, What is the import of that phrase, common defence and general welfare, in its actual connexion? The import which Virginia has always asserted, and still contends for, is, that they are explained and limited to the enumerated objects subjoined to them, among which objects is the regulation of foreign commerce; as far, therefore, as a tariff of duties is necessary and proper in regulating foreign commerce for any of the usual purposes of such regulations, it may be imposed by Congress, and, consequently, for the purpose of encouraging manufactures, which is a well-known purpose for which duties and imposts have been usually employed. This view of the clause providing for revenue, instead of interfering with or excluding the power

of regulating foreign trade, corroborates the rightful exercise of power for the encouragement of domestic manufactures.

It may be thought that the Constitution might easily have been made more explicit and precise in its meaning. But the same remark might be made on so many other parts of the instrument, and, indeed, on so many parts of every instrument of a complex character, that, if completely obviated, it would swell every paragraph into a page and every page into a volume, and, in so doing, have the effect of multiplying topics for criticism and controversy.

The best reason to be assigned, in this case, for not having made the Constitution more free from a charge of uncertainty in its meaning, is believed to be, that it was not suspected that any such charge would ever take place; and it appears that no such charge did take place, during the early period of the Constitution, when the meaning of its authors could be best ascertained, nor until many of the contemporary lights had in the lapse of time been extinguished. How often does it happen, that a notoriety of intention diminishes the caution against its being misunderstood or doubted! What would be the effect of the Declaration of Independence, or of the Virginia Bill of Rights, if not expounded with a reference to that view of their meaning?

“Those who assert that the encouragement of manufactures is not within the scope of the power to regulate foreign commerce, and that a tariff is exclusively appropriated to revenue, feel the difficulty of finding authority for objects which they cannot admit to be unprovided for by the Constitution; such as ensuring internal supplies of necessary articles of defence, the countervailing of regulations of foreign countries, &c., unjust and injurious to our navigation or to our agricultural products. To bring these objects within the constitutional power of Congress, they are obliged to give to the power “to regulate foreign commerce” an extent that at the same time necessarily embraces the encouragement of manufactures; and how, indeed, is it possible to suppose that a tariff is applicable to the extorting from foreign Powers of a reciprocity of privileges and not applicable to the encouragement of manufactures, an object to which it has been far more frequently applied?”

He wrote again December 5:

“Has not the passage in Mr. Jefferson’s letter to Mr. Giles, to which you allude, denouncing the assumptions of power by the General Government, been in some respects misunderstood? ‘They assume,’ he says, ‘*indefinitely* that also over Agriculture and Manufactures.’ It would seem that writing confidentially, & probably in haste, he did not discriminate with the care he otherwise might have done, between an assumption of power and an abuse of power; relying on the term ‘*indefinitely*’ to indicate an excess of the latter, and to imply an admission of a *definite* or reasonable use of the power to regulate trade for the encouragement of manufacturing and agricultural products. This view of the subject is recommended by its avoiding a variance with Mr. Jefferson’s known sanctions, in official acts & private correspondence, to a power in Congress to encourage manufactures by commercial regulations. It is not easy to believe that he could have intended to reject *altogether* such a power. It is evident from the context that his language was influenced by the

great injustice, impressed on his mind, of a measure charged with the effect of taking the earnings of one, & that the most suffering class, & putting them into the pockets of another, & that the most flourishing class. Had Congress so regulated an impost for revenue merely, as in the view of Mr. Jefferson to oppress one section of the Union & favor another, it may be presumed that the language used by him, would have been not less indignant, tho the Tariff, in that case, could not be otherwise complained of, than as an abuse, not as a usurpation of power; or, at most, as an abuse violating the spirit of the Constitution, as every unjust measure must that of every Constitution, having justice for a cardinal object. No Constitution could be lasting without an habitual distinction between an abuse of legitimate power, and the exercise of a usurped one. It is quite possible that there might be a latent reference in the mind of Mr. Jefferson to the reports of Mr. Hamilton & Executive recommendations, to Congress favorable to indefinite power over both Agriculture and Manufactures. He might have seen also the report of a Committee of a late Congress presented by Mr. Steward, of Pennsylvania, which in supporting the cause of internal improvement, took the broad ground of ‘General Welfare,’ (including, of course, *every* internal as well as external power,) without incurring any positive mark of disapprobation from Congress.”—*Mad. MSS.*

[1] *Correspondence between John Quincy Adams, esquire, President of the United States, and several citizens of Massachusetts, concerning the charge of a design to dissolve the union alleged to have existed in that state.* Boston, 1829.

[1] Cabell wrote from Warminster: “May I take the liberty to ask that you will be so good as to read the enclosed pamphlet and to inform me whether the argument in the speech respecting the rights of the parties to the compact be sound and in conformity to your own views of the subject, and if there be error, where and to what extent, it exists.” He had advanced the propositions in the pamphlet in the State Senate and afterwards written them out as a speech with notes for printing—*Mad. MSS.*

[1] Cabell sent the resolutions of the sessions of 1825-26, 1826-27, and 1828-29. The first declared:—“That the imposition of taxes and duties by the Congress of the U. States, for the purpose of protecting and encouraging domestic manufactures, is an unconstitutional exercise of power and is highly oppressive and partial in its operations.”

The second:—“That this General Assembly does hereby most solemnly protest against any claim or exercise of power, whatever, on the part of the General Government, which serves to draw money from the inhabitants of this state, into the treasury of the U. States and to disburse it for any object whatever, except for carrying into effect the grants of power to the General Government contained in the Constitution of the U. States,” and

“That this General Assembly does most solemnly protest against the claim or exercise of any power, whatever, on the part of the General Government, to protect domestic manufactures, the protection of manufactures not being amongst the grants of power to that government specified in the constitution of the U. States,—and also against the operations of the Act of Congress, passed May 22., 1824, entitled ‘An Act to amend

the several acts imposing duties on imports' generally called the tariff law, which vary the distribution of the proceeds of the labour of the community, in such a manner as to transfer property from one portion of the United States to another, and to take private property from the owner for the benefit of another person, not rendering public service,—as unconstitutional, unwise, unjust, unequal and oppressive.”

The third:—“That this General Assembly of Virginia, actuated by the desire of guarding the constitution from all violation, anxious to preserve and perpetuate the Union and to execute with fidelity the trust reposed in it by the people, as one of the high contracting parties, feels itself bound to declare, and it hereby most solemnly declares its deliberate conviction that the acts of Congress usually denominated the tariff laws passed avowedly for the protection of American manufactures are not authorized by the plain construction true intent and meaning of the constitution.”—*Mad. MSS.*

[1] *Ante* Vol. VIII, p. 447.

[1] See letter to N. P. Trist; and see also the distinction between an expatriating individual withdrawing only his person and moveable effects, and the withdrawal of a State mutilating the domain of the Union.—*Madison's Note.*

The Virginia Expatriation Act was that of October, 1783, Sec. III. Hening's *Stats. at Large*, XI, 325. The letter to Trist was dated February 15, 1830.

It has been too much the case in expounding the Constitution of the U. S. that its meaning has been sought not in its peculiar and unprecedented modifications of Power; but by viewing it, some through the medium of a simple Govt others thro' that of a mere League of Govts. It is neither the one nor the other, but essentially different from both. It must consequently be its own interpreter. No other Government can furnish a key to its true character. Other Governments present an individual & indivisible sovereignty. The Constitution of the U. S. divides the sovereignty, the portions surrendered by the States, composing the Federal sovereignty over specified subjects, the portions retained forming the sovereignty of each over the residuary subjects within its sphere. If sovereignty cannot be thus divided, the Political System of the United States is a chimæra, mocking the vain pretensions of human wisdom. If it can be so divided, the system ought to have a fair opportunity of fulfilling the wishes & expectations which cling to the experiment.

Nothing can be more clear than that the Constitution of the U. S. has created a Government, in as strict a sense of the term, as the Governments of the States created by their respective Constitutions. The Federal Govt. has like the State govts. its Legislative, its Executive & its Judiciary Departments. It has, like them, acknowledged cases in which the powers of these departments are to operate. And the operation is to be directly on persons & things in the one Govt as in the others. If in some cases, the jurisdiction is concurrent as it is in others exclusive, this is one of the features constituting the peculiarity of the system.

In forming this compound scheme of Government it was impossible to lose sight of

the question, what was to be done in the event of controversies which could not fail to occur, concerning the partition line, between the powers belonging to the Federal and to the State Govts. That some provision ought to be made, was as obvious and as essential, as the task itself was difficult and delicate.

That the final decision of such controversies, if left to each of the 13 now 24 members of the Union, must produce a different Constitution & different laws in the States was certain; and that such differences must be destructive of the common Govt & of the Union itself, was equally certain. The decision of questions between the common agents of the whole & of the parts, could only proceed from the whole, that is from a collective not a separate authority of the parts.

The question then presenting itself could only relate to the least objectionable mode of providing for such occurrences, under the collective authority.

The provision immediately and ordinarily relied on, is manifestly the Supreme Court of the U. S., clothed as it is, with a Jurisdiction “in controversies to which the U. S. shall be a party;” the Court itself being so constituted as to render it independent & impartial in its decisions, [see Federalist, No. 39, p. 241] whilst other and ulterior resorts would remain in the elective process, in the hands of the people themselves the joint constituents of the parties; and in the provision made by the Constitution for amending itself. All other resorts are extra & ultra constitutional, corresponding to the Ultima Ratio of nations renouncing the ordinary relations of peace.

If the Supreme Court of the U. S. be found or deemed not sufficiently independent and impartial for the trust committed to it, a better Tribunal is a desideratum. But whatever this may be, it must necessarily derive its authority from the whole not from the parts, from the States in some collective not individual capacity. And as some such Tribunal is a vital element, a sine qua non, in an efficient & permanent Govt the Tribunal existing must be acquiesced in, until a better or more satisfactory one can be substituted.

Altho’ the old idea of a compact between the Govt & the people be justly exploded, the idea of a compact among those who are parties to a Govt. is a fundamental principle of free Govt.

The original compact is the one implied or presumed, but nowhere reduced to writing, by which a people agree to form one society. The next is a compact, here for the first time reduced to writing, by which the people in their social state agree to a Govt. over them. These two compacts may be considered as blended in the Constitution of the U. S., which recognises a union or society of States, and makes it the basis of the Govt. formed by the parties to it.

It is the nature & essence of a compact that it is equally obligatory on the parties to it, and of course that no one of them can be liberated therefrom without the consent of the others, or such a violation or abuse of it by the others, as will amount to a dissolution of the compact.

Applying this view of the subject to a single community, it results, that the compact being between the individuals composing it, no individual or set of individuals can at pleasure, break off and set up for themselves, without such a violation of the compact as absolves them from its obligations. It follows at the same time that, in the event of such a violation, the suffering party rather than longer yield a passive obedience may justly shake off the yoke, and can only be restrained from the attempt by a want of physical strength for the purpose. The case of individuals expatriating themselves, that is leaving their country in its *territorial* as well as its social & political sense, may well be deemed a reasonable privilege, or rather as a right impliedly reserved. And even in this case equitable conditions have been annexed to the right which qualify the exercise of it.

Applying a like view of the subject to the case of the U. S. it results, that the compact being among individuals as embodied into States, no State can at pleasure release itself therefrom, and set up for itself. The compact can only be dissolved by the consent of the other parties, or by usurpations or abuses of power justly having that effect. It will hardly be contended that there is anything in the terms or nature of the compact, authorizing a party to dissolve it at pleasure.

It is indeed inseparable from the nature of a compact, that there is as much right on one side to expound it & to insist on its fulfilment according to that exposition, as there is on the other so to expound it as to furnish a release from it, and that an attempt to annul it by one of the parties, may present to the other, an option of acquiescing in the annulment, or of preventing it as the one or the other course may be deemed the lesser evil. This is a consideration which ought deeply to impress itself on every patriotic mind, as the strongest dissuasion from unnecessary approaches to such a crisis. What would be the condition of the States attached to the Union & its Govt and regarding both as essential to their well-being, if a State placed in the midst of them were to renounce its Federal obligations, and erect itself into an independent and alien nation? Could the States N. & S. of Virginia, Pennsyla. or N. York, or of some other States however small, remain associated and enjoy their present happiness, if geographically politically and practically thrown apart by such a breach in the chain which unites their interests and binds them together as neighbours & fellow citizens. It could not be. The innovation would be fatal to the Federal Governnt. fatal to the Union, and fatal to the hopes of liberty and humanity; and presents a catastrophe at which all ought to shudder.

Without identifying the case of the U. S. with that of individual States, there is at least an instructive analogy between them. What would be the condition of the State of N. Y. of Massts. or of Pena for example, if portions containing their great commercial cities, invoking original rights as paramount to social & constitutional compacts, should erect themselves into distinct & absolute sovereignties? In so doing they would do no more, unless justified by an intolerable oppression, than would be done by an individual State as a portion of the Union, in separating itself, without a [Editor: illegible word] cause, from the other portions. Nor would greater evils be inflicted by such a mutilation of a State of some of its parts, than might be felt by some of the States from a separation of its neighbours into absolute and alien sovereignties.

Even in the case of a mere League between nations absolutely independent of each other, neither party has a right to dissolve it at pleasure; each having an equal right to expound its obligations, and neither, consequently a greater right to pronounce the compact void than the other has to insist on the mutual execution of it. [See, in Mr. Jefferson's volumes, his letters to J. M. Mr. Monroe & Col. Carrington].

Having suffered my pen to take this ramble over a subject engaging so much of your attention, I will not withhold the notes made by it from your persual. But being aware that without more development & precision, they may in some instances be liable to misapprehension or misconstruction, I will ask the favour of you to return the letter after it has passed under your partial & confidential eye.

I have made no secret of my surprize and sorrow at the proceedings in S. Carolina, which are understood to assert a right to annul the Acts of Congress within the State, & even to secede from the Union itself. But I am unwilling to enter the political field with the "telum imbellis" which alone I could wield. The task of combating such unhappy aberrations belongs to other hands. A man whose years have but reached the canonical three-score-&-ten (and mine are much beyond the number) should distrust himself, whether distrusted by his friends or not, and should never forget that his arguments, whatever they may be will be answered by allusions to the date of his birth.

With affect. respects,

[1] From *Proceedings and Debates of the Virginia State Convention of 1829-30*. Richmond, 1830. In 1827-28 the people of the State voted in favor of holding a State convention to revise the constitution and Madison accepted service as a delegate, this being his last public employment. He made but one speech, although he offered several motions. The question before the convention was the qualification for suffrage. The report says: "Mr. Madison now rose and addressed the Chair. The members rushed from their seats, and crowded around him."

He made the following memorandum suggested by the question (See also *ante*, Vol. IV., pp. 120, 121, n.)

## NOTE DURING THE CONVENTION FOR AMENDING THE CONSTITUTION OF VIRGINIA.

The right of suffrage being of vital importance, and approving an extension of it to House keepers & heads of families, I will suggest a few considerations which govern my judgment on the subject.

Were the Constitution on hand to be adapted to the present circumstances of our Country, without taking into view the changes which time is rapidly producing, an unlimited extension of the right wd probably vary little the character of our public



councils or measures. But as we are to prepare a system of Govt for a period which it is hoped will be a long one, we must look to the prospective changes in the condition and composition of the society on which it is to act.

It is a law of nature, now well understood, that the earth under a civilized cultivation is capable of yielding subsistence for a large surplus of consumers, beyond those having an immediate interest in the soil, a surplus which must increase with the increasing improvements in agriculture, and the labor-saving arts applied to it. And it is a lot of humanity that of this surplus a large proportion is necessarily reduced by a competition for employment to wages which afford them the bare necessaries of life. That proportion being without property, or the hope of acquiring it, can not be expected to sympathize sufficiently with its rights, to be safe depositories of power over them.

What is to be done with this unfavored class of the community? If it be, on one hand, unsafe to admit them to a full share of political power, it must be recollected, on the other, that it cannot be expedient to rest a Republican Govt on a portion of the society having a numerical & physical force excluded from, and liable to be turned against it, and which would lead to a standing military force, dangerous to all parties & to liberty itself.

This view of the subject makes it proper to embrace in the partnership of power, every description of citizens having a sufficient stake in the public order, and the stable administration of the laws, and particularly the House keepers & Heads of families; most of whom "having given hostages to fortune," will have given them to their Country also.

This portion of the community, added to those, who although not possessed of a share of the soil, are deeply interested in other species of property, and both of them added to the territorial proprietors, who in a certain sense may be regarded as the owners of the Country itself, form the safest basis of free Government. To the security for such a Govt. afforded by these combined numbers, may be further added, the political & moral influence emanating from the actual possession of authority and a just & beneficial exercise of it.

It would be happy if a State of Society could be found or framed, in which an equal voice in making the laws might be allowed to every individual bound to obey them. But this is a Theory, which like most Theories, confessedly requires limitations & modifications, and the only question to be decided in this as in other cases, turns on the particular degree of departure, in practice, required by the essence & object of the Theory itself.

It must not be supposed that a crowded state of population, of which we have no example here, and which we know only by the image reflected from examples elsewhere, is too remote to claim attention.

The ratio of increase in the U. S. shows that the present.

12 Millions will in 25 years be 24 Mils.  
24 Millions will in 50 years be 48 Mils.  
48 Millions will in 75 years be 96 Mils.  
96 Millions will in 100 years be 192 Mils.

There may be a gradual decrease of the rate of increase. but it will be small as long as agriculture shall yield its abundance. G. Britain has doubled her population in the last 50 years; notwithstanding its amount in proportion to its territory at the commencement of that period, and Ireland is a much stronger proof of the effect of an increasing product of food, in multiplying the consumers.

How far this view of the subject will be affected by the Republican laws of descent and distribution, in equalizing the property of the citizens and in reducing to the minimum mutual surplusses for mutual supplies, cannot be inferred from any direct and adequate experiment. One result would seem to be a deficiency of the capital for the expensive establishments which facilitate labour and cheapen its products on one hand, and, on the other, of the capacity to purchase the costly and ornamental articles consumed by the wealthy alone, who must cease to be idlers and become labourers. Another the increased mass of labourers added to the production of necessaries by the withdrawal for this object, of a part of those now employed in producing luxuries, and the addition to the labourers from the class of present consumers of luxuries. To the effect of these changes, intellectual, moral, and social, the institutions and laws of the Country must be adapted, and it will require for the task all the wisdom of the wisest patriots.

Supposing the estimate of the growing population of the U. S. to be nearly correct, and the extent of their territory to be 8 or 9 hundred Mils of acres, and one fourth of it to consist of inarable surface, there will in a century or a little more, be nearly as crowded a population in the U. S. as in G. Britain or France, and if the present Constitution (of Virginia) with all its flaws, lasted more than half a century, it is not an unreasonable hope that an amended one will last more than a century.

If these observations be just, every mind will be able to develop & apply them.—Mad. MSS.

[1] Copy of the original kindly contributed by W. H. Gibbes, Esq., of Columbia, S. C.

[2] The report was introduced in the House by McDuffie, April 13. It may be found in Cong. Debates, 21st Cong. 1st Session, p. 103, appendix.

[1] The pamphlet was *Propositions for amending the Constitution of the United States, providing for the election of President and Vice-President, and guarding against the undue exercise of Executive influence, patronage and power*. Washington, 1830. It was a revival of Hillhouse's proposed amendments to the constitution offered in the Senate in 1808.

[1] This letter was printed by Edward Everett in the *North American Review*, for October, 1830, vol. 31, p. 537.

[2] Having received a copy of Senator Robert Y. Hayne's speeches on the constitution which began January 19, 1830, Madison wrote to him, the draft being dated "Apr. (say 3d or 4th)."

"I recd in due time your favor enclosing your two late speeches, and requesting my views of the subject they discuss. The speeches could not be read without leaving a strong impression of the ability & eloquence which have justly called forth the eulogies of the public. But there are doctrines espoused in them from which I am constrained to dissent. I allude particularly to the doctrine which I understand to assert that the States perhaps their Governments have, singly, a constitutional right to resist & by force annul within itself acts of the Government of the U. S. which it deems unauthorized by the Constitution of the U. S.; although such acts be not within the extreme cases of oppression, which justly absolve the State from the Constitutional compact to which it is a party.

"It appears to me that in deciding on the character of the Constitution of the U. S. it is not sufficiently kept in view that being an unprecedented modification of the powers of Govt it must not be looked at thro' the refracting medium either of a consolidated Government, or of a confederated Govt; that being essentially different from both, it must be its own interpreter according to its text and *the facts of the case*.

"Its characteristic peculiarities are 1. the mode of its formation. 2. its division of the supreme powers of Govt. between the States in their united capacity, and the States in their individual capacities.

"1. It was formed not by the Governments of the States as the Federal Government superseded by it was formed; nor by a majority of the people of the U. S. as a single Community, in the manner of a consolidated Government.

"It was formed by the States, that is by the people of each State, acting in their highest sovereign capacity thro' Conventions representing them in that capacity, in like manner and by the same authority as the State Constitutions were formed; with this characteristic & essential difference that the Constitution of the U. S. being a compact among the States that is the people thereof making them the parties to the compact over one people for specified objects can not be revoked or changed at the will of any State within its limits as the Constitution of a State may be changed at the will of the State, that is the people who compose the State & are the parties to its constitution & retained their powers over it. The idea of a compact between the Governors & the Governed was exploded with the Royal doctrine that Government was held by some tenure independent of the people.

"The Constitution of the U. S. is therefore within its prescribed sphere a Constitution in as strict a sense of the term as are the Constitutions of the individual States, within their respective spheres.

“2. And that it divides the supreme powers of Govt. between the two Governments is seen on the face of it; the powers of war & taxation, that is of the sword & the purse, of commerce of treaties &c. vested in the Govt. of the U. S. being of as high a character as any of the powers reserved to the State Govts.

“If we advert to the Govt of the U. S. as created by the Constitution it is found also to be a Govt in as strict a sense of the term, within the sphere of its powers, as the Govts created by the Constitutions of the States are within their respective spheres. It is like them organized into a Legislative, Executive & Judicial Dept. It has, like them, acknowledged cases in which the powers of those Departments are to operate and the operation is to be the same in both; that is *directly* on the persons & things submitted to their power. The concurrent operation in certain cases is one of the features constituting the peculiarity of the system.

“Between these two Constitutional Govts, the one operating in all the States, the others operating in each respectively; with the aggregate powers of Govt divided between them, it could not escape attention, that controversies concerning the boundary of Jurisdiction would arise, and that without some adequate provision for deciding them, conflicts of physical force might ensue. A political system that does not provide for a peaceable & authoritative termination of occurring controversies, can be but the name & shadow of a Govt the very object and end of a real Govt. being the substitution of law & order for uncertainty confusion & violence.

“That a final decision of such controversies, if left to each of 13 State now 24 with a prospective increase, would make the Constitution & laws of the U. S. different in different States, was obvious; and equally obvious that this diversity of independent decisions must disorganize the the Government of the Union, and even decompose the Union itself.

“Against such fatal consequences the Constitution undertakes to guard 1. by declaring that the Constitution & laws of the States in their united capacity shall have effect, anything in the Constitution or laws of any State in its individual capacity to the contrary notwithstanding, by giving to the Judicial authority of the U. S. an appellate supremacy in all cases arising under the Constitution; & within the course of its functions, arrangements supposed to be justified by the necessity of the case; and by the agency of the people & Legislatures of the States in electing & appointing the Functionaries of the Common Govt. whilst no corresponding relation existed between the latter and the Functionaries of the States.

“2. Should these provisions be found notwithstanding the responsibility of the functionaries of the Govt. of the U. S. to the Legislatures & people of the States not to secure the State Govts against usurpations of the Govt. of the United States there remains within the purview of the Constn. an impeachment of the Executive & Judicial Functionaries, in case of their participation in the guilt, the prosecution to depend on the Representatives of the people in one branch, and the trial on the Representatives of the States in the other branch of the Govt. of the U. S.

“3. The last resort within the purview of the Constn is the process of amendment

provided for by itself and to be executed by the States.

“Whether these provisions taken together be the best that might have been made; and if not, what are the improvements, that ought to be introduced, are questions altogether distinct from the object presented by your communication, which relates to the Constitution as it stands.

“In the event of a failure of all these Constitutional resorts against usurpations and abuses of power and of an accumulation thereof rendering passive obedience & nonresistance a greater evil than resistance and revolution, there can remain but one resort, the last of all, the appeal from the cancelled obligation of the Constitutional compact to original rights and the law of self-preservation. This is the *Ultima ratio*, under all Governments, whether consolidated, confederated, or partaking of both those characters. Nor can it be doubted that in such an extremity a single State would have a right, tho’ it would be a natural not a *constitutional* Right to make the appeal. The same may be said indeed of particular portions of any political community whatever so oppressed as to be driven to a choice between the alternative evils.

“The proceedings of the Virginia Legislature (occasioned by the Alien and Sedition Acts) in which I had a participation, have been understood it appears, as asserting a Constitutional right in a single State to nullify laws of the U. S. that is to resist and prevent by force the execution of them, within the State.

“It is due to the distinguished names who have given that construction of the Resolutions and the Report on them to suppose that the meaning of the Legislature though expressed with a discrimination and fulness sufficient at the time may have been somewhat obscured by an oblivion of contemporary indications and impressions. But it is believed that by keeping in view distinctions (an inattention to which is often observable in the ablest discussions of the subjects embraced in those proceedings) between the Governments of the States & the States in the sense in which they were parties to the Constitution; between the several modes and objects of interposition agst the abuses of Power; and more especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature, paramount to all Constitutions; with these distinctions kept in view, and an attention always of explanatory use to the views and arguments which are combated, a confidence is felt that the Resolutions of Virgia as vindicated in the Report on them, are entitled to an exposition shewing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

“On recurring to the printed Debates in the House of Delegates on the occasion, which were ably conducted, and are understood to have been, for the most part at least, revised by the Speakers, the tenor of them does not disclose any reference to a constitutional right in an individual State to arrest by force the operation of a law of the U. S. Concert among the States for redress agst the Alien & Sedition laws as acts of usurped power, was a leading sentiment, and the attainment of a Concert the immediate object of the course adopted, which was an invitation to the other States ‘to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary & proper measures in maintaining unimpaired the authorities rights and liberties

reserved to the States respectively or to the people.’ That by the necessary & proper measures to be concurrently & co-operatively taken were meant measures known to the Constitution, particularly the control of the Legislatures and people of the States over the Cong. of the U. S. cannot well be doubted.

“It is worthy of remark, and explanatory of the intentions of the Legislature, that the words ‘*and not law, but utterly null void & of no power or effect*’\* which in the Resolutions before the House followed the word unconstitutional, were near the close of the debate stricken out by common consent. It appears that the words had been regarded as only surplusage by the friends of the Resolution, but lest they should be misconstrued into a nullifying import instead of a declaration of opinion, the word unconstitutional alone was retained, as more safe agst. that error. The term *nullification* to which such an important meaning is now attached, was never a part of the Resolutions and appears not to have been contained in the Kentucky Resolutions as *originally* passed, but to have been introduced at an after date.

“Another and still more conclusive evidence of the intentions of the Legislature is given in their Address to their Constituents accompanyg. the publication of their Resoln. The address warns them agst the encroaching spirit of the Gen Govt.; argues the unconstitutionality of the Alien & Sedition laws, enumerates the other instances in which the Constitutional limits had been overleaped; dwells on the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of the Fedr. policy. But nothing is said that can be understood to look to means of maintaing the rights of the States beyond the regular ones within the forms of the Constitution.

“If any further lights on the subject could be needed a very strong one is reflected from the answers given to the Resolutions by the States who protested agst. them. Their great objection, with a few undefined complaints of the spirit & character of the Resolutions, was directed agst the assumed authority of a State Legislature to declare a law of the U. S. to be unconstitutional which they considered an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the U. S. Had the Resolutions been regarded as avowing & maintaining a right in an individual State to arrest by force the execution of a law of the U. S. it must be presumed that it would have been a pointed and conspicuous object of their denunciation.

“In this review I have not noticed the idea entertained by some that disputes between the Govt of the U. S. and those of the individual States may & must be adjusted by negotiation, as between independent Powers.

“Such a mode as the only one of deciding such disputes would seem to be as expressly at variance with the language and provisions of the Constitution as in a practical view it is pregnant with consequences subversive of the Constitution. It may have originated in a supposed analogy to the negotiating process in cases of disputes between separate branches or Departments of the same Govt. but the analogy does not exist. In the case of disputes between independent parts of the same Govt neither of them being able to consummate its pretensions, nor the Govt to proceed without a co-operation of the several parts necessity brings about an adjustment. In disputes

between a State Govt and the Govt. of the U. S. the case is both theoretically & practically different; each party possessing all the Departments of an organized Governmt Legislative Ex. & Judl., and having each a physical force at command.

“This idea of an absolute separation & independence between the Govt. of the U. S. and the State Govts as if they belonged to different nations alien to each other has too often tainted the reasoning applied to Constitutional questions. Another idea not less unsound and sometimes presenting itself is, that a cession of any part of the rights of sovereignty is inconsistent with the nature of sovereignty, or at least a degradation of it. This would certainly be the case if the cession was not both mutual & equal, but when there is both mutuality & equality there is no real sacrifice on either side, each gaining as much as it grants, and the only point to be considered is the expediency of the compact and that to be sure is a point that ought to be well considered. On this principle it is that Treaties are admissible between Independent powers, wholly alien to each other, although privileges may be granted by each of the parties at the expense of its internal jurisdiction. On the same principle it is that individuals entering into the social State surrender a portion of their equal rights as men. If a part only made the surrender, it would be a degradation; but the surrenders being mutual, and each gaining as much authority over others as is granted to others over him, the inference is mathematical that in theory nothing is lost by any; however different the result may be in practice.

“I am now brought to the proposal which claims for the States respectively a right to appeal agst an exercise of power by the Govt. of the U. S. which by the States is decided to be unconstitutional, to a final decision by  $\frac{3}{4}$  of the parties to the Constitution. With every disposition to take the most favorable view of this expedient that a high respect for its Patrons could prompt I am compelled to say that it appears to be either not necessary or inadmissible.

“I take for granted it is not meant that pending the appeal the offensive law of the U. S. is to be suspended within the State. Such an effect would necessarily arrest its operation everywhere, a uniformity in the operation of laws of the U. S. being indispensable not only in a Constitutional and equitable, but in most cases in a practicable point of view, and a final decision adverse to that of the Appellant State would afford grounds to all kinds of complaint which need not be traced.

“But aside from those considerations, it is to be observed that the effect of the appeal will depend wholly on the form in which the case is proposed to the Tribunal which is to decide it.

“If  $\frac{3}{4}$  of the States can sustain the State in its decision it would seem that this extra constitutional course of proceeding might well be spared; inasmuch as can institute and  $\frac{3}{4}$  can effectuate an amendment of the Constitution, which would establish a permanent rule of the highest authority, instead of a precedent of construction only.

“If on the other hand  $\frac{3}{4}$  are required to reverse the decision of the State it will then be in the power of the smallest fraction over  $\frac{1}{4}$  (of 7 States for example out of 24) to give the law to 17 States, each of the 17 having as parties to the Constitutional compact an

equal right with each of the 7 to expound & insist on its exposition. That the 7 might in particular cases be right and the 17 wrong, is quite possible. But to establish a positive & permanent rule giving such a power to such a minority, over such a majority, would overturn the first principle of a free Government and in practice could not fail to overturn the Govt. itself.

“It must be recollected that the Constitution was proposed to the people of the States as a *whole*, and unanimously adopted as a *whole*, it being a part of the Constitution that not less than  $\frac{3}{4}$  should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake a majority even of  $\frac{3}{4}$  are distrusted and a unanimity required to make any change affecting those cases.

“When the Constitution was adopted as a whole, it is certain that there are many of its parts which if proposed by themselves would have been promptly rejected. It is far from impossible that every part of a whole would be rejected by a majority and yet the whole be unanimously accepted. Constitutions will rarely, probably never be formed without mutual concessions, without articles conditioned on & balancing each other. Is there a Constitution of a single State out of the 24 that would bear the experiment of having its component parts submitted to the people separately, and decided on according to their insulated merits.

“What the fate of the Constitution of the U. S. would be if a few States could expunge parts of it most valued by the great majority, and without which the great majority would never have agreed to it, can have but one answer.

“The difficulty is not removed by limiting the process to cases of construction. How many cases of that sort involving vital texts of the Constitution, have occurred? how many now exist? How many may hereafter spring up? How many might be plausibly enacted, if entitled to the privilege of a decision in the mode proposed.

“Is it certain that the principle of that mode may not reach much farther than is contemplated? If a single State can of right require  $\frac{3}{4}$  of its Co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, is the plea less plausible that as the Constitution was unanimously formed it ought to be unanimously expounded.

“The reply to all such suggestions must be that the Constitution is a compact; that its text is to be expounded according to the provision for it making part of that Compact; and that none of the parties can rightfully violate the expounding provision, more than any other part. When such a right accrues as may be the case, it must grow out of abuses of the Constitution amounting to a release of the sufferers from their allegiance to it.

“Will you permit me Sir to refer you to Nos. 39 & 44 of the Federalist Edited at Washington by Gideon, which will shew the views taken on some points of the Constitution at the period of its adoption. I refer to that Edition because none preceding it are without errors in the names prefixed to the several papers as happens



to be the case in No. 51 for which you suppose Col: Hamilton to be responsible. The errors were occasioned by a memorandum of his penned probably in haste, & partly in a lumping way. It need not be remarked that they were pure inadvertences.

“I fear Sir I have written you a letter the length of which may accord as little with your patience, as I am sorry to foresee that the scope of parts of it must do with your judgment. But a naked opinion did not appear respectful either to the subject or to the request with which you honored me, and notwithstanding the latitude given to my pen, I am not unaware that the views it presents may need more of development in some instances, if not more exactness of discrimination in others, than I could bestow on them. The subject has been so expanded and recd. such ramifications & refinements, that a full survey of it is a task agst which my age alone might justly warn me.

“The delay Sir in making the acknowledgments I owe you was occasioned for a time by a crowd of objects which awaited my return from a long absence at Richmond, and latterly by an indisposition from which I am not yet entirely recovered. I hope you will be good eno’ to accept these apologies, and with them assurances of my high esteem & my cordial salutations, in which Mrs. M. begs to be united with me, as I do with her in a respectful tender of them to Mrs. Hayne.”—*Chic. Hist. Soc. MSS.*

August 20, 1830, Madison wrote to Everett:

“There is not I am persuaded the slightest ground for supposing that Mr. Jefferson departed from his purpose not to furnish Kentucky with a set of Resolutions for the year ’99. It is certain that he penned the Resolutions of ’98, and, probably in the terms in which they passed. It was in those of ’99 that the word ‘nullification’ appears.

“Finding among my pamphlets a copy of the debates in the Virginia House of Delegates on the Resolutions of ’98, and one of an address of the two Houses to their constituents on the occasion, I enclose them for your perusal; and I add another, though it is less likely to be new to you, the ‘Report of a Committee of the S. Carolina House of Representatives, Decr. 9, 1828,’ in which the nullifying doctrine is stated in the precise form in which it is now asserted. There was a protest by the minority in the Virginia Legislature of ’98 against the Resolutions, but I have no copy. The matter of it may be inferred from the speeches in the Debates. I was not a member in that year, though the penman of the Resolutions, as now supposed.”—*Mad. MSS.*

Again on September 10, 1830, he wrote to Everett:

“Since my letter in which I expressed a belief that there was no ground for supposing that the Kentucky Resolutions of 1799, in which the term ‘nullification’ appears, were drawn by Mr. Jefferson, I infer from a manuscript paper containing the term just noticed, that altho he probably had no agency in the draft, nor even any knowledge of it at the time, yet that the term was borrowed from that source. It may not be safe, therefore, to rely on his to Mr. W. C. Nicholas printed in his *Memoir & Correspondence*, as a proof that he had no connection with or responsibility for the use of such term on such an occasion. Still I believe that he did not attach to it the idea

of a constitutional right in the sense of S. Carolina, but that of a natural one in cases justly appealing to it.”—*Mad. MSS.*

On September 23, 1830, he wrote to Nicholas P. Trist:

“In a letter, lately noticed, from Mr Jefferson, dated November 17, 1799, he ‘*incloses me a copy of the draught of the Kentucky Resolves*’, (a press copy of his own manuscript). Not a word of explanation is mentioned. It was probably sent, and possibly at my request, in consequence of my being a member elect of the Virga Legislature of 1799, which would have to vindicate its contemporary Resolns. of -98. It is remarkable that the paper differs both from the Kentucky Resolutions of -98, & from those of -99. It agrees with the former in the main and must have been the pattern of the Resolns. of that year, but contains passages omitted in them, which employ the terms nullification & nullifying; and it differs in the quantity of matter from the Resolutions of -99, but agrees with them in a passage which employs that language, and would seem to have been the origin of it. I conjecture that the correspondent in Kentucky, Col. George Nicholas, probably might think it better to leave out particular parts of the draught than risk a misconstruction or misapplication of them; and that the paper might, notwithstanding, be within the reach & use of the Legislature of -99, & furnish the phraseology containing the term ‘nullification.’ Whether Mr. Jefferson had noted the difference between his draught & the Resolns of -98 (he could not have seen those of -99, which passed Novr. 14,) does not appear. His files, particularly his correspondence with Kentucky, must throw light on the whole subject. This aspect of the case seems to favor a recall of the communication if practicable. Though it be true that Mr Jefferson did not draught the Resolutions of -99, yet a denial of it, simply, might imply more than wd. be consistent with a knowledge of what is here stated.”—*Mad. MSS.*

See Warfield’s *Kentucky Resolutions of 1798*; also, for Jefferson’s correspondence, his Writings (P. L. Ford, Federal Edition) viii., 57, *et seq.*

[1] Copy of the original among the family papers of the late J. Henley Smith, Esq., of Washington. On the same subject Madison wrote to Henry St. George Tuckner, April 30, 1830, giving the same information and adding:

“Mr. Jefferson’s letters to me amount to hundreds. But they have not been looked into for a longtime, with the exception of a few of latter dates. As he kept copies of all his letters throughout the period, the originals of chose to me exist of course elsewhere.

“My eye fell on the inclosed paper. It is already in obscurity, and may soon be in oblivion. The Ceracchi named was an artist celebrated for his genius, & was thought a rival in embryo to Canova & doomed to the guillotine as the author or patron, guilty or suspected, of the infernal machine for destroying Bonaparte. I knew him, well, having been a lodger in the same house with him, and much teased by his eager hopes on wch I constantly threw cold water, of obtaining the aid of Congress for his grand project. Having failed in this chance, he was advised by me & others to make the experiment of subscriptions, with the most auspicious names heading the list, and considering the general influence of Washington and the particular influence of

Hamilton on the corps of speculators then suddenly enriched by the funding system, the prospect was encouraging. But just as the circular address was about to be despatched, it was put into his head that the scheme, was merely to get rid of his importunities, and being of the genus irritabile, suddenly went off in anger and disgust, leaving behind him heavy drafts on Genl. W. Mr. Jefferson &c. &c. for the busts &c. he had presented to them. His drafts were not the effect of avarice, but of his wants, all his resources having been exhausted in the tedious pursuit of his object. He was an enthusiastic worshipper of Liberty and Fame, and his whole soul was bent on securing the latter by rearing a monument to the Former, which he considered as personified in the American Republic. Attempts were made to engage him for a statue of Genl. W. but he wd. not stoop to that.”—*Mad. Mss.* The enclosure was Ceracchi’s circular concerning his proposed monument. A photograph of his bust of Madison is the frontispiece of this edition of his writings.

[1] See the bill in *Jefferson’s Writings* (P. L. Ford, Federal Edition) ii., 414.

[1] The draft may be seen *ante*, Vol. VI., p. 113, n.

[2] Delaplaine’s *Repository of the Lives and Portraits of Distinguished Americans*. Philadelphia, 1818.

[1] “At the epoch of 1798-9, I had just attained my majority, and although I was too young to share in the public councils of my country, I was acquainted with many of the actors of that memorable period; I knew their views, and formed and freely expressed my own opinions on passing events.” He insisted that the Kentucky and Virginia resolutions contemplated action to correct the evil of federal usurpation by the States collectively, following the same line of reasoning as that of Madison.—*Works* (Federal Edition), vii., 401.

[1] *Ante* p. 370.

[2] In a letter of the same date enclosing the letter, Madison said:

“I have omitted a vindication of the true punctuation of the clause, because I now take for certain that the original Document signed by the members of the Convention, is in the Department of State, and that it testifies for itself against the erroneous editions of the text in that particular. Should it appear that the Document is not there, or that the error had slipped into it, the materials in my hands to which you refer, will amount I think to a proof outweighing even that authority. It would seem a little strange, if the original Constitution be in the Department of State, that it has hitherto escaped notice. But it is to be explained I presume by the fact that it was not among the papers relating to the Constn. left with Genl. Washington, and there deposited by him; but, having been sent from the Convention to the old Congress, lay among the mass of papers handed over on the expiration of the latter to that Dept. On your arrival at Washington, you will be able personally, or by a friend having more leisure, to satisfy yourself on these points. It appears as you foretold that my letter in the Northn. Review has encountered newspaper criticism; but as yet little if at all I believe on the ground looked for. In some instances, both the letter & the report of 1799 are

misunderstood, and in none that I have seen has the distinction been properly kept in view between the authority of a higher Tribunal to decide on the extent of its own jurisdiction, compared with that of other Tribunals, and its claim of jurisdiction in any particular case or description of cases as within that extent; it being presumed that if not within the extent of its jurisdiction it will be pronounced *coram non jndice*; and it being understood that if not so, it will be a case of usurpation & to be treated as such.”—*Mad. MSS.*

(For the punctuation of the Constitution see *ante*, Vol. IV., p. 489).

He wrote a memorandum to accompany his letter to Stevenson:

“Memorandum not used in letter to Mr. Stevenson.

“These observations will be concluded with a notice of the argt. in favor of the grant of a full power to provide for Common D. & Genl. w. drawn from the *punctuation* in some Editions of the Constn.

“According to one mode of presenting the text: it reads as follows: Congress shall have power To lay & collect taxes duties- imposts & excises, to pay the debts & provide for the C.D. & G.W. of the U.S. but all duties imposts & excises shall be uniform, to another mode the same with commas—vice semicolons.

“According to the other mode the text stands thus. Congress shall have power,

To lay & col. tax, ds imp. & excises;  
To pay the debts & provide for the Com. d. & G.W.  
of the U. S.; but all ds imp. & excs. shall be  
uniform throug the U. S.

and from this view of the text, it is inferred that the latter sentence conveys a distinct substantive power to provide for the C.D. & G.W.

“Without enquiring how far the text in this form wd convey the power in question; or admitting that any mode of pointing or distributing the terms could invalidate the evidence wch has been exhibited, that it was not the intention of the Genl. or of the St. Convns. to express by the use of the terms C.D. & G.W. a substantive & indefinite power; or to imply that the Gen. terms were not to be explained and limited by the specified powers, succeeding them; in like manner as they were explained & limited in the former Articles of Confedn. from which the terms were taken, it happens that the authenticity of the punctuation which preserves the Unity of the clause can be as satisfactorily shewn, as the true intention of the parties to the Constn. has been shewn in the language used by them.

“The only instance of a division of the Clause afforded by the Journal of the Convention is in the Draft of a Constn reported by a Come. of five members, & entered on the 12. of Sepr.

“But that this must have been an erratum of the pen or of the press, may be inferred from the circumstance that in a copy of that Report printed at the time for the use of the members & now in my possession the text is so pointed as to unite the parts in one substantive clause—an inference favored also by a previous Report of Sept. 4 by a Come. of eleven in which the parts of the clause are united not separated.

“And that the true reading of the Constn. as it passed, is that which unites the parts, is abundantly attested by the following facts.

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

“2. The case is the same in the Constn reported from the Convention to the old Congress as printed on their Journal of Sept 28, 1787, and transmitted by that Body to the Legislatures of the several States.

“3. The case is the same in the copies of the transmitted Constn as printed by the ratifying States, several of which have been examined and it is a presumption that there is no variation in the others. The text is in the same form in an Edn of the Const. published in 1814 by order of the Senate, as also in the Constn as prefixed to the Edn. of the Laws of the U. S.

“Should it be not contested that the origl. Const in its engrossed or enrolled state with the names of the subscribing members suffixed thereto, presents the text in the same form, that alone must extinguish the argt in question.

“If contrary to every ground of confidence the text in its original enrolled Document, should not coincide with these multiplied examples, the first question wd be of comparative probability of error even in the enrolled doct. and in the no & variety of the concerning examples in opposition to it.

“And a 2d. question, whether the construction put on the text in any of its forms or punctuations ought to have the weight of a feather agst the solid & diversified proofs which have been pointed out of the meaning of the parties to the Constn.

“It might be added, that in the Journal of Sepr. 14 the clause to which the proviso was added now a part of the Constn viz—‘but all duties, imposts & excises shall be uniform throughout the U.S.’ is called the ‘first’ of course a ‘*single*’ clause, and it is obvious that the uniformity required by the proviso implies that what is referred to was a part of the same clause with the proviso not an antecedent clause altogether separated from it.”—*Mad. Mss.*

[1] See *ante*, Vol. IV., p. 253 *et seq.*

[1] Wilson’s pamphlet may be found in his *Works* (Philadelphia, 1804), iii., 397.

[1] A final paragraph for the letter of Novr 27, 1830 to Mr. Stevenson.

“Allow me dear Sir to express on this occasion, what I always feel, an anxious hope that as our Constitution rests on a middle ground between a form, wholly national, and one merely federal, and on a division of the powers of Govt between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view as a key to the sound interpretation of the Instrument and a warning agst. any doctrine that would either enable the States to invalidate the powers of the U. States, or confer all power on them.”—*Madison’s Note*.

The following is not in the Madison MSS., but is from the *Works* of Madison (Cong Ed.):

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

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

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

2. But admitting the distinction as alleged, the appropriating power to *all* objects of “common defence and general welfare” is itself of sufficient magnitude to render the preceding views of the subject applicable to it. Is it credible that such a power would have been unnoticed and unopposed in the Federal Convention? in the State Conventions, which contended for, and proposed restrictive and explanatory amendments? and in the Congress of 1789, which recommended so many of these amendments? A power to impose *unlimited taxes* for *unlimited purposes* could never have escaped the sagacity and jealousy which were awakened to the many inferior and minute powers which were criticised and combated in those public bodies.

3. A power to appropriate money, without a power to apply it in execution of the object of appropriation, could have no effect but to lock it up from public use altogether; and if the appropriating power carries with it the power of application and execution, the distinction vanishes. The power, therefore, means nothing, or what is worse than nothing, or it is the same thing with the sweeping power “to provide for the common defence and general welfare.”

4. To avoid this dilemma, the consent of the States is introduced as justifying the exercise of the power in the full extent within their respective limits. But it would be a new doctrine, that an extra-constitutional consent of the parties to a Constitution could amplify the jurisdiction of the constituted Government. And if this could not be done by the concurring consents of all the States, what is to be said of the doctrine that the consent of an individual State could authorize the application of money belonging to all the States to its individual purposes? Whatever be the presumption that the Government of the whole would not abuse such an authority by a partiality in expending the public treasure, it is not the less necessary to prove the existence of the power. The Constitution is a limited one, possessing no power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free Government.

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them, and all such minorities, however composed, act with consistency in opposing a latitude of construction, particularly that which has been applied to the terms "common defence and general welfare," which would impair the security intended for minor parties. Whether the distrustful precaution interwoven in the Constitution was or was not in every instance necessary; or how far, with certain modifications, any farther powers might be safely and usefully granted, are questions which were open for those who framed the great Federal Charter, and are still open to those who aim at improving it. But while it remains as it is, its true import ought to be faithfully observed; and those who have most to fear from constructive innovations ought to be most vigilant in making head against them.

But it would seem that a resort to the consent of the State Legislatures, as a sanction to the appropriating power, is so far from being admissible in this case, that it is precluded by the fact that the Constitution has expressly provided for the cases where that consent was to sanction and extend the power of the national Legislature. How can it be imagined that the Constitution, when pointing out the cases where such an effect was to be produced, should have deemed it necessary to be positive and precise with respect to such minute spots as forts, &c., and have left the general effect ascribed to such consent to an argumentative, or, rather, to an arbitrary construction? And here again an appeal may be made to the incredibility that such a mode of enlarging the sphere of federal legislation should have been unnoticed in the ordeals through which the Constitution passed, by those who were alarmed at many of its powers bearing no comparison with that source of power in point of importance.

5. Put the case that money is appropriated to a canal<sup>2</sup> to be cut within a particular State; how and by whom, it may be asked, is the money to be applied and the work to be executed? By agents under the authority of the General Government? then the power is no longer a mere appropriating power. By agents under the authority of the States? then the State becomes either a branch or a functionary of the Executive authority of the United States, an incongruity that speaks for itself.

6. The distinction between a pecuniary power only, and a plenary power “to provide for the common defence and general welfare,” is frustrated by another reply to which it is liable. For if the clause be not a mere introduction to the enumerated powers, and restricted to them, the power to provide for the common defence and general welfare stands as a distinct substantive power, the first on the list of legislative powers, and not only involving all the powers incident to its execution, but coming within the purview of the clause concluding the list, which expressly declares that Congress may make all laws necessary and proper to carry into execution the *foregoing* powers vested in Congress.

The result of this investigation is, that the terms “common defence and general welfare” owed their induction into the text of the Constitution to their connexion in the “Articles of Confederation,” from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Congress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution. It equally appears that the alleged power to appropriate money to the “common defence and general welfare” is either a dead letter, or swells into an unlimited power to provide for unlimited purposes, by all the means necessary and proper for those purposes. And it results finally, that if the Constitution does not give to Congress the unqualified power to provide for the common defence and general welfare, the defect cannot be supplied by the consent of the States, unless given in the form prescribed by the Constitution itself for its own amendment.

As the people of the United States enjoy the great merit of having established a system of Government on the basis of human rights, and of giving to it a form without example, which, as they believe, unites the greatest national strength with the best security for public order and individual liberty, they owe to themselves, to their posterity, and to the world, a preservation of the system in its purity, its symmetry, and its authenticity. This can only be done by a steady attention and sacred regard to the chartered boundaries between the portion of power vested in the Government over the whole, and the portion undivested from the several Governments over the parts composing the whole; and by a like attention and regard to the boundaries between the several departments, Legislative, Executive, and Judiciary, into which the aggregate power is divided. Without a steady eye to the landmarks between these



departments, the danger is always to be apprehended, either of mutual encroachments, and alternate ascendancies incompatible with the tranquil enjoyment of private rights, or of a concentration of all the departments of power into a single one, universally acknowledged to be fatal to public liberty.

And without an equal watchfulness over the great landmarks between the General Government and the particular Governments, the danger is certainly not less, of either a gradual relaxation of the band which holds the latter together, leading to an entire separation, or of a gradual assumption of their powers by the former, leading to a consolidation of all the Governments into a single one.

The two vital characteristics of the political system of the United States are, first, that the Government holds its powers by a charter granted to it by the people; second, that the powers of Government are formed into two grand divisions—one vested in a Government over the whole community, the other in a number of independent Governments over its component parts. Hitherto charters have been written grants of privileges by Governments to the people. Here they are written grants of power by the people to their Governments

Hitherto, again, all the powers of Government have been, in effect, consolidated into one Government, tending to faction and a foreign yoke among a people within narrow limits, and to arbitrary rule among a people spread over an extensive region. Here the established system aspires to such a division and organization of power as will provide at once for its harmonious exercise on the true principles of liberty over the parts and over the whole, notwithstanding the great extent of the whole; the system forming an innovation and an epoch in the science of Government no less honorable to the people to whom it owed its birth, than auspicious to the political welfare of all others who may imitate or adopt it.

As the most arduous and delicate task in this great work lay in the untried demarcation of the line which divides the general and the particular Governments by an enumeration and definition of the powers of the former, more especially the legislative powers; and as the success of this new scheme of polity essentially depends on the faithful observance of this partition of powers, the friends of the scheme, or rather the friends of liberty and of man, cannot be too often earnestly exhorted to be watchful in marking and controlling encroachments by either of the Governments on the domain of the other.

[1]Tefft wrote from Savannah, introduced by William B. Sprague of the same place.

[1]In the draft of the letter was the following sentence against which Madison wrote, “extract”:

“[In the year 1828 I recd. from J. V. Bevan sundry numbers of the ‘Savannah Georgian,’ containing *continuations* of the notes of Majr. Pierce in the Federal Convention of 1827. They were probably sent on account of a marginal suggestion of inconsistency between language held by me in the Convention with regard to an Executive Veto, and a use made of the power by myself, when in the Executive

administration. The inconsistency is done away by the distinction, not averted to, between an *absolute* veto, to which the language was applied, and the *qualified* veto which was exercised.]”

[1] *Ante*, Vol. VIII., p. 386.

[1] The reference is to the edition of 1830.

[1] From the *Works of Madison* (Cong. Ed.).

[1] “That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the states [alone] are parties,” &c. *Ante*, Vol. VI., p. 326.

[2] *Ibid.*, p. 331.

[1] From the *Works of Madison* (Cong. Ed.).

[1] The paper to which he refers he probably destroyed. It is not among his MSS.

[1] See *ante*, Vol. VIII., 408 *et seq.*; also *The Authorship of the Federalist*, by Edward Gaylord Bourne, *Am. Hist. Rev.*, ii., 443.

[1] The letter is in *The Works of Hamilton* (Lodge), Federal Edition, x., 446.

[1] This appears to have been drafted by Madison as a postscript to his letter to Paulding, but it may have been sent separately. On June 6, 1831, he wrote Paulding again.

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

And on June 27.

“With your favor of the 20th inst. I recd the Vol. of pamphlets containing that of Mr. Chs. Pinckney, for which I am indebted to your obliging researches. The vol. shall be duly returned & in the mean time duly taken care of. I have not sufficiently examined the pamphlet in question, but have no doubt that it throws light on the object to which it has relation.

“I had previously recd yours of the 13th, and must remark that you have not rightly seized the scope of what was said in mine of April—I did not mean that I had in view a *History* of any sort, public or personal; but only a preservation of materials, of which I happened to be a Recorder, or to be found in my voluminous correspondences with official associates or confidential friends. By the first I alluded particularly to the proceedings & debates of the latter periods of the Revolutionary Congress & of the Federal Convention in 1787; of which in both cases, I had as a member an opportunity of taking an account.”—*Mad. MSS.*

[1] Monroe’s letter is in the *Writings of Monroe* (Hamilton), vii., 231. He died July 4.

[1] Madison wrote the dates of Ringgold’s letters incorrectly. The first was dated July 4, “Monday afternoon 50 minutes past 4 o’clock,” and informed Madison of Monroe’s death “exactly at half-past 3 o’clock p.m.” Alexander Hamilton, Jr., under date New York, June 30, had informed him that Monroe’s death was inevitable. He replied to Hamilton July 9.

“The feelings with which the event was recd. by me may be inferred from the long & uninterrupted friendship which united us, and the intimate knowledge I had of his great public merits, and his endearing private virtues. I condole in his loss most deeply with those to whom he was most dear. We may cherish the consolation nevertheless, that his memory, like that of the other heroic worthies of the Revolution gone before him, will be embalmed in the grateful affections of a posterity enjoying the blessings which he contributed to procure for it.

“With my thanks for the kind attention manifested by your letter, I pray you to accept assurances of my friendly esteem, and my good wishes.”—*Mad. MSS.*

[1] From the *Works of Madison* (Cong. Ed.)

[1]

Charleston, March 28, 1789.

. . . I shall begin by saying what I am sure you will believe, that I am much pleased to find you in the federal Legislature.—I did expect you would have been in the Senate & think your State was blind to it’s interests in not placing you there, but where you are may in the event prove the most important situation—for as most of the acts which are to affect the Revenue of the Union must originate with your house, and as they are the most numerous body, a greater scope will be afforded for the display of legislative talents than in the other branch, whose radical defect is the smallness of their numbers & whose doors must be always shut during their most interesting deliberations.

It will be some time perhaps before I hear of you, but when you write, answer me candidly as I am sure you will the following Queries, without suffering any little disappointment to yourself to warp your opinion.

Are you not, to use a full expression, abundantly convinced that the theoretical nonsense of an election of the members of Congress by the people in the first instance, is clearly and practically wrong—that it will in the end be the means of bringing our councils into contempt and that the legislature are the only proper judges of who ought to be elected?

Are you not fully convinced that the Senate ought at least to be double their number to make them of consequence & to prevent their falling into the same comparative state of insignificance that the State Senates have, merely from their smallness?

Do you not suppose that giving to the federal Judicial *retrospective jurisdiction in any case whatever*, from the difficulty of determining to what periods to look back from its being an *ex post facto* provision, & from the confusion & opposition it will give rise to, will be the surest & speediest mode to subvert our present system & give its adversaries the majority?

Do not suffer these and other queries I may hereafter put to you to startle your opinion with respect to my principles—I am more than ever a friend to the federal constitution,—not I trust from that fondness which men sometimes feel for a performance in which they have been concerned but from a conviction of its intrinsic worth—from a conviction that on its efficacy our political welfare depends,—my wish is to see it divested of those improprieties which I am sure will sooner or later subvert, or what is worse bring it into contempt. . . .

Pinckney to Madison.—*Mad. MSS.*

The omitted portions of the letter relate to private and personal affairs.

[1] To E. D. White, a Representative from Louisiana, Madison wrote February 14, 1832, that error had been made “in ascribing to him the opinion that Congress possesses Constitutional powers to appropriate public funds to aid this redeeming project of colonizing the Coloured people.” He wished the powers of Congress to be enlarged on this subject.—*Mad. MSS.*

[1] See “New Views,” written *after* the Journal of Conn was printed.—*Madison’s Note.*

[1] Copy from the original draft kindly contributed by Frederick D. McGuire, Esq., of Washington. Stevenson was Speaker of the House of Representatives from 1827 to 1834.

[1] The reference is to the edition of 1829. See the letters in the *Writings of Jefferson* (P. L. Ford) iv., 265, 423.

[1] Cabell wrote from Richmond that the House of Delegates had proposed to print Madison’s letter to Everett of August 28, 1831 (see *ante*, p. 383) with the report of 1799 on the Resolutions of the previous year; that in the course of the debate Madison had been accused of inconsistency. Cabell would like to read Madison’s letter of June 29, 1821, to Judge Roane and to be permitted to say that Roane had in the month of

April preceding written to Madison “for advice & aid upon *the subject* of the letters of Algernon Sydney.” Cabell had seen the letters to Roane and had kept copies of them. He wanted a word in the letter of June 29th, 1821, supplied.—*Mad. MSS.* For the letters to Roane see *ante*, p. 65.

[1] From the *National Intelligencer*, November 24, 1860. December 28, 1832, Charlottesville, Va., “A Friend of Union and State Rights” (Alexander Rives) sent Madison two essays of his defending Madison’s views on secession. Madison’s reply was addressed to the anonymous correspondent, but on January 7, 1833, Rives acknowledged the letter (*Mad. MSS.*) In printing Madison’s letter the *National Intelligencer* said.

“In 1832 Mr. Alexander Rives, under the signature of ‘A Friend of Union and State Rights,’ published two communications in the *Virginia (Charlottesville) Advocate*. The letter of Mr. Madison was called forth by these articles, and was addressed to the writer of them under his nom-de-plume. It bears no date, but a letter from Mr. Rives in reply to it, in our possession, is dated January 7th, 1833.”

[1] The letter is in the hand of Madison’s Secretary, and was not sent. Tyler was then Senator from Virginia.

[1] See his published letter of Augt 4, 1787 to Ed Carrington—*Madison’s Note*.

[1] Clay’s letter said that by 1842, he thought, Northern manufacturers would be able to sell most of their products without protection as cheaply as they could be bought in Europe.—*Chic. Hist. Soc. MSS.*

[1] The draft does not state to whom the letter was addressed. Probably it was not sent at all and was meant as a memorandum for posthumous use.

[1] The rest of the draft is not among the Madison MSS. and is supplied from the *Works of Madison* (Cong. Ed.).

[1] August 17, 1834, from Albemarle County, Coles wrote to Madison urging him to express his views on the powers of the President, on the veto power, and on the spoils system.—*Chic. Hist. Soc. MSS.*

[1] See Franklin’s letter to Lord Howe in 1776.—*Madison’s Note* The letter is of July 20 and may be seen in the *Writings of Benjamin Franklin* (Smyth) vi., 458.

[2] The son of General William H. Winder.

[1] Madison’s advices concerning affairs in Kentucky had come chiefly from John Brown, George Muter, and John Campbell. See *ante*, Vol. II.

[1] He organized the medical department of Cincinnati College this year, and the address was doubtless before that or some other college.

[1] Orange C. H. Records.

[1] From the *Works of Madison* (Cong Ed).

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

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

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

It is remarkable, that although the plan furnished to Mr. Adams enumerates, with such close resemblance to the language of the Constitution as adopted, the following provisions, and among them the fundamental article relating to the constitution of the House of Representatives, they are unnoticed in his observations on the plan of Government submitted by him to the Convention, while minor provisions, as that enforcing the attendance of members of the Legislature, are commented on. I cite the following, though others might be added: [1] To subdue a rebellion in any State on application of its Legislature. [2] To provide such dock-yards and arsenals, and erect such fortifications, as may be necessary for the U. States, and to exercise exclusive jurisdiction therein. [3] To establish post and military roads. [4] To declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses. [5] No tax shall be laid on articles exported from the States.

1. Election by the people of the House of Representatives. (Not improbably unnoticed, because the plan presented by him to the Convention contained his favourite mode of electing the House of Representatives by the State Legislatures, so essentially different from that of an election by the people, as in the Constitution recommended for adoption).—*Madison's Note*.

2. The Executive veto on the laws. See the succeeding numbers as above.

[1] Alluding particularly to the debates in the Convention and the letter of Mr. Pinckney of March 28th, 1789, to Mr. Madison. [This note not included in the letter sent to Mr. Duer.]—*Madison's Note*.

[1] Virginia proposed, in 1786, the Convention at Annapolis, which recommended the Convention at Philadelphia, of 1787, and was the first of the States that acted on, and complied with, the recommendation from Annapolis. [This note not included in the letter sent to Mr. Duer.]—*Madison's Note*.

[1] The following analysis of the Pinckney plan was made by Madison [1835]

In the plan of Mr Pinkney as presented to Mr Adams and published in Journal

Article 1 Style—

2. Division of Legislative power in two Houses.
3. Members of H. of D. to be chosen by the people &ce.
4. Senate to be elected by the H. of Del. &c.
5. relates to the mode of electing the H. of Del by the people & rules &ce. Every bill to be presented to the *President* for his revision
6. powers of the Legislature enumerated & all constitutional acts thereof and treaties declared to be the supreme law & the judges bound thereby.

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

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

no such provision.

“All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed. The trials shall be open & public, & be by Jury.”

Article 9. gives the legislative power to establish Courts of law, equity & admiralty & relates to the appointment & compensation of judges—one to be the Supreme Court—its jurisdiction over all cases under the laws of U. S. or affecting ambassadors &c. to the trial of impeachment of officers of U. S.; cases of admiralty & maritime jurisdiction—cases where original and where appellate.

Article 10. after first Census the H. of D. shall apportion the Senate by electing one Senator for every — members each State shall have in H. of D.—each State to have at least one member.

See article 6th.

To establish uniform rules of naturalization in Article 6.



Article 16 provides the same by ?.

Nothing of it —

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

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

Not in the plan.

In the plan of Mr.. Pinkney as presented to Mr Adams & published in the Journal of the Convention.

The House of Representatives to be chosen

No Council of Revision

The President to be elected for years—

not in the plan.

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

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

Article 7. Senate alone to declare War, make treaties & appoint ministers & Judges of Sup. Court. To regulate the manner of deciding disputes, now subsisting, or which may arise between States respecting jurisdiction or territory.

Article 8. The Executive power—H[is] E[xcellency] President U. S. for years & re-eligible. To give information to the Legislatures of the State of the Union & recommend measures to their consideration. To take care that the laws be executed. To commission all officers of the U. S. and except ministers & Judges of Sup. Court, nominate & *with consent of Senate* appoint all other officers—to receive ministers & may correspond with Ex. of different States. To grant pardon except in impeachments. To be commander in chief—to receive a fixed compensation—to take an oath—removable on impeachment by H. of D. and conviction in Supreme Court of bribery & corruption. The President of Senate to act as Pres. in case of death & ce and the Speaker of the H. of D. in case of death of Pres. of Senate.

Silent.



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

“Every bill, which shall have passed the Legislature, shall be presented to the President for his revision; if he approves it he shall sign it; but if he does not approve it, he shall return it with his objections &ce &ce.

The Legislature shall have power

To subdue a rebellion in any State, on application of its Legislature;

To provide such dockyards & arsenals, and erect such fortifications as may be necessary for the U. S. and to exercise exclusive jurisdiction therein;

To establish post & military roads;

To declare the law & punishment of counterfeiting coin;

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

The prohibition of any tax on exports—

Plan as commented on in Pamphlet

Not adverted to

recommended as essential page 8.

Silent.

recommended page 9, but the 4th. article relates to extending rights of Citizens of each State throughout U. S., the delivery of fugitives from justice on demand, & the giving faith & credit to records & proceedings of each—vide Art. 12 & 13.

This article declares that individual States shall not exercise certain powers, founded on the principles of the 6th of the Confederation. A *Council* of revision is stated to be incorporated in his plan page 9. Vide Art. 11, for prohibition—empowers Congress to raise troops, & to levy taxes according to numbers of whites and ? of other descriptions

This article is stated to be an important alteration in the fed. system giving to Congress, not only a revision but a negative on the State laws. The States to retain only local legislation limited to concerns affecting each only, vide Art. 11th

“In all those important questions where the present Confederation has made the assent of nine States necessary, I have made the assent of ?ds of both Houses, when

assembled in Congress, and added to the number the regulation of trade and acts for laying an Impost and raising a revenue.”

“I have also added an article authorizing the United States, upon petition from the majority of the citizens of any State, or Convention authorized for that purpose, and of the Legislature of the State to which they wish to be annexed, or of the States among which they are willing to be divided, to consent to such junction or division, on the terms mentioned in the article.”

page 25. “a provision respecting the attendance of the members of both Houses; the penalties under which their attendance is required, are such as to insure it, as we are to suppose no man would willingly expose himself to the ignominy of a disqualification.”

Trial by Jury is provided for “in all cases, criminal as well as *Civil*.”

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

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

page 19. The exclusive right of coining money &c. is essential to assuring the federal funds—&c.

page 20. In all important questions where the Confederation made the assent of 9 States necessary I have made ? of both houses—and have added to them the regulation of trade and acts for levying Impost & raising revenue.

page 20. The exclusive right of making regulations for the government of the Militia ought to be vested in the Federal Councils &c.

page 22. The article empowering the U. S. to admit new States indispensable. Vide Article 14.

page 23. The Fed. Govt. should possess the exclusive right of declaring on what terms the privileges of citizenship & naturalization should be extended to foreigners.

page 23. Article 16 provides that alterations may be made by a given number of the legislature.

page 25. There is also in the articles, a provision respecting the attendance of members of both Houses—the penalties under which their attendance is required are such as to insure it &c.

page 26. The next article provides for the privilege of the writ of Habeas Corpus—the trial by jury in all cases—criminal as well as civil—the freedom of the press, and the prevention of religious tests as qualifications for offices of trust &c.

page 26. There is also an authority to the National Legislature, permanently to fix the seat of the Genl. Govt., to secure to authors the exclusive right to their performances & discoveries, & to establish a federal university.

There are other articles of subordinate consideration.

The plan according to his comments in the pamphlet printed by Francis Childs in New York.

No provision for electing the House of Representatives.

A Council of Revision consisting of the Executive and principal officers of government. “This, I consider as an improvement in legislation, and have therefore incorporated it as a part of the system.”

The Executive to be appointed septennially

“—have a right to convene and prorogue the legislature upon special occasions, when they cannot agree as to the time of their adjournment, and appoint all officers except Judges and Foreign Ministers.”

“The 9th article respecting the appointment of Federal Courts for deciding territorial controversies between different States, is the same with that in the Confederation; but this may with propriety be left to the Supreme Judicial.”

The 7th. article invests the U. S. with the compleat power of regulating trade & levying imposts & duties. (The regulation of commerce is given in the powers enumerated article 6th of plan.)

Article 8 like same in Confed & gives power to exact postage for expense of office & for revenue.

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

“to secure to authors the exclusive right to their performances and discoveries.”

Silent.

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

These and other important powers are unnoticed in his remarks.

There is no numerical correspondence between the articles contained in the plan & those treated of in the pamphlet & the latter alludes to several more than are included in the former.

In Mr. Pinkney’s letter to Mr. Adams, accompanying his plan he states that “very soon after the Convention met, I changed and avowed candidly the change of my opinion on giving the power to Congress to revise the State laws in certain cases, and in giving the exclusive power to the Senate to declare war, thinking it safer to refuse the first altogether, and to vest the latter in Congress.”

In his pamphlet he concludes the 5th page of his argument in favor of the first power with these remarks—“In short, from their example [other republics] and from our own experience, there can be no truth more evident than this, that unless our Government is consolidated as far as is practicable, by retrenching the State authorities, and centering as much force & vigor in the Union, as are adequate to its exigencies, we shall soon be a divided, and consequently an unhappy people. I shall ever consider the revision and negation of the State laws, as one great and leading step to this reform, and have therefore conceived it proper to bring it into view.”

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

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

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

Title

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

New York—Printed by Francis Childs.—*State Dept. Const. MSS.*

[1] Copy of the original kindly furnished by Charles Francis Adams, Esq., of Boston.

[1] These notes were written almost entirely in Madison's own hand and revised by him with the aid of Mrs. Madison and his brother-in-law, John C. Payne.

[1] Madison left the quotation to be filled in.

[1] *Ante*, Vol. VI., p. 341.

[1] There is a direct proof that the authority of the Supreme Court of the U. S. was understood by the Legislature of Virginia to have been an asserted bar to an interposition by the states agst the al & sed laws.—*Madison's Note*.

[1] No example of the inconsistency of party zeal can be greater than is seen in the value allowed to Mr. Jefferson's authority by the nullifying party; while they disregard his repeated assertions of the Federal authority, even under the articles of confederation, to stop the commerce of a refractory State, while they abhor his opinions & propositions on the subject of slavery & overlook his declaration, that in a republick, it is a vital principle that the minority must yield to the majority—they seize on an expression of Mr. Jefferson that nullification is the rightful remedy, as the Shiboleth of their party, & almost a sanctification of their cause. But in *addition* to their inconsistency, their zeal is guilty of the subterfuge of dropping a part of the language of Mr. Jefferson, which shews his meaning to be entirely at variance with the nullifying construction. His words in the document appealed to as the infallible test of his opinions are: [ . . . “but, when powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every state has a natural right in cases not within the compact (*casus non fæderis*,) to nullify” etc.]

.....

Thus the right of nullification meant by Mr. Jefferson is the natural right, which all admit to be a remedy against insupportable oppression. It cannot be supposed for a moment that Mr. Jefferson would not revolt at the doctrine of South Carolina, that a single state could constitutionally resist a law of the Union while remaining within it, and that with the accession of a small minority of the others, overrule the will of a great majority of the whole, & constitutionally annul the law everywhere.

If the right of nullification meant by him had not been thus guarded agst. a perversion of it, let him be his own interpreter in his letter to Mr. Giles in December 1826 in which he makes the rightful remedy of a state in an extreme case to be a separation from the Union, not a resistance to its authority while remaining in it. The authority of Mr. Jefferson, therefore, belongs not, but is directly opposed to, the nullifying party who have so unwarrantably availed themselves of it—*Madison's Note*.

[1] The precedents for the nullification doctrine are given in *The Genuine Book of Nullification*, Charleston, 1831.

[1] Madison's note says: Extract of a letter from Monroe to Madison, dated Albemarle, May 15, 1800: “Besides, I think there is cause to suspect the sedition law will be carried into effect in this state at the approaching federal court, and I ought to

be there [Richmond] to aid in preventing trouble. A camp is formed of about 400 men at Warwick, four miles below Richmond, and no motive for it assigned except to proceed to Harper's Ferry, to sow cabbage-seed. But the gardening season is passing, and this camp remains. I think it possible an idea may be entertained of opposition, and by means whereof the fair prospect of the republican party may be overcast. But in this they are deceived, as certain characters in Richmond and some neighbouring counties are already warned of their danger, so that an attempt to excite a hotwater insurrection will fail."

Extract from another letter from J. Monroe to J. M., dated Richmond, June 4, 1800: "The conduct of the people on this occasion was exemplary, and does them the highest honour. They seemed aware the crisis demanded of them a proof of their respect for law and order, and resolved to show they were equal to it. I am satisfied a different conduct was expected from them, for everything that could was done to provoke it. It only remains that this business be closed on the part of the people, as it has been so far acted; that the judge, after finishing his career, go off in peace, without experiencing the slightest insult from any one; and that this will be the case I have no doubt."

[1] The following note is marked by Madison as intended to be inserted at this point. Most of it appears, however, embodied in other parts of the essay:

"The predominant feelings & views of Virginia, in her Resolutions of 98 & the comment on them in the Report of 99 may be seen in the instructions to her members in Congs. passed at the same session with the Report. These instructions, instead of squinting at any such doctrine as that of nullification, are limited to efforts, on the part of the members 1. to procure a reduction of the army 2. to prevent or stop the premature augmentation of the navy, 3. to oppose the principle lately advanced, that the common law of England is in force under the Govt. of the U. S., excepting the particular parts &c [as excepted in the Report] 4th Repeal of the alien & seda acts.

"Again as a final answer to the question asked with a triumphant tone, whether the solemnity of the proceedings of Virga. on that occasion, cd. be called for or wasted, in mere declarations and protests, rights which no one desired; and whether the nullifying right alone must not therefore have been the object of them? it may be observed that sufficient answer both to the fact and the inference had been already given in the appeal to language held in the answers of the several states, denying the right of a state to protest agst. the Constitutionality of acts of Congs. and to the solemnity of the concluding paragraph of the Report renewing the protest agst. the alien & sedition acts The fact that the right of a state Legisl to protest, was positively denied is authenticated by a large and respectable portion of the House of Delegates in their votes as recorded in the Journal of the House.

"A motion offered at the date of the Report affirms 'that protests, made by the Legislature of this or of any other State, agts. particular acts of Congs. as unconstitutional, accompanied with invitations to other States to join in such protests are improper & unauthorized assumptions of power, not permitted or intended to be permitted to the State Legislatures. And inasmuch as *correspondent sentiments with*

*the present have been expressed by those of our Sister States who have acted on the Resolutions aforesaid* [of 1798] Resolved therefore that the present Genl. Assembly convinced of the impropriety of the Resolutions of the last assembly, deem it inexpedient farther to act on the said Resolutions.’

“On this Resolution, the votes according to the yeas & nays were 57 of the former and 98 of the latter.

“Here then within the House of Delegates itself, more than ? of the whole number denied & protested agst. the right of protest, which the nullifying critics have alleged was denied by nobody.”—*Mad. MSS.*

[1] *Documentary History of the Constitution*, ii., 1.

[1] See letter of J. M. to D[aniel] W[ebster] on file [March 15, 1833].—*Madison’s Note.*

The letter is as follows

“Dear Sir—

I return my thanks for the copy of your late very powerful Speech in the Senate of the United S. It crushes ‘nullification’ and must hasten the abandonment of ‘Secession.’ But *this* dodges the blow by confounding the claim to secede at will, with the right of seceding from intolerable oppression. The former answers itself, being a violation, without cause, of a faith solemnly pledged. The latter is another name only for revolution, about which there is no theoretic controversy. Its double aspect, nevertheless, with the countenance recd from certain quarters, is giving it a popular currency here which may influence the approaching elections both for Congress & for the State Legislature. It has gained some advantage also, by mixing itself with the question whether the Constitution of the U. S. was formed by the people or by the States, now under a theoretic discussion by animated partizans.

“It is fortunate when disputed theories, can be decided by undisputed facts. And here the undisputed fact is, that the Constitution was made by the people, but as imbodyed into the several States, who were parties to it and therefore made by the States in their highest authoritative capacity. They might, by the same authority & by the same process have converted the Confederacy into a mere league or treaty; or continued it with enlarged or abridged powers, or have imbodyed the people of their respective States into one people, nation or sovereignty; or as they did by a mixed form make them one people, nation, or sovereignty, for certain purposes, and not so for others.

“The Constitution of the U. S. being established by a Competent authority, by that of the sovereign people of the several States who were the parties to it, it remains only to inquire what the Constitution is; and here it speaks for itself. It organizes a Government into the usual Legislative Executive & Judiciary Departments; invests it with specified powers, leaving others to the parties to the Constitution, it makes the Government like other Governments to operate directly on the people; places at its

Command the needful Physical means of executing its powers; and finally proclaims its supremacy, and that of the laws made in pursuance of it, over the Constitutions & laws of the States; the powers of the Government being exercised, as in other elective & responsible Governments, under the controul of its Constituents, the people & legislatures of the States, and subject to the Revolutionary *Rights* of the people in extreme cases.

“It might have been added, that whilst the Constitution, therefore, is admitted to be in force, its *operation*, in *every respect* must be precisely the *same*, whether its authority be derived from that of the *people*, in the one or the other of the modes, in question; the authority being equally Competent in both; and that, without an annulment of the Constitution itself its supremacy must be submitted to.

“The only distinctive effect, between the two modes of forming a Constitution by the authority of the people, is that if formed by them as imbodyed into separate communities, as in the case of the Constitution of the U. S. a dissolution of the Constitutional Compact would replace them in the condition of separate communities, that being the Condition in which they entered into the compact; whereas if formed by the people as one community, acting as such by a numerical majority, a dissolution of the compact would reduce them to a state of nature, as so many individual persons. But whilst the Constitutional compact remains undissolved, it must be executed according to the forms and provisions specified in the compact. It must not be forgotten, that compact, express or implied is the vital principle of free Governments as contradistinguished from Governments not free; and that a revolt against this principle leaves no choice but between anarchy and despotism.”—*Mad. MSS.*

[1] The known existence of this controul has a silent influence, which is not sufficiently adverted to in our political discussions, and which has doubtless prevented collisions, in cases which might otherwise have threatened the fabric of the Union. Another preventive resource is in the fact noted by Montesquieu, that if one member of a union become diseased, it is cured by the examples and the frowns of the others, before the contagion can spread.—*Madison's Note.*

[2] The debates of the Pennsylvania Convention contain a speech of Mr. Willson, (\*) (Decr 3, 1787) who had been a member of the general convention, in which, alluding to the clause tolerating for a time, the farther importation of slaves, he consoles himself with the hope that, in a few years it would be prohibited altogether; observing that in the mean time, the new States which were to be formed would be under the controul of Congress *in this particular*, and slaves would never be introduced among them. In another speech on the day following and alluding to the same clause, his words are “yet the lapse of a few years & Congress will have power to *exterminate* slavery within our borders.” How far the language of Mr. W. may have been accurately reported is not known. The expressions used, are more vague & less consistent than would be readily ascribed to him. But as they stand, the fairest construction would be, that he considered the power given to Congress, to arrest the importation of slaves as “laying a foundation for banishing slavery out of the country; & tho’ at a period more distant than might be wished, producing the same kind of gradual change which was pursued in Pennsylvania.” (See his speech, page 90 of the



Debates.) By this “change,” after the example of Pennsylvania, he must have meant a change by the other States influenced by that example, & yielding to the general way of thinking & feeling, produced by the policy of putting an end to the importation of slaves. He could not mean by “banishing slavery,” more than by a power “to exterminate it,” that Congress were authorized to do what is literally expressed.—*Madison’s Note*.

In the letter Madison said.

“It is far from my purpose to resume a subject on which I have perhaps already exceeded the proper limits. But, having spoken with so confident a recollection of the meaning attached by the Convention to the term “migration” which seems to be an important hinge to the Argument, I may be permitted merely to remark that Mr. Wilson, with the proceedings of that assembly fresh on his mind, distinctly applies the term to persons coming to the U. S. *from abroad*, (see his printed speech, p. 59) and that a consistency of the passage cited from the Federalist with my recollections, is preserved by the discriminating term “*beneficial*” added to voluntary emigrations from Europe to America.”—*Mad. MSS*. Wilson’s speech may be found in *Elliott’s Debates*, ii., 451.

[1](See Vol. II., p. 326 of the Secret Journals now in print which I presume you have)—*Madison’s note*. See for the report *ante* Vol. I., p. 82; for the letter, Vol. II., p. 64. On Feb. 27, 1824, Madison wrote Rush:

“Almost at the moment of receiving yours of Decr. 28, my hand casually fell on the inclosed scrap, which I must have extracted from the Author,<sup>2</sup> [borrowed for the purpose] on some occasion when the right of navigating the Mississippi engaged my attention. I add it to my former inclosures on that subject, merely as pointing to one source of information which may lead to others fuller & better.”—*Mad. MSS*.

[1] On Sept. 27 Cabell wrote Madison asking permission to print this letter and on October 15 Madison replied that because of the all-absorbing interest in the impending presidential election it must not be printed until the election was over and the public mind should be in a tranquil state—*Mad. MSS*.

Madison wrote to Cabell again October 30:

“In my letter of September 18th, I stated briefly the grounds on which I rested my opinion that a power to impose duties & restrictions on imports with a view to encourage domestic productions, was constitutionally lodged in Congress. In the observations then made was involved the opinion also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by Congress, the only Body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

“I will premise that I concur in the opinion that, as a *general* rule, individuals ought to be deemed the best judges, of the best application of their industry and resources.

“I am ready to admit also that there is no Country in which the application may, with more safety, be left to the intelligence and enterprize of individuals, than the U. States.

“Finally, I shall not deny that, in all doubtful cases, it becomes every Government to lean rather to a confidence in the judgment of individuals, than to interpositions controuling the free exercise of it.

“With all these concessions, I think it can be satisfactorily shewn, that there are exceptions to the general rule, now expressed by the phrase ‘Let us alone,’ forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

“1. The Theory of ‘Let us alone,’ supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view, be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former, as to the latter. But this golden age of free trade has not yet arrived; nor is there a single nation that has set the example. No Nation can, indeed, safely do so, until a reciprocity at least be ensured to it. Take for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in question, must shrink from a *universal* application of it.

“A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783, and the establishment of the present Constitution of the U. States, the want of a General Authority to regulate trade, is known to have had this consequence. And have not the pretensions & policy latterly exhibited by G. Britain, given warning of a like result from a renunciation of all countervailing regulations, on the part of the U. States. Were she permitted, by conferring on certain portions of her Domain the name of Colonies, to open from these a trade for herself, to foreign Countries, and to exclude, at the same time, a reciprocal trade to such colonies by foreign Countries, the use to be made of the monopoly needs not be traced. Its character will be placed in a just relief, by supposing that one of the Colonial Islands, instead of its present distance, happened to be in the vicinity of G. Britain, or that one of the Islands in that vicinity, should receive the name & be regarded in the light of a Colony, with the peculiar privileges claimed for colonies. Is it not manifest, that in this case, the favored Island might be made the sole medium of the commercial intercourse with foreign nations, and the parent Country thence enjoy every essential advantage, as to the terms of it, which would flow from an *unreciprocal* trade from her other ports with other nations.

“Fortunately the British claims, however speciously coloured or adroitly managed were repelled at the commencement of our commercial career as an Independent people; and at successive epochs under the existing Constitution, both in legislative

discussions and in diplomatic negotiations. The claims were repelled on the solid ground, that the Colonial trade as a *rightful monopoly*, was limited to the intercourse between the parent Country & its Colonies, and between one Colony and another; the whole being, strictly in the nature of a coasting trade from one to another port of the same nation; a trade with which no other nation has a right to interfere. It follows of necessity, that the Parent Country, whenever it opens a Colonial port for a direct trade to a foreign Country, departs itself from the principle of Colonial Monopoly, and entitles the foreign Country to the same reciprocity in every respect, as in its intercourse with any other ports of the nation.

“This is common sense, and common right. It is still more, if more could be required; it is in conformity with the established usage of all nations, other than Great Britain, which have Colonies; notwithstanding British representations to the contrary. Some of those Nations are known to adhere to the monopoly of their Colonial trade, with all the rigor & constancy which circumstances permit. But it is also known, that whenever, and from whatever cause, it has been found necessary or expedient, to open their Colonial ports to a foreign trade, the rule of reciprocity in favour of the foreign party was not refused, nor, as is believed, a right to refuse it ever pretended.

“It cannot be said that the reciprocity was dictated by a deficiency of the commercial marine. France, at least could not be, in every instance, governed by that consideration; and Holland still less, to say nothing of the navigating States of Sweden and Denmark, which have rarely if ever, enforced a colonial monopoly. The remark is indeed obvious, that the shipping liberated from the usual conveyance of supplies from the parent Country to the Colonies, might be employed in the new channels opened for them in supplies from abroad.

“Reciprocity, or an equivalent for it, is the only rule of intercourse among Independent communities; and no nation ought to admit a doctrine, or adopt an invariable policy, which would preclude the counteracting measures necessary to enforce the rule.

“2. The Theory supposes moreover a perpetual peace, not less chimerical, it is to be feared, than a universal freedom of commerce.

“The effect of war among the commercial and manufacturing nations of the World, in raising the wages of labour and the cost of its products, with a like effect on the charges of freight and insurance, needs neither proof nor explanation. In order to determine, therefore, a question of economy between depending on foreign supplies, and encouraging domestic substitutes, it is necessary to compare the probable periods of war, with the probable periods of peace; and the cost of the domestic encouragement in times of peace, with the cost added to foreign articles in times of War.

“During the last century the periods of war and peace have been nearly equal. The effect of a state of war in raising the price of imported articles, cannot be estimated with exactness. It is certain, however, that the increased price of particular articles, may make it cheaper to manufacture them at home.

“Taking, for the sake of illustration, an equality in the two periods, and the cost of an imported yard of cloth in time of war to be 9½ dollars, and in time of peace to be 7 dollars, whilst the same could, at all times, be manufactured at home, for 8 dollars, it is evident that a tariff of 1¼ dollar on the imported yard, would protect the home manufacture in time of peace, and avoid a tax of 1½ dollars imposed by a state of war.

“It cannot be said that the manufactories, which could not support themselves in periods of peace, would spring up of themselves at the recurrence of war prices. It must be obvious to every one, that, apart from the difficulty of great & sudden changes of employment, no prudent capitalists would engage in expensive establishments of any sort, at the commencement of a war of uncertain duration, with a certainty of having them crushed by the return of peace.

“The strictest economy, therefore, suggests, as exceptions to the general rule, an estimate, in every given case, of war & peace periods and prices, with inferences therefrom, of the amount of a tariff which might be afforded during peace, in order to avoid the tax resulting from war. And it will occur at once, that the inferences will be strengthened, by adding to the supposition of wars wholly foreign, that of wars in which our own country might be a party.<sup>1</sup>

“3. It is an opinion in which all must agree, that no nation ought to be unnecessarily dependent on others for the munitions of public defence, or for the materials essential to a naval force, where the nation has a maritime frontier or a foreign commerce to protect. To this class of exceptions to the theory may be added the instruments of agriculture and of mechanic arts, which supply the other primary wants of the community. The time has been when many of these were derived from a foreign source, and some of them might relapse into that dependence were the encouragement to the fabrication of them at home withdrawn. But, as all foreign sources must be liable to interruptions too inconvenient to be hazarded, a provident policy would favour an internal and independent source as a reasonable exception to the general rule of consulting cheapness alone.

“4. There are cases where a nation may be so far advanced in the pre-requisites for a particular branch of manufactures, that this, if once brought into existence, would support itself; and yet, unless aided in its nascent and infant state by public encouragement and a confidence in public protection, might remain, if not altogether, for a long time unattempted, or attempted without success. Is not our cotton manufacture a fair example? However favoured by an advantageous command of the raw material, and a machinery which dispenses in so extraordinary a proportion with manual labour, it is quite probable that, without the impulse given by a war cutting off foreign supplies and the patronage of an early tariff, it might not even yet have established itself; and pretty certain that it would be far short of the prosperous condition which enables it to face, in foreign markets, the fabrics of a nation that defies all other competitors. The number must be small that would now pronounce this manufacturing boon not to have been cheaply purchased by the tariff which nursed it into its present maturity.

“5. Should it happen, as has been suspected, to be an object, though not of a foreign Government itself, of its great manufacturing capitalists, to strangle in the cradle the infant manufactures of an extensive customer or an anticipated rival, it would surely, in such a case, be incumbent on the suffering party so far to make an exception to the ‘let alone’ policy as to parry the evil by opposite regulations of its foreign commerce.

“6. It is a common objection to the public encouragement of particular branches of industry, that it calls off labourers from other branches found to be more profitable; and the objection is, in general, a weighty one. But it loses that character in proportion to the effect of the encouragement in attracting skilful labourers from abroad. Something of this sort has already taken place among ourselves, and much more of it is in prospect; and as far as it has taken or may take place, it forms an exception to the general policy in question.

“The history of manufactures in Great Britain, the greatest manufacturing nation in the world, informs us, that the woollen branch, till of late her greatest branch, owed both its original and subsequent growths to persecuted exiles from the Netherlands; and that her silk manufactures, now a flourishing and favourite branch, were not less indebted to emigrants flying from the persecuting edicts of France. [*Anderson’s History of Commerce.*]

“It appears, indeed, from the general history of manufacturing industry, that the prompt and successful introduction of it into new situations has been the result of emigrations from countries in which manufactures had gradually grown up to a prosperous state; as into Italy, on the fall of the Greek Empire; from Italy into Spain and Flanders, on the loss of liberty in Florence and other cities; and from Flanders and France into England, as above noticed. [*Franklin’s Canadian Pamphlet.*]

“In the selection of cases here made, as exceptions to the ‘let alone’ theory, none have been included which were deemed controvertible; and if I have viewed them, or a part of them only, in their true light, they show what was to be shown, that the power granted to Congress to encourage domestic products by regulations of foreign trade was properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation.”

### ***Notes.***

“It does not appear that any of the strictures on the letters from J. Madison to J. C. Cabell have in the least invalidated the constitutionality of the power in Congress to favour domestic manufactures by regulating the commerce with foreign nations.

“1. That this regulating power embraces the object remains fully sustained by the uncontested fact that it has been so understood and exercised by all commercial and manufacturing nations, particularly by Great Britain; nor is it any objection to the inference from it, that those nations, unlike the Congress of the United States, had all

other powers of legislation as well as the power of regulating foreign commerce, since this was the particular and appropriate power by which the encouragement of manufactures was effected.

“2. It is equally a fact that it was generally understood among the States previous to the establishment of the present Constitution of the United States, that the encouragement of domestic manufactures by regulations of foreign commerce, particularly by duties and restrictions on foreign manufactures, was a legitimate and ordinary exercise of the power over foreign commerce; and that, in transferring this power to the Legislature of the United States, it was anticipated that it would be exercised more effectually than it could be by the States individually. [See Lloyd’s Debates and other publications of the period.]

“It cannot be denied that a right to vindicate its commercial, manufacturing, and agricultural interests against unfriendly and unreciprocal policy of other nations, belongs to every nation, that it has belonged at all times to the United States as a nation; that, previous to the present Federal Constitution, the right existed in the governments of the individual States, not in the Federal Government; that the want of such an authority in the Federal Government was deeply felt and deplored; that a supply of this want was generally and anxiously desired; and that the authority has, by the substituted Constitution of the Federal Government, been expressly or virtually taken from the individual States; so that, if not transferred to the existing Federal Government it is lost and annihilated for the United States as a nation. Is not the presumption irresistible, that it must have been the intention of those who framed and ratified the Constitution, to vest the authority in question in the substituted Government? and does not every just rule of reasoning allow to a presumption so violent a proportional weight in deciding on a question of such a power in Congress, not as a source of power distinct from and additional to the constitutional source, but as a source of light and evidence as to the true meaning of the Constitution?

“3. It is again a fact, that the power was so exercised by the first session of the first Congress, and by every succeeding Congress, with the sanction of every other branch of the Federal Government, and with universal acquiescence, till a very late date. [See the Messages of the Presidents and the Reports and Letters of Mr. Jefferson.]

“4. That the surest and most recognized evidence of the meaning of the Constitution, as of a law, is furnished by the evils which were to be cured or the benefits to be obtained; and by the immediate and long-continued application of the meaning to these ends. This species of evidence supports the power in question in a degree which cannot be resisted without destroying all stability in social institutions, and all the advantages of known and certain rules of conduct in the intercourse of life.

“5. Although it might be too much to say that no case could arise of a character overruling the highest evidence of precedents and practice in expounding a constitution, it may be safely affirmed that no case which is not of a character far more exorbitant and ruinous than any now existing or that has occurred, can authorize a disregard of the precedents and practice which sanction the constitutional power of Congress to encourage domestic manufactures by regulations of foreign commerce.

“The importance of the question concerning the authority of precedents, in expounding a constitution as well as a law, will justify a more full and exact view of it.

“It has been objected to the encouragement of domestic manufactures by a tariff on imported ones, that duties and imposts are in the clause specifying the sources of revenue, and therefore cannot be applied to the encouragement of manufactures when not a source of revenue.

“But, 1. It does not follow from the applicability of duties and imposts under one clause for one usual purpose, that they are excluded from an applicability under another clause to another purpose, also requiring them, and to which they have also been usually applied. “2. A history of that clause, as traced in the printed journal of the Federal Convention, will throw light on the subject.

“It appears that the clause, as it originally stood, simply expressed ‘a power to lay taxes, duties, imposts, and excises,’ without pointing out the objects; and, of course, leaving them applicable in carrying into effect the other specified powers. It appears, farther, that a solicitude to prevent any constructive danger to the validity of public debts contracted under the superseded form of government, led to the addition of the words ‘to pay the debts.’

“This phraseology having the appearance of an appropriation limited to the payment of debts, an express appropriation was added ‘for the expenses of the Government,’ &c.

“But even this was considered as short of the objects for which taxes, duties, imposts, and excises might be required; and the more comprehensive provision was made by substituting ‘for expenses of Government’ the terms of the old Confederation, viz.: and provide for the common defence and general welfare, making duties and imposts, as well as taxes and excises, applicable not only to payment of debts, but to the common defence and general welfare.

“The question then is, What is the import of that phrase, common defence and general welfare, in its actual connexion? The import which Virginia has always asserted, and still contends for, is, that they are explained and limited to the enumerated objects subjoined to them, among which objects is the regulation of foreign commerce; as far, therefore, as a tariff of duties is necessary and proper in regulating foreign commerce for any of the usual purposes of such regulations, it may be imposed by Congress, and, consequently, for the purpose of encouraging manufactures, which is a well-known purpose for which duties and imposts have been usually employed. This view of the clause providing for revenue, instead of interfering with or excluding the power of regulating foreign trade, corroborates the rightful exercise of power for the encouragement of domestic manufactures.

It may be thought that the Constitution might easily have been made more explicit and precise in its meaning. But the same remark might be made on so many other parts of the instrument, and, indeed, on so many parts of every instrument of a complex

character, that, if completely obviated, it would swell every paragraph into a page and every page into a volume, and, in so doing, have the effect of multiplying topics for criticism and controversy.

The best reason to be assigned, in this case, for not having made the Constitution more free from a charge of uncertainty in its meaning, is believed to be, that it was not suspected that any such charge would ever take place; and it appears that no such charge did take place, during the early period of the Constitution, when the meaning of its authors could be best ascertained, nor until many of the contemporary lights had in the lapse of time been extinguished. How often does it happen, that a notoriety of intention diminishes the caution against its being misunderstood or doubted! What would be the effect of the Declaration of Independence, or of the Virginia Bill of Rights, if not expounded with a reference to that view of their meaning?

“Those who assert that the encouragement of manufactures is not within the scope of the power to regulate foreign commerce, and that a tariff is exclusively appropriated to revenue, feel the difficulty of finding authority for objects which they cannot admit to be unprovided for by the Constitution; such as ensuring internal supplies of necessary articles of defence, the countervailing of regulations of foreign countries, &c., unjust and injurious to our navigation or to our agricultural products. To bring these objects within the constitutional power of Congress, they are obliged to give to the power “to regulate foreign commerce” an extent that at the same time necessarily embraces the encouragement of manufactures; and how, indeed, is it possible to suppose that a tariff is applicable to the extorting from foreign Powers of a reciprocity of privileges and not applicable to the encouragement of manufactures, an object to which it has been far more frequently applied?”

He wrote again December 5:

“Has not the passage in Mr. Jefferson’s letter to Mr. Giles, to which you allude, denouncing the assumptions of power by the General Government, been in some respects misunderstood? ‘They assume,’ he says, ‘*indefinitely* that also over Agriculture and Manufactures.’ It would seem that writing confidentially, & probably in haste, he did not discriminate with the care he otherwise might have done, between an assumption of power and an abuse of power; relying on the term ‘*indefinitely*’ to indicate an excess of the latter, and to imply an admission of a *definite* or reasonable use of the power to regulate trade for the encouragement of manufacturing and agricultural products. This view of the subject is recommended by its avoiding a variance with Mr. Jefferson’s known sanctions, in official acts & private correspondence, to a power in Congress to encourage manufactures by commercial regulations. It is not easy to believe that he could have intended to reject *altogether* such a power. It is evident from the context that his language was influenced by the great injustice, impressed on his mind, of a measure charged with the effect of taking the earnings of one, & that the most suffering class, & putting them into the pockets of another, & that the most flourishing class. Had Congress so regulated an impost for revenue merely, as in the view of Mr. Jefferson to oppress one section of the Union & favor another, it may be presumed that the language used by him, would have been not less indignant, tho the Tariff, in that case, could not be otherwise complained of,



than as an abuse, not as a usurpation of power; or, at most, as an abuse violating the spirit of the Constitution, as every unjust measure must that of every Constitution, having justice for a cardinal object. No Constitution could be lasting without an habitual distinction between an abuse of legitimate power, and the exercise of a usurped one. It is quite possible that there might be a latent reference in the mind of Mr. Jefferson to the reports of Mr. Hamilton & Executive recommendations, to Congress favorable to indefinite power over both Agriculture and Manufactures. He might have seen also the report of a Committee of a late Congress presented by Mr. Steward, of Pennsylvania, which in supporting the cause of internal improvement, took the broad ground of 'General Welfare,' (including, of course, *every* internal as well as external power,) without incurring any positive mark of disapprobation from Congress."—*Mad. MSS.*

[2.] Having received a copy of Senator Robert Y. Hayne's speeches on the constitution which began January 19, 1830, Madison wrote to him, the draft being dated "Apr. (say 3d or 4th)."

"I recd in due time your favor enclosing your two late speeches, and requesting my views of the subject they discuss. The speeches could not be read without leaving a strong impression of the ability & eloquence which have justly called forth the eulogies of the public. But there are doctrines espoused in them from which I am constrained to dissent. I allude particularly to the doctrine which I understand to assert that the States perhaps their Governments have, singly, a constitutional right to resist & by force annul within itself acts of the Government of the U. S. which it deems unauthorized by the Constitution of the U. S.; although such acts be not within the extreme cases of oppression, which justly absolve the State from the Constitutional compact to which it is a party.

"It appears to me that in deciding on the character of the Constitution of the U. S. it is not sufficiently kept in view that being an unprecedented modification of the powers of Govt it must not be looked at thro' the refracting medium either of a consolidated Government, or of a confederated Govt; that being essentially different from both, it must be its own interpreter according to its text and *the facts of the case.*

"Its characteristic peculiarities are 1. the mode of its formation. 2. its division of the supreme powers of Govt. between the States in their united capacity, and the States in their individual capacities.

"1. It was formed not by the Governments of the States as the Federal Government superseded by it was formed; nor by a majority of the people of the U. S. as a single Community, in the manner of a consolidated Government.

"It was formed by the States, that is by the people of each State, acting in their highest sovereign capacity thro' Conventions representing them in that capacity, in like manner and by the same authority as the State Constitutions were formed; with this characteristic & essential difference that the Constitution of the U. S. being a compact among the States that is the people thereof making them the parties to the compact over one people for specified objects can not be revoked or changed at the will of any

State within its limits as the Constitution of a State may be changed at the will of the State, that is the people who compose the State & are the parties to its constitution & retained their powers over it. The idea of a compact between the Governors & the Governed was exploded with the Royal doctrine that Government was held by some tenure independent of the people.

“The Constitution of the U. S. is therefore within its prescribed sphere a Constitution in as strict a sense of the term as are the Constitutions of the individual States, within their respective spheres.

“2. And that it divides the supreme powers of Govt. between the two Governments is seen on the face of it; the powers of war & taxation, that is of the sword & the purse, of commerce of treaties &c. vested in the Govt. of the U. S. being of as high a character as any of the powers reserved to the State Govts.

“If we advert to the Govt of the U. S. as created by the Constitution it is found also to be a Govt in as strict a sense of the term, within the sphere of its powers, as the Govts created by the Constitutions of the States are within their respective spheres. It is like them organized into a Legislative, Executive & Judicial Dept. It has, like them, acknowledged cases in which the powers of those Departments are to operate and the operation is to be the same in both; that is *directly* on the persons & things submitted to their power. The concurrent operation in certain cases is one of the features constituting the peculiarity of the system.

“Between these two Constitutional Govts, the one operating in all the States, the others operating in each respectively; with the aggregate powers of Govt divided between them, it could not escape attention, that controversies concerning the boundary of Jurisdiction would arise, and that without some adequate provision for deciding them, conflicts of physical force might ensue. A political system that does not provide for a peaceable & authoritative termination of occurring controversies, can be but the name & shadow of a Govt the very object and end of a real Govt. being the substitution of law & order for uncertainty confusion & violence.

“That a final decision of such controversies, if left to each of 13 State now 24 with a prospective increase, would make the Constitution & laws of the U. S. different in different States, was obvious; and equally obvious that this diversity of independent decisions must disorganize the the Government of the Union, and even decompose the Union itself.

“Against such fatal consequences the Constitution undertakes to guard 1. by declaring that the Constitution & laws of the States in their united capacity shall have effect, anything in the Constitution or laws of any State in its individual capacity to the contrary notwithstanding, by giving to the Judicial authority of the U. S. an appellate supremacy in all cases arising under the Constitution; & within the course of its functions, arrangements supposed to be justified by the necessity of the case; and by the agency of the people & Legislatures of the States in electing & appointing the Functionaries of the Common Govt. whilst no corresponding relation existed between the latter and the Functionaries of the States.

“2. Should these provisions be found notwithstanding the responsibility of the functionaries of the Govt. of the U. S. to the Legislatures & people of the States not to secure the State Govts against usurpations of the Govt. of the United States there remains within the purview of the Constn. an impeachment of the Executive & Judicial Functionaries, in case of their participation in the guilt, the prosecution to depend on the Representatives of the people in one branch, and the trial on the Representatives of the States in the other branch of the Govt. of the U. S.

“3. The last resort within the purview of the Constn is the process of amendment provided for by itself and to be executed by the States.

“Whether these provisions taken together be the best that might have been made; and if not, what are the improvements, that ought to be introduced, are questions altogether distinct from the object presented by your communication, which relates to the Constitution as it stands.

“In the event of a failure of all these Constitutional resorts against usurpations and abuses of power and of an accumulation thereof rendering passive obedience & nonresistance a greater evil than resistance and revolution, there can remain but one resort, the last of all, the appeal from the cancelled obligation of the Constitutional compact to original rights and the law of self-preservation. This is the *Ultima ratio*, under all Governments, whether consolidated, confederated, or partaking of both those characters. Nor can it be doubted that in such an extremity a single State would have a right, tho’ it would be a natural not a *constitutional* Right to make the appeal. The same may be said indeed of particular portions of any political community whatever so oppressed as to be driven to a choice between the alternative evils.

“The proceedings of the Virginia Legislature (occasioned by the Alien and Sedition Acts) in which I had a participation, have been understood it appears, as asserting a Constitutional right in a single State to nullify laws of the U. S. that is to resist and prevent by force the execution of them, within the State.

“It is due to the distinguished names who have given that construction of the Resolutions and the Report on them to suppose that the meaning of the Legislature though expressed with a discrimination and fulness sufficient at the time may have been somewhat obscured by an oblivion of contemporary indications and impressions. But it is believed that by keeping in view distinctions (an inattention to which is often observable in the ablest discussions of the subjects embraced in those proceedings) between the Governments of the States & the States in the sense in which they were parties to the Constitution; between the several modes and objects of interposition agst the abuses of Power; and more especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature, paramount to all Constitutions; with these distinctions kept in view, and an attention always of explanatory use to the views and arguments which are combated, a confidence is felt that the Resolutions of Virga as vindicated in the Report on them, are entitled to an exposition shewing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

“On recurring to the printed Debates in the House of Delegates on the occasion, which were ably conducted, and are understood to have been, for the most part at least, revised by the Speakers, the tenor of them does not disclose any reference to a constitutional right in an individual State to arrest by force the operation of a law of the U. S. Concert among the States for redress agst the Alien & Sedition laws as acts of usurped power, was a leading sentiment, and the attainment of a Concert the immediate object of the course adopted, which was an invitation to the other States ‘to *concur* in declaring the acts to be unconstitutional, and to *co-operate* by the necessary & proper measures in maintaining unimpaired the authorities rights and liberties reserved to the States respectively or to the people.’ That by the necessary & proper measures to be concurrently & co-operatively taken were meant measures known to the Constitution, particularly the control of the Legislatures and people of the States over the Cong. of the U. S. cannot well be doubted.

“It is worthy of remark, and explanatory of the intentions of the Legislature, that the words ‘*and not law, but utterly null void & of no power or effect*’\* which in the Resolutions before the House followed the word unconstitutional, were near the close of the debate stricken out by common consent. It appears that the words had been regarded as only surplusage by the friends of the Resolution, but lest they should be misconstrued into a nullifying import instead of a declaration of opinion, the word unconstitutional alone was retained, as more safe agst. that error. The term *nullification* to which such an important meaning is now attached, was never a part of the Resolutions and appears not to have been contained in the Kentucky Resolutions as *originally* passed, but to have been introduced at an after date.

“Another and still more conclusive evidence of the intentions of the Legislature is given in their Address to their Constituents accompanyg. the publication of their Resoln. The address warns them agst the encroaching spirit of the Gen Govt.; argues the unconstitutionality of the Alien & Sedition laws, enumerates the other instances in which the Constitutional limits had been overleaped; dwells on the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of the Fedr. policy. But nothing is said that can be understood to look to means of maintaing the rights of the States beyond the regular ones within the forms of the Constitution.

“If any further lights on the subject could be needed a very strong one is reflected from the answers given to the Resolutions by the States who protested agst. them. Their great objection, with a few undefined complaints of the spirit & character of the Resolutions, was directed agst the assumed authority of a State Legislature to declare a law of the U. S. to be unconstitutional which they considered an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the U. S. Had the Resolutions been regarded as avowing & maintaining a right in an individual State to arrest by force the execution of a law of the U. S. it must be presumed that it would have been a pointed and conspicuous object of their denunciation.

“In this review I have not noticed the idea entertained by some that disputes between the Govt of the U. S. and those of the individual States may & must be adjusted by

negotiation, as between independent Powers.

“Such a mode as the only one of deciding such disputes would seem to be as expressly at variance with the language and provisions of the Constitution as in a practical view it is pregnant with consequences subversive of the Constitution. It may have originated in a supposed analogy to the negotiating process in cases of disputes between separate branches or Departments of the same Govt. but the analogy does not exist. In the case of disputes between independent parts of the same Govt neither of them being able to consummate its pretensions, nor the Govt to proceed without a co-operation of the several parts necessity brings about an adjustment. In disputes between a State Govt and the Govt. of the U. S. the case is both theoretically & practically different; each party possessing all the Departments of an organized Government Legislative Ex. & Judl., and having each a physical force at command.

“This idea of an absolute separation & independence between the Govt. of the U. S. and the State Govts as if they belonged to different nations alien to each other has too often tainted the reasoning applied to Constitutional questions. Another idea not less unsound and sometimes presenting itself is, that a cession of any part of the rights of sovereignty is inconsistent with the nature of sovereignty, or at least a degradation of it. This would certainly be the case if the cession was not both mutual & equal, but when there is both mutuality & equality there is no real sacrifice on either side, each gaining as much as it grants, and the only point to be considered is the expediency of the compact and that to be sure is a point that ought to be well considered. On this principle it is that Treaties are admissible between Independent powers, wholly alien to each other, although privileges may be granted by each of the parties at the expense of its internal jurisdiction. On the same principle it is that individuals entering into the social State surrender a portion of their equal rights as men. If a part only made the surrender, it would be a degradation; but the surrenders being mutual, and each gaining as much authority over others as is granted to others over him, the inference is mathematical that in theory nothing is lost by any; however different the result may be in practice.

“I am now brought to the proposal which claims for the States respectively a right to appeal agst an exercise of power by the Govt. of the U. S. which by the States is decided to be unconstitutional, to a final decision by  $\frac{3}{4}$  of the parties to the Constitution. With every disposition to take the most favorable view of this expedient that a high respect for its Patrons could prompt I am compelled to say that it appears to be either not necessary or inadmissible.

“I take for granted it is not meant that pending the appeal the offensive law of the U. S. is to be suspended within the State. Such an effect would necessarily arrest its operation everywhere, a uniformity in the operation of laws of the U. S. being indispensable not only in a Constitutional and equitable, but in most cases in a practicable point of view, and a final decision adverse to that of the Appellant State would afford grounds to all kinds of complaint which need not be traced.

“But aside from those considerations, it is to be observed that the effect of the appeal will depend wholly on the form in which the case is proposed to the Tribunal which is

to decide it.

“If  $\frac{3}{4}$  of the States can sustain the State in its decision it would seem that this extra constitutional course of proceeding might well be spared; inasmuch as can institute and  $\frac{3}{4}$  can effectuate an amendment of the Constitution, which would establish a permanent rule of the highest authority, instead of a precedent of construction only.

“If on the other hand  $\frac{3}{4}$  are required to reverse the decision of the State it will then be in the power of the smallest fraction over  $\frac{1}{4}$  (of 7 States for example out of 24) to give the law to 17 States, each of the 17 having as parties to the Constitutional compact an equal right with each of the 7 to expound & insist on its exposition. That the 7 might in particular cases be right and the 17 wrong, is quite possible. But to establish a positive & permanent rule giving such a power to such a minority, over such a majority, would overturn the first principle of a free Government and in practice could not fail to overturn the Govt. itself.

“It must be recollected that the Constitution was proposed to the people of the States as a *whole*, and unanimously adopted as a *whole*, it being a part of the Constitution that not less than  $\frac{3}{4}$  should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake a majority even of  $\frac{3}{4}$  are distrusted and a unanimity required to make any change affecting those cases.

“When the Constitution was adopted as a whole, it is certain that there are many of its parts which if proposed by themselves would have been promptly rejected. It is far from impossible that every part of a whole would be rejected by a majority and yet the whole be unanimously accepted. Constitutions will rarely, probably never be formed without mutual concessions, without articles conditioned on & balancing each other. Is there a Constitution of a single State out of the 24 that would bear the experiment of having its component parts submitted to the people separately, and decided on according to their insulated merits.

“What the fate of the Constitution of the U. S. would be if a few States could expunge parts of it most valued by the great majority, and without which the great majority would never have agreed to it, can have but one answer.

“The difficulty is not removed by limiting the process to cases of construction. How many cases of that sort involving vital texts of the Constitution, have occurred? how many now exist? How many may hereafter spring up? How many might be plausibly enacted, if entitled to the privilege of a decision in the mode proposed.

“Is it certain that the principle of that mode may not reach much farther than is contemplated? If a single State can of right require  $\frac{3}{4}$  of its Co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, is the plea less plausible that as the Constitution was unanimously formed it ought to be unanimously expounded.

“The reply to all such suggestions must be that the Constitution is a compact; that its

text is to be expounded according to the provision for it making part of that Compact; and that none of the parties can rightfully violate the expounding provision, more than any other part. When such a right accrues as may be the case, it must grow out of abuses of the Constitution amounting to a release of the sufferers from their allegiance to it.

“Will you permit me Sir to refer you to Nos. 39 & 44 of the Federalist Edited at Washington by Gideon, which will shew the views taken on some points of the Constitution at the period of its adoption. I refer to that Edition because none preceding it are without errors in the names prefixed to the several papers as happens to be the case in No. 51 for which you suppose Col: Hamilton to be responsible. The errors were occasioned by a memorandum of his penned probably in haste, & partly in a lumping way. It need not be remarked that they were pure inadvertences.

“I fear Sir I have written you a letter the length of which may accord as little with your patience, as I am sorry to foresee that the scope of parts of it must do with your judgment. But a naked opinion did not appear respectful either to the subject or to the request with which you honored me, and notwithstanding the latitude given to my pen, I am not unaware that the views it presents may need more of development in some instances, if not more exactness of discrimination in others, than I could bestow on them. The subject has been so expanded and recd. such ramifications & refinements, that a full survey of it is a task agst which my age alone might justly warn me.

“The delay Sir in making the acknowledgments I owe you was occasioned for a time by a crowd of objects which awaited my return from a long absence at Richmond, and latterly by an indisposition from which I am not yet entirely recovered. I hope you will be good eno’ to accept these apologies, and with them assurances of my high esteem & my cordial salutations, in which Mrs. M. begs to be united with me, as I do with her in a respectful tender of them to Mrs. Hayne.”—*Chic. Hist. Soc. MSS.*

August 20, 1830, Madison wrote to Everett:

“There is not I am persuaded the slightest ground for supposing that Mr. Jefferson departed from his purpose not to furnish Kentucky with a set of Resolutions for the year ’99. It is certain that he penned the Resolutions of ’98, and, probably in the terms in which they passed. It was in those of ’99 that the word ‘nullification’ appears.

“Finding among my pamphlets a copy of the debates in the Virginia House of Delegates on the Resolutions of ’98, and one of an address of the two Houses to their constituents on the occasion, I enclose them for your perusal; and I add another, though it is less likely to be new to you, the ‘Report of a Committee of the S. Carolina House of Representatives, Decr. 9, 1828,’ in which the nullifying doctrine is stated in the precise form in which it is now asserted. There was a protest by the minority in the Virginia Legislature of ’98 against the Resolutions, but I have no copy. The matter of it may be inferred from the speeches in the Debates. I was not a member in that year, though the penman of the Resolutions, as now supposed.”—*Mad. MSS.*

Again on September 10, 1830, he wrote to Everett:

“Since my letter in which I expressed a belief that there was no ground for supposing that the Kentucky Resolutions of 1799, in which the term ‘nullification’ appears, were drawn by Mr. Jefferson, I infer from a manuscript paper containing the term just noticed, that altho he probably had no agency in the draft, nor even any knowledge of it at the time, yet that the term was borrowed from that source. It may not be safe, therefore, to rely on his to Mr. W. C. Nicholas printed in his *Memoir & Correspondence*, as a proof that he had no connection with or responsibility for the use of such term on such an occasion. Still I believe that he did not attach to it the idea of a constitutional right in the sense of S. Carolina, but that of a natural one in cases justly appealing to it.”—*Mad. MSS.*

On September 23, 1830, he wrote to Nicholas P. Trist:

“In a letter, lately noticed, from Mr Jefferson, dated November 17, 1799, he ‘*incloses me a copy of the draught of the Kentucky Resolves*’, (a press copy of his own manuscript). Not a word of explanation is mentioned. It was probably sent, and possibly at my request, in consequence of my being a member elect of the Virga Legislature of 1799, which would have to vindicate its contemporary Resolns. of -98. It is remarkable that the paper differs both from the Kentucky Resolutions of -98, & from those of -99. It agrees with the former in the main and must have been the pattern of the Resolns. of that year, but contains passages omitted in them, which employ the terms nullification & nullifying; and it differs in the quantity of matter from the Resolutions of -99, but agrees with them in a passage which employs that language, and would seem to have been the origin of it. I conjecture that the correspondent in Kentucky, Col. George Nicholas, probably might think it better to leave out particular parts of the draught than risk a misconstruction or misapplication of them; and that the paper might, notwithstanding, be within the reach & use of the Legislature of -99, & furnish the phraseology containing the term ‘nullification.’ Whether Mr. Jefferson had noted the difference between his draught & the Resolns of -98 (he could not have seen those of -99, which passed Novr. 14,) does not appear. His files, particularly his correspondence with Kentucky, must throw light on the whole subject. This aspect of the case seems to favor a recall of the communication if practicable. Though it be true that Mr Jefferson did not draught the Resolutions of -99, yet a denial of it, simply, might imply more than wd. be consistent with a knowledge of what is here stated.”—*Mad. MSS.*

See Warfield’s *Kentucky Resolutions of 1798*; also, for Jefferson’s correspondence, his Writings (P. L. Ford, Federal Edition) viii., 57, *et seq.*

[1] A final paragraph for the letter of Novr 27, 1830 to Mr. Stevenson.

“Allow me dear Sir to express on this occasion, what I always feel, an anxious hope that as our Constitution rests on a middle ground between a form, wholly national, and one merely federal, and on a division of the powers of Govt between the States in their united character and in their individual characters, this peculiarity of the system will be kept in view as a key to the sound interpretation of the Instrument and a



warning agst. any doctrine that would either enable the States to invalidate the powers of the U. States, or confer all power on them.”—*Madison’s Note*.

The following is not in the Madison MSS., but is from the *Works* of Madison (Cong Ed.):

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

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

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

2. But admitting the distinction as alleged, the appropriating power to *all* objects of “common defence and general welfare” is itself of sufficient magnitude to render the preceding views of the subject applicable to it. Is it credible that such a power would have been unnoticed and unopposed in the Federal Convention? in the State Conventions, which contended for, and proposed restrictive and explanatory amendments? and in the Congress of 1789, which recommended so many of these amendments? A power to impose *unlimited taxes* for *unlimited purposes* could never have escaped the sagacity and jealousy which were awakened to the many inferior and minute powers which were criticised and combated in those public bodies.

3. A power to appropriate money, without a power to apply it in execution of the object of appropriation, could have no effect but to lock it up from public use altogether; and if the appropriating power carries with it the power of application and execution, the distinction vanishes. The power, therefore, means nothing, or what is worse than nothing, or it is the same thing with the sweeping power “to provide for the common defence and general welfare.”

4. To avoid this dilemma, the consent of the States is introduced as justifying the exercise of the power in the full extent within their respective limits. But it would be a new doctrine, that an extra-constitutional consent of the parties to a Constitution could amplify the jurisdiction of the constituted Government. And if this could not be done

by the concurring consents of all the States, what is to be said of the doctrine that the consent of an individual State could authorize the application of money belonging to all the States to its individual purposes? Whatever be the presumption that the Government of the whole would not abuse such an authority by a partiality in expending the public treasure, it is not the less necessary to prove the existence of the power. The Constitution is a limited one, possessing no power not actually given, and carrying on the face of it a distrust of power beyond the distrust indicated by the ordinary forms of free Government.

The peculiar structure of the Government, which combines an equal representation of unequal numbers in one branch of the Legislature, with an equal representation of equal numbers in the other, and the peculiarity which invests the Government with selected powers only, not intrusting it even with every power withdrawn from the local governments, prove not only an apprehension of abuse from ambition or corruption in those administering the Government, but of oppression or injustice from the separate interests or views of the constituent bodies themselves, taking effect through the administration of the Government. These peculiarities were thought to be safeguards due to minorities having peculiar interests or institutions at stake, against majorities who might be tempted by interest or other motives to invade them, and all such minorities, however composed, act with consistency in opposing a latitude of construction, particularly that which has been applied to the terms "common defence and general welfare," which would impair the security intended for minor parties. Whether the distrustful precaution interwoven in the Constitution was or was not in every instance necessary; or how far, with certain modifications, any farther powers might be safely and usefully granted, are questions which were open for those who framed the great Federal Charter, and are still open to those who aim at improving it. But while it remains as it is, its true import ought to be faithfully observed; and those who have most to fear from constructive innovations ought to be most vigilant in making head against them.

But it would seem that a resort to the consent of the State Legislatures, as a sanction to the appropriating power, is so far from being admissible in this case, that it is precluded by the fact that the Constitution has expressly provided for the cases where that consent was to sanction and extend the power of the national Legislature. How can it be imagined that the Constitution, when pointing out the cases where such an effect was to be produced, should have deemed it necessary to be positive and precise with respect to such minute spots as forts, &c., and have left the general effect ascribed to such consent to an argumentative, or, rather, to an arbitrary construction? And here again an appeal may be made to the incredibility that such a mode of enlarging the sphere of federal legislation should have been unnoticed in the ordeals through which the Constitution passed, by those who were alarmed at many of its powers bearing no comparison with that source of power in point of importance.

5. Put the case that money is appropriated to a canal<sup>2</sup> to be cut within a particular State; how and by whom, it may be asked, is the money to be applied and the work to be executed? By agents under the authority of the General Government? then the power is no longer a mere appropriating power. By agents under the authority of the States? then the State becomes either a branch or a functionary of the Executive

authority of the United States, an incongruity that speaks for itself.

6. The distinction between a pecuniary power only, and a plenary power “to provide for the common defence and general welfare,” is frustrated by another reply to which it is liable. For if the clause be not a mere introduction to the enumerated powers, and restricted to them, the power to provide for the common defence and general welfare stands as a distinct substantive power, the first on the list of legislative powers, and not only involving all the powers incident to its execution, but coming within the purview of the clause concluding the list, which expressly declares that Congress may make all laws necessary and proper to carry into execution the *foregoing* powers vested in Congress.

The result of this investigation is, that the terms “common defence and general welfare” owed their induction into the text of the Constitution to their connexion in the “Articles of Confederation,” from which they were copied, with the debts contracted by the old Congress, and to be provided for by the new Congress; and are used in the one instrument as in the other, as general terms, limited and explained by the particular clauses subjoined to the clause containing them; that in this light they were viewed throughout the recorded proceedings of the Convention which framed the Constitution; that the same was the light in which they were viewed by the State Conventions which ratified the Constitution, as is shown by the records of their proceedings; and that such was the case also in the first Congress under the Constitution, according to the evidence of their journals, when digesting the amendments afterward made to the Constitution. It equally appears that the alleged power to appropriate money to the “common defence and general welfare” is either a dead letter, or swells into an unlimited power to provide for unlimited purposes, by all the means necessary and proper for those purposes. And it results finally, that if the Constitution does not give to Congress the unqualified power to provide for the common defence and general welfare, the defect cannot be supplied by the consent of the States, unless given in the form prescribed by the Constitution itself for its own amendment.

As the people of the United States enjoy the great merit of having established a system of Government on the basis of human rights, and of giving to it a form without example, which, as they believe, unites the greatest national strength with the best security for public order and individual liberty, they owe to themselves, to their posterity, and to the world, a preservation of the system in its purity, its symmetry, and its authenticity. This can only be done by a steady attention and sacred regard to the chartered boundaries between the portion of power vested in the Government over the whole, and the portion undivested from the several Governments over the parts composing the whole; and by a like attention and regard to the boundaries between the several departments, Legislative, Executive, and Judiciary, into which the aggregate power is divided. Without a steady eye to the landmarks between these departments, the danger is always to be apprehended, either of mutual encroachments, and alternate ascendancies incompatible with the tranquil enjoyment of private rights, or of a concentration of all the departments of power into a single one, universally acknowledged to be fatal to public liberty.

And without an equal watchfulness over the great landmarks between the General Government and the particular Governments, the danger is certainly not less, of either a gradual relaxation of the band which holds the latter together, leading to an entire separation, or of a gradual assumption of their powers by the former, leading to a consolidation of all the Governments into a single one.

The two vital characteristics of the political system of the United States are, first, that the Government holds its powers by a charter granted to it by the people; second, that the powers of Government are formed into two grand divisions—one vested in a Government over the whole community, the other in a number of independent Governments over its component parts. Hitherto charters have been written grants of privileges by Governments to the people. Here they are written grants of power by the people to their Governments

Hitherto, again, all the powers of Government have been, in effect, consolidated into one Government, tending to faction and a foreign yoke among a people within narrow limits, and to arbitrary rule among a people spread over an extensive region. Here the established system aspires to such a division and organization of power as will provide at once for its harmonious exercise on the true principles of liberty over the parts and over the whole, notwithstanding the great extent of the whole; the system forming an innovation and an epoch in the science of Government no less honorable to the people to whom it owed its birth, than auspicious to the political welfare of all others who may imitate or adopt it.

As the most arduous and delicate task in this great work lay in the untried demarcation of the line which divides the general and the particular Governments by an enumeration and definition of the powers of the former, more especially the legislative powers; and as the success of this new scheme of polity essentially depends on the faithful observance of this partition of powers, the friends of the scheme, or rather the friends of liberty and of man, cannot be too often earnestly exhorted to be watchful in marking and controlling encroachments by either of the Governments on the domain of the other.

[(\*)] See letter of J. M. to Mr. Walsh, Jany. 11, 1820.—Madison's Note.

[2] Linquet, "Observations sur l'ouverture de l'Escant."—Madison's note.

[1] The rest of the letter is missing from the Madison MSS. and is reprinted from the Works of Madison (Cong. Ed.).

[\*] Whether these words were in the draft from my pen or added before the Resolutions were introduced by the member who withdrew them I am not authorized to say, no Copy of the draft having been retained & memory not to be trusted after such a lapse of time. I certainly never disapproved the erasure of them.—Madison's Note.

[2] On more occasions than one, it has been noticed in Congressional debates that propositions appear to have been made in the Convention of 1787 to give to Congress

the power of opening canals, and to have been rejected; and that Mr. Hamilton, when contending in his report in favour of a bank for a liberal construction of the powers of Congress, admitted that a canal might be beyond the reach of those powers.—Madison's Note.